

Intersection of Intellectual Property Law and Artificial Intelligence

August 2024

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I. AI and IP: navigating the new frontier of Intellectual property challenges

Today, intellectual property (IP) can be argued to be a company's most valuable asset, including trademarks and brand-related assets. A recent study by IP consultancy Ocean Tomo found that the share of intangible asset market value in companies increased between 1995 and 2020 and now constitutes 90 percent of the market value.

Simultaneously, Artificial Intelligence (AI) is being employed across a wide range of industries, impacting almost every aspect of creation. These two topics have recently made headlines due to an incident involving an AI system that used Scarlett Johansson's voice without her consent. But what are the other risks posed by the rise of AI systems on IP?

Firstly, there are risks of copyright infringement by training AI systems since such systems utilize vast amounts of data for training purposes. These data can include text from articles, websites, books, and academic papers (in the case of OpenAI's ChatGPT); artwork (in the case of Midjourney); or computer code (in the case of GitHub Copilot). These sources are the result of human labor and are often protected by intellectual property laws. An AI system can also produce outputs that infringe on copyrights because they closely resemble original works. AI also raises ethical questions and concerns about the role of humans in future artistic creations.

In this intersection of AI and IP, several challenges are anticipated. These include the difficulty for an author to prove that an AI used their work without permission and that their work was part of the training data (trade secret). Another challenge involves identifying the infringer: is it the user or the AI system owner?

Fortunately, regulations are evolving globally, notably with the introduction of the EU AI Act. This legislation includes provisions requiring transparency of training data and mandates that

general-purpose AI models publicly provide a sufficiently detailed summary of the content used to train the model.

II. Getty Images sues Stability AI: the battle over AI training and copyright

With the advancement of Artificial Intelligence (AI), numerous questions and several conflicts have arisen, particularly concerning the intersection of AI and Intellectual Property (IP). These conflicts are likely to become increasingly frequent. A notable example of such conflicts is the case of 'Getty Images vs. Stability AI'.

Getty Images, a global media provider distributing royalty-free images, photos, music, and videos, sued Stability AI in the United Kingdom and the United States for using more than 12 million of its copyright-protected images to train its AI image generation tool (Stable Diffusion) without consent or compensation. Getty claims copyright infringement, violation of the sui generis database right, trademark infringement, and unfair competition.

However, since copyright is a territorial right, the primary question raised by this lawsuit is *where* the training of Stable Diffusion took place. If it occurred outside the United Kingdom, there would be no copyright infringement under UK law. Establishing the location involves relying on evidence such as the location of the development teams and the resources used for the development (including the specific machines used).
