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6 AI Cases And What They Mean For Copyright Law

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Our favorite songs, stories, applications and designs are all copyrightable creative works.

In some respects, we can thank the Copyright Act and other intellectual property laws for the abundance of creative works that exist, as these laws ensure that creators can profit from their ingenuity. But technology brings change, and new artificial intelligence tools allow users to create songs, stories, applications and designs in ways that only a year ago would have seemed impossible.

New technology like these AI tools may also help our creative community flourish.

What happens when existing copyright laws are used to challenge new AI technology? Is it ever OK to use copyrighted works to develop AI tools and, if so, when? If an AI tool produces an output that is substantially similar to an existing copyrighted work, does that infringe on the copyright?

These are some of the questions that federal courts around the country are now addressing. As cases progress through the legal system, we will learn more about how the U.S. judiciary thinks about the balance between copyright and AI technology development.

The decisions made in these cases will also help us understand how the appellate courts that set binding precedent look at the intersection between copyright and AI.

1. Kadrey v. Meta Platforms

A Nov. 20, 2023, **order** on a motion to dismiss in Kadrey v. Meta Platforms Inc., filed in the U.S. District Court for the Northern District of California, informs plaintiffs of the pleading standards they will need to meet in cases alleging that an AI model's outputs infringed an author's copyrights.

In July 2023, authors Richard Kadrey, Sarah Silverman and Christopher Golden filed a class action on behalf of other authors against Meta, alleging that Meta's large language model, LLaMA, was trained on a corpus of elements that they believed included the plaintiffs' copyrighted books.

Meta moved to dismiss, arguing first that the plaintiffs do not allege that the AI-generated output is

substantially similar to their copyrighted books and also that the plaintiffs do not claim that portions of the copyrighted passages appear in the LLaMA codebase, but instead are claiming infringement based on the extraction of information from the books as part of the training process.

This, Meta argued, was insufficient to state a claim for copyright infringement. While Kadrey also brought a claim of copyright infringement related to the inputs — e.g., that copyrighted materials were used as training data — Meta did not move to dismiss this claim.

The court agreed with Meta. In dismissing the plaintiffs' copyright infringement claim related to the model's outputs, the court concluded that the plaintiffs would either have to allege that LLaMA's outputs are actual copies of their protected works or that the outputs are substantially similar to the books such that they are derivative works.

The court determined the plaintiffs did neither and could not survive the pleading stage, dismissing their claims without prejudice.

2. Andersen v. Stability AI

The court's decision in Kadrey follows another similar Northern District of California decision in Andersen.

Plaintiffs Sarah Andersen, Kelly McKernan and Karla Ortiz, all visual artists, sued Stability AI, Midjourney and DeviantArt alleging infringement of the artists' copyrighted works in connection with the companies' generative artificial intelligence systems and products.

Following a motion to dismiss, the court dismissed with leave to amend the artists' copyright claims, concluding that the plaintiffs had not sufficiently alleged substantial similarity between the AI-generated outputs and the copyrighted art.

From this pair of orders granting motions to dismiss, the message to plaintiffs is clear: If the plaintiff is claiming that the outputs infringe copyrighted works at the pleading stage, the plaintiff must allege either that the outputs are actual copies of the copyrighted works or that the outputs are substantially similar.

Failure to allege either will likely lead to a dismissal, albeit with the opportunity for the plaintiff to amend their output-related claims. Attorneys representing plaintiffs alleging similar claims should take guidance from Kadrey and Andersen to ensure the claims of copyright infringement of the outputs are sufficiently pled.

3. Authors Guild v. OpenAI

In the U.S. District Court for the Southern District of New York, the Authors Guild, along with George R. R. Martin, John Grisham, Jodi Picoult and Shanbhag Lang, among others, represent a class of professional writers whose livelihoods depend on the works they create — the same works being used to train large language models now.

In their complaint, the plaintiffs claim that OpenAI and its governing organization violated copyright rules by reproducing their copyrighted work to train LLMs. The plaintiffs allege that their works have been used to train data, resulting in the improved quality of tools like ChatGPT.

When prompted, ChatGPT can produce detailed summaries, analyses and outlines of their works that could not be generated had materials not been ingested by the LLM. The plaintiffs say that OpenAI had ample opportunities to license their works and should license their works now, protecting authors from being exploited without "consent, credit, or compensation."

Attorneys should watch as this case progresses. As AI companies continue to train LLMs, their potential use of copyrighted material may see new copyright requirements in place.

4. Concord Music Group v. Anthropic

Like writers, creatives in the music industry have challenged the use of their works in the development of AI chatbots.

In Nashville, Tennessee, major music publishers including Universal Publishing Group and Concord have sued AI-software developer Anthropic PBC for copyright infringement, alleging that Anthropic misused at least 500 copyrighted song lyrics to train its AI chatbot, Claude.

In the complaint, Concord Music Group v. Anthropic, filed in the U.S. District Court for the Middle District of Tennessee, the plaintiffs allege that outputs from the AI tool will result in identical or substantially similar lyrics to those from copyrighted songs — for example, that Claude will provide lyrics to Don McLean's famous "American Pie" when prompted to write a song about the death of Buddy Holly.

This case is at a very early stage — the complaint was filed in October 2023, and while a motion to dismiss was filed in late November, we should not anticipate a decision on the motion for at least a few months.

Thus, while we may reasonably anticipate that the court here will take into consideration the decisions made by other courts opining on the interaction between AI and copyright, what ultimately will occur remains unclear. Both the factual and venue differences between this case and the Kadrey and Stability AI cases counsels against drawing, at this stage, any firm conclusions.

Litigators should see this case as a complement to the other AI-chatbot litigation across the country — potentially useful, but not necessarily.

5. Perry v. Shein

AI litigation has also worked its way into the fashion industry. In an era of TikTok and Instagram influencers, and the growing popularity of inexpensive dupes, companies can profit from using AI to stay on top of trends and to create popular styles.

However, companies should take caution when incorporating AI into the design process, as demonstrated by a recent lawsuit against controversial fast-fashion company Shein.

In Perry v. Shein Distribution Corp., which was originally filed in July 2023 in the U.S. District Court for the Central District of California, and includes a civil Racketeer Influenced and Corrupt Organizations Act claim, a collection of individuals and small businesses allege that Shein's network of related entities employs an algorithm intended to cull and copy the most commercially valuable designs.

Through this algorithm, Shein allegedly infringed the plaintiffs' intellectual property rights by creating identical copies of their works. As of December 2023, Shein has moved to dismiss the RICO claim and one of the copyright infringement claims. However, Shein has not moved to dismiss the majority of the infringement-based claims.

It remains to be seen how the court will handle infringement claims premised on an algorithm, as well as if the court will entertain the RICO claims based on this alleged organized infringing activity. Companies in the fashion space should pay attention to this litigation, as it could set an important precedent for what constitutes infringement in the AI realm and who is ultimately culpable.

Attorneys representing fashion and/or AI companies should also stay on top of developments in this case, as it could set the stage for future claims and defenses in the IP infringement space.

6. Chabon v. OpenAI

In the Northern District of California's Chabon v. OpenAI, Michael Chabon and Ta-Nehisi Coates, among others, **claim** that ChatGPT's ability to consistently and accurately summarize and analyze their copyrighted text makes clear that their works have been used to train LLMs, and claim that the use of ChatGPT continues to produce unauthorized derivative works of copyrighted material.

Chabon, coupled with the Authors Guild, puts LLMs in the spotlight, calling on courts to protect copyrighted works. As these cases advance, attorneys should watch for new precedents the courts may set on AI and copyright.

Conclusion

As these cases move forward, lawyers eagerly await the courts' decisions. It is clear that the competition between authors and AI could go many ways. As other companies develop LLMs, they should take note, ensuring copyrighted materials are licensed and properly used.

Moreover, these cases shed light on the complex legal implications arising from AI. Many of them come on the heels of a five-month strike by the Writer's Guild of America, negotiating terms to protect writers from AI.

Specifically, WGA's tentative agreement on 2023 contract terms explicitly states, "AI can't write or rewrite literary material; can't be used as source material; and MBA-covered material can't be used to train AI."[1]

As AI continues to advance and play an increasingly prominent role across industries, the protection of IP becomes paramount. Courts are just beginning to grapple with questions about ownership, inventorship, copyright infringement, and the liability of AI systems and/or companies in generating creative works.

These cases highlight the need for comprehensive legislation and guidelines that address the unique challenges posed by AI-generated content and the potential implications for U.S. IP law.

As technologies continue to evolve, it is crucial for legal frameworks to adapt and provide clarity in order

to foster innovation, protect creators, and ensure fair and equitable outcomes in the rapidly evolving landscape of AI.

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[1] https://www.wgacontract2023.org/the-campaign/what-we-won.