Culture Unbound
Journal of Current Cultural Research

Night at the Artificial Museum: Copyright Law and Artificial Intelligence

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Abstract

This essay explores the legal challenges and risks posed by tools associated with artificial intelligence (AI) for the protection, preservation, promotion, and regeneration of digital cultural heritage. In particular, it focuses on copyright litigation over AI training projects. However, it also touches upon other forms of intellectual property protection, such as passing off, trademark law, publicity rights, patent law, and trade secrets. This article considers the implications of copyright litigation in respect of AI projects for galleries, libraries, archives, and museums (composing the GLAM sector). It surveys the host of copyright action over AI projects – looking at literary works, journalism, databases, artistic works, musical works, performances, and cinematographic films. It explores the relationship between copyright law, the Creative Commons, and cultural heritage. It also considers how Indigenous intellectual property will be impacted by AI. The work investigates law reform options in respect of copyright law and AI in the GLAM sector. It also considers comparative perspectives on the regulation of AI – with a particular focus on copyright law, transparency, and AI training materials.

Keywords: Copyright Subsistence, Defence of Fair Use, Artificial Intelligence, Creative Commons, Cultural Heritage, Indigenous intellectual property

Rimmer: "Night at the Artificial Museum: Copyright Law and Artificial Intelligence", *Culture Unbound*, Volume 18, issue 1, 2026: 151–210. Published by Linköping University Electronic Press: http://www.cultureunbound.ep.liu.se https://doi.org/10.3384/cu.5601

Introduction

This essay explores the legal challenges and risks posed by tools associated with artificial intelligence (AI) for the protection, preservation, promotion, and regeneration of digital cultural heritage.

Los Angeles has announced the establishment of Dataland, a museum of AI Arts (Dataland 2024; see also Gelt 2024). Dataland will use millions of photographs and other records from partners including the Smithsonian and London's Natural History Museum to create its installations. Refik Anadol and Efsun Erkilic will be the guiding artists and curators behind Dataland. The project explains: "In pursuit of its mission, Dataland combines online access and learning platforms, acts as a public repository for large-scale, nature-focused data sets, and will build a comprehensive collection of AI art" (Dataland 2024). The project maintains that "Dataland is committed to ethical data-gathering and AI practices" (Dataland 2024). The project observes: "Aspiring to set the global standard for the presentation, curation, and exploration of AI-driven art, Dataland operates at the intersection of human imagination and the creative potential of machines, establishing a new model for cultural institutions in the digital age" (Dataland 2024).

There has been enthusiasm amongst curators about how AI could enhance the work of existing galleries, libraries, archives, and museums. Lauren Styx (2024) suggests: "From interactive virtual guides and personalized tours to predictive maintenance and sentiment analysis, AI is transforming how museums engage with audiences and manage their collections, ensuring a more dynamic and efficient future for the industry". She contends: "By leveraging AI responsibly, museums can enhance visitor experiences, streamline operations, and remain relevant in an increasingly digital world" (Styx 2024). Styx (2024) observes: "The future of AI in museums is bright, but it requires careful navigation to ensure ethical and effective implementation".

However, it may be difficult to claim copyright ownership in such works because of the lack of a human author. Copyright law – with its notions of authorship, material form, and originality – requires human authorship for copyright subsistence. Moreover, there could be dangers of copyright infringement in respect of AI projects, particularly if they draw upon third-party data and source material for training models. There has been a flood of copyright litigation relating to the unauthorised use of copyright materials for machine learning and AI training.

In the United States, a number of jurists and legal theorists have considered ways and means by which robotics and artificial intelligence could be accommodated within copyright law. Pamela Samuelson (1985), Annemarie Bridy (2012), James Grimmelmann (2016), and Andres Guadamuz (2017) have explored the possibilities in respect of copyright law and artificial intelligence.

There is a growing literature on the topic of intellectual property and AI. Carys Craig (2022) has written about the AI-copyright challenge to technology neutrality, authorship, and the public interest. Giancarlo Frosio (2022) has considered how the advent of AI has required a reconsideration of theories of authorship, creativity, and aesthetics. Enrico Bonadio, Plamen Dinev, and Luke McDonagh (2022) have considered whether AI can infringe copyright. Some academics have argued that copyright law needs to be updated, reformed, and modernised to take AI into account (see for instance Lemley & Casey 2021). Other scholars have maintained that copyright law should remain true to its original founding principles in the face of AI (Lee & Woo 2020). The United States Copyright Office (2023a) issued a notice of inquiry, seeking public responses to questions about the intersection of copyright law and AI. The United States Copyright Office (2023b) received over 10,000 submissions. Given the competing interests of stakeholders, it has often been difficult to achieve consensus on copyright law reform – such as in Australia (Attorney-General's Department 2023). As Dennis Crouch (2024) has observed, there are also limitations as to the role of copyright law as a regulator of AI.

There have also been studies of the impact of AI upon other fields of intellectual property. There has been investigation of the implications of AI for design law, trademark law, and consumer protection law. There has been particular concern about AI and deepfakes, raising questions in respect of personality rights, publicity rights, and passing off. James Boyle (2024) has highlighted the impact of AI on personhood. More generally, Toby Walsh (2023) has explored the rise of AI-related fakes in a study of authenticity. In the field of patent law, there has been litigation as to whether AI can be the inventor of a patented invention (Osha 2023, Noto La Diega, Cifrodelli & Dermawan 2024). There has also been consideration of how trade secrets law and the protection of confidential information will be affected by AI (Crouch 2024). Beyond intellectual property, there is larger work concerning the regulation of AI and robotics (Guihot & Bennett Moses 2020, Chesterman 2021, Allegre 2024, Santow & Nellor 2024). There is a considerable literature on the ethics of AI (Dubber, Pasquale & Das 2020). There has also been a broader discussion of the impact of AI on politics, society, and the environment (Crawford 2022).

Given the expanding universe of scholarship on intellectual property and AI, this paper seeks to limit the scope of its study in a variety of ways. This work is focused largely on the intellectual property domain of copyright law. Given the concern with digital cultural heritage, this paper looks at relevant subject matter – including literary works, databases, artistic works, musical works, cinematographic films, and Indigenous intellectual property. This work is particularly interested in case law and litigation in respect of copyright law and AI training materials. There is however a discussion of the larger political debate in respect of copyright law and AI – particularly given the deep divisions between stakeholders in the field.

Given the preponderance of activity in the United States at present in respect of copyright law and AI, this essay mainly looks at United States copyright law and policy. While there is a brief comparative survey at the end, there is not really the space to do a full comparative study of copyright law and AI, especially as such an endeavour would require a full monograph.

This article explores the ramifications of copyright law for AI projects in the GLAM sector (galleries, libraries, archives, and museums). There has been a wave of copyright litigation over AI projects, especially in the United States (Lee 2024a, 2025a). There are currently 59 copyright lawsuits before the United States courts relating to AI projects, as at November 2025 (Lee 2025c). This article will evaluate such copyright litigation over AI, according to the copyright subject matter involved. Part 1 focuses on copyright law, literary works, and AI – particularly highlighting the outcomes of early disputes in this field. Part 2 examines copyright lawsuits by news companies and media organisations against AI companies. Part 3 focuses upon legal action for copyright infringement by database developers against AI companies. Part 4 examines the relationship between copyright law, artistic works, and AI. Part 5 focuses upon copyright law, musical works, and AI. Part 6 deals with the complaints of performers about the use of their voices by AI companies, particularly under publicity rights. Part 7 focuses upon cinematographic films, audio-visual works, copyright law, and AI. Part 8 examines disputes over copyright law, computer programs, and AI. Part 9 looks at the work of the Creative Commons movement in dealing with open licensing, cultural heritage, and AI. Part 10 focuses on copyright law, Indigenous intellectual property, and AI. Part 11 focuses upon law reform options for copyright law and AI in the GLAM sector. Part 12 explores alternative comparative perspectives in terms of dealing with copyright law and AI training materials.

Copyright Law, Literary Works, and AI

The copyright litigation over literary works and AI builds upon previous precedents dealing with copyright law and digital libraries involving Google, Hathi Trust, and the Internet Archive. Google sought to raise the defence of fair use in the litigation over Google Books – ultimately, a settlement was reached by Google with the publishing industry.[1] Hathi Trust raised the defence of fair use after conflict with authors and publishers.[2] The copyright litigation by authors and publishers against the Internet Archive perhaps suggests that the courts are shifting their approach to fair use (Rimmer 2024/2025).[3] The preliminary decisions over copyright law,

1 Authors Guild Inc., et al. v. Google, Inc. 804 F.3d 202 (2nd Cir., 2015).
2 Authors Guild Inc. v. HathiTrust 775 F.3d 87 (2nd Cir., 2014).
3 Hachette Book Group, Inc. v. Internet Archive 115 F. 4th 163 (2nd Cir., 2024).

fair use, literary works, and AI handed down in mid-2025 have been mixed. In June 2025, Meta largely prevailed in a dispute over copyright and fair use against Kadrey at first instance.[4] However, the decision in *Bartz* v. *Anthropic* in June 2025 was much more complicated.[5] While Anthropic won summary judgment on the use of literary works as training materials against Bartz, Anthropic failed to obtain summary judgment in respect of the creation of a library of pirated books. There has been a proposed settlement in this dispute. Copyright litigation by literary authors and publishers against OpenAI is ongoing. Given the divergence of opinion thus far, superior courts, such as the Court of Appeals for the Federal Circuit and the Supreme Court of the United States, may need to intervene to resolve the diversity of opinion in the district courts.

Kadrey v. Meta

There have been a series of lawsuits by writers and authors against Meta Platforms Inc.[6] Pulitzer Prize winner Michael Chabon has led a group of authors in filing a class action against Meta, accusing the tech giant of misusing their copyrighted works to train its Llama AI software (Brittain & Paul 2023).

In May 2025, Justice Vince Chhabria considered oral argument over summary judgment in a dispute between Meta and another group of authors. There has also been an array of amicus curiae briefs involving other interested parties. The judge responded to the arguments of Meta that Llama AI training is a transformative use, which poses no threat to authors. The judge commented: "You have companies using copyright-protected material to create a product that is capable of producing an infinite number of competing products" (Belanger 2025a). Chhabria said: "You are dramatically changing, you might even say obliterating, the market for that person's work, and you're saying that you don't even have to pay a license to that person" (Belanger 2025a). He questioned the defence of fair use raised by Meta: "I just don't understand how that can be fair use" (Belanger 2025a). The judge reflected: "It seems like you're asking me to speculate that the market for Sarah Silverman's memoir will be affected by the billions of things that Llama will ultimately be capable of producing" (Belanger 2025a). Nonetheless, some commentators – such as Lee (2025b) – predicted that Meta could still prevail on the fair use defence.

4 *Kadrey* v. *Meta Platforms, Inc.* 788 F.Supp.3d 1026 (United States District Court, N.D. California, 25 June 2025).

5 Bartz v. Anthropic PBC 787 F.Supp.3d 1007 (United States District Court, N.D. California, 23 June 2025).

6 *Kadrey* v. *Meta Platforms, Inc.*, the U.S. District Court for the Northern District of California, No. 3:23-cv-03417 (filed July 7, 2023) (proposed class action); *Chabon* v. *Meta Platforms, Inc.*, the U.S. District Court for the Northern District of California, 3:23-cv-04663 (filed Sept. 12, 2023) (proposed class action); and *Huckabee* v. *Meta Platforms, Inc.*, the U.S. District Court for the Northern District of California, 3:2023cv06663 (filed Sept. 12, 2023; revived and consolidated on July 5, 2024) (proposed class action).

In June 2025, the judge largely found in favour of Meta at first instance. Chhabria discussed the conflict in these terms:

> Companies are presently racing to develop generative artificial intelligence models—software products that are capable of generating text, images, videos, or sound based on materials they've previously been 'trained' on. Because the performance of a generative AI model depends on the amount and quality of data it absorbs as part of its training, companies have been unable to resist the temptation to feed copyright-protected materials into their models—without getting permission from the copyright holders or paying them for the right to use their works for this purpose. This case presents the question whether such conduct is illegal.[7]

The judge commented: "Although the devil is in the details, in most cases the answer will likely be yes".[8] The judge observed: "What copyright law cares about, above all else, is preserving the incentive for human beings to create artistic and scientific works".[9] The judge feared: "Generative AI has the potential to flood the market with endless amounts of images, songs, articles, books, and more".[10] The judge lamented: "People can prompt generative AI models to produce these outputs using a tiny fraction of the time and creativity that would otherwise be required".[11] The judge observed: "So by training generative AI models with copyrighted works, companies are creating something that often will dramatically undermine the market for those works, and thus dramatically undermine the incentive for human beings to create things the old-fashioned way".[12]

The judge discussed the application of the defence of fair use to the topic of AI training:

> Fair use is a fact-specific doctrine that requires case-by-case analysis that is sensitive to new technologies and their potential consequences. No previous case has involved a use that is both as transformative and as capable of diluting the market for the original works as LLM training is. So no previous case answers the question whether Meta's copying was fair use. That question must be answered by flexibly applying the

7 Kadrey v. Meta Platforms, Inc. 788 F.Supp.3d 1026 at 1034 (United States District Court, N.D. California, 25 June 2025).
8 Ibid., 1034.
9 Ibid., 1034.
10 Ibid., 1034.
11 Ibid., 1034-1035.
12 Ibid., 1035.

> fair use factors and considering Meta's copying in light of the purpose of copyright and fair use: protecting the incentive to create by preventing copiers from creating works that substitute for the originals in the marketplace.[13]

The judge commented: "In cases involving uses like Meta's, it seems like the plaintiffs will often win, at least where those cases have better-developed records on the market effects of the defendant's use".[14] The judge also observed: "No matter how transformative LLM training may be, it's hard to imagine that it can be fair use to use copyrighted books to develop a tool to make billions or trillions of dollars while enabling the creation of a potentially endless stream of competing works that could significantly harm the market for those books".[15] Nonetheless, on the facts of this case, the judge commented that "because Meta's use of the works of these thirteen authors is highly transformative, the plaintiffs needed to win decisively on the fourth factor to win on fair use".[16]

The judge also noted that the decision was qualified and limited: "But in the grand scheme of things, the consequences of this ruling are limited".[17] The judge noted: "This is not a class action, so the ruling only affects the rights of these thirteen authors—not the countless others whose works Meta used to train its models".[18] The judge observed: "And, as should now be clear, this ruling does not stand for the proposition that Meta's use of copyrighted materials to train its language models is lawful".[19] The judge commented of the ruling: "It stands only for the proposition that these plaintiffs made the wrong arguments and failed to develop a record in support of the right one".[20]

An appeal has been launched against this decision by copyright owners who have complained that the decision of the judge is self-contradictory.

Bartz v. Anthropic

A group of authors – including Andrea Bartz, Charles Graeber, and Kirk Wallace Johnson – have sued the Amazon.com-backed Anthropic for copyright infringement over using their books to train the AI Claude.[21] The complaint calls

13 Ibid., 1059.
14 Ibid., 1059.
15 Ibid., 1059.
16 Ibid., 1060.
17 Ibid., 1036.
18 Ibid., 1036.
19 Ibid., 1036-1037.
20 Ibid., 1037.
21 *Bartz* v. *Anthropic*, the U.S. District Court for the Northern District of California, 3:24-cv-05417 (filed Aug. 19, 2024). For discussion, see Soni 2024a.

Anthropic a "modern-day Napster".[22] The complaint maintains: "It is not consistent with core human values or the public benefit to download hundreds of thousands of books from a known illegal source".[23] The complaint suggests: "Anthropic has attempted to steal the fire of Prometheus".[24]

In his June 2025 decision on fair use, Alsup J portrayed the dispute in these terms:

> An artificial intelligence firm downloaded for free millions of copyrighted books in digital form from pirate sites on the internet. The firm also purchased copyrighted books (some overlapping with those acquired from the pirate sites), tore off the bindings, scanned every page, and stored them in digitized, searchable files. All the foregoing was done to amass a central library of 'all the books in the world' to retain 'forever.' From this central library, the AI firm selected various sets and subsets of digitized books to train various large language models under development to power its AI services. Some of these books were written by plaintiff authors, who now sue for copyright infringement.[25]

His decision on the conflict was a mixed one. Alsup J granted summary judgment for Anthropic that the training use was a fair use. Alsup J also granted that the print-to-digital format change was a fair use, albeit for a different reason. However, Alsup J denied summary judgment for Anthropic that the pirated library copies must be treated as training copies.

First, Alsup J held: "The copies used to train specific LLMs were justified as a fair use".[26] In his view, "Every factor but the nature of the copyrighted work favors this result".[27] His Honour concluded: "The technology at issue was among the most transformative many of us will see in our lifetimes".[28]

Second, Alsup J held: "The copies used to convert purchased print library copies into digital library copies were justified, too, though for a different fair use".[29] The judge ruled: "On balance, as the purchased print copy was destroyed and its digital replacement not redistributed, this was a fair use".[30] Alsup J held that it was "a fair use because all Anthropic did was replace the print copies it had purchased

22 Ibid.
23 Ibid.
24 Ibid.
25 Bartz v. Anthropic PBC 787 F.Supp.3d 1007 at 1014 (United States District Court, N.D. California, 23 June 2025).
26 Ibid., 1033.
27 Ibid., 1033.
28 Ibid., 1033.
29 Ibid., 1033.
30 Ibid., 1033.

for its central library with more convenient space-saving and searchable digital copies for its central library — without adding new copies, creating new works, or redistributing existing copies".[31]

Third, Alsup J held: "The downloaded pirated copies used to build a central library were not justified by a fair use".[32] The judge noted: "Every factor points against fair use".[33] Alsup J noted: "Anthropic employees said copies of works (pirated ones, too) would be retained 'forever' for 'general purpose' even after Anthropic determined they would never be used for training LLMs".[34] Alsup J maintained: "A separate justification was required for each use".[35] The judge observed: "None is even offered here except for Anthropic's pocketbook and convenience".[36] Alsup insisted that "Anthropic had no entitlement to use pirated copies for its central library".[37] In his view, "Creating a permanent, general-purpose library was not itself a fair use excusing Anthropic's piracy".[38]

Finally, Alsup J commented: "As for any copies made from central library copies but not used for training, this order does not grant summary judgment for Anthropic".[39] The judge observed: "Anthropic is not entitled to an order blessing all copying 'that Anthropic has ever made after obtaining the data,' to use its words".[40]

There has been a proposed settlement of the dispute in *Bartz* v. *Anthropic*. Alsup J has expressed his concern about certain aspects of the settlement. In September 2025, the judge quipped: "We'll see if I can hold my nose and approve it" (Liedtke & O'Brien 2025). The $US1.5 billion settlement is "the largest copyright settlement in U.S. history" (Hansen 2025b). The success of this lawsuit has led to many other Shadow Library lawsuits being filed against AI developers.

Authors Guild v OpenAI

In September 2023, the Authors Guild and 17 authors filed a class-action suit against OpenAI in the Southern District of New York for copyright infringement of their works of fiction.[41] The named plaintiffs included David Baldacci, Mary Bly, Michael Connelly, Sylvia Day, Jonathan Franzen, John Grisham, Elin Hilderbrand, Christina Baker Kline, Maya Shanbhag Lang, Victor LaValle, George R.R. Martin,

31 Ibid., 1019.
32 Ibid., 1033.
33 Ibid., 1033.
34 Ibid., 1033.
35 Ibid., 1033.
36 Ibid., 1033.
37 Ibid., 1019.
38 Ibid., 1019.
39 Ibid., 1033.
40 Ibid., 1034.
41 *Authors Guild* v. *OpenAI*, in the U.S. District Court for the Southern District of New York, 1:23-cv-8292 (filed Sept. 19, 2023) (proposed class action).

Jodi Picoult, Douglas Preston, Roxana Robinson, George Saunders, Scott Turow, and Rachel Vail.

Rachel Geman, a partner with Lieff Cabraser and co-counsel for Plaintiffs and the Proposed Class, commented: "Without Plaintiffs' and the proposed class' copyrighted works, Defendants would have a vastly different commercial product" (The Authors Guild 2023). She stated that the "Defendants' decision to copy authors' works, done without offering any choices or providing any compensation, threatens the role and livelihood of writers as a whole" (The Authors Guild 2023).

Scott Sholder, a partner with Cowan, DeBaets, Abrahams & Sheppard and co-counsel for Plaintiffs and the Proposed Class, added: "Plaintiffs don't object to the development of generative AI, but Defendants had no right to develop their AI technologies with unpermitted use of the authors' copyrighted works" (The Authors Guild 2023). He commented: "Defendants could have 'trained' their large language models on works in the public domain or paid a reasonable licensing fee to use copyrighted works" (The Authors Guild 2023). Authors Guild CEO Mary Rasenberger commented: "It is imperative that we stop this theft in its tracks or we will destroy our incredible literary culture, which feeds many other creative industries in the U.S." (The Authors Guild 2023). She observed: "To preserve our literature, authors must have the ability to control if and how their works are used by generative AI" (The Authors Guild 2023).

In December 2024, the Authors Guild filed an amended complaint, naming Microsoft as a defendant.[42] The complaint observed:

> Plaintiffs seek to represent a class of professional fiction writers whose works spring from their own minds and their creative literary expression. These authors' livelihoods derive from the works they create. But OpenAI's LLMs endanger fiction writers' ability to make a living, in that the LLMs allow anyone to generate—automatically and freely (or very cheaply)—texts that they would otherwise pay writers to create. Moreover, OpenAI's LLMs can spit out derivative works: material that is based on, mimics, summarizes, or paraphrases Plaintiffs' works, and harms the market for them.[43]

The complaint alleged: "Unfairly, and perversely, without Plaintiffs' copyrighted works on which to 'train' their LLMs, Defendants would have no commercial product with which to damage—if not usurp—the market for these professional authors' works".[44] The complaint maintained: "OpenAI's willful copying thus makes

42 Amended complaint.
43 Amended complaint.
44 Amended complaint.

Plaintiffs' works into engines of their own destruction".[45] The claims to relief include direct copyright infringement, vicarious copyright infringement, and contributory copyright infringement.

In April 2024, Judge Sidney Stein of the U.S. District Court for the Southern District of New York denied a motion by plaintiffs in a California case to intervene in litigation pending against OpenAI in a New York federal court.[46]

The Authors Alliance (2024) – which promotes a progressive approach to copyright law – has argued: "We believe AI training can rely on transformative fair use, but it is also possible for courts to take a very restrictive reading of fair use (especially in the wake of the Supreme Court's recent *Warhol* decision) and decide that AI training is not acceptable as a fair use for a variety of reasons".

There has been a lawsuit lodged by Jonathan Alter against OpenAI and Microsoft in New York.[47] This action has been consolidated with other authors' lawsuits (BakerHostetler 2024).

In California, a number of legal actions have been consolidated in the matter of *In Re: OpenAI ChatGPT Litigation*.[48] The authors alleged six causes of action: direct copyright infringement, vicarious copyright infringement, violation of the *Digital Millennium Copyright Act* (DMCA), unfair competition, negligence, and unjust enrichment. OpenAI sought dismissal of all causes of action except direct copyright infringement. In February 2024, a federal judge in California, Araceli Martínez-Olguín, granted the bulk of OpenAI's motion to dismiss many of the writers' claims.[49] Martínez-Olguín dismissed a claim of vicarious copyright infringement on the grounds that the authors had not shown that there was "substantial similarity" between their books and ChatGPT's output.[50] The judge was of the view that the authors' claim that all ChatGPT outputs are "infringing derivative work" is "insufficient".[51] Her Honour also dismissed allegations of negligence, unjust enrichment, and violations of the *Digital Millennium Copyright Act* 1998.

45 Amended complaint.
46 Authors Guild v. OpenAI (1 April 2024) https://caselaw.findlaw.com/court/us-dis-crt-sd-new-yor/116009536.html
47 *Alter* v. *OpenAI, Microsoft (formerly Julian Sancton v. OpenAI, Microsoft)*, in the U.S. District Court for the Southern District of New York, 1:23-cv-10211 (filed Nov. 21, 2023).
48 *Tremblay* v. *OpenAI, Inc*., the U.S. District Court for the Northern District of California, No. 3:23-cv-03223 (filed June 28, 2023) (proposed class action); *Silverman* v. *OpenAI, Inc*., the U.S. District Court for the Northern District of California, No. 3:23-cv-03223 (filed July 7, 2023) (proposed class action); and *Chabon* v. *OpenAI Inc*., the U.S. District Court for the Northern District of California, 3:23-cv-04625-PHK (filed Sept. 8, 2023) (proposed class action).
49 Tremblay v. OpenAI, Inc., the U.S. District Court for the Northern District of California, 12 February 2024. See Creamer 2024.
50 Ibid.
51 Ibid.

Other Literary Copyright Litigation v. AI Developers

In July 2023, a lawsuit was filed by authors against Alphabet Inc. over the scraping of data for the AI program Bard.[52] One of the plaintiffs, J.L., a Texan author and investigative journalist, said Google also copied her book in full to train Bard. The lawsuit requested the court to order Google to let internet users opt out of Google's "illicit data collection" and to delete the existing data or pay its owners "fair compensation" (Brittain 2023). Google general counsel Halimah DeLaine Prado responded that the company has been "clear for years that we use data from public sources — like information published to the open web and public datasets – to train the AI models behind services like Google Translate, responsibly and in line with our AI Principles" (Brittain 2023).

Novelist Andre Dubus III and journalist and nonfiction writer Susan Orlean have lodged a copyright complaint in respect of Nvidia's NeMo Megatron models.[53] The complaint alleges: "NVIDIA made multiple copies of the Infringed Works during the training of the NeMo Megatron models without Plaintiffs' or Class members' permission and in violation of their exclusive rights under the Copyright Act".[54] There has also been a proposed class action launched by Abdi Nazemian against the NVIDIA Corporation.[55]

Fiction writers Rebecca Makai and Jason Reynolds have filed a lawsuit for copyright infringement against Databricks Inc. over its Mosaic ML model in the U.S. District Court for the Northern District of California.[56] There has been another action launched against Databricks Inc. by Stewart O'Nan.[57]

Copyright Law, Journalism, News, and AI

There have been significant intellectual property disputes over news and journalism in the past, raising issues about copyright law, confidential information, and "hot news" (Slauter 2019). A range of news, media, and journalistic organisations have brought action against technology developers for copyright infringement in respect of AI programs.

52 J.L. v. Alphabet Inc., the U.S. District Court for the Northern District of California, 3:23-cv-03440-LB (filed Jul. 11, 2023)
53 *Dubus* v. *NVIDIA Corp.*, the U.S. District Court for the Northern District of California, 4:24-cv-02655 (filed May 2, 2024) (proposed class action). For commentary, see Jahner 2024.
54 Dubus v. NVIDIA Corp., in the U.S. District Court for the Northern District of California, 4:24-cv-02655 (filed May 2, 2024) (proposed class action).
55 *Nazemian* v. *NVIDIA Corp.*, the U.S. District Court for the Northern District of California, No. 3:23-cv-01454 (filed Mar. 8, 2024) (proposed class action).
56 *Makkai* v. *Databricks, Inc.,* the U.S. District Court for the Northern District of California, 3:24-cv-02653 (filed Aug. 27, 2024). For commentary, see Jahner 2024.
57 *O'Nan* v. *Databricks, Inc.,* Mosaic ML in the U.S. District Court for the Northern District of California, No. 3:23-cv-01451 (filed Mar. 8, 2024).

In February 2024, Intercept Media brought a legal action against OpenAI and Microsoft in the U.S. District Court for the Southern District of New York.[58] Intercept Media alleged that OpenAI and Microsoft removed electronic rights management information in respect of its copyright: "Defendants… trained ChatGPT and Copilot not to acknowledge or respect copyright, not to notify ChatGPT and Copilot users when the responses they received were protected by journalists' copyright, and not to provide attribution when using the works of human journalists".[59] In June 2024, The Intercept Media Inc. amended its complaint to include over 600 pages of exhibits (Gilbert 2024a). It detailed how algorithms stripped articles of the author's name and title. In response, the technology companies argued that the lawsuit should be dismissed, because of a lack of injury. Rakoff J responded: "The injury is that you removed that information knowing or having reason to know it would lead to copyright infringement" (Soni 2024b).

In February 2024, Raw Story Media Inc. and Alternet brought an action against OpenAI, claiming that it was in breach of the *Digital Millennium Copyright Act* 1998 (US) by scraping news articles from its site, and removing the electronic management rights information.[60] In November 2024, McMahon J dismissed the copyright lawsuit by Raw Story Media Inc. and Alternet Media. Inc. on the grounds that they lacked concrete injury to bring the lawsuit (Gilbert 2024b).

Investigative journalist Nicholas Gage and author Nicholas Basbanes have also filed a copyright lawsuit against OpenAI and Microsoft, alleging that their books and articles were used to train ChatGPT.[61] The lawsuit from Gage and Basbanes said that "until recently, ChatGPT provided verbatim quotes of copyrighted text" (Poritz 2024). The complaint observed: "Currently, it instead readily offers to produce summaries of such text".[62] The lawsuit noted: "These summaries themselves are derivative works, the creation of which is inherently based on the original unlawfully copied work".[63]

The New York Times has also brought a copyright infringement against Microsoft and OpenAI over the use of its journalism for training materials.[64] *The New York Times* noted: "Publicly, Defendants insist that their conduct is

58 *Intercept Media Inc.* v. *OpenAI*, the U.S. District Court for the Southern District of New York, 1:24-cv-01515 (filed Feb. 28, 2024).
59 Intercept Media Inc. v. OpenAI, the U.S. District Court for the Southern District of New York, 1:24-cv-01515 (filed Feb. 28, 2024), complaint, 2.
60 *Raw Story Media, Inc.* v. *OpenAI*, in the U.S. District Court for the Southern District of New York, 1:24-cv-01514 (filed Feb. 28, 2024).
61 *Basbanes* v. *Microsoft Corp.*, *OpenAI*, the U.S. District Court for the Southern District of New York, 1:24-cv-00084 (filed Jan. 5, 2024) (proposed class action).
62 Ibid.
63 Ibid.
64 *The New York Times Co.* v. *Microsoft Corp.*, *OpenAI*, the U.S. District Court for the Southern District of New York, 1:23-cv-11195 (filed Dec. 27, 2023).

protected as 'fair use' because their unlicensed use of copyrighted content to train GenAI models serves a new 'transformative' purpose".[65] However, in the view of *The New York Times*, "there is nothing 'transformative' about using The Times's content without payment to create products that substitute for The Times and steal audiences away from it".[66] *The New York Times* argued: "Because the outputs of Defendants' GenAI models compete with and closely mimic the inputs used to train them, copying Times works for that purpose is not fair use".[67] *The New York Times* commented: "This action seeks to hold them responsible for the billions of dollars in statutory and actual damages that they owe for the unlawful copying and use of The Times's uniquely valuable works".[68] There has been some scholarly discussion as to whether the position of *The New York Times* is consistent with its past approach to copyright law and fair use (Pope 2024).

A group of United States newspapers – including the *New York Daily News* and *Chicago Tribune* – have sued Microsoft and OpenAI for copyright infringement.[69] The complaint observes: "This lawsuit arises from Defendants purloining millions of the Publishers' copyrighted articles without permission and without payment to fuel the commercialization of their generative artificial intelligence ('GenAI') products, including ChatGPT and Copilot".[70] The complaint observes: "Microsoft and OpenAI simply take the work product of reporters, journalists, editorial writers, editors and others who contribute to the work of local newspapers—all without any regard for the efforts, much less the legal rights, of those who create and publish the news on which local communities rely".[71] The complaint also worries about the distortion of its journalism: "As if plagiarizing the Publishers' work were not enough, Defendants' products are often subject to 'hallucinations' where those products malign the Publishers' credibility by falsely attributing inaccurate reporting to the Publishers' newspapers".[72] The lawsuit fears: "Beyond just profiting from the theft of the Publishers' content, Defendants are actively tarnishing the newspapers' reputations and spreading dangerous disinformation".[73] An OpenAI spokesperson responded that the company takes "great care in our products and design process to support news organizations" (Brittain 2024d).

The Center for Investigative Reporting Inc. has also brought action against

65 Complaint, [8].
66 Ibid., [8].
67 Ibid., [8].
68 Ibid., [9].
69 *Daily News* v. *Microsoft*, in the U.S. District Court for the Southern District of New York, 1:24-cv-03285 (filed Aug. 27, 2024).
70 Ibid., Complaint, 1.
71 Ibid., Complaint, 6.
72 Ibid., Complaint, 7.
73 Ibid., Complaint, 7.

OpenAI and Microsoft for copyright infringement.[74] The complaint alleged: "Defendants copied, used, abridged, and displayed CIR's valuable content without CIR's permission or authorization, and without any compensation to CIR".[75] The complaint maintained that "Defendants greatly benefit from CIR's distinct voice in the marketplace, as CIR provides a unique perspective, especially regarding investigative topics impacting diverse communities".[76] Monika Bauerlein, CEO of the Center for Investigative Reporting, commented: "OpenAI and Microsoft started vacuuming up our stories to make their product more powerful, but they never asked for permission or offered compensation, unlike other organizations that license our material" (Reveal Staff 2024). She added: "This free rider behavior is not only unfair, it is a violation of copyright" (Reveal Staff 2024). Bauerlein argues: "The work of journalists, at CIR and everywhere, is valuable, and OpenAI and Microsoft know it" (Reveal Staff 2024).

In October 2024, Rupert Murdoch's Dow Jones and New York Post sued the AI firm Perplexity AI for copyright infringement (Reuters 2024). The lawsuit read: "This suit is brought by news publishers who seek redress for Perplexity's brazen scheme to compete for readers while simultaneously freeriding on the valuable content the publishers produce" (Reuters 2024). The News Corp CEO, Robert Thomson, said in a statement: "Perplexity perpetrates an abuse of intellectual property that harms journalists, writers, publishers and News Corp" (Reuters 2024).

There has also been litigation by news organisations against AI developers in neighbouring Canada.[77] In November 2025, the Ontario Superior Court of Justice ruled that a copyright action by Canadian news publishers – including Postmedia, CBC/Radio-Canada, the Canadian Press, the *Toronto Star*, and the *Globe and Mail* – against OpenAI could proceed to trial (Lau, 2025). The Ontario court held that "a good, arguable case has been made that the *Copyright Act* breaches are sufficiently connected to Ontario". The court additionally awarded the Canadian news media companies $260,000 in preliminary costs.

Such litigation over copyright law, journalism, and AI is relevant and pertinent to museums, archives, libraries, and galleries, given that they often rely on news reporting in the creation of exhibition content.

74 *The Center for Investigative Reporting, Inc.* v. *OpenAI*, in the U.S. District Court for the Southern District of New York, 1:24-cv-04872 (filed Aug. 12, 2024).
75 Ibid., Complaint, [6].
76 Ibid., Complaint, [7].
77 Toronto Star Newspapers Limited v. OpenAI Inc., 2025 ONSC 4685 (CanLII). Court File Number: CV-24-00732231-00CL.

Copyright Law, Databases, and AI

There has been significant copyright litigation over the use of databases in AI projects. There has also been broader concern about data, AI, and algorithmic surveillance (Sinnreich & Gilbert 2024).

A leading early case is *Thomson Reuters Enterprise Centre GMBH* v. *Ross Intelligence Inc.,* which was filed in the U.S. District Court for the District of Delaware in 2020.[78]

In 2023, Justice Bibas rejected summary judgment and the analysis of fair use, in light of *Andy Warhol Foundation* v. *Goldsmith*[79] and *Google* v. *Oracle*[80] decisions in *Thomson Reuters* v. *Ross*.[81] The judge observed: "Facts can be messy even when parties wish they were not".[82] The judge noted: "But summary judgment is proper only if factual messes have been tidied".[83] The judge observed: "Courts cannot clean them up".[84] The judge commented that because "many of the critical facts in this case remain genuinely disputed", it was necessary to deny Thomson Reuters's and Ross's motions for summary judgment.[85]

The judge noted that the parties still dispute the breadth and validity of Westlaw's copyright. The judge observed that questions of substantial similarity needed to go to a jury.

The judge also highlighted how contested the question of fair use would be between the parties: "Deciding whether the public's interest is better served by protecting a creator or a copier is perilous, and an uncomfortable position for a court".[86] The judge observed: "Here, we run into a hotly debated question: Is it in the public benefit to allow AI to be trained with copyrighted material?".[87] The judge commented that "an independent evaluation of the benefits of AI is unlikely to be useful yet, even though both the potential benefits and risks are huge".[88] The judge observed: "Suffice it to say, each side presents a plausible and powerful account of the public benefit that would result from ruling for it".[89]

In 2024, Justice Bibas invited the parties to renew their motions for summary judgment: "I invite Thomson Reuters to renew its motions for summary judgment

78 Thomson Reuters Enterprise Centre GMBH v. Ross Intelligence Inc., in the U.S. District Court for the District of Delaware, No. 1:20-cv-613-SB (filed May 6, 2020).
79 Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith, 598 U.S. 508 (2023).
80 Google LLC v. Oracle America, Inc., 593 U.S. 1 (2021).
81 Thomson Reuters Enterprise Centre GmbH v. Ross Intelligence Inc., United States District Court, D. Delaware, 694 F.Supp.3d 467 (2023).
82 Ibid.
83 Ibid.
84 Ibid.
85 Ibid.
86 Ibid.
87 Ibid.
88 Ibid.
89 Ibid.

on those issues and Ross to renew its cross-motion for summary judgment on fair use".[90] The judge noted: "Thus, the parties may submit two sets of additional briefing on (1) copyrightability, validity, and infringement, and (2) the defense of fair use. In the briefing, the parties may also choose to address merger, scenes a faire, copyright misuse, and innocent infringement, as I instructed this morning".[91]

In 2025, Bibas J engaged in a substantial revision of his position.[92] His Honour noted: "A smart man knows when he is right; a wise man knows when he is wrong".[93] The judge noted: "Wisdom does not always find me, so I try to embrace it when it does––even if it comes late, as it did here".[94] The judge granted most of Thomson Reuters' motion for partial summary judgment on direct copyright infringement and related defences. The judge granted Thomson Reuters' motion for partial summary judgment on fair use. The judge denied Ross' motion for summary judgment on fair use, and on Thomson Reuter's copyright claims.

Bibas J suggested that, since "Ross took the headnotes to make it easier to develop a competing legal research tool", "Ross's use is not transformative".[95] His Honour also observed: "Because the AI landscape is changing rapidly, I note for readers that only non-generative AI is before me today".[96] Balancing the fair use factors, Bibas J now held: "Factors one and four favor Thomson Reuters. Factors two and three favor Ross".[97] Bibas J ruled: "Factor two matters less than the others, and factor four matters more".[98]

Ross Intelligence has appealed against the ruling of Bibas J on originality and fair use – saying, amongst other things, that there was conflict between his own decisions (Brachmann 2025). The Authors Alliance has been critical of the district court ruling for blurring the line between fact and expression; expanding copyright infringement to intermediate copies; and imagining a robust market for AI training material (Xu 2025).

Another database case is *Huckabee* v. *Bloomberg*.[99] Mike Huckabee (former governor of Arkansas) and others filed a putative class-action complaint against Meta, Bloomberg, Microsoft, and EleutherAI Institute, claiming that Meta, Bloomberg, and Microsoft trained their LLMs on EleutherAI's datasets. The

90 Ibid.
91 Ibid.
92 Thomson Reuters Enterprise Centre GMBH v. Ross Intelligence Inc. 2025 WL 458520 (US District Court for the District of Delaware, 11 February 2025).
93 Ibid.
94 Ibid.
95 Ibid.
96 Ibid.
97 Ibid.
98 Ibid.
99 *Huckabee* v. *Bloomberg*, in the U.S. District Court for the Southern District of New York, 1:23-cv-11195 (filed Dec. 27, 2023) proposed class action).

plaintiffs have amended their complaint to only name the Bloomberg entities as defendants. Bloomberg has asked the case to be dismissed (Brittain 2024b).

Given that GLAM entities often rely on databases, such copyright litigation over databases and AI will have a bearing on their activities.

Copyright Law, Artistic Works, and AI

There has been consideration of the protection of AI-generated pictures such as photographs and paintings under copyright law. Yaniv Benhamou and Ana Andrijevic (2022) have considered the complexities of copyright law and AI art.

Stephen Thaler has sought to test whether copyright protection extends to AI-generated artistic works in a dispute with the United States Copyright Office.[100] (In parallel action, Thaler has also been involved in testing whether AI can be named as an inventor in patent applications.) The United States Copyright Office denied an application by Thaler on the grounds that an artistic work generated by the "Creativity Machine" lacked human authorship, a prerequisite for a valid copyright. Beryl A. Howell J of the United States District Court for the District of Columbia held that the "defendants are correct that human authorship is an essential part of a valid copyright claim".[101] The judge noted: "Copyright has never stretched so far, however, as to protect works generated by new forms of technology operating absent any guiding human hand, as plaintiff urges here".[102] Her Honour insisted: "Human authorship is a bedrock requirement of copyright".[103] The judge recognised:

> Undoubtedly, we are approaching new frontiers in copyright as artists put AI in their toolbox to be used in the generation of new visual and other artistic works. The increased attenuation of human creativity from the actual generation of the final work will prompt challenging questions regarding how much human input is necessary to qualify the user of an AI system as an 'author' of a generated work, the scope of the protection obtained over the resultant image, how to assess the originality of AI-generated works where the systems may have been trained on unknown pre-existing works, how copyright might best be used to incentivize creative works involving AI, and more.[104]

100 *Thaler* v. *Perlmutter* 687 F. Supp. 3d 140 (US District Court for the District of Columbia, 2023).
101 Ibid., 142.
102 Ibid., 146.
103 Ibid., 146.
104 Ibid., 149.

Howell J observed: "On the record designed by plaintiff from the outset of his application for copyright registration, this case presents only the question of whether a work generated autonomously by a computer system is eligible for copyright".[105] The judge ruled: "In the absence of any human involvement in the creation of the work, the clear and straightforward answer is the one given by the Register: No.".[106] The judge concluded that "the image autonomously generated by plaintiff's computer system was never eligible for copyright, so none of the doctrines invoked by plaintiff conjure up a copyright over which ownership may be claimed".[107]

In March 2025, the United States Court of Appeals for the District of Columbia Circuit upheld the initial ruling against an appeal by Stephen Thaler.[108] In the opinion for the court, Patricia Ann Millett J found:

> As a matter of statutory law, the *Copyright Act* requires all work to be authored in the first instance by a human being. Dr. Thaler's copyright registration application listed the Creativity Machine as the work's sole author, even though the Creativity Machine is not a human being. As a result, the Copyright Office appropriately denied Dr. Thaler's application.[109]

The judge commented: "Numerous *Copyright Act* provisions both identify authors as human beings and define 'machines' as tools used by humans in the creative process rather than as creators themselves".[110] The judge ruled: "Because many of the *Copyright Act's* provisions make sense only if an author is a human being, the best reading of the *Copyright Act* is that human authorship is required for registration".[111]

The judge held: "The Creativity Machine cannot be the recognized author of a copyrighted work because the *Copyright Act* of 1976 requires all eligible work to be authored in the first instance by a human being".[112] The judge also noted that it was unnecessary to consider constitutional law questions in the matter: "Because the *Copyright Act* itself requires human authorship, we need not and do not address the Copyright Office's argument that the Constitution's Intellectual Property Clause

105 Ibid., 149-150.
106 Ibid., 150.
107 Ibid., 150.
108 Thaler v. Perlmutter 130 F.4th 1039 (United States Court of Appeals, District of Columbia Circuit, 18 March 2025).
109 Ibid., 1044-1045.
110 Ibid., 1045.
111 Ibid., 1045.
112 Ibid., 1041.

requires human authorship".[113] The judge also found: "Nor do we reach Dr. Thaler's argument that he is the work's author by virtue of making and using the Creativity Machine because that argument was waived before the agency".[114]

Millett J noted that "even if the human authorship requirement were at some point to stymy the creation of original work, that would be a policy argument for Congress to address".[115] Millett J emphasized that it was the role of Congress to accommodate new technologies: "In that regard, it bears noting that the Political Branches have been grappling with how copyright law should adapt to new technology".[116]

As well as raising questions in respect of authorship of artistic works, AI has also posed questions about copyright infringement, and the nature and scope of copyright exceptions, such as the defence of fair use.

The Supreme Court of the United States recently considered copyright law and the defence of fair use in the context of artistic works. The court found against the Andy Warhol Estate in a dispute over a pop art rendition of a photograph of Prince.[117] The case has raised concerns about a shift in the approach of the United States judiciary towards the defence of fair use. There has been concern that the Roberts Court has neglected the importance of freedom of speech in some of the Supreme Court intellectual property cases (Lemley & Tushnet 2023).

In 2023, Getty Images launched a copyright infringement and trademark infringement lawsuit against Stability AI Ltd, the developer of the open source image generator Stable Diffusion, in the U.S. District Court for the District of Delaware.[118] The complaint alleged:

> This case arises from Stability AI's brazen infringement of Getty Images' intellectual property on a staggering scale. Upon information and belief, Stability AI has copied more than 12 million photographs from Getty Images' collection, along with the associated captions and metadata, without permission from or compensation to Getty Images, as part of its efforts to build a competing business. As part of its unlawful scheme, Stability AI has removed or altered Getty Images' copyright management information, provided false copyright management information, and infringed Getty Images' famous trademarks.[119]

113 Ibid., 1051
114 Ibid., 1041.
115 Ibid., 1050
116 Ibid., 1051.
117 Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith, 598 U.S. 508 (2023).
118 *Getty Images (US), Inc.* v. *Stability AI Ltd*, in the U.S. District Court for the District of Delaware, No. 1:23-cv-00135-UNA (filed 2/03/23) (proposed class action).
119 Complaint, [1].

The complaint sought relief from the court: "Getty Images brings this action to recover damages that it has suffered and is continuing to suffer, and to prevent the irreparable harm caused by Stability AI's intentional and willful acts".[120]

The lawsuit argues that Stability AI has not sought permission for its use of the images: "Rather than attempt to negotiate a license with Getty Images for the use of its content, and even though the terms of use of Getty Images' websites expressly prohibit unauthorized reproduction of content for commercial purposes such as those undertaken by Stability AI, Stability AI has copied at least 12 million copyrighted images from Getty Images' websites, along with associated text and metadata, in order to train its Stable Diffusion model".[121] The lawsuit contends: "Stability AI now competes directly with Getty Images by marketing Stable Diffusion and its DreamStudio interface to those seeking creative imagery, and its infringement of Getty Images' content on a massive scale has been instrumental to its success to date".[122]

In addition to the copyright complaint, Getty Images also argued that Stability AI Ltd was also engaged in trademark dilution. Stable Diffusion is well known for recreating the company's watermark in some of its images, and Getty argues that the appearance of this watermark on the model's "bizarre or grotesque images, dilutes the quality of the Getty Images Marks by blurring or tarnishment".[123]

Writing for *The Verge*, James Vincent (2023) commented: "The lawsuit is the latest volley in the ongoing legal struggle between the creators of AI art generators and rights-holders". He observed: "AI art tools require illustrations, artwork, and photographs to use as training data, and often scrape it from the web without the creator's consent" (Vincent 2023).

Getty Images has also filed legal action in the United Kingdom against Stability AI.[124] Stability AI has mounted a defence against this lawsuit (GT Law 2024). Reflecting upon the United Kingdom litigation by Getty Images, Cerys Wyn Davies and Gill Dennis commented: "There is quite a lot for the High Court to consider in this case, and quite a lot at stake beyond how this individual dispute between Getty and Stability AI is resolved" (Davies & Dennis 2024). Davies and Dennis (2024) observed: "The case is therefore likely to be followed closely by AI developers, the copyright lobby, and policymakers alike given its potential to precipitate the evolution of licensing and the law".

In November 2025, Justice Joanna Smith of the High Court of Justice (Chancery

120 Complaint, [2].
121 Ibid., [8].
122 Ibid., [9].
123 Ibid., [11].
124 *Getty Images (US), Inc.* v. *Stability AI Ltd.*, the High Court of Justice in London (Chancery Division), (filed 1/16/23), No. IL-2023-000007.

Division) handed down a decision in *Getty Images (US) Inc. and others* v. *Stability AI Ltd* (2025).[125] The judge held: "An AI model such as Stable Diffusion which does not store or reproduce any copyright works (and has never done so) is not an 'infringing copy'". However, her Honour declined to rule on the passing off claim. The judge ruled in favour of some of Getty's claims about trademark infringement related to watermarks. The decision has been seen in the media as a qualified victory for the AI developer (Booth 2025). In a statement, Getty Images said: "We remain deeply concerned that even well-resourced companies such as Getty Images face significant challenges in protecting their creative works given the lack of transparency requirements" (Booth 2025). Christian Dowell, the general counsel for Stability AI, said: "The decision to voluntarily dismiss most of its copyright claims at the conclusion of trial testimony left only a subset of claims before the court, and this final ruling ultimately resolves the copyright concerns that were the core issue" (Booth 2025).

In December 2025, Justice Joanna Smith DBE granted permission to Getty to appeal her finding of no secondary copyright infringement in her judgment of 4 November (Montagnon 2025). However, the judge refused leave to Stability AI to appeal her finding of trade mark infringement (Montagnon 2025).

Getty Images itself has faced lawsuits for copyright infringement from photographers and artists whose work has been put on its database without its consent (Graphic Artists Guild 2016). The action was dismissed by the judge.

In 2023, visual artists Sarah Andersen, Kelly McKernan, and Karla Ortiz filed a class-action lawsuit against Stability AI, Midjourney, and DeviantArt in the Northern District of California.[126] The legal action alleged copyright infringement, right of publicity violations, and other claims related to the use of the plaintiffs' works in training data sets for the AI image-generating platforms Stable Diffusion, the Midjourney Product, DreamStudio, and DreamUp. In August 2024, the court issued an order granting defendants' motions to dismiss the copyright management information claims under the *Digital Millennium Copyright Act* 1998 (US) with prejudice (Madigan 2024). However, the court denied the motions to dismiss trademark, direct copyright infringement, and inducement claims.

In 2024, photographer Jingna Zhang and cartoonists Sarah Andersen, Hope Larson, and Jessica Fink brought a legal action against Google and its parent company for copyright infringement in respect of the misuse of copyrighted images to teach Imagen.[127] The artists' attorneys Joseph Saveri and Matthew Butterick said in a statement that the case was "another instance of a multi-trillion-dollar tech

125 Getty Images (US) Inc & Ors v. Stability AI Ltd [2025] EWHC 2863 (Ch) (04 November 2025).
126 *Andersen* v. *Stability AI Ltd*, the U.S. District Court for the Northern District of California, No. 3:23-cv-00201 (filed 1/13/23) (proposed class action).
127 *Zhang* v. *Google, Alphabet*, the U.S. District Court for the Northern District of California, No. 3:23-cv-02531 (filed Apr. 26, 2024) (proposed class action).

company choosing to train a commercial AI product on the copyrighted works of others without consent, credit, or compensation" (Brittain 2024c). In response, Google spokesperson Jose Castaneda maintained: "Our AI models are trained primarily on publicly available information on the internet" (Brittain 2024c). He commented: "American law has long supported using public information in new and beneficial ways, and we will refute these claims in court" (Brittain 2024c).

Copyright Law, Musical Works, and AI

The music industry has a vast experience of copyright litigation in respect of new technologies, having previously weathered the introduction of new modes of distribution, including cassette tape recording, CDs, DVDs, peer-to-peer networks, and streaming. As Lee (2024b: 235) observes: "AI raises profound challenges for musicians and the copyright system at a time when the music industry is still reeling from the major disruptions wrought by the streaming of music". Key companies in the music industry – including Universal, Sony, and Warner Brothers – have launched legal action for copyright infringement against a number of AI companies.

A leading complaint is the 2024 matter of *UMG Recordings* v. *Suno Inc.*, in the U.S. District Court for Massachusetts.[128] The complaint notes: "From the invention of the phonograph record, through the eras of vinyl, cassette tapes, CDs, and now streaming and social media, the recorded music industry has been at the forefront of technological advancement".[129] The complaint observes: "Artificial intelligence ('AI') and machine learning are the next frontier of technological development, poised to push boundaries and expand commercial opportunity".[130] The complaint notes: "But with AI's enormous capabilities comes an equally enormous potential for abuse, making it critical that AI technology be implemented responsibly, ethically, and legally".[131] The complaint maintains: "Most fundamentally, AI companies, like all other enterprises, must abide by the laws that protect human creativity and ingenuity".[132] The complaint argues: "There is nothing that exempts AI technology from copyright law or that excuses AI companies from playing by the rules".[133]

The lawsuit contends: "Suno is not exempt from the copyright laws that

128 UMG Recordings v. Suno Inc., the U.S. District Court for Massachusetts, 1:24-cv-11611 (filed Jun. 24, 2024).
129 Complaint in UMG Recordings v. Suno Inc., the U.S. District Court for Massachusetts, 1:24-cv-11611 (filed Jun. 24, 2024), [1].
130 Ibid., [1].
131 Ibid., [1].
132 Ibid., [2].
133 Ibid., [2].

protect human authorship".[134] The complaint observes: "Like any other market participant, Suno cannot reproduce copyrighted works for a commercial purpose without permission".[135] The lawsuit argues: "Heedless of this basic principle, Suno's unauthorized copying erodes the value and integrity of Plaintiffs' copyrighted sound recordings with rapid and devastating impact".[136] The lawsuit alleges that "Suno also profits substantially from its infringement of Plaintiffs' copyrighted sound recordings".[137]

The lawsuit further argues: "Suno cannot avoid liability for its willful copyright infringement by claiming fair use".[138] The lawsuit maintains: "The doctrine of fair use promotes human expression by permitting the unlicensed use of copyrighted works in certain, limited circumstances, but Suno offers imitative machine-generated music—not human creativity or expression".[139]

The lawsuit maintains: "Suno's wholesale theft of the Copyrighted Recordings threatens the entire music ecosystem and the numerous people it employs".[140] The complaint also alleges that Suno "also degrades the rights of artists to control their works, determine whether future uses of their works align with their aesthetic and personal values, and decide the products or services with which they wish to be associated".[141]

The lawsuit argues: "There is room for AI and human creators to forge a sustainable, complementary relationship that promotes human creativity and facilitates the human creations that shape culture, excite the public, and resonate with consumers".[142] The complaint maintains: "This can and should be achieved through the well established mechanism of free-market licensing that ensures proper respect for copyright owners".[143]

The lawsuit laments: "Since the day it launched, Suno has flouted the rights of copyright owners in the music industry as part of a mad dash to become the dominant AI music generation service".[144] The lawsuit contends: "Neither Suno, nor any other generative AI company, can be allowed to advance toward this goal by trampling the rights of copyright owners".[145]

The lawsuit pleads that there is a direct copyright infringement of post-1972

134 Ibid., [12].
135 Ibid., [12].
136 Ibid., [12].
137 Ibid., [13].
138 Ibid., [14].
139 Ibid., [14].
140 Ibid., [80].
141 Ibid., [80].
142 Ibid., [81].
143 Ibid., [81].
144 Ibid., [82].
145 Ibid., [82].

copyright recordings. The lawsuit also pleads that there is a direct copyright infringement of pre-1972 copyright recordings. The lawsuit seeks as a relief a declaration of willful copyright infringement; equitable relief; statutory damages; costs; interest; and any further relief.

There has been a similar action launched by UMG Recordings against Uncharted Labs in respect of Udio.[146] The lawsuit noted: "If developed with the permission and participation of copyright owners, generative AI tools will be able to assist humans in creating and producing new and innovative music".[147] The lawsuit observed: "But if developed irresponsibly, without regard for fundamental copyright protections, those same tools threaten enduring and irreparable harm to recording artists, record labels, and the music industry, inevitably reducing the quality of new music available to consumers and diminishing our shared culture".[148]

In October 2025, the Universal Music Group announced that a settlement had been reached with Udio (UMG 2025). The press release noted: "In addition to the compensatory legal settlement, the new license agreements for recorded music and publishing will provide further revenue opportunities for UMG artists and songwriters" (UMG 2025). Sir Lucian Grainge, Chairman and CEO of UMG, said: "These new agreements with Udio demonstrate our commitment to do what's right by our artists and songwriters, whether that means embracing new technologies, developing new business models, diversifying revenue streams or beyond" (UMG 2025). Andrew Sanchez, Co-Founder and CEO of Udio, commented: "This moment brings to life everything we've been building toward – uniting AI and the music industry in a way that truly champions artists" (UMG 2025). Oliver Brown (2025) questioned the arrangement: "The idea that copyright provides an incentive for creators to produce original work is faltering with AI–recording industry licensing deals".

In October 2024, Universal, Concord, and ABKCO sued the AI company Anthropic for copyright violations.[149] The complaint alleged:

> Publishers bring this action to address the systematic and widespread infringement of their copyrighted song lyrics by the artificial intelligence ('AI') company Anthropic. In the process of building and operating AI models, Anthropic unlawfully copies and disseminates vast amounts of copyrighted works — including the lyrics to myriad musical compositions owned or controlled by Publishers. Publishers embrace innovation and

146 *UMG Recordings* v. *Uncharted Labs d/b/a/ Udio*, the U.S. District Court for the Southern District of New York, 1:24-cv-04777 (filed Jun. 24, 2024).
147 Ibid., complaint [3].
148 Ibid., complaint [3].
149 *Concord Music Group, Inc.* v. *Anthropic PBC*, transferred to the U.S. District Court for the Northern District of California, 5:24-cv-03811 (filed Oct. 18, 2023). For discussion, see Aswad 2023.

> recognize the great promise of AI when used ethically and responsibly. But Anthropic violates these principles on a systematic and widespread basis. Anthropic must abide by well-established copyright laws, just as countless other technology companies regularly do.[150]

The music publishers maintained that Anthropic misused lyrics to train the chatbot Claude (Brittain, 2024a). In August 2024, Anthropic filed a motion, asking to have a large part of the copyright infringement case against it dismissed (Tencer 2024).

In March 2025, in the case of *Concord Music Group, Inc*. v. *Anthropic PBC*, Eumi K. Lee J distinguished the case from the ruling of Bibas J in February 2025: "The Court reviewed the subject opinion and notes that it is distinguishable because (1) it addressed the merits of the parties' respective infringement claims and defenses at the summary judgment stage; (2) it did not concern a generative AI model; and (3) the parties in that case were direct competitors".[151] The judge held that the music "Publishers are not entitled to the extraordinary remedy of a preliminary injunction".[152] The judge noted: "In reaching this conclusion, the Court does not address whether Publishers could plausibly state either direct or secondary infringement claims against Anthropic, as those questions are appropriately reserved for Anthropic's motion to dismiss the complaint and subsequent proceedings on the merits".[153]

Musicians have had reservations about the use of AI to create musical works. Australian musician Nick Cave (2023) doubted that AI music would be convincing: "ChatGPT may be able to write a speech or an essay or a sermon or an obituary but it cannot create a genuine song". He observed: "It could perhaps in time create a song that is, on the surface, indistinguishable from an original, but it will always be a replication, a kind of burlesque" (Cave 2023). He predicted: "ChatGPT's melancholy role is that it is destined to imitate and can never have an authentic human experience, no matter how devalued and inconsequential the human experience may in time become" (Cave 2023).

However, there have also been some productive uses of AI in the restoration of lost musical works. The Beatles were able to recover the musical work 'Now and Then' with the help of technology developed by Peter Jackson for the Get Back documentary, which enabled the splitting of music into separate tracks based on machine learning (Welch 2023). The resulting work has been nominated for a Grammy (Roth 2024).

There remains debate as to whether copyright law reform is necessary to

150 Ibid.
151 Concord Music Group, Inc. v. Anthropic PBC, 2025 WL 904333 (N.D. Cal., 25 March 2025).
152 Ibid.
153 Ibid.

deal with musical works and sound recordings in the age of AI. As Lee (2024b: 236) comments: "Congress and the courts both have important roles to play in periodically rebalancing the scope of copyright, and in considering the need for measures beyond copyright to address problems posed by AI".

Copyright Law, Dramatic Works, Performances, and AI

United States copyright law has not embraced performers' rights like other jurisdictions, particularly in the European Union. Richard Arnold (2022) has considered the problems in respect of the protection and enforcement of performers' rights in an age of AI.

As a result, performers have often relied upon publicity rights and other secondary forms of intellectual property protection to protect their identity. Jane Gaines (1991) has written about the origins and evolution of publicity rights in the United States. There have been numerous precedents relating to publicity rights and sound-alike voices. Better Midler won a lawsuit against the Ford Motor Company over an advertisement featuring what sounded like her voice.[154] Tom Waits won litigation against Frito-Lay over a Doritos ad that featured an imitation of his singing voice.[155] Such precedents are relevant and pertinent to litigation over AI and voices.

In 2024, the actor Scarlett Johansson objected to a sound-alike version of her voice being used by OpenAI (Fung, Duffy & Maruf 2024). She hired legal counsel to request that OpenAI take down the 'Sky Voice'. Johansson commented: "I was shocked, angered and in disbelief that Mr. Altman would pursue a voice that sounded so eerily similar to mine that my closest friends and news outlets could not tell the difference" (Weprin 2023). Johansson noted: "In a time when we are all grappling with deepfakes and the protection of our own likeness, our own work, our own identities, I believe these are questions that deserve absolute clarity" (Weprin 2023). She observed: "I look forward to resolution in the form of transparency and the passage of appropriate legislation to help ensure that individual rights are protected" (Weprin 2023).

OpenAI (2024) denied that the company had misappropriated the publicity rights of Scarlett Johansson. Sam Altman maintained: "The voice of Sky is not Scarlett Johansson's, and it was never intended to resemble hers" (OpenAI 2024). He emphasised: "We cast the voice actor behind Sky's voice before any outreach to Ms. Johansson" (OpenAI 2024). Sam Altman noted: "Out of respect for Ms. Johansson, we have paused using Sky's voice in our products" (OpenAI 2024).

154 Midler v. Ford Motor Co. 849 F.2d 460 (9th Cir., 1988).
155 Waits v. Frito Lay, Inc. 978 F.2d 1093 (9th Cir., 1992).

He observed: "We are sorry to Ms. Johansson that we didn't communicate better" (OpenAI 2024).

This dispute could have certainly raised questions around the operation of publicity rights (Fung 2024). Professor Tiffany Li observed: "It doesn't matter if OpenAI used any of Scarlett Johansson's actual voice samples" (Fung 2024). She noted: "[Johansson] still has a viable right of publicity case here" (Fung 2024). Professor James Grimmelmann commented: "OpenAI might have had a plausible case if they hadn't spent the last two weeks hinting to everyone that they had just created Samantha from 'Her'". (Fung 2024). He highlighted: "There was widespread public recognition that Sky was Samantha, and intentionally so" (Fung 2024).

There have been further disputes over AI and publicity rights. In *Vacker* v. *ElevenLabs Inc*, the audiobook voice actors Karissa Vacker and Mark Boyett have accused ElevenLabs of creating an AI voice-over generator which mimics their distinctive voices.[156] They alleged that there had been a misappropriation of their likenesses and publicity rights – as well as violations of the *Digital Millennium Copyright Act* 1998 (US) through the circumvention of technological protection measures, and the removal of electronic management information. After mediation, this dispute was settled and closed in August 2025 (Lee 2025d).

There has been another action by voice actors Paul Sky Lehrman and Linnea Sage against Lovo over the cloning of voice recordings.[157] The complaint observes: "This is a class action brought on behalf of Plaintiffs and similarly situated persons whose voices and/or identities were stolen and used by LOVO – to create millions of voice-over productions – without permission or proper compensation, in violation of numerous state right of privacy laws, and the federal *Lanham Act*".[158] The complaint alleges: "To be clear, the product that customers purchase from LOVO is stolen property".[159] The complaint maintains: "They are voices stolen by LOVO and marketed by LOVO under false pretenses: LOVO represents that it has the legal right to market these voices, but it does not".[160]

There has been further controversy over Amazon's plans to use AI voices to narrate audiobooks on Audible (Knight 2025). Stephen Briggs, who voiced a number of the audiobooks of Terry Pratchett's Discworld novels, said: "The use of AI to replace human creativity is in itself a dangerous path" (Knight 2025). Actor and audiobook narrator Deepti Gupta lamented: "We need to create more, not less, space for Bipoc narrators, and these AI tools are a new way to marginalise and

156 *Vacker* v. *ElevenLabs, Inc*., the U.S. District Court for the District of Delaware, No. 1:20-cv-00987 (filed Aug. 30, 2024). For commentary, see Soni 2024c.
157 *Lehrman* v. *Lovo*, the U.S. District Court for the Southern District of New York, 1:24-cv-03770 (filed May 16, 2024) (proposed class action). For news reportage, see Derico 2024.
158 Ibid., [1].
159 Ibid., [1].
160 Ibid., [1].

colonise the voices that need to be heard" (Knight 2025).

There will no doubt be further disputes involving AI over copyright law, dramatic works, and performances, as well as associated fields of publicity rights. Such matters will raise important questions around authenticity as well as ownership.

Copyright Law, Cinematographic Films, Audio-Visual Works, and AI

In the 2000s and 2010s, there was mega-litigation over copyright law and YouTube videos. Google/Alphabet – the owner of YouTube – sought protection behind the safe harbours regime of the *Digital Millennium Copyright Act* 1998 (US).[161] In the end, there was a settlement of the dispute (Stempel 2014). There was complex litigation as well in respect of take down notices under the *Digital Millennium Copyright Act* 1998 (US), most notably in respect of the Dancing Baby case.[162] There have been proposals for a reformation of the *Digital Millennium Copyright Act* 1998 (US), but there has not been agreement or consensus as to the nature of any shift to that regime (United States Copyright Office 2020).

As documented by Stuart Cunningham and David Craig (2019, 2021), a new creative class of YouTube video performers and makers has emerged. In the 2020s, there has been litigation by YouTube creators against AI projects, which have used YouTube videos for AI training. In 2024, David Millette brought a class action against OpenAI on behalf of YouTube creators and users: "This case addresses the surreptitious, non-consensual transcription of millions of YouTube users' videos by Defendants to train Defendants' AI software products".[163] The lawsuit alleged: "By collecting and using this data without consent, Defendants have profited significantly from the use of Plaintiff's and Class members' materials, violated California's Unfair Competition Law ('UCL'), and been unjustly enriched at Plaintiff and Class members' expense".[164] Similar lawsuits were launched by Millett against Google[165] and Nvidia.[166] The companies have sought to dismiss the lawsuits (Gilbert 2024c).

In October 2024, the producer of 'Blade Runner 2049' sued Elon Musk's Tesla and Warner Bros Discovery over AI-generated promotional materials for Tesla's

161 Viacom International Inc. v. YouTube, Inc. 676 F.3d 19 (2nd Cir., 2012).
162 Lenz v. Universal Music Corp. 801 F. 3d 1126 (2015); for discussion, see Rimmer 2017.
163 *Millette* v. *OpenAI*, in the U.S. District Court for the Northern District of California, 3:24-cv-04710 (filed Aug. 2, 2024) (proposed class action). For a news report of the action, see Skolnik 2024.
164 Ibid.
165 *Millette* v. *Google*, in the U.S. District Court for the Northern District of California, 5:24-cv-04708 (filed Aug. 2, 2024) (proposed class action).
166 *Millette* v. *Nvidia*, in the U.S. District Court for the Northern District of California, 5:24-cv-04708 (filed Aug. 14, 2024) (proposed class action).

cybercab robotaxi (Cho 2024). The complaint alleged direct copyright infringement, vicarious copyright infringement, contributory copyright infringement, and false endorsement.[167] The complaint summarises the dispute in these terms:

> Defendants requested permission to use an iconic still image (Exhibit A) from Alcon's 'Blade Runner 2049' motion picture ('BR2049' or the 'Picture') to promote Tesla's new fully autonomous cybercab in an October 10, 2024 event that was livestreamed worldwide from WBDI's Burbank, California studio lot. Alcon refused all permissions and adamantly objected to Defendants suggesting any affiliation between BR2049 and Tesla, Musk or any Musk-owned company. Defendants then used an apparently AI-generated faked image to do it all anyway.[168]

The complaint observed: "Any prudent brand considering any Tesla partnership has to take Musk's massively amplified, highly politicized, capricious and arbitrary behavior, which sometimes veers into hate speech, into account".[169] The complaint noted: "If, as here, a company or its principals do not actually agree with Musk's extreme political and social views, then a potential brand affiliation with Tesla is even more issue fraught".[170]

The producers contend that the false affiliation is "highly offensive to Alcon's right to commercial and cultural self-determination" and "a massive economic theft".[171] The producers contended: "Beyond Alcon's lost fees for the unauthorized association, Defendants muddied the waters for Alcon's in-progress exploration of automotive brand partnerships for the upcoming BR2049-based Blade Runner 2099 television series".[172] The producers lamented: "The theft infringed Alcon's copyright in the Picture, and created actual confusion or a likelihood of it in the relevant marketplaces about BR2049 branding, including Alcon's current marketing efforts with potential auto brand partners on the Blade Runner 2099 television series, among other marketplace confusion and brand damage".[173]

In June 2025, Disney and Universal launched copyright litigation against Midjourney (Riga 2025).[174] The film studios insisted: "For more than 100 years, Disney and Universal have delighted audiences around the world by investing in

167 Alcon Entertainment LLC v. Tesla Inc., Elon Musk, and Warner Bros. Discovery Inc. (2024), United States District Court for the Central District of California, Western Division, Case 2:24-cv-09033.
168 Ibid., [2].
169 Ibid., [7].
170 Ibid., [7].
171 Ibid., [9].
172 Ibid., [9].
173 Ibid., [70].
174 Complaint in Disney Enterprises Inc. et al. v. Midjourney Inc. United States District Court for the Central District of California, Case 2:25-cv-05275, 11 June 2025.

and fostering American creative innovation and producing some of the greatest motion pictures and fictional characters of all time".[175] The film studios alleged: "Midjourney, however, seeks to reap the rewards of Plaintiffs' creative investment by selling an artificial intelligence ('AI') image-generating service ('Image Service') that functions as a virtual vending machine, generating endless unauthorized copies of Disney's and Universal's copyrighted works".[176] The film studios argued Midjourney used the studios' works to train its image service and generate high-quality reproductions, appropriating the companies' cinematic characters. The lawsuit alleged: "By helping itself to Plaintiffs' copyrighted works, and then distributing images (and soon videos) that blatantly incorporate and copy Disney's and Universal's famous characters — without investing a penny in their creation — Midjourney is the quintessential copyright free-rider and a bottomless pit of plagiarism".[177] The complaint maintained: "Midjourney's conduct misappropriates Disney's and Universal's intellectual property and threatens to upend the bedrock incentives of U.S. copyright law that drive American leadership in movies, television, and other creative arts".[178]

In response, Midjourney complained that the film studios were seeking to censor creative expression: "Plaintiffs seek to stifle them all… [They] made sweeping allegations about Midjourney writ large, commenced this litigation, and are pursuing a path that chills lawful expression" (Kinsella 2025).

In September 2025, Warner Brothers also sued Midjourney for copyright infringement (Stempel 2025).[179] The complaint alleged: "Midjourney has made a calculated and profit-driven decision to offer zero protection for copyright owners even though Midjourney knows about the breathtaking scope of its piracy and copyright infringement".[180] In terms of remedies, the lawsuit sought unspecified damages and disgorgement of profits, and a halt to further infringements. No doubt there will be further copyright litigation over audio-visual works and AI.

It should be noted that not all the film industry are opposed to the use of AI. George Miller – the film-maker behind the Mad Max franchise – has commented: "AI is arguably the most dynamically evolving tool in making moving image" (Burke 2025). Miller maintained: "As a film-maker, I've always been driven by the tools. AI is here to stay and change things" (Burke 2025). He observed: "It's the balance between human creativity and machine capability, that's what the debate and the anxiety is about" (Burke 2025). Burke commented: "It strikes me how this

175 Ibid.
176 Ibid.
177 Ibid.
178 Ibid.
179 Warner Bros Entertainment Inc et al. v Midjourney Inc. (2025) U.S. District Court for the Central District of California, No. 25-08376.
180 Ibid.

debate echoes earlier moments in art history" (Burke 2025).

There could be clashes within the film industry over the use of AI. Professional guilds in the film industry have campaigned in labour disputes over the misuse of AI to replace creative contributions (see Anguiano & Beckett 2023, Maddaus 2024).

Copyright Law, Computer Programs, and AI

There has also been conflict over copyright law, computer programs, and AI.

In the 2021 case of *Google LLC.* v. *Oracle America Inc.,* the Supreme Court of the United States considered the operation of the defence of fair use in respect of computer programs.[181] The majority of the court held that Google's copying of the Java SE API, which included only those lines of code that were needed to allow programmers to put their accrued talents to work in a new and transformative program, was a fair use of that material as a matter of law. Breyer J delivered the majority opinion, which was joined by Sotomayor, Kagan, Gorsuch, and Kavanaugh JJ. Breyer J commented:

> The fact that computer programs are primarily functional makes it difficult to apply traditional copyright concepts in that technological world. In doing so here, we have not changed the nature of those concepts. We do not overturn or modify our earlier cases involving fair use—cases, for example, that involve 'knockoff' products, journalistic writings, and parodies. Rather, we here recognize that application of a copyright doctrine such as fair use has long proved a cooperative effort of Legislatures and courts, and that Congress, in our view, intended that it so continue. As such, we have looked to the principles set forth in the fair use statute, §107, and set forth in our earlier cases, and applied them to this different kind of copyrighted work.[182]

Thomas J filed a dissenting opinion, which was joined by Alito J. Barrett J took no part in the consideration or decision of the case. Thomas J maintained: "Properly considering that statutory text, Oracle's code at issue here is copyrightable, and Google's use of that copyrighted code was anything but fair".[183]

In the context of AI, there has been a proposed class action by authors of computer programs against Github Inc and Microsoft.[184] The amended complaint alleges:

181 Google LLC v. Oracle America, Inc., 593 U.S. 1 (2021).
182 Google LLC v. Oracle America, Inc., 593 U.S. 1 (2021).
183 Google LLC v. Oracle America, Inc., 593 U.S. 1 (2021).
184 *Doe 1* v. *Github, Inc.*, in the U.S. District Court for the Northern District of California, No 4:2022cv06823 (filed 11/03/22) (proposed class action).

> Defendants have made no attempt to comply with the open-source licenses that are attached to much of their training data. Instead, they have pretended those licenses do not exist, and trained Codex and Copilot to do the same. By simultaneously violating the open-source licenses of tens-of-thousands—possibly millions—of software developers, Defendants have accomplished software piracy on an unprecedented scale. As Microsoft's Co-Founder Bill Gates once said regarding software piracy: "the thing you do is theft".[185]

The complaint has various grounds of action – including for a (1) DMCA s. 1202 claim for removal of electronic management information, (2) breach of contract open-source license violations, (3) breach of contract by Github, (4) intentional interference with prospective economic relations Cal. common law, (5) negligent interference with prospective economic relations Cal. common law, (6) unjust enrichment, (7) unfair competition Cal. law, and (8) negligence.

In January 2024, Judge Jon Steven Tigar made an order dismissing most of the claims. In June 2024, the judge made an order granting in part and denying in part motions to dismiss the First Amended Complaint.

Creative Commons, Cultural Heritage, and AI

The Creative Commons movement has used standardised template contracts to make copyright works more widely available, subject to conditions in respect of attribution, commercial use, derivative use, and so forth.[186] The Creative Commons has been grappling with the implications of AI for copyright law and contract law.

Kat Walsh (2023) has written a policy note on what role Creative Commons licences could and should play in the future of generative AI. Walsh (2023) noted: "Generative AI presents an amazing opportunity to be a transformative tool that supports creators — both individuals and organizations — provides new avenues for creation, facilitates better sharing, enables more people to become creators, and benefits the commons of knowledge, information, and creativity for all". Walsh (2023) also recognised: "But there are serious concerns, such as issues around author recognition and fair compensation for creators (and the labor market for artistic work in general), the potential flood of AI-generated works on the commons making it difficult to find relevant and trustworthy information, and the disempowering effect of the privatization and enclosure of AI services and outputs, to name a few". Walsh (2023) maintained: "CC wants AI to augment and support

185 Amended Complaint, [181].
186 Creative Commons, https://creativecommons.org/

commons, not detract from it, and we want to see solutions to these concerns to avoid AI turning creators away from contributing to the commons altogether".

Stephen Wolfson (2023) has contemplated the question of whether generative AI would be protected by the defence of fair use under copyright law. He contended that the public purposes of copyright law should facilitate AI training: "Since the purpose of copyright law is to encourage the new creative works, to promote learning, and to benefit the public interest, fair use should permit using copyrighted works as training data for generative AI models like Stable Diffusion and Midjourney" (Wolfson 2023). He observed: "The law should support and foster the development of new technologies that can provide benefits to the public, and fair use provides a safeguard against the cudgel of copyright being used to impede these technologies" (Wolfson 2023).

The Creative Commons movement has been grappling with copyright law and AI in the cultural heritage sector. In 2021, Policy Director Brigitte Vezina (2021) discussed the position of the Creative Commons organisation in respect of the use of GLAM collections as input for AI training:

> CC fully supports GLAMs in using the massive amounts of data in their digital collections for AI-training purposes (including machine-learning) in order to fulfil their public interest missions. Legally, there remains significant uncertainty as to whether copyright limitations and exceptions allow the use of copyright content for AI training. This uncertainty is likely to have a chilling effect on GLAMs wishing to take advantage of AI technologies. This is one reason why, at CC, we argue that the use of copyright works to train AI should be considered non-infringing by default. As concerns CC-licensed content, where copyright permission is required to train AI systems, the licenses grant that permission under different terms and conditions depending on the particular CC license.

The Creative Commons movement is of the view that there should be no copyright in AI "creative" content. Brigitte Vezina (2021) commented: "While the copyright status of such content is unclear under existing law, CC is of the firm view that there should be no copyright on AI-generated content and that it should be in the public domain". She also added: "Beyond copyright, several obstacles to sharing and using GLAM collections related to ethics, privacy and data protection need to be assessed to bring clarity to the rapidly evolving role that AI is playing in the GLAM sector" (Vezina 2021).

Indigenous Intellectual Property, Cultural Heritage, and AI

There has been a long wretched history of misappropriation of Indigenous intellectual property and cultural heritage, including in the GLAM sector (Janke 2021). As a result, Indigenous communities have been forced to engage in intellectual property litigation in respect of misuse and misappropriation of Indigenous culture. Moreover, there has been an effort by Indigenous communities to get national governments to engage in law reform to better protect Indigenous intellectual property – whether through amendments of existing legislation, or the development of sui generis, standalone legislation. At an international level, there has been an ongoing dialogue and discussion about the need for the protection of Indigenous intellectual property in various international treaties, agreements, and declarations, such as the *United Nations Declaration on the Rights of Indigenous Peoples* 2007.[187]

In this context, Indigenous advocates and lawyers have been worried and concerned about whether Indigenous culture will be misused in AI projects. Emma Fitch, Clare McKenzie, Terri Janke, and Adam Shul (2023) have written a discussion paper on the topic looking at "The New Frontier: Artificial Intelligence, Copyright, and Indigenous Culture". The lawyers observed: "Generative AI can create further issues with inauthentic art because anyone can create 'Aboriginal style art'" (Fitch, McKenzie, Janke & Shul 2023). The lawyers call into question "the inability for AI to understand and respect the important and meaningful connection that a person creating the artwork has to culture and Country, informing what the artwork is about and how it is created" (Fitch, McKenzie, Janke & Shul 2023). The lawyers contend: "Reinserting Indigenous sovereignty and self-determination practices within the AI space can alleviate this concern" (Fitch, McKenzie, Janke & Shul 2023). The lawyers maintained: "The users of AI should consider ICIP rights as well recognising Indigenous Data Sovereignty Principles as they relate to AI, and ensuring there is appropriate use of AI that respects ICIP rights" (Fitch, McKenzie, Janke & Shul 2023). The lawyers contend: "To protect misuse of ICIP, it is important that First Nations people are involved in the development of AI, that creators of the AI system can recognise where ICIP may be used inappropriately, and limiting the information used for machine learning to avoid negative impacts on ICIP rights and copyright" (Fitch, McKenzie, Janke & Shul 2023). They observed: "These strategies could help prevent the misuse of ICIP and other expressions of cultural heritage, such as artwork, songs, and stories" (Fitch, McKenzie, Janke & Shul 2023).

More broadly, Tamika Worrell (2024) has worried that "the AI industry and governments have largely ignored Indigenous people in the development

187 United Nations Declaration on the Rights of Indigenous Peoples 2007 resolution / adopted by the General Assembly, A/RES/61/295, 2 October 2007.

and regulation of AI technologies". She has commented: "AI developers and governments need to urgently fix this if they are serious about ensuring everybody shares the benefits of AI" (Worrell 2024). Worrell (2024) noted: "A first step is for industry to involve Indigenous people in creating, maintaining and evaluating the technologies – rather than asking them retrospectively to approve work already done". She also stressed: "Governments need to also do more than highlight the importance of Indigenous data sovereignty in policy documents" (Worrell 2024).

The Indigenous Data Sovereignty movement has sought to boost the rights of Indigenous peoples to govern the collection, ownership, and application of data about Indigenous peoples (Bodkin-Andrews, Walter, Lee, Kukutai & Lovett 2019). The Australian Government published a Framework for Governance of Indigenous Data in 2024 to provide practical guidance for the Australian public service (Commonwealth of Australia 2024). The Indigenous Data Sovereignty has been demanding ethical AI in business, as well as government (Rana 2024).

United States Copyright Law Reform

This survey has been quite focused on United States copyright law and AI. It is worth providing a sense of the political discussion swirling around the topic, above and beyond the litigation itself.

The United States Copyright Office has been engaged in ongoing consultations over copyright law and AI.

In July 2024, the United States Copyright Office (2024) released a report on *Copyright and Artificial Intelligence*, focusing on digital replicas. This report argued that existing laws do not provide sufficient legal redress for those harmed by unauthorised digital replicas and proposed the adoption of a new federal law. The United States Copyright Office (2024) proposed a new law in respect of digital replicas. In its view, "The statute should target those digital replicas, whether generated by AI or otherwise, that are so realistic that they are difficult to distinguish from authentic depictions" (United States Copyright Office 2024). The United States Copyright Office recommended (2024): "Protection should be narrower than, and distinct from, the broader 'name, image, and likeness' protections offered by many states".

In January 2025, the United States Copyright Office (2025a) published the second part of its report on *Copyright and Artificial Intelligence*, focusing on copyrightability. The United States Copyright Office (2025a) concluded that "Questions of copyrightability and AI can be resolved pursuant to existing law, without the need for legislative change". The United States Copyright Office (2025a) maintained: "The use of AI tools to assist rather than stand in for human

creativity does not affect the availability of copyright protection for the output". The United States Copyright Office (2025a) advised: "Copyright protects the original expression in a work created by a human author, even if the work also includes AI-generated material". The United States Copyright Office (2025a) added: "Copyright does not extend to purely AI-generated material, or material where there is insufficient human control over the expressive elements". The United States Copyright Office (2025a) reflected: "Whether human contributions to AI-generated outputs are sufficient to constitute authorship must be analyzed on a case-by-case basis". The United States Copyright Office (2025a) commented: "Based on the functioning of current generally available technology, prompts do not alone provide sufficient control". The United States Copyright Office (2025a) found: "Human authors are entitled to copyright in their works of authorship that are perceptible in AI-generated outputs, as well as the creative selection, coordination, or arrangement of material in the outputs, or creative modifications of the outputs". The United States Copyright Office (2025a) concluded: "The case has not been made for additional copyright or sui generis protection for AI-generated content".

In May 2025, the United States Copyright Office (2025b) released a pre-publication report on *Copyright and Artificial Intelligence*. This was the third part of its report and was focused upon generative AI training. The report recognised: "These issues are the subject of intense debate" (United States Copyright Office 2025b: 1). The report also recognised that there was significant litigation underway in respect of copyright and AI training materials: "Dozens of lawsuits are pending in the United States, focusing on the application of copyright's fair use doctrine" (United States Copyright Office 2025b: 1). The report also acknowledged that there was significant public policy debate on the topic of copyright law and AI training: "Legislators around the world have proposed or enacted laws regarding the use of copyrighted works in AI training, whether to remove barriers or impose restrictions" (United States Copyright Office 2025b: 1).

In particular, the United States Copyright Office (2025b: 32) considered the operation of the defence of fair use in relation to claims of copyright infringement by generative AI. The report considered the various indicia involved in a fair use determination:

> We observe, however, that the first and fourth factors can be expected to assume considerable weight in the analysis. Different uses of copyrighted works in AI training will be more transformative than others. And given the volume, speed and sophistication with which AI systems can generate outputs, and the vast number of works that may be used in training, the impact on the markets for copyrighted works could be of unprecedented scale (United States Copyright Office 2025b: 74).

The report recognised the difficulties of pre-judging litigation outcomes: "As generative AI involves a spectrum of uses and impacts, it is not possible to prejudge litigation outcomes" (United States Copyright Office 2025b: 74). The report suggested that there would be missed outcomes to the litigation over copyright law and AI: "The Office expects that some uses of copyrighted works for generative AI training will qualify as fair use, and some will not" (United States Copyright Office 2025b: 74). The report observed: "On one end of the spectrum, uses for purposes of noncommercial research or analysis that do not enable portions of the works to be reproduced in the outputs are likely to be fair" (United States Copyright Office 2025b: 74). The report also commented: "On the other end, the copying of expressive works from pirate sources in order to generate unrestricted content that competes in the marketplace, when licensing is reasonably available, is unlikely to qualify as fair use" (United States Copyright Office 2025b: 74).

The report recognised: "Various uses of copyrighted works in AI training are likely to be transformative" (United States Copyright Office 2025b: 107). The report observed: "The extent to which they are fair, however, will depend on what works were used, from what source, for what purpose, and with what controls on the outputs—all of which can affect the market" (United States Copyright Office 2025b: 107). The report commented: "When a model is deployed for purposes such as analysis or research—the types of uses that are critical to international competitiveness—the outputs are unlikely to substitute for expressive works used in training" (United States Copyright Office 2025b: 107). The reported warned: "But making commercial use of vast troves of copyrighted works to produce expressive content that competes with them in existing markets, especially where this is accomplished through illegal access, goes beyond established fair use boundaries" (United States Copyright Office 2025b: 107). The report suggested: "For those uses that may not qualify as fair, practical solutions are critical to support ongoing innovation" (United States Copyright Office 2025b: 107). The report also explores the feasibility of voluntary licensing; the ability to provide meaningful compensation; and possible legal obstacles to collective licensing.

The report attracted critical commentary from technology associations and representatives. The president and CEO of the Computer & Communications Industry Association, Matt Schruers, expressed concerns that the report advocated "an expansive theory of market harm for fair use purposes that would allow rightsholders to block any use that might have a general effect on the market for copyrighted works, even if it doesn't impact the rightsholder themself" (Belanger 2025b). Likewise, the Chamber of Progress feared that "the report does not go far enough to support innovation and unnecessarily muddies the waters on what should be clear cases of transformative use with copyrighted works" (Belanger 2025b).

The Authors Alliance wondered about the timing of the publication: "Whatever the motivation for the timing of the release, we think it's unfortunate for this reason: there are two cases currently pending in the courts, *Kadrey* v. *Meta* and *Bartz* v *Anthropic*, where the issues being litigated are directly related to the contents of this report" (Hansen 2025a). The Authors Alliance reflected: "While it's certainly fair for the Copyright Office to make its views known, even on controversial issues, the timing of this report is problematic because it could put a thumb on the scale for how the courts will resolve these cases" (Hansen 2025a).

Just after the release of this draft report, the Trump Administration removed the Register of Copyrights and Director of the United States Copyright Office, Shira Perlmutter. The Office reported that Perlmutter had received an email from the White House with the notification that "your position as the Register of Copyrights and Director at the U.S. Copyright Office is terminated effective immediately" (O'Brien 2025). The decision follows on from the White House firing the Librarian of Congress, Carla Hayden (O'Brien 2025). Jose Olivares suggested: "Perlmutter's firing evidently signals another step by the Trump administration to reshape the federal government by ousting officials who he believes may resist his agenda". There was discussion as to how the removal of Perlmutter would affect the entertainment industry's leverage against AI companies (Zeitchick and Millman 2025).

Democrat Representative Joe Morelle responded that the removal of Perlmutter was politically motivated: "Donald Trump's termination of Register of Copyrights, Shira Perlmutter, is a brazen, unprecedented power grab with no legal basis" (Nolan 2025). He argued that the public policy report on copyright law and AI was a factor in her removal: "It is surely no coincidence he acted less than a day after she refused to rubber-stamp Elon Musk's efforts to mine troves of copyrighted works to train AI models" (Nolan 2025). He commented: "Register Perlmutter is a patriot, and her tenure has propelled the Copyright Office into the 21st century by comprehensively modernizing its operations and setting global standards on the intersection of AI and intellectual property" (Nolan 2025).

Courtney Radsch, the Director of the Center for Journalism & Liberty at the Open Markets Institute, commented that the removal of Perlmutter "appears directly linked to her office's new AI report questioning unlimited harvesting of copyrighted materials" (Belanger 2025b). She commented: "This unprecedented executive intrusion into the Library of Congress comes directly after Perlmutter released a copyright report challenging the tech elite's fundamental claim: unlimited access to creators' work without permission or compensation" (Belanger 2025b). Radsch alleged that the move came "after months of lobbying by the corporate billionaires" who have pursued "AI dominance" (Belanger 2025b).

Comparative Perspectives

From a comparative perspective, it should be noted that other jurisdictions have been pursuing alternative approaches in terms of the regulation of AI, and the reform of copyright law to take into account developments in AI. Given the scope of this paper, it is not possible to exhaustively examine such alternative approaches. Nonetheless, a quick comparative analysis of how other regimes deal with disputes over copyright law and AI is helpful and useful.

In the European Union, the 2019 Directive on Copyright in the Digital Single Market provided that members could provide for exceptions for "reproductions and extractions" of copyrighted material for use in text and data mining.[188] Article 3 allows for text and data mining for the purposes of scientific research by "research organisations and cultural heritage institutions". Article 4 provides for an exception or limitation in text and data mining. Article 5 deals with use of works and other subject matter in digital and cross-border teaching activities. Of particular interest for cultural institutions, Article 6 enables "cultural heritage institutions to make copies of any works or other subject matter that are permanently in their collections, in any format or medium, for purposes of preservation of such works or other subject matter and to the extent necessary for such preservation".

In 2024, the European Union adopted the *Artificial Intelligence Act* (*EU AI Act*).[189] The EU AI Act provides for transparency obligations for providers and developers of AI systems. The EU AI Act also provides for obligations for the providers of general-purpose AI models, as well as for AI Models with systemic risk. Recital 105 explains: "Any use of copyright protected content requires the authorisation of the rightsholder concerned unless relevant copyright exceptions and limitations apply". Recital 105 emphasises: "Directive (EU) 2019/790 introduced exceptions and limitations allowing reproductions and extractions of works or other subject matter, for the purpose of text and data mining, under certain conditions". Recital 105 notes: "Under these rules, rightsholders may choose to reserve their rights over their works or other subject matter to prevent text and data mining, unless this is done for the purposes of scientific research". Recital 105 provides: "Where the right to opt out has been expressly reserved in an appropriate manner, providers of general-purpose AI models need to obtain an authorisation from rightsholders if they want to carry out text and data mining over such works".

Axel Voss, a German centre-right member of the European parliament,

188 Directive EU 2019/790 of the European Parliament and of the Council of 17 Apr. 2019 on Copyright and Related Rights in the Digital Single Market and Amending Council Directives 96/9/EC and 2001/29/EC, 2019 O.J. (L. 130/92).

189 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act).

has been critical of the EU AI Act (Rankin 2025). He observed: "What I do not understand is that we are supporting big tech instead of protecting European creative ideas and content" (Rankin 2025). He argued that the absence of strong provisions on copyright was "irresponsible" and that it was "unbelievable" that the legal gap remained (Rankin 2025).

There are other jurisdictions with text and data mining copyright exceptions. Japan has established a broad, all-encompassing "non-enjoyment"-based text and data mining exception (Dermawan 2023). Singapore has also established a broad copyright exception for text and data mining (Oh 2021). There has been discussion of a potential expansion of Singapore's text and data mining exception (Oh 2024). Hong Kong's government has proposed a copyright exception for text and data mining activities to encourage the development of generative AI (Ho 2024).

In other jurisdictions, there has been unresolved debate over copyright law and AI training materials. In Australia, the Senate Select Committee on Adopting Artificial Intelligence (2024) favoured submissions from creative industries and copyright collecting societies. The report recommended: "The Government should continue consulting with creative workers, rights holders, and their representative organisations, including through the Copyright and AI Reference Group (CAIRG)" (Senate Select Committee on Adopting Artificial Intelligence 2024). The report labelled the use of copyright materials for AI training as "theft", even though the Australian courts have not settled such a contention: "This consultation is essential to address the unprecedented theft of creative works by multinational tech companies operating in Australia" (Senate Select Committee on Adopting Artificial Intelligence 2024). The report called for greater transparency in respect of the use of copyrighted materials: "Developers of AI products must be transparent about the use of copyrighted works in their training datasets. Further, these works should be appropriately licensed and remunerated" (Senate Select Committee on Adopting Artificial Intelligence 2024). The report also favoured establishment of a licensing regime: "The Government should urgently consult the creative industry to establish mechanisms that ensure fair remuneration for creators when AI systems generate commercial outputs based on copyrighted material" (Senate Select Committee on Adopting Artificial Intelligence 2024).

In 2025, the Attorney General's Department (2025) released a summary of responses to a discussion paper on copyright law and AI transparency. Creative artists and copyright industries have been pressing the Australian Government to engage in copyright law reform in the field of AI (Taylor 2025). Meanwhile, the Productivity Commission (2025) recommended consideration of new copyright exceptions for the age of AI.

The Australian Attorney-General Michelle Rowland (2025) has ruled out the creation of a specific copyright exception for text and data mining: "The Albanese

Government is consulting on possible updates to Australia's copyright laws – while reiterating that this will not include a Text and Data Mining Exception." Rowland (2025) noted: "Some in the technology sector called for the introduction of a broad Text and Data Mining Exception in Australian copyright law." Rowland (2025) observed: "Under such a proposal, Artificial Intelligence (AI) developers would be able to use the works of Australian creators for free and without permission to train AI systems." Rowland (2025) concluded: "The Government stands behind Australia's creative industries and, by ruling out a Text and Data Mining Exception, is providing certainty to Australian creators." Rowland (2025) maintained that "work is underway to ensure that Australia is prepared for future copyright challenges emerging from AI – so that Australian creators are protected and supported while unlocking new uses of copyright material."

The Government of Canada (2021) launched a consultation on the modern copyright framework for AI and the Internet of Things. Subsequently, the Government of Canada (2025) held a further consultation focused on the impacts of recent developments in AI on the creative industries and the creative economy. The new Carney Government will have to consider its responses to such inquiries. In the context of Canadian copyright law, Carys Craig (2021) contends that there is a need for "much more careful consideration of the extent to which the copyright system can and should play a role in encouraging, facilitating, restricting, and/or regulating the ongoing evolution of AI". Craig (2021) contends: "A robust, substantive principle of technological neutrality should guide any efforts to 'update' copyright law in response to AI technologies: changes to the allocation of rights and responsibilities within the copyright system must be made with a view to maintaining the appropriate balance between protection and access, in furtherance of copyright's public policy goals and the social values it seeks to foster". Copyright litigation of AI is currently emerging in the Canadian courts as well (Lau 2025).

In the United Kingdom, there has been activity in the courts over intellectual property and AI, with the ongoing dispute between Getty Images and StabilityAI. At a policy level, there has been conflict in the Parliament over copyright law, AI, and transparency. The United Kingdom Government has blocked an amendment by the House of Lords which would have required technology companies to reveal which copyrighted material was used in their models (Hall 2025).

Conclusion

The deployment of AI for the protection, preservation, promotion, and regeneration of digital cultural heritage will raise larger questions around copyright law, policy, and practice. Setting up AI museums like Dataland and adopting AI practices in existing cultural institutions will pose complex questions in respect of copyright

law and cultural heritage.

This survey of copyright litigation in relation to AI should provide a cautionary tale. Creative guilds and legacy copyright industries have initiated a wave of copyright litigation against AI companies using copyright materials for machine learning and AI training without permission. In response, AI companies have maintained that they have not violated or infringed copyright law, and, in any case, are protected by the defence of fair use. It will take the American courts some time to process the fifty-nine cases currently on foot over copyright law and AI (as at November 2025). It will take some time to resolve procedural and substantive issues in respect of these copyright disputes over AI. This survey of copyright litigation in respect of AI is certainly provisional and incomplete. There have been some early decisions in the United States over copyright law, fair use, and AI, with a diverse set of outcomes. Many of the legal actions are in a formative stage. No doubt there are further lawsuits being prepared in respect of copyright law and AI. Given the considerable resources of the warring industries, such disputes will no doubt be appealed from the District Courts to the Federal Circuit appellate courts, and even up to the Supreme Court of the United States.

There is great uncertainty as to how courts will resolve key matters in respect of copyright law and AI. For some subject matter, there may be questions about copyright subsistence. To establish copyright infringement, there will be a need for copyright owners to demonstrate that a substantial part of their work has been reproduced. There will be larger questions as to whether AI developers can rely upon the defence of fair use in such copyright litigation. The Authors Guild, professional creators, and copyright industries have maintained that AI developers should not be shielded by the defence of fair use. In response, AI developers and information technology companies have argued that AI training is transformative fair learning and deserving of protection under the defence of fair use. There is a division of opinion in the judicial sphere as to whether AI developers will be able to satisfy the various indicia required for a fair use determination. Indeed, there have been conflicting early precedents in *Kadrey* v. *Meta*, *Bartz* v. *Anthropic*, and *Thomson Reuters Enterprise Centre GMBH* v. *Ross Intelligence Inc*. The profusion and diversity of opinions may require further resolution by superior courts, and intervention by the United States Congress. The specific copyright exceptions for libraries, archives, galleries, and museums are narrow and limited, and have not been properly updated for the digital age, let alone the era of AI. It is doubtful that such copyright exceptions for cultural institutions will offer much protection for AI projects engaged in the protection, preservation, promotion, and regeneration of digital cultural heritage. There is a debate as to whether new copyright exceptions should be developed and designed for the AI era, such as data-mining exceptions (Authors Alliance 2023).

The copyright litigation over AI has also raised questions about the efficacy of special new remedies introduced by the *Digital Millennium Copyright Act* 1998 (US), including technological protection measures and electronic rights management information. It will also be important to consider what remedies courts will grant to copyright owners who are successful in their legal action.

There is an array of public policy activity in respect of copyright law and AI. As highlighted by the ructions over the United States Copyright Office report on copyright law and AI, there are great political divisions over an appropriate course of action. It remains to be seen what the Trump administration will do in respect of copyright law and AI – especially given that the Republicans control the House of Representatives and the Senate. The removal of Register of Copyrights and Director of the United States Copyright Office Shira Perlmutter perhaps indicates that the Trump administration will favour a more permissive regime for the use of AI training materials under copyright law.

While United States copyright law is a hegemonic force in comparative law and international law, it should be recognised that there are other alternative approaches to dealing with copyright law and AI. The European Union and a number of other regimes have exceptions for text and data mining – which can be extended potentially to AI training. In other jurisdictions outside the United States (which is heavily focused on economic rights), there may also be considerations in respect of the protection of moral rights (Matulionyte 2022) and performers' rights (Bouvard, Cooper & Thomas 2024). Moreover, certain AI projects will raise additional considerations in respect of the protection of Indigenous intellectual property and Indigenous Data Sovereignty.

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