Tool, Pirate or Creator?
Copyright in AI-Created Works

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Overview

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1   Why is this even relevant?

How can we **define** "Artificial Intelligence"?

WILEY
Publishers Since 1807

~ *Entwurf der EU-Kommission zur KI-VO*

„AI Tools and Technologies means **Software** that is developed with one or more **computational techniques** such as machine learning approaches, including supervised, unsupervised and reinforcement learning, deep learning, and can, for a given set of **human-defined objectives**, **generate Outputs** such as content, predictions, recommendations, or decisions."

SPRINGER NATURE

"To provide clarity and guidance for Member Institutions and Authorized Users, DEAL Operating Entity and Publisher agree to **jointly monitor the legal and technological developments regarding artificial intelligence tools in relation to the use of Content** during the Term of this Agreement, and align on such in a joint working group"

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Are there any **statutory definitions**? (1)

Article 3 Artificial Intelligence Act 2024/1689 – Definitions

For the purposes of this Regulation, the following definitions apply:

(1) '**AI system**' means a **machine-based system** that is designed to operate with **varying levels of autonomy** and that **may exhibit adaptiveness** after deployment, and that, for explicit or implicit objectives, **infers**, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that **can influence physical or virtual environments**;

Are there any **statutory definitions**? (2)

Article 3 Artificial Intelligence Act 2024/1689 – Definitions

For the purposes of this Regulation, the following definitions apply:

(63) '**general-purpose AI model**' means an AI model, **including** where such an AI model is trained with a large amount of data using self-supervision at scale, that displays **significant generality** and is capable of **competently performing a wide range of distinct tasks** regardless of the way the model is placed on the market and that **can be integrated into a variety of downstream systems or applications**, except AI models that are used for research, development or prototyping activities before they are placed on the market;

Let's bring **OpenAI** to Court!

michalsons

Focus Areas   Our Approach   Learning   Programmes   Software   Services

Authors Guild v OpenAI | Copyright infringement

BBC

Home   News   Sport   Business   Innovation   Culture   Arts   Travel   Earth   Audio   Video   Live

New York Times sues Microsoft and OpenAI for 'billions'

27 December 2023

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Tom Gerken
Technology reporter

Updated Apr 30, 2024 - Business
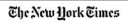
Major U.S. newspapers sue OpenAI, Microsoft for copyright infringement

Sara Fischer

Indian news agency sues OpenAI alleging copyright infringement

heise online   heise+ entdecken

Parent company of PCMag and IGN sues OpenAI

The media company Ziff Davis is suing OpenAI for copyright infringement. The lawsuit is one of a number of ongoing proceedings against the AI company.

THE Hollywood REPORTER

NEWS   FILM   TV   MUSIC   AWARDS   LIFESTYLE   BUSINESS   INTERNATIONAL   VIDEO   CHARTS   LISTS
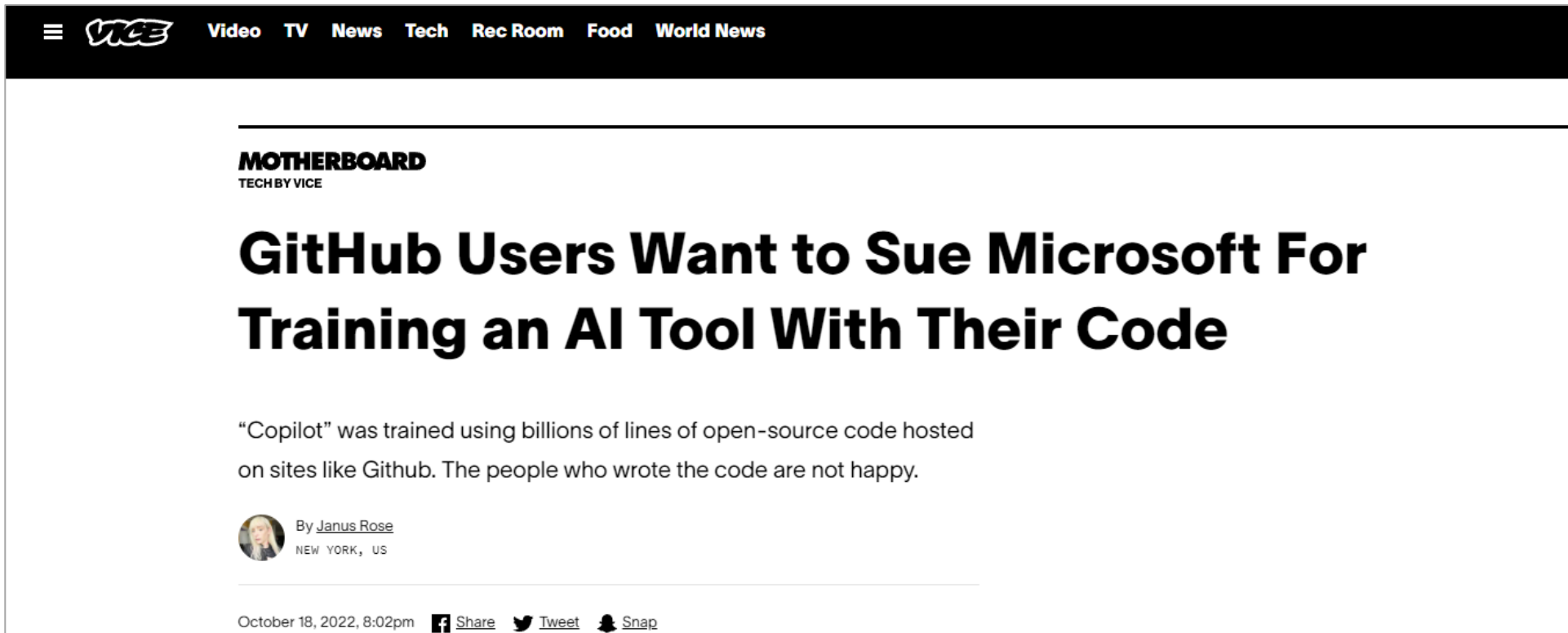
THR, ESQ.

HOME > BUSINESS > BUSINESS NEWS

Scarlett Johansson's AI Legal Threat Sets Stage for Actors' Battle With Tech Giants

Voice actors are filing lawsuits while SAG-AFTRA is rallying lawmakers to bar AI companies from misappropriating members' likenesses.

WINSTON CHO   MAY 21, 2024 5:09PM

The New York Times

Artificial Intelligence >   A.I. Forecast   A.I.'s Super Bowl   Google's Anthropic Investment   What is Vibecoding?   Quiz

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JAZZ DAY

Digital Media Outlets Sue OpenAI for Copyright Infringement

Raw Story, AlterNet and The Intercept sued for copyright infringement over the way the ChatGPT creator technology.

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Is this **<u>exclusively</u>** about pictures, music, voice-recordings and movies?

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VICE — Video TV News Tech Rec Room Food World News

MOTHERBOARD
TECH BY VICE

GitHub Users Want to Sue Microsoft For Training an AI Tool With Their Code

"Copilot" was trained using billions of lines of open-source code hosted on sites like Github. The people who wrote the code are not happy.

By Janus Rose
NEW YORK, US

October 18, 2022, 8:02pm   Share   Tweet   Snap

<u>No</u>, this is about any kind of copyrighted (or otherwise protected) source used as a base for AI-generated results.

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How does Artificial Intelligence relate to copyright?

Reproduction
(Art. 2 InfoSoc-Dir. 2001/29/EC)

TDM

Analysis

TDM?

Adaptation?

Content-Generation

Adaptation?

Use

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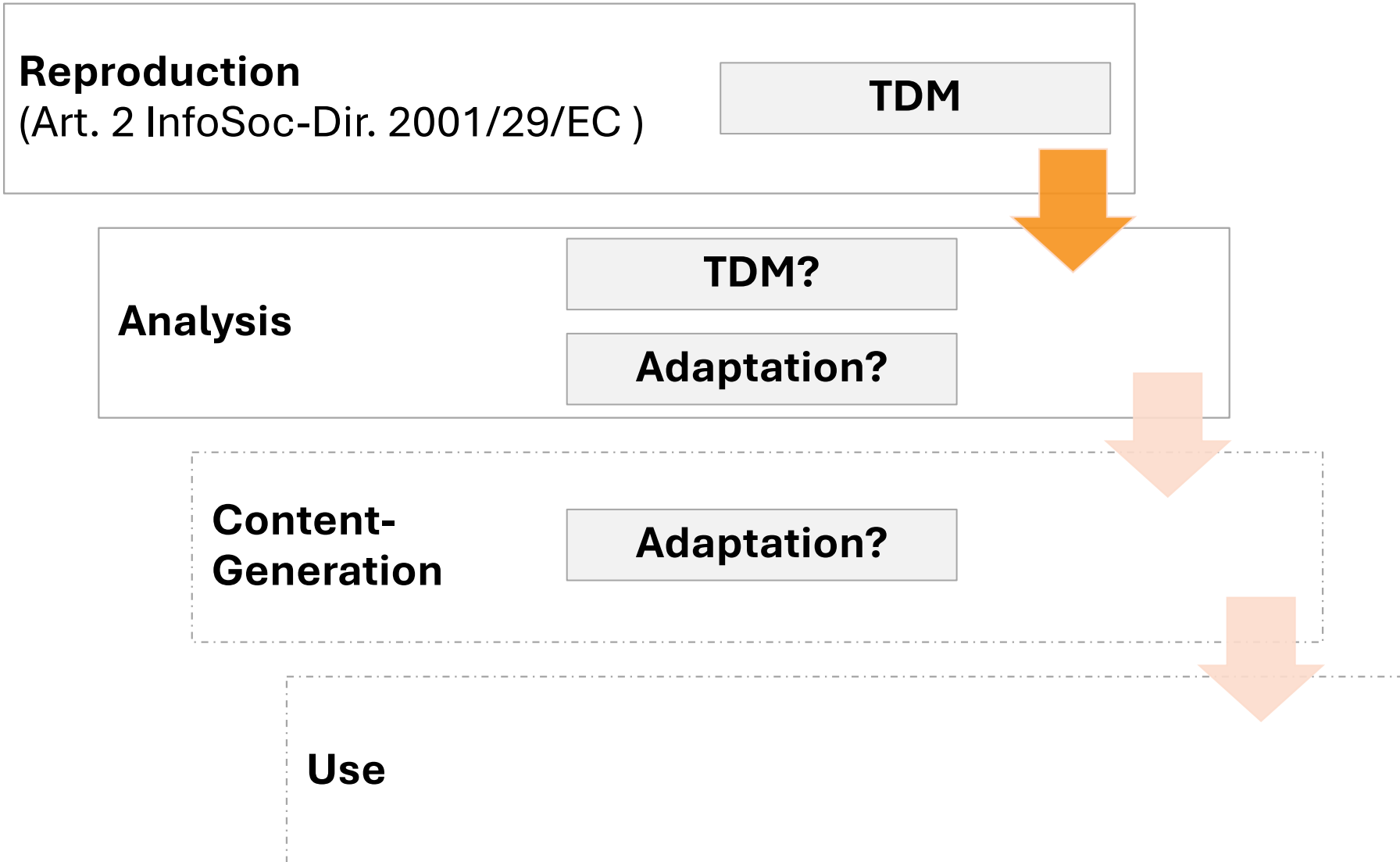
AI-generated works

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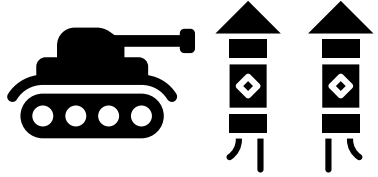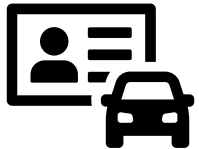Moral Rights

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What possible **means of regulation** are available?

Prohibition with highly specific exceptions granted by the state

Driver License Model: Initial approval / review procedure

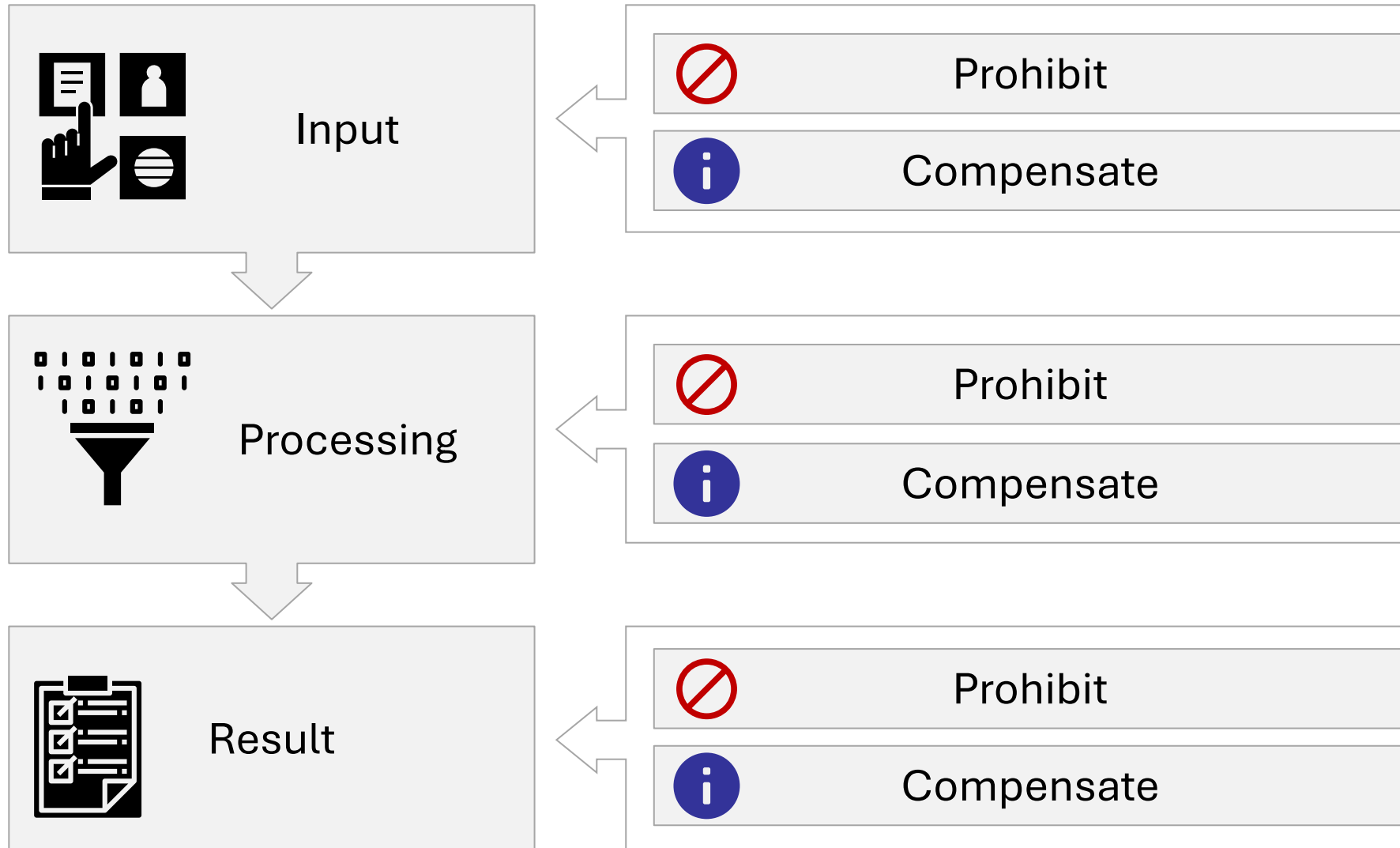Mere Warning and specific ex-post rights (e.g. compensation)

What **phase** should we regulate?

Input

🚫	Prohibit
ℹ️	Compensate

Processing

🚫	Prohibit
ℹ️	Compensate

Result

🚫	Prohibit
ℹ️	Compensate

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2 Who owns AI generated content?

Can we "**detect**" AI-generated content?

Süddeutsche Zeitung

Burda-Verlag

KI mit Soße

12. Mai 2023, 16:31 Uhr | Lesezeit: 3 Min.

▷ Artikel anhören

Zusammengeköchelt von künstlicher Intelligenz: Für Burdas "Lisa Kochen & Backen"-Extraheft mit 99 Pasta-Rezepten stand niemand in der Testküche.
(Foto: Anna Ernst/SZ)

Schmeckt's? Das Burda-Heft präsentiert "99 Pasta-Rezepte" – weitgehend mittels künstlicher Intelligenz. Die Leser erfahren davon nichts. Im Verlag herrscht Unruhe.

Von Anna Ernst

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https://www.sueddeutsche.de/medien/burda-lisa-kochen-backen-rezepte-ki-leser-1.5855586?reduced=true

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Can we "**detect**" AI-generated content?

Art. 50 AI-Act - Transparency obligations for providers and deployers of certain AI systems

2.   Providers of AI systems, including general-purpose AI systems, **generating synthetic audio, image, video or text content**, shall ensure that the outputs of the AI system are **marked in a machine-readable format and detectable as artificially generated or manipulated**. Providers shall ensure their technical solutions are effective, interoperable, robust and reliable as far as this is technically feasible, taking into account the specificities and limitations of various types of content, the costs of implementation and the generally acknowledged state of the art, as may be reflected in relevant technical standards.

Does Watermarking **work**?

OpenAI's New o3/o4-mini Models Add Invisible Characters to Text, Sparking Watermark Debate

The discovery of non-standard space characters in OpenAI's o3/o4-mini output has raised questions about AI watermarking, though it remains unclear if it's intentional.

By **Markus Kasanmascheff**   April 21, 2025 11:09 am CEST

Google DeepMind

TECHNOLOGIES

Watermarking AI-generated text and video with SynthID

14 MAY 2024

Should we protect AI generated works? (1)

CHRISTIE'S   AUCTIONS   PRIVATE SALES   SELL   DEPARTMENTS   DISCOVER   SHOP

Portrait of Edmond Belamy (2018)

Is artificial intelligence set to become art's next medium?

AI artwork sells for $432,500 — nearly 45 times its high estimate — as Christie's becomes the first auction house to offer a work of art created by an algorithm

12 December 2018

PHOTOGRAPHS & PRINTS | INTERVIEW

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Should we protect AI generated works? (2)

"The works in this auction are using artificial intelligence to enhance their bodies of work, not to replace human creativity. These artists are pushing the boundaries of what's possible with AI rather than relying on it as a shortcut."

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Alexander Reben, Untitled Robot Painting   Courtesy of Christie's Images Ltd. 2025

Augmented Intelligence: AI-Powered Art Breaks Records at Christie's

Christie's AI Art Auction Sets New Records and Sparks Ethical Debate

Related Stories

Coastal Resilience: How Sustainable Architecture is Shaping Virginia Beach Communities

Muhammad Asim · Apr 25, 2025

The AI Art Dilemma: What

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Is this a **new question**? (1)

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Is this a **<u>new question</u>**? (2)

International Association for the Protection of Intellectual Property – World Congress 2019

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Is this a **new question**? (3)

Why shouldn't we simply have „**AI Copyright Owners**"?

AI has no assets (apart from possible copyright claim)

AI is unable to enforce / defend copyright

„**mere tool**"
(no © to the brush!)

AI has no interest in „moral rights"

AI would have no use for license fees, damages, etc.

Should we grant **copyright to the user**?

§ 9 Copyright, Designs and Patents Act 1988

(3)   In the case of a literary, dramatic, musical or artistic work which is **computer-generated**, the author shall be taken to be the **person by whom the arrangements necessary for the creation of the work are undertaken**.

Is it time to **<u>rethink copyright as such</u>**?
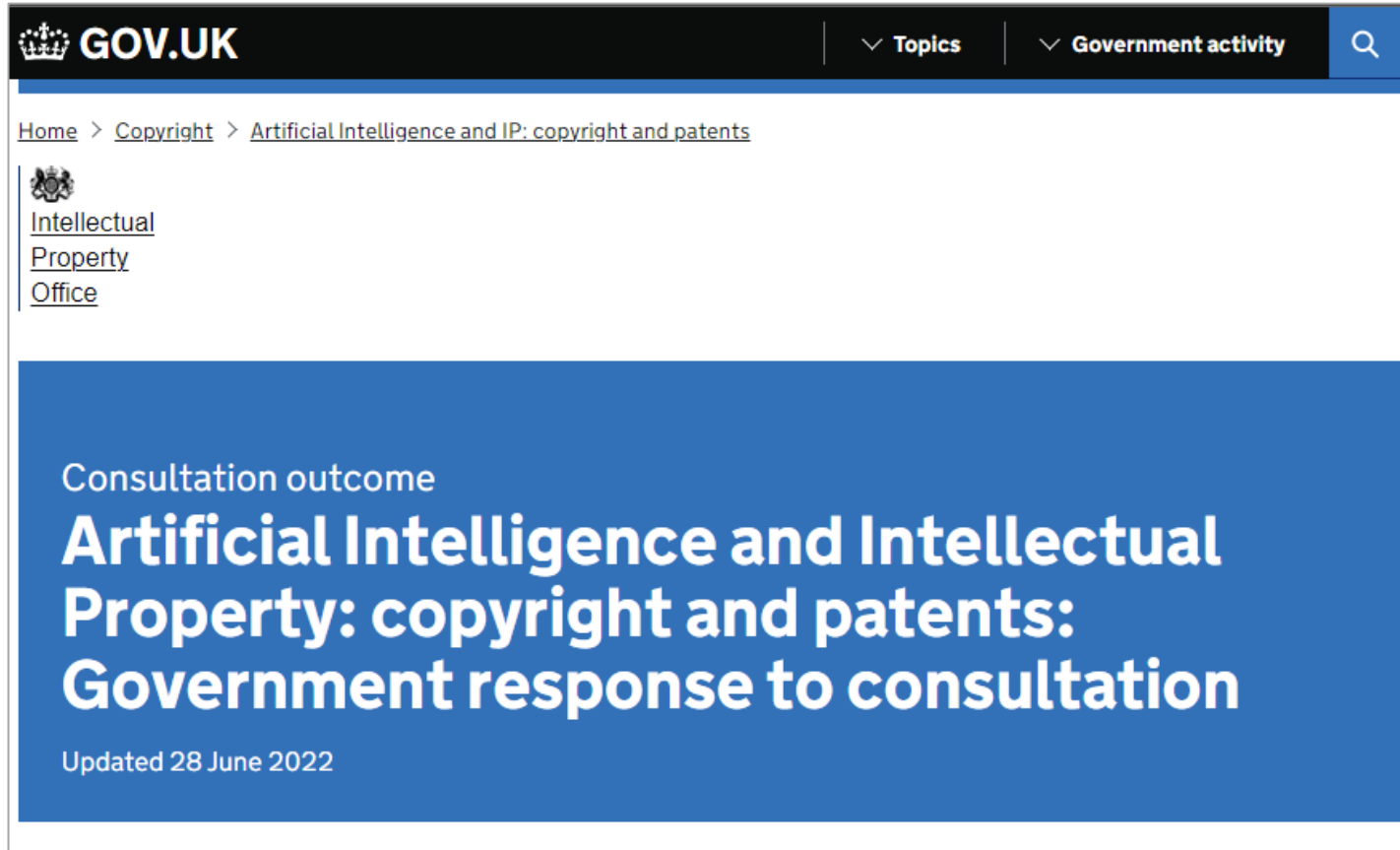
https://www.gov.uk/government/consultations/artificial-intelligence-and-ip-copyright-and-patents/outcome/artificial-intelligence-and-intellectual-property-copyright-and-patents-government-response-to-consultation

Art. 6 Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights

A photographic work within the meaning of the Berne Convention is to be considered original if it is **the author's own intellectual creation reflecting his personality,** no other criteria such as merit or purpose being taken into account.

Art. 1 Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs

(3)   A computer program shall be protected if it is original in the sense that it is **the author's own intellectual creation**. No other criteria shall be applied to determine its eligibility for protection.

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In the case of works containing AI-generated material, the Office will consider whether the AI contributions are the result of "mechanical reproduction" or instead of an author's "own original mental conception, to which [the author] gave visible form." The answer will depend on the circumstances, particularly how the AI tool operates and how it was used to create the final work. This is necessarily a case-by-case inquiry.

UNITED STATES COPYRIGHT OFFICE

Copyright Registration Guidance:
Works Containing Material Generated
by Artificial Intelligence

PUBLISHED ON THURSDAY, MARCH 16, 2023
16190 FEDERAL REGISTER, VOL. 88, NO. 51
RULES AND REGULATIONS
37 CFR PART 202

ACTION: Statement of policy

SUMMARY: The Copyright Office issues this statement of policy to clarify its practices for examining and registering works that contain material generated by the use of artificial intelligence technology.

DATES: This statement of policy is effective March 16, 2023.

FOR FURTHER INFORMATION CONTACT: Rhea Efthimiadis, Assistant to the General Counsel, by email at *meft@copyright.gov* or telephone at 202–707– 8350.

SUPPLEMENTARY INFORMATION

I. Background

The Copyright Office (the "Office") is the Federal agency tasked with administering the copyright registration system, as well as advising Congress, other agencies, and the Federal judiciary on copyright and related matters.[1] Because the Office has overseen copyright registration since its origins in 1870, it has developed substantial experience and expertise regarding "the distinction between copyrightable and noncopyrightable works."[2] The Office is empowered by the Copyright Act to establish the application used by applicants seeking registration of their copyrighted works.[3] While the Act identifies certain minimum requirements, the Register may determine that additional information is necessary for the Office to evaluate the "existence, ownership, or duration of the copyright."[4] Because the Office receives roughly half a million applications for registration each year, it sees new trends in registration activity that may require modifying or expanding the information required to be disclosed on an application.

One such recent development is the use of sophisticated artificial intelligence ("AI") technologies capable of producing expressive material.[5] These technologies "train" on vast quantities of preexisting human-authored works and use inferences from that training to generate new content. Some systems operate in response to a user's textual instruction, called a "prompt."[6] The resulting output may be textual, visual, or audio, and is determined by the AI based on its design and the material it has been trained on. These technologies, often described as "generative AI," raise questions about whether the material they produce

1 | Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence

Decision of the Supreme Court of Cassation of Italy, Civil Division, Section I (Corte Suprema di Cassazione, Sez. 1 Civ.) 16 January 2023 – Case No. 1107/2023; ECLI:IT:CASS:2023:1107CIV

1. An image generation using software is compatible with developing a creative work of the intellect.

2. A more rigorous examination of the degree of creativity involved suffices.

Is there an **international standard**? (1)

SMART NEWS

U.S. Copyright Office Rules A.I. Art Can't Be Copyrighted

An image generated through artificial intelligence lacked the "human authorship" necessary for protection

Jane Recker
Daily Correspondent
March 24, 2022

https://www.smithsonianmag.com/smart-news/us-copyright-office-rules-ai-art-cant-be-copyrighted-180979808/

Is there an **international standard**? (2)

Individuals who use AI technology in creating a work may claim copyright protection for their own contributions to that work. ... For example, an applicant who incorporates AI-generated text into a larger textual work should claim the portions of the textual work that is human-authored.

...

AI-generated content that is more than de minimis should be explicitly excluded from the application.

https://www.copyright.gov/ai/ai_policy_guidance.pdf

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Where can we find "**originality**"?

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Beijing Internet Court
A Civil Judgment

(2023) Jing 0491 Min Chu No. 11279 (2023)

Plaintiff: LI
Agent ad litem 1: Sun Yan, lawyer at Beijing Tian Yuan Law Firm
Agent ad litem 2: Li Yufan, lawyer at Beijing Tian Yuan Law Firm
Defendant: LIU

The case of LI (the plaintiff) v. LIU (the defendant) over infri...
authorship and the right of dissemination on the information network...
on May 25, 2023. A collegial panel was formed in accordance with...
procedures being applied. After a pre-trial meeting, a public hearing...
2023. The plaintiff LI and his agents Sun Yan and Li Yufan, and the...
the trial via the e-litigation platform of the Court. The case has now be...

The plaintiff LI requested that: 1. The defendant issue a public sta...
account involved to apologize to the plaintiff and eliminate the impact...
The defendant compensate 5,000 yuan for the plaintiff's economic los...
case: On February 24, 2023, the plaintiff generated the picture involv...
words in Stable Diffusion, an open source software, and then publish...
Red Book, a social media platform, under the title "Spring Breeze Bri...
the plaintiff found that the picture was used in an article titled "Love...
Blossoms," which was published by the defendant under the baijiaha...
March 2, 2023. The defendant had used the picture without the plaintiff's permission and even
removed the plaintiff's watermark on Little Red Book, causing viewers to believe that the
defendant was the author of the picture. The defendant's behavior seriously violated the
plaintiff's right of authorship and of dissemination on the information network. The defendant
should compensate the plaintiff for his economic losses and make an apology to eliminate the
impact. Accordingly, the plaintiff filed a lawsuit to the Court and requested the above.

The defendant LIU argued that: 1. The defendant searched the Internet and obtained the
picture involved and used it as an illustration for his original poem "Love in March, in the

– 1 –

The plaintiff claimed that the picture was **generated via Stable Diffusion** on February 24, 2023. He submitted a **video that demonstrates the process of generating the picture** involved.

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Where can we find "**originality**"?

4. Enter the following prompt words:"(ultra photorealistic:1.3), extremely high quality highdetail RAW color photo, in locations, japan idol, highly detailed symmetrical attractive face, angular simmetrical face, perfectskin, skin pores, dreamy black eyes, reddish-brown plaits hairs, uniform, long legs, thighhighs, soft focus, (film grain, vivid colors, film emulation, kodak gold portra 100, 35mm, canon50 f1.2)   Lens Flare, Golden Hour, HD, Cinematic, Beautiful Dynamic Lighting".

Enter the following negative prompt words:"((3d ~~~~~~, anime, comic:1.2)), bad anatomy, bad hands, ~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~ped, worst quality, signature, water~~~~~~uid body, malformed, muta~~~~~~y, gross proportions, muta~~~~~~malistic, nsfw, lowres, bada~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~digits, cropped, worst quality, low quality~~~~~~~~~~~~~~~~~~~~~~~~~~~termark, username, blurry, disfigured, kitsch, ugly, oversa~~~~~~~~~~~~~~~~~~~~ed, disfigured, poorly drawn face, mutation, mutated, extra limb, ugly, poo~~~~~~~~~~~~~~~, missing limb, floating limbs, disconnected limbs, malformed hands, blur, out of focus, long neck, long body, ugly, disgusting, poorly drawn, childish, mutilated, mangled, old, surreal, text, b&w, monochrome, conjoined twins, multiple heads, extra legs, extra arms, meme, elongated, twisted, fingers, strabismus, heterochromia, closed eyes, blurred, watermark, wedding, group, dark skin, dark-skinned female, tattoos, nude, lowres, badanatomy, badhands, text, error, missing fingers, extra digit, fewer digits, cropped, worst quality, low quality, normal quality, jpeg artifacts, signature, watermark, username, blurry"

Among them, "((3d render, CG, painting, drawing, cartoon, anime, comic: 1.2))" comes from the defendant himself, and the rest are directly copied from an online forum.

Where can we find "**originality**"?

6. With the above parameters unchanged, modify the weight of "lord-hanfugirl-v1-5.safetensors" in "Addition-Networks" to 0.75. The result is shown in Figure 4.

7. With the above parameters unchanged, modify random seed to 2692150199. The result is shown in Figure 5.
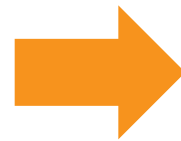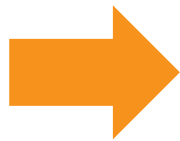
Where can we find "**originality**"?

With the above parameters unchanged, add the following prompt words:
"shy, elegant, cute, lust, cool pose, teen, viewing at camera, masterpiece, best quality",
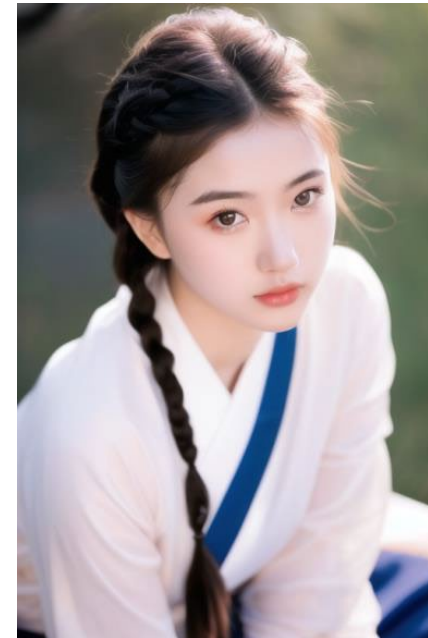
Where can we find "**<u>originality</u>**"?

This picture is **not a ready made one** that can be obtained through a search engine, **nor is it an arrangement or combination of various elements preset by the software designer**. ...

Based on the initially generated picture, the plaintiff **added some prompt words**, **modified the parameters**, and finally got the picture he wanted. From the time the plaintiff had an idea about the picture to his final selection of the picture involved, the plaintiff did some **intellectual investment**, such as designing the presentation of the character, selecting prompt words, arranging the order of prompt words, setting parameters, and selecting the picture that he wanted.

The **picture involved reflects the plaintiff's intellectual investment**, so it meets the element of "intellectual achievement".

Where can we find "**originality**"?

The plaintiff **input prompt words and set parameters** and got the first picture; then he **added some prompt words, modified the parameters**, and finally got the picture involved.

Such **adjustment and modification also reflect the plaintiff's aesthetic choice and personal judgment**. During the trial, the plaintiff generated different pictures by changing the prompt words or the parameters.

One can infer that with this model, **different people can generate different pictures** by entering different prompt words and setting different parameters.

Therefore, the picture involved is **not a "mechanical intellectual achievement"**.

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"Currently, the <mark>**generative AI model has no free will and is not a legal subject**</mark>. Therefore, when people use an AI model to generate pictures, there is no question about who is the creator. In essence, it is a <mark>**process of man using tools to create**</mark>, that is, it is man who does intellectual investment throughout the creation process, the not AI model.

The core purpose of the copyright system is to <mark>**encourage creation**</mark>. And creation and AI technology can only prosper by properly applying the copyright system and using the legal means to encourage more people to use the latest tools to create. "

Where are the **limits**? (1)

Case 1:22-cv-01564-BAH   Document 24   Filed 08/18/23   Page 1 of 15

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STEPHEN THALER,

      Plaintiff,

      v.

SHIRA PERLMUTTER, *Register of
Copyrights and Director of the United States
Copyright Office, et al.*

      Defendants.

Civil Action No. 22-1564 (BAH)

Judge Beryl A. Howell

MEMORANDUM OPINION

Plaintiff Stephen Thaler owns a computer system he calls the "Creativity Machine," which he claims generated a piece of visual art of its own accord. He sought to register the work for a copyright, listing the computer system as the author and explaining that the copyright should transfer to him as the owner of the machine. The Copyright Office denied the application on the grounds that the work lacked human authorship, a prerequisite for a valid copyright to issue, in the view of the Register of Copyrights. Plaintiff challenged that denial, culminating in this lawsuit against the United States Copyright Office and Shira Perlmutter, in her official capacity as the Register of Copyrights and the Director of the United States Copyright Office ("defendants"). Both parties have now moved for summary judgment, which motions present the sole issue of whether a work generated entirely by an artificial system absent human involvement should be eligible for copyright. *See* Pl.'s Mot. Summ. J. (Pl.'s Mot."), ECF No. 16; Defs.' Cross-Mot. Summ. J. ("Defs.' Mot."), ECF No. 17. For the reasons explained below, defendants are correct that human authorship is an essential part of a valid copyright claim, and

1

Recent Entrance to Paradise ("Creativity Machine")

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Where are the **<u>limits</u>**? (2)

After its creation, plaintiff attempted to register this work with the Copyright Office. In his application, **he identified the author as the Creativity Machine**, and explained the work had been "**autonomously created by a computer algorithm running on a machine**," but that plaintiff sought to claim the copyright of the "computer-generated work" himself "as a work-for-hire to the owner of the Creativity Machine." …

Plaintiff requested reconsideration of his application, confirming that the work "was autonomously generated by an AI" and "**lack[ed] traditional human authorship,**" but contesting the Copyright Office's human authorship requirement and urging that AI should be "acknowledge[d] . . . as an author where it otherwise meets authorship criteria, with any copyright ownership vesting in the AI's owner."

Where are the <u>**limits**</u>? (3)

While plaintiff attempts to transform the issue presented here, **by asserting new facts that he "provided instructions and directed his AI to create the Work," that "the AI is entirely controlled by [him]," and that "the AI only operates at [his] direction,"** Pl.'s Mem. at 36–37—implying that he played a controlling role in generating the work—these **statements directly contradict the administrative record**. Judicial review of a final agency action under the APA is **limited to the administrative record**...

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**. 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.

3 In how far can AI providers use existing content?

What is the **economic issue**?

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Cost to create training data

Cost to develop tools

Cost to train neural network

Cost to request result

Cost to generate result

What is „**Text- and Datamining**" („TDM")?

Art. 2 DSM-Dir. 2019/790 – Definitions

For the purposes of this Directive, the following definitions apply:

2. '**text and data mining**' means any **automated analytical technique** aimed at **analysing text and data in digital form** in order to **generate information** which includes but is not limited to patterns, trends and correlations
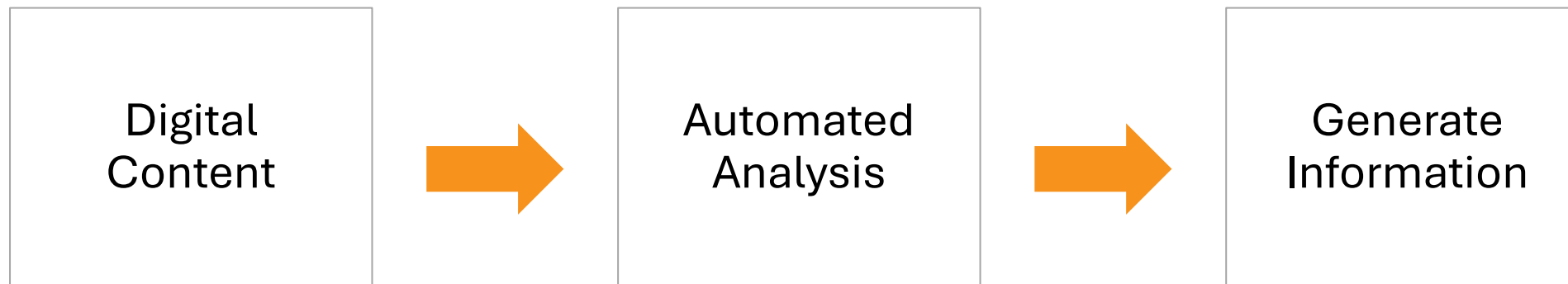
Digital Content	→	Automated Analysis	→	Generate Information

And how does this relate to **Artificial Intelligence**?

Recital 105 AI-Act 2024/1669

... The development and training of such models require access to vast amounts of text, images, videos and other data. **Text and data mining techniques may be used extensively in this context** for the retrieval and analysis of such content, which may be protected by copyright and related rights. Any use of copyright protected content **requires the authorisation of the rightsholder concerned** unless **relevant copyright exceptions and limitations apply**.

And how does this relate to **Artificial Intelligence**?

Recital 105 AI-Act 2024/1669

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. 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. Where the rights 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.

Does **<u>EU-Copyright Law</u>** apply to text mining?

Art. 8 Rome II Regulation 864/2007 - Infringement of intellectual property rights

1. The law applicable to a non-contractual obligation arising from an infringement of an intellectual property right shall be the **law of the country for which protection is claimed**. ...

3. The law applicable under this Article **may not be derogated from by an agreement** pursuant to Article 14.

> **<u>Relevant Act</u>**: Reproduction (Art. 2 InfoSocDir 2001/29/EC)
> by Download / Copy into AI-System (as Input- or Trainingsdata)

In Germany / in USA / in China...

And how does this relate to **<u>Artificial Intelligence</u>**?

Art. 53 AI-Act 2024/1669 - Obligations for providers of general-purpose AI models

1.   Providers of general-purpose AI models shall:

(c) put in place a **policy to comply with Union law on copyright and related rights**, and in particular to identify and comply with, including through state-of-the-art technologies, a reservation of rights expressed pursuant to Article 4(3) of Directive (EU) 2019/790;

(d) draw up and make publicly available a **sufficiently detailed summary about the content used for training** of the general-purpose AI model, according to a template provided by the AI Office.

How does the EU treat **data mining**?

Article 4 DSM-Dir. (EU) 2019/790 – Exception or limitation for text and data mining

1. Member States shall provide for an exception or limitation to the rights provided for in Article 5(a) and Article 7(1) of Directive 96/9/EC, Article 2 of Directive 2001/29/EC, Article 4(1)(a) and (b) of Directive 2009/24/EC and Article 15(1) of this Directive for **reproductions and extractions of lawfully accessible works and other subject matter for the purposes of text and data mining**....

3. The exception or limitation provided for in paragraph 1 shall apply on condition that the use of works and other subject matter referred to in that paragraph has not been **expressly reserved by their rightholders** in an appropriate manner, such as **machine-readable means in the case of content made publicly available online**.

How does the EU treat **data mining**?

Art. 3 DSM-Dir. (EU) 2019/790 - Text and data mining for the purposes of scientific research

1. Member States shall provide for an exception to the rights provided for in Article 5(a) and Article 7(1) of Directive 96/9/EC, Article 2 of Directive 2001/29/EC, and Article 15(1) of this Directive for reproductions and extractions **made by research organisations and cultural heritage institutions** in order to carry out, for the **purposes of scientific research**, text and data mining of works or other subject matter to which they have **lawful access**.

2. Copies of works or other subject matter made in compliance with paragraph 1 shall be stored with an appropriate level of security and may be retained for the purposes of scientific research, including for the verification of research results.

Can we deviate by **contractual agreements**?

One can commit oneself to omit legal acts

however:

Art. 7 DSM-Dir. (EU) 2019/790 - Common provisions

1. Any contractual provision contrary to the exceptions provided for in Articles 3, 5 and 6 shall be unenforceable.
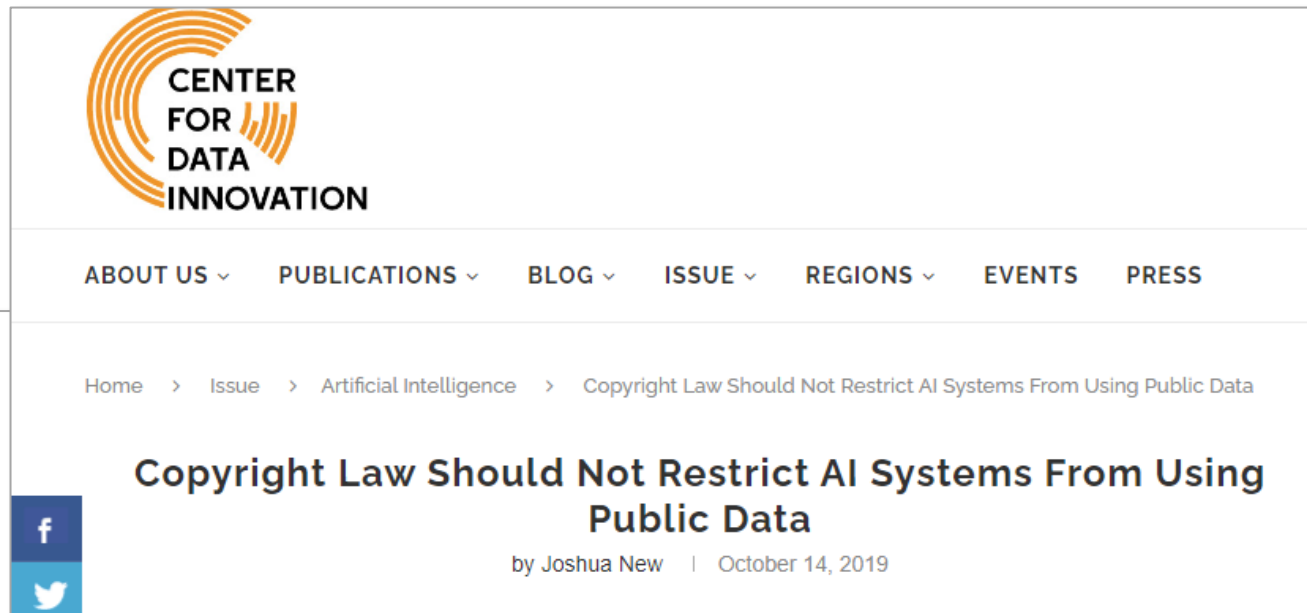
No contract to the detriment of third parties

Is this only a **European perspective**?

https://datainnovation.org/2019/10/copyright-law-should-not-restrict-ai-systems-from-using-public-data/

CENTER FOR DATA INNOVATION

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Home   >   Issue   >   Artificial Intelligence   >   Copyright Law Should Not Restrict AI Systems From Using Public Data

Copyright Law Should Not Restrict AI Systems From Using Public Data

by Joshua New | October 14, 2019

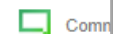Join TechCrunch+

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Web scraping is legal, US appeals court reaffirms

Zack Whittaker   @zackwhittaker   /   9:16 PM GMT+2 • April 18, 2022   Comm

What about **CC-Licences**?

UNDERSTANDING CC LICENSES AND GENERATIVE AI

by Kat Walsh

Many wonder what role CC licenses, and CC as an organization, can and should play in the future of generative AI. The legal and ethical uncertainty over using copyrighted inputs for training, the uncertainty over the legal status and best practices around works produced by generative AI, and the implications for this technology on the growth and sustainability of the open commons have led CC to examine these issues more closely. We want to address some common questions, while acknowledging that the answers may be complex or still unknown.

"CC Icon Statue" by Creative Commons, generated in part by the DALL-E 2 AI platform. CC dedicates any rights it holds to this image to the public domain via CC0.

" We use "artificial intelligence" and "AI" as shorthand terms for what we know is a complex field of technologies and practices, currently involving machine learning and large language models (LLMs). Using the abbreviation "AI" is handy, but not ideal, because we recognize that AI is not really "artificial" (in that AI is created and used by humans), nor "intelligent" (at least in the way we think of human intelligence).

CC-0: Clear

CC-BY: Attribution?

Model under CC-BY-SA when using CC-BY-SA

No sharing of Model when using CC-BY-ND

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Is there **compulsory compensation** for TDM?

ErwGr. 17 DSM-RL 2019/790

In view of the nature and scope of the exception, which is limited to entities carrying out scientific research, **any potential harm created to rightholders through this exception would be minimal**.

Member States should, therefore, **not provide for compensation for rightholders as regards uses under the text and data mining exceptions** introduced by this Directive.

4   Is this just a case of moral rights?

Should an **actor** decide how digital look-alikes are used?

Juristische Fakultät   CC-BY 4.0 – M. Beurskens

THE U.S. Sun

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Tech

YIPPEE AI YAY Bruce Willis sells rights to 'AI twin' that could see him back on screen after brain disorder diagnosis

Jona Jaupi
12:37 ET, Sep 29 2022 | Updated: 15:59 ET, Sep 29 2022

BBC

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Tech

Bruce Willis denies selling rights to his face

2 October

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Is there any **legal basis** for that claim?

Article 5 Beijing Treaty on Audiovisual Performances – Moral Rights

(1)   Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live performances or performances fixed in audiovisual fixations, have the right:

  (i)   to claim to be **identified** as the performer of his performances, except where omission is dictated by the manner of the use of the performance; and

  (ii)   to object to any distortion, mutilation or other **modification of his performances that would be prejudicial to his reputation**, taking due account of the nature of audiovisual fixations.

What about **porn**?

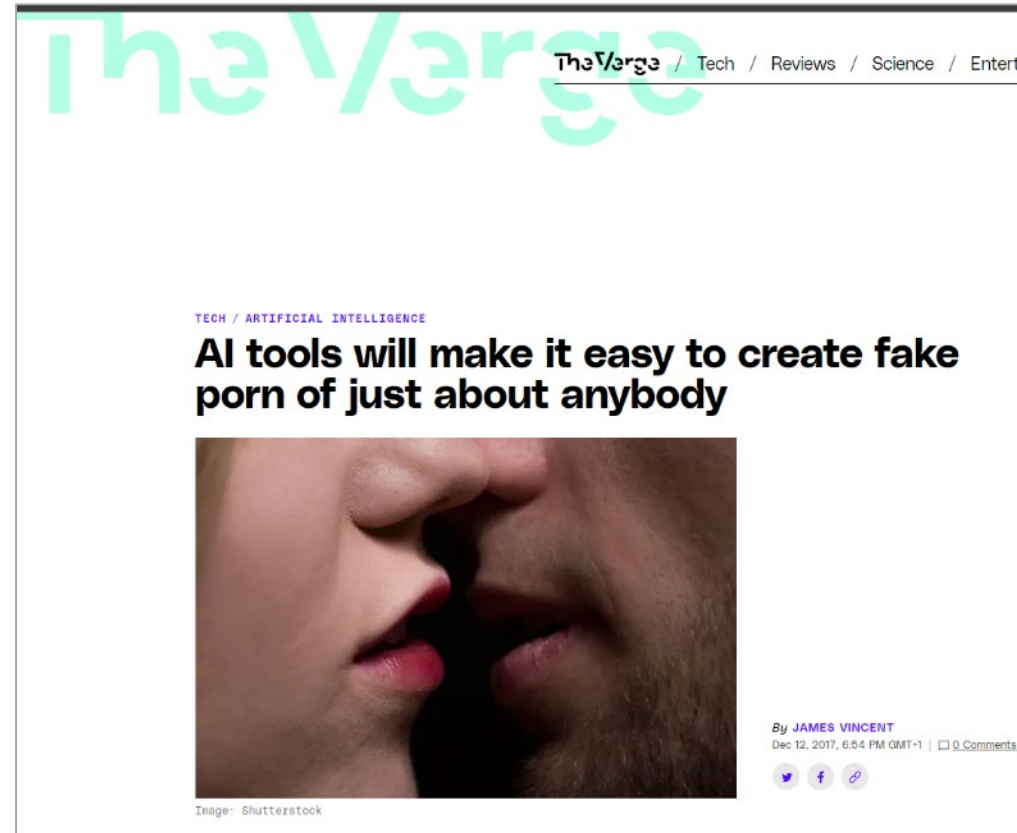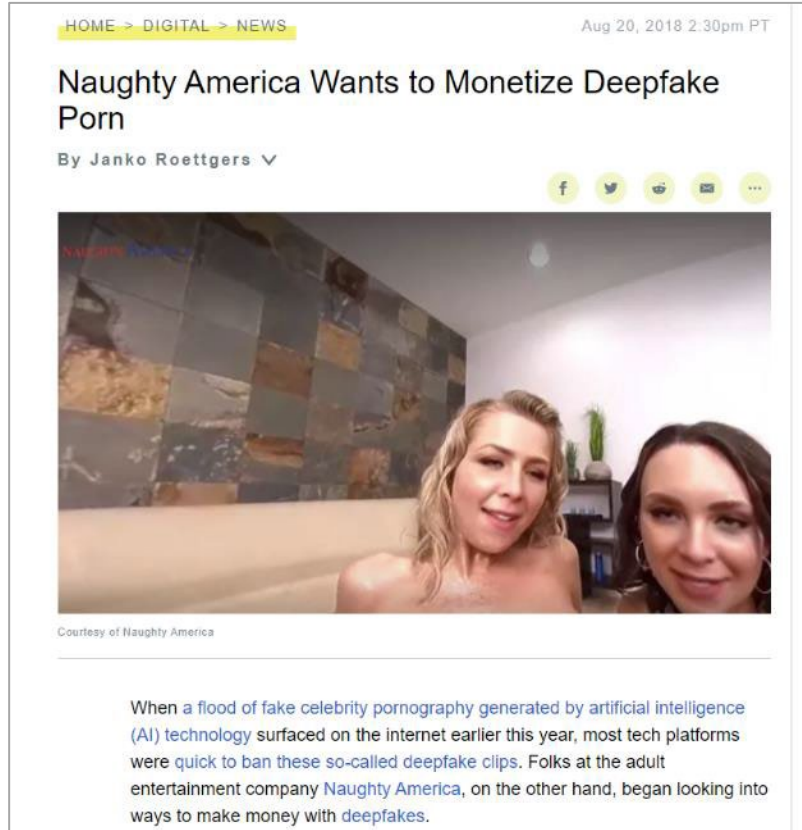HOME > DIGITAL > NEWS   Aug 20, 2018 2:30pm PT

Naughty America Wants to Monetize Deepfake Porn

By Janko Roettgers ∨

Courtesy of Naughty America

When a flood of fake celebrity pornography generated by artificial intelligence (AI) technology surfaced on the internet earlier this year, most tech platforms were quick to ban these so-called deepfake clips. Folks at the adult entertainment company Naughty America, on the other hand, began looking into ways to make money with deepfakes.

TheVerge / Tech / Reviews / Science / Enterta

TECH / ARTIFICIAL INTELLIGENCE

AI tools will make it easy to create fake porn of just about anybody

By JAMES VINCENT
Dec 12, 2017, 6:54 PM GMT+1 | ▢ 0 Comments /

Image: Shutterstock

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https://www.theverge.com/2017/12/12/1676659
6/ai-fake-porn-celebrities-machine-learning

https://variety.com/2018/digital/news/deepfake-
porn-custom-clips-naughty-america-
1202910584/

Can't this be easily resolved by the **legislator**?

TECHSPOT
TRENDING   FEATURES   REVIEWS   THE BEST   DOWNLOADS   VIDEO   PRODUCT FINDER   FORUMS

THE WEB   TECH CULTURE   LAW   DEEPFAKE

New California laws tackle political and pornographic deepfakes

Expect more states to do the same

By Rob Thubron October 7, 2019 at 8:55 AM | 12 comments

But what about cases **without any(determinable) person** used as a base?
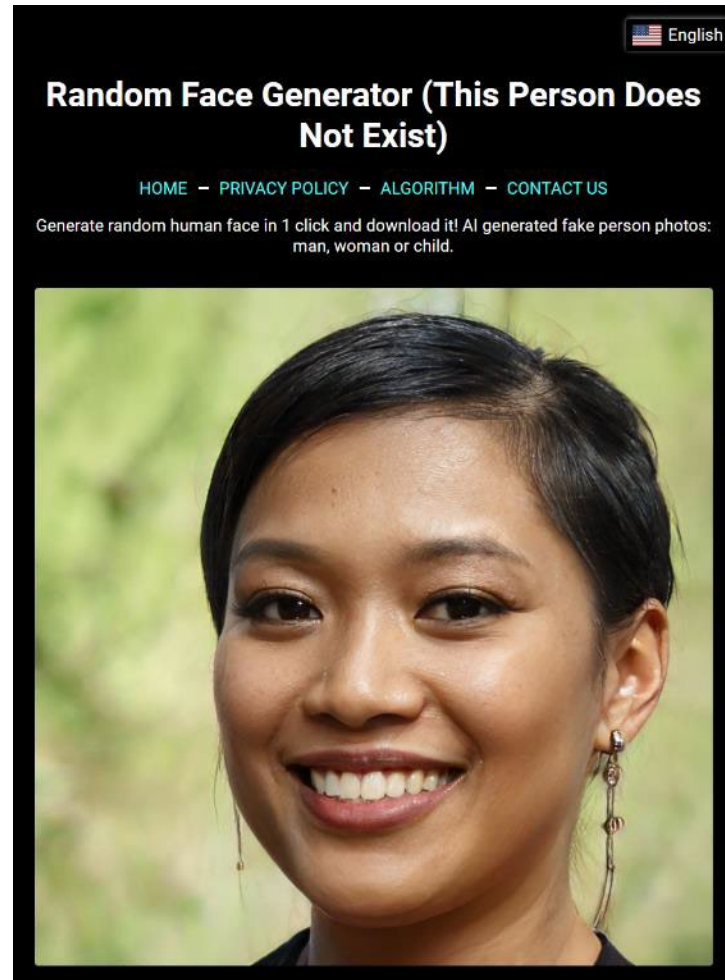
5   Is this only about the money?

Why are (especially) **voice actors** worried about increasing AI use?

UNIVERSITÄT PASSAU

FINANCIAL TIMES

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Opinion **Artificial intelligence**

Actors worry that AI is taking centre stage

Synthetic voices may not be as good but they can still threaten human talent's work and rights

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Stop AI stealing the show

Stop AI stealing the show

Join our campaign to strengthen performers' rights in response to the rise of artificial intelligence across the entertainment industry.

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Is there any **reason** to be worried?

UNIVERSITÄT
PASSAU
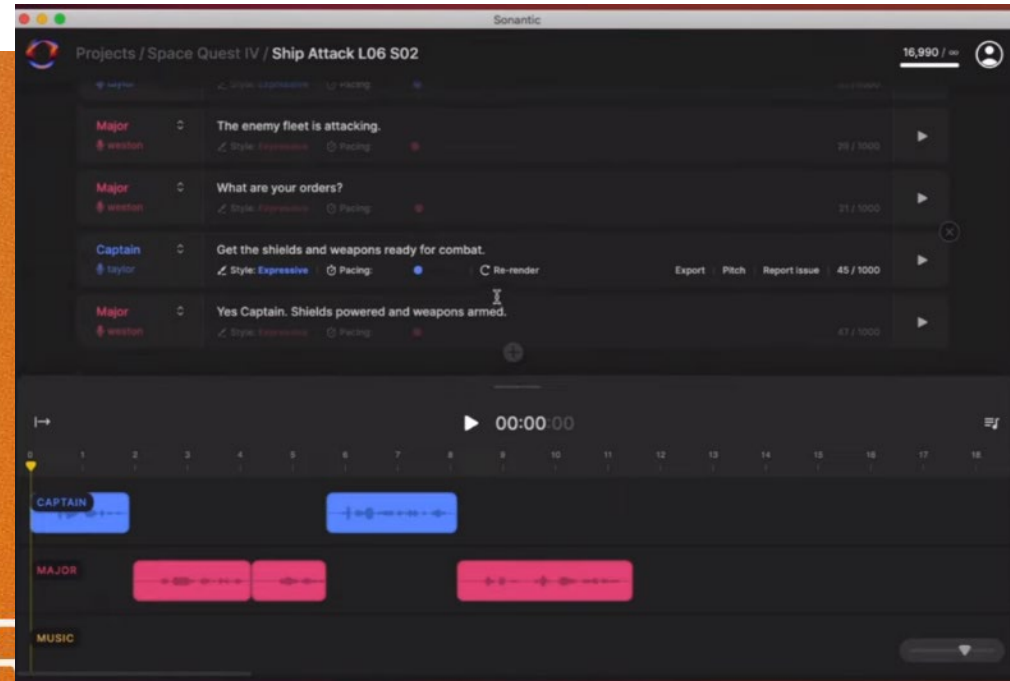
Is there a **legal basis** for that claim?

Article 12 **Convention for the Protection of Literary and Artistic Works (Berne Convention)**

Authors of literary or artistic works shall enjoy the exclusive right of authorizing **adaptations, arrangements and other alterations of their works**.

Mere Remix / Recombination?

Why not **profit** without (further) work?

Zeena Qureshi
CEO & Co-founder

June 3, 2021

The short answer is no: AI voices will never replace actors

If game, animation, and film studios can access extremely realistic, expressive AI voices, will real-life actors lose their jobs? The short answer is no: AI voices will never replace actors. And in fact, the development of AI voice models and the use of those AI voices by studios benefit not only the studios but the actors as well.

Generating new sources of income

From the moment we started building our product, we wanted to ensure that our actors would benefit financially from their partnership with us. Each time a client uses an actor's voice model, the actor receives a profit share. Since multiple Sonantic clients can—and often do—use the same actor's voice simultaneously, **each actor could potentially gain a substantial passive revenue stream**.

Is this only a question of **licensing**?

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PASSAU

US & WORLD / POLICY / TECH

Creative Commons says copyright can't protect your photos from ending up in a facial recognition database

/ It says that it's up to public policy to address ethical concerns

By SHANNON LIAO / @shannon_liao
Mar 14, 2019, 7:47 PM GMT+1 | 0 Comments

Illustration by James Bareham / The Verge

This week, NBC reported that facial recognition researchers at companies like IBM often feed their algorithms photos from publicly available collections, only protected by a Creative Commons license, without requesting permission from the people who are photographed. The incident raised the question of whether or not such training could be considered a valid use under the Creative Commons licenses.

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https://www.theverge.com/2019/3/14/18265826/creative-commons-photos-facial-recognition-database

What about **misrepresentation** vis-a-vis consumers?

UNIVERSITÄT
PASSAU

TECH CULTURE   STAR WARS   AI

James Earl Jones gives his blessing to AI recreation of Darth Vader voice

Jones is stepping away from the role

By Rob Thubron September 27, 2022 at 5:20 AM

Unfair competition
(false endorsement)?

In brief: James Earl Jones, known for providing the legendary voice of Darth Vader, is stepping away from the iconic character, but we'll still get to hear those recognizable tones in future Star Wars media thanks to the magic of AI.

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6 How can we solve this issue?

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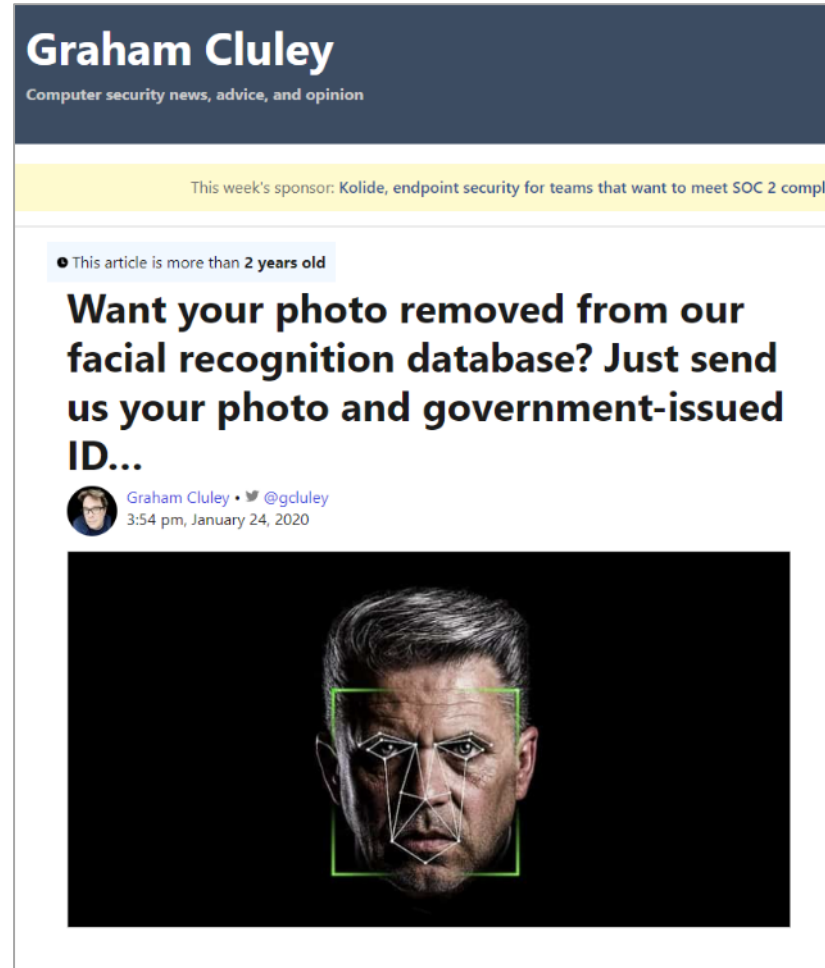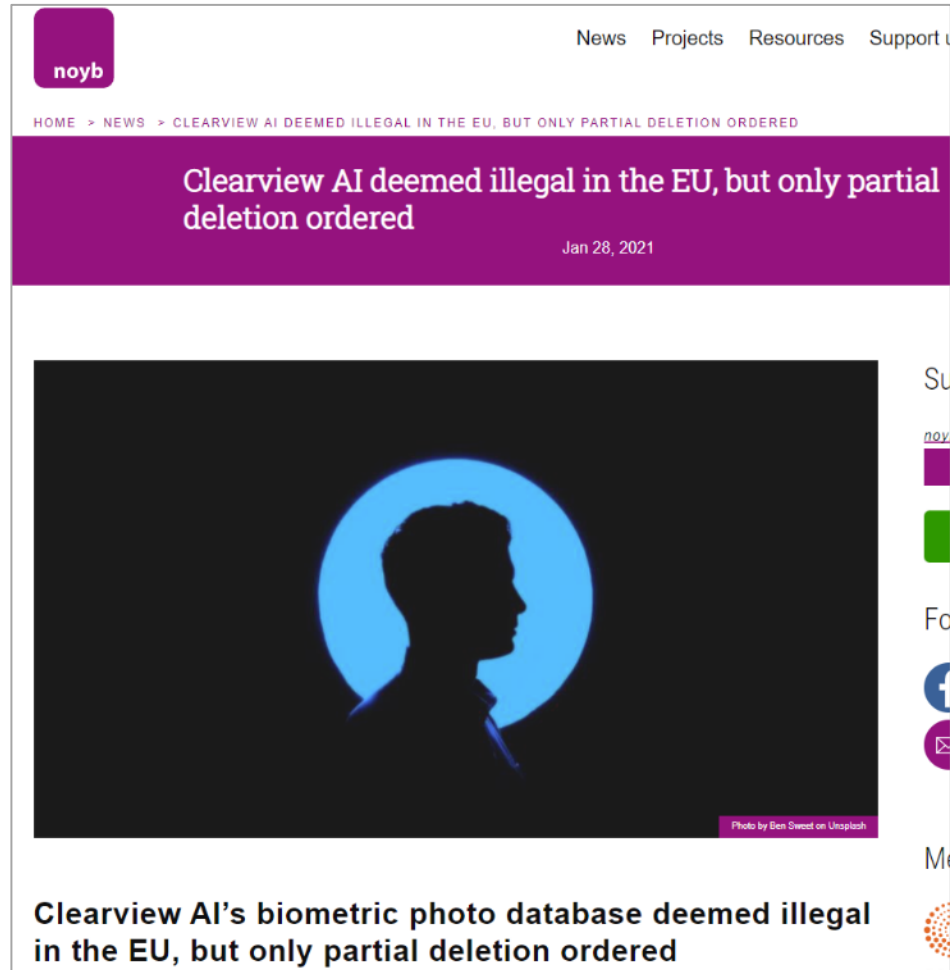
Perspectives

What **<u>could</u>** we do?
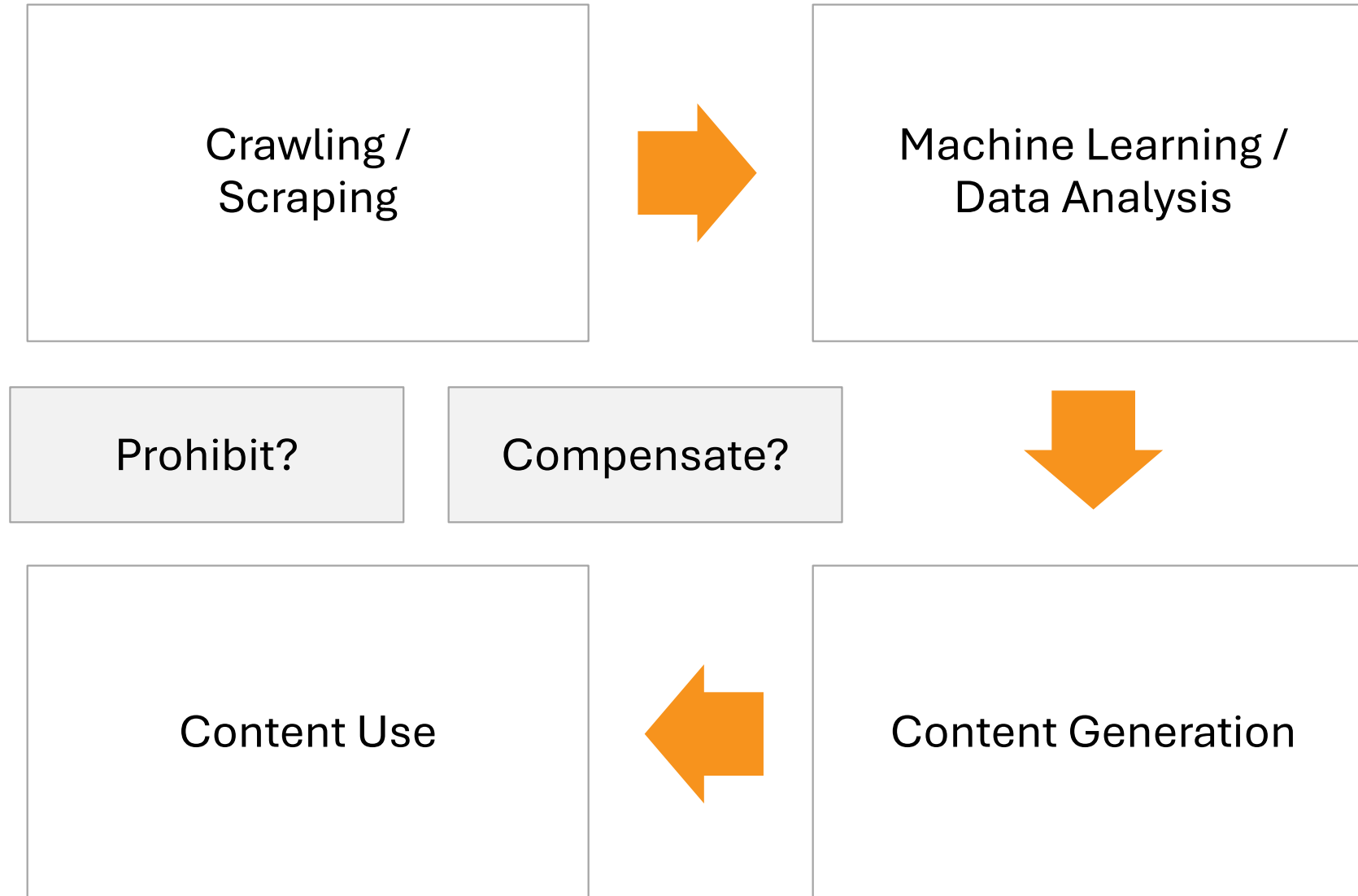
Can't we just clean up **after** the fact?

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https://grahamcluley.com/clearview-ai-facial-recognition-database-twitter/

Can't we just **stop trading** in AI-generated content?
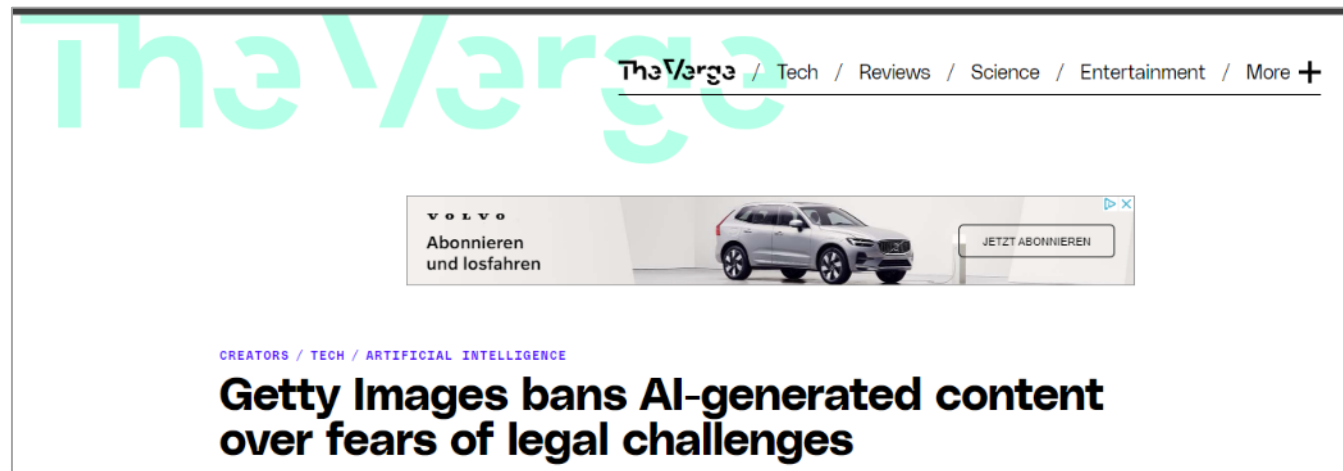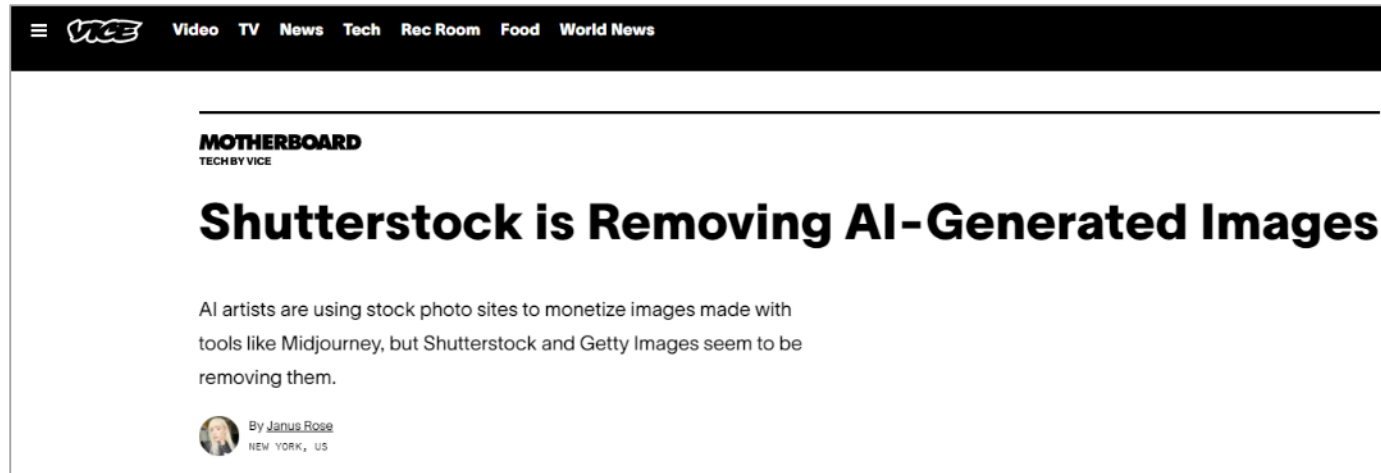
Is there a **technical solution** (to a technical problem)?
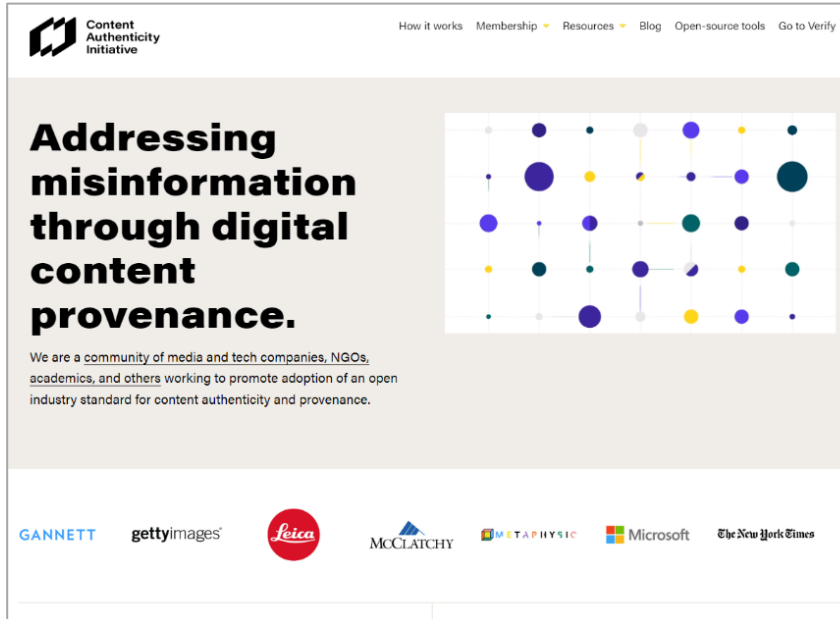
Have I Been Trained?

Enter text or upload an image…

Search 5.8 billion images used to train popular AI art models
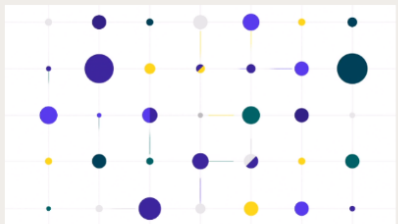
Content Authenticity Initiative

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Addressing misinformation through digital content provenance.

We are a community of media and tech companies, NGOs, academics, and others working to promote adoption of an open industry standard for content authenticity and provenance.

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