10 Questions: Intellectual Property and Artificial Intelligence Around the World

A survey by members of the ITechLaw Association Intellectual Property Committee

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Foreword

The ITechLaw Intellectual Property Committee asked members to answer 10 questions on the interface between artificial intelligence and IP. The responses indicate some significant differences of approach around the world, and raise a number of further issues that remain as yet uncertain.

We are very grateful to all our contributors. This is a rapidly evolving field, and we hope to update the survey, and expand the territories. If any ITechLaw member would like to contribute to this topic for an additional territory, please let the committee know.

Jeremy Morton, Temple Bright LLP – Chair

Yasamin Parsafar, Sheppard – Vice Chair

Barbara Sartori, CBA Studio Legale – Immediate Past Chair

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TERMS OF USE

CONTENTS

ARGENTINA

Patents

1. *Does the law of this territory recognise patent rights in AI-generated inventions and/or AI-assisted inventions? If so, briefly what are the particular criteria for patentability and inventorship and who owns the patent rights?*

No. A patentable invention has to be invented by a human person.

2. *Does the law, or patent office practice, address whether AI-generated, artificial 'prior art' could affect validity of patents?*

No. The current patentability guidelines do not address this issue.

Copyright and Related Rights (training or output infringement)

3. *Does this territory have a copyright registration system, and if so can AI-generated works be registered? What, if any, are the criteria for registration?*

As a member of the Berne Convention, Argentina acknowledges rights to authors as of creation of a work, and case law has consistently awarded protection to works in this manner. Argentina also has a declarative copyright registration before the National Copyright Office ("DNDA"). There are no specific provisions allowing the registration of AI-generated works. In principle, only works created by human authors are eligible for registration under Argentine copyright law No. 11.723 (although we are not aware of any rejections so far by the Copyright Office or the local courts).

4. *Aside from any copyright registration system, does the law recognise the subsistence of copyright (and/or related IP rights) in works generated (a) entirely by an AI system, and (b) with the assistance of AI tools? If so, who is the author and who is the first owner of the rights?*

In principle, works generated entirely by AI are not recognized under Argentine copyright law, which requires human authorship. As for work generated with the assistance of AI tools, it would mostly depend on the level of assistance and whether the human intervention is material to the final work of authorship. In this case also, in principle, works generated with material assistance of AI tools would not be recognized under the Argentine copyright law.

5. *Does this territory protect against unauthorised use of copyright-protected works for training AI? In what circumstances will unauthorized use of copyright-protected works for training AI constitute copyright infringement?*

There is no specific regulation addressing the use of copyrighted works for AI training. Thus, the general rules apply. Although no court decision has been issued in connection with this matter, most local authors consider that unauthorized use of protected works for AI training should be considered a copyright infringement.

6. *What, if any, copyright exceptions or defenses apply to the unauthorised use of protected material in training AI (e.g., fair use in US)?*

Argentina does not have a general fair use doctrine like in the United States. Instead, the Argentine copyright law provides for a limited set of exceptions and limitations (e.g., private use, quotation for criticism or review, educational uses) which are interpreted using a strict criterion and, in case of doubt, always in favour of the author. None of these explicitly authorize the use of protected works for AI training.

7. *Is there a prescribed and legally recognised mechanism to opt-out copyright or other IP-protected work from any such exceptions or defenses?*

No, Argentine copyright law does not provide a prescribed or legally recognised mechanism for rightsholders to opt-out of statutory exceptions or limitations, nor to prevent the use of works under such exceptions.

8. *What is the test for whether the output of a generative AI system infringes works that were used in its training? If there is infringement in such a situation, would the tool provider or the user of the tool be liable (or both)? How is this affected by the location of servers, providers and users respectively?*

There is no specific test in Argentine copyright law for determining whether the output of a generative AI system infringes works used in its training. General principles of substantial similarity and unauthorized reproduction may apply.

9. *If copyright protected work is used to train AI, is there any established obligation to maintain copyright management information in the outputs or liability for failing to do so?*

No, there is no established obligation under Argentine law to maintain copyright management information (CMI) in the outputs of AI systems. Unlike the U.S., where CMI protection is regulated under specific provisions, in Argentina registration is optional, and copyright protection arises automatically upon creation, not upon registration. Therefore, the concept of CMI as a legal requirement is not applicable under Argentine law in the context of AI training or outputs.

Confidential Information

10. *What legal principles govern the protection of company confidential information disclosed within AI prompts, in this territory?*

The protection of company confidential information disclosed within AI prompts is governed by several legal principles, often overlapping with intellectual property law, contract law, and data protection regulations. Typically, the following issues should be carefully considered: Confidentiality Agreements, Trade Secrets Law, Data Protection Laws, and Intellectual Property Rights.

AUSTRALIA

Patents

1. *Does the law of this territory recognise patent rights in AI-generated inventions and/or AI-assisted inventions? If so, briefly what are the particular criteria for patentability and inventorship and who owns the patent rights?*

Australia does not currently recognise patent rights in entirely AI-generated inventions, as the inventor named in a patent application must be a natural person. The Full Federal Court in *Commissioner of Patents v Thaler* [2022] FCAFC 62 confirmed that an AI system cannot be named as an inventor in a patent application. The High Court of Australia refused special leave to appeal this decision, although it left open the possibility that it would consider this issue in future in an "appropriate vehicle" (*Thaler v Commissioner of Patents* [2022] HCATrans 199).

For AI-assisted inventions, the ordinary statutory criteria for patent rights under the *Patents Act 1990* (Cth) (**Patents Act**) apply, including the requirements for novelty, an inventive step and usefulness. Ownership of patent rights vests in the inventor (i.e. the person responsible for the inventive concept) or a person deriving title to the invention from the inventor.

2. *Does the law, or patent office practice, address whether AI-generated, artificial 'prior art' could affect validity of patents?*

Australian patent law does not currently specifically address AI-generated prior art.

The definitions of "prior art base" and "prior art information" under the Patents Act include "information in a document that is publicly available, whether in or out of the patent area". Therefore, AI-generated prior art that is publicly available could potentially affect the validity of patents in Australia.

IP Australia's current practice does not address AI-generated prior art. However, IP Australia has identified this as a potential issue arising from generative AI. In July 2023, it published a paper titled "Generative AI and patents: a provocation" which raised the possibility of filtering out mass AI-generated content from being considered as prior art at all.

Copyright and Related Rights (training or output infringement)

3. *Does this territory have a copyright registration system, and if so can AI-generated works be registered? What, if any, are the criteria for registration?*

No, Australia has no copyright registration system.

4. *Aside from any copyright registration system, does the law recognise the subsistence of copyright (and/or related IP rights) in works generated (a) entirely by an AI system, and (b) with the assistance of AI tools? If so, who is the author and who is the first owner of the rights?*

Australian copyright law does not recognise copyright subsisting in works entirely generated by an AI system, noting this is currently untested. This is because copyright requires "originality", which depends on human authorship (*Telstra Corporation Limited v Phone Directories Co Pty Ltd* [2010] FCAFC 149 (**Telstra**)).

For works generated with the assistance of AI tools, copyright will only subsist if there was "independent intellectual effort" from a human author. In *Telstra*, the Court held that phone directories which had been largely organised and presented by a computer

program were not subject to copyright protection as the compilation did not originate from an identifiable individual's independent intellectual effort (i.e. there was an absence of human authorship).

The human(s) who brings the work into existence in its material form by exercising "independent intellectual effort" will be the author(s). Under s 35 of the *Copyright Act 1968* (Cth) (**Copyright Act**), the first owner of the rights is the author, subject to the usual employment or commissioning rules.

An AI system does not have moral rights under Australian law.

5. *Does this territory protect against unauthorised use of copyright-protected works for training AI? In what circumstances will unauthorized use of copyright-protected works for training AI constitute copyright infringement?*

Although the position is currently untested in Australia, the substantial reproduction in Australia of copyright-protected works as part of training AI will likely constitute copyright infringement (without authorisation from the copyright owners). Copying entire works to create a training corpus therefore strongly risks infringement.

Whether the reproduction is "substantial" is a question of fact and degree. This can involve consideration of whether an essential or material part has been reproduced, or whether there has been an appropriation of the essential features and substance of a work (*SW Hart & Co Pty Ltd v Edwards Hot Water Systems* (1985) 159 CLR 466).

It is also untested whether an AI model itself (i.e. the system of weights and parameters) would infringe copyright in Australia, including for example in the context of post-training AI models in Australia that were pre-trained outside of Australia. It is possible that Australian courts would adopt a similar view to the UK in *Getty Images v Stability AI* [2025] EWHC 2863 (Ch) that an AI model does not in and of itself involve the substantial reproduction of copyright-protected works.

6. *What, if any, copyright exceptions or defenses apply to the unauthorised use of protected material in training AI (e.g., fair use in US)?*

No AI-specific exceptions or defences to copyright infringement exist in Australia. The Australian Government has recently declined to introduce a text and data mining exception for training AI systems in Australia.

The limited exceptions to copyright infringement under the Copyright Act are unlikely to encompass the unauthorised use of copyright-protected works in AI training, although this is untested. While there is an exception to infringement for "fair dealing" for the purpose of research or study (ss 40 and 103C of the Copyright Act), this is a narrow exception that requires the consideration of several factors including the effect of the dealing on the market. Commercial-scale copying to develop an AI model is unlikely to constitute fair dealing on this basis.

The exception under s 43B of the Copyright Act for temporary reproductions of works as part of a technical process of use would also be unlikely to encompass training AI systems on copyrighted materials.

7. *Is there a prescribed and legally recognised mechanism to opt-out copyright or other IP-protected work from any such exceptions or defenses?*

No, there is no legally recognised mechanism to opt-out copyrighted materials from any exceptions or defences to copyright infringement in Australia.

8. *What is the test for whether the output of a generative AI system infringes works that were used in its training? If there is infringement in such a situation, would the tool provider or the user of the tool be liable (or both)? How is this affected by the location of servers, providers and users respectively?*

The key test for infringement in Australia is whether an output reproduces, in a material form, a "substantial part" of a copyrighted work (see s 14(1) of the Copyright Act). See question 5 above for the meaning of "substantial".

If a work is used in AI training, then a substantial reproduction of the work in an output will likely constitute infringement as this will satisfy the requirement for copying directly or indirectly from the original work.

The primary infringer is the user who generates an output that substantially reproduces a copyrighted work.

The AI provider may also be liable for authorising copyright infringement under s 36(1) of the Copyright Act (see *Roadshow Films Pty Ltd v iiNet Ltd* (2012) 248 CLR 42). Relevant considerations include the provider's power to prevent the doing of the infringing act, the relationship between the provider and the infringer, and whether the provider took any reasonable steps to prevent the infringing act. Contractual terms disclaiming liability for copyright infringement and content filters will therefore be relevant to whether an AI provider is liable for authorising copyright infringement in outputs by a user.

Infringing acts that take place in Australia will be actionable in Australia. Even if a provider and servers are located outside of Australia, if a user is located in Australia and generates an infringing output, this will likely amount to copyright infringement under Australian law (as well as potential authorisation of the infringement by the provider).

9. *If copyright protected work is used to train AI, is there any established obligation to maintain copyright management information in the outputs or liability for failing to do so?*

There is no positive obligation to maintain copyright management information in AI outputs under Australian law.

However, relevantly there is civil liability to the copyright owner and criminal liability where:

- a person distributes or communicates a copy of a copyrighted work to the public without the permission of the copyright owner;
- the person knew that the electronic rights management information had been removed or altered without the permission of the owner; and
- the person knew or ought reasonably to have known that the distribution or communication would induce, enable, facilitate or conceal copyright infringement (ss 116C and 132AR of the Copyright Act).

There can also be civil liability to the copyright owner and criminal liability where a person removes or alters electronic rights management information without the permission of the copyright owner (ss 116B and 132AQ of the Copyright Act).

It is untested in Australia whether an AI provider would be liable for outputs that do not include electronic rights management information. However, the AI provider may be liable in relation to outputs if it intentionally removes (or has the requisite knowledge of

the removal of) electronic rights management information during the training of an AI model.

Confidential Information

10. What legal principles govern the protection of company confidential information disclosed within AI prompts, in this territory?

There are no trade secrets or confidentiality law requirements specifically in respect of AI in Australia.

Company confidential information disclosed within AI prompts will be protected in Australia where there is a contractual obligation to that effect, or the circumstances import an obligation of confidence under common law or equity.

For an obligation of confidence to arise under common law or equity (without a contractual obligation), the information must possess the necessary quality of confidence and it must be imparted in circumstances importing an obligation of confidence. For example, this would likely arise where an AI provider made clear representations to users that it would keep user data in prompts confidential.

BRAZIL

Patents

1. *Does the law of this territory recognise patent rights in AI-generated inventions and/or AI-assisted inventions? If so, briefly what are the particular criteria for patentability and inventorship and who owns the patent rights?*

There is no specific guidance provided by the Brazilian Patent Office regarding AI-generated or AI-assisted inventions yet. Therefore, if the application fulfils the legal requirements of novelty, prior art and industrial application (article 8, Brazilian IP Act), it will probably be accepted. On the other hand, just as in many countries, the Patent Office determined that it is impossible for an AI to be listed as an inventor (PCT/IB2019/057809, DABUS case), based on the Brazilian legal framework that determines that a natural person must be the owner of assets (Patent Office Opinion No. 24/2022/CGPPI/PEE-INPI/PGF/AGU). It is worth mentioning that the proposed Bill of Law No. 303/2024 would allow AI systems to be the inventor and the owner in cases of AI-generated inventions. The Bill is still very incipient and has not yet been voted on.

2. *Does the law, or patent office practice, address whether AI-generated, artificial 'prior art' could affect validity of patents?*

Not yet. AI-generated and AI-assisted discussions are common but there are no laws or guidelines addressing these issues in the patents area. Since patents require novelty, prior art and industrial applications, some claim that the widespread use of AI-generated tools will raise the bar for what can effectively be considered "inventive". This means that AI-generated patents would be required to have above average inventiveness to be protected. However, these are discussions in the academic area and there are no Patent Office decisions or guidance yet that could provide more transparency about how the topic will develop.

Copyright and Related Rights (training or output infringement)

3. *Does this territory have a copyright registration system, and if so can AI-generated works be registered? What, if any, are the criteria for registration?*

Yes, Brazil has a copyright registration system. Such registration is not mandatory based on the Brazilian Copyright Act (article 18), but it is important to (i) guarantee the time stamp; and (ii) enforce copyright since it creates evidence about the date of creation/registration and ownership.

In addition, the Brazilian Copyright Act provides that only natural persons can be the owners of copyright, since such copyright works are "creations of the spirit", which means the product of human creativity (article 7th).

Just as in patents, AI-generated works protection has been widely discussed, but the bodies responsible for registration (National Library and School of Fine Arts) have not issued any decision or important guidance.

It is worth mentioning that the proposed Bill of Law No. 2,338/2023 (Brazilian Artificial Intelligence Act) is being voted, but without final approval yet. It addresses AI risks in a similar manner to the EU AI regulation. On copyright, it allows research institutions, journalists and museums to conduct text and data mining (TDM) within certain conditions, but it does not go deeper into copyright issues.

4. *Aside from any copyright registration system, does the law recognise the subsistence of copyright (and/or related IP rights) in works generated (a) entirely by an AI*

system, and (b) with the assistance of AI tools? If so, who is the author and who is the first owner of the rights?

Please refer to Answer No. 3.

The subsistence of copyrights of an entirely AI-generated work would not allow the AI system to be the owner, since the Brazilian legal framework requires a natural person to be the creator of the work. Regarding AI-assisted works it could be analyzed upon the degree of human input in the creation of the work. Since the appointed copyright bodies are less involved in such complex discussions in Brazil, it is most probable that we will obtain such answers from Court decisions when cases are under litigation.

There is no relevant decision issued so far to give more certainty about what is going to be the Brazilian position regarding this matter.

5. *Does this territory protect against unauthorised use of copyright-protected works for training AI? In what circumstances will unauthorised use of copyright-protected works for training AI constitute copyright infringement?*

There is no specific disposition for protection of works concerning AI training. The partial or total reproduction of copyright works are an infringement under Brazilian law. This is because the author has the exclusive rights to use, benefit from and license/assign their copyrights (the author is the main target of protection and not the work, just as in French doctrine of droit d'auteur). Therefore, the training of databases must: (1) be accompanied by an authorization from the copyright owner, (2) have a license from an authorized third party or (3) be upheld based on a finding that they are non-protectable works (i.e., public domain, open licenses).

The proposed Bill of Law No. 2,338/2023 intends to allow the use of AI for TDM, but only in a very limited way that will not benefit big companies, according to the previous answers above.

In parallel, a lawsuit was filed in 2025 in the State Court of São Paulo to discuss the use of scraped content (protected by copyright) for machine learning. Similar to the case "The New York Times vs OpenAI", the Brazilian newspaper Folha de São Paulo sued OpenAI in the same grounds. There is no relevant decision yet and the case is now under secrecy, but it shall be the first relevant decision in this sense in the territory.

6. *What, if any, copyright exceptions or defenses apply to the unauthorised use of protected material in training AI (e.g., fair use in US)?*

- Legal exception for reproduction in case of visual arts, if the reproduction itself is not the main objective of the new work created and that it neither harms the normal exploitation of the reproduced work nor causes unjustified harm to the legitimate interests of the authors (article 46, item VIII of the Brazilian Copyright Act).

- TDM for research entities, journalism and museums, with some restrictions (if Bill of Law No.2,338/2023 is approved)

- Licensed use: claim that the copyrighted content used to train the AI model is under a valid license.

7. *Is there a prescribed and legally recognised mechanism to opt-out copyright or other IP-protected work from any such exceptions or defenses?*

There is no opt-out provision, but it will depend on the circumstances of the case.

8. *What is the test for whether the output of a generative AI system infringes works that were used in its training? If there is infringement in such a situation, would the tool provider or the user of the tool be liable (or both)? How is this affected by the location of servers, providers and users respectively?*

Brazil respects the Constitutional principle of access to justice, so anyone with interest and legitimacy regarding the right claimed can file a lawsuit. Specifically for copyright infringement, the claimant must demonstrate that (i) they have the rights over the work, (ii) they created it before it was misused (importance of the time stamp) and (iii) there is a similarity between the original work and the output. So far, no legal actions in that sense were filed and decided by any Court.

If the infringement is confirmed, Brazilian Civil Code determines that there will be direct liability, so the party who causes harm to the other is compelled to repair it. Therefore, depending on the situation, is it possible that both tool provider and the user could be liable.

Usually, activities that occur outside Brazil are not actionable under Brazilian copyright law. However, if there is a way to connect the infringement to the Brazilian territory, the infringers might be legally pursued (the complexity of the lawsuit will increase if the person/company does not have any registration/address in Brazil).

9. *If copyright protected work is used to train AI, is there any established obligation to maintain copyright management information in the outputs or liability for failing to do so?*

There is no legal or binding obligation to maintain copyright management information. In any case, keeping such information would be relevant if the AI company is accused of copyright infringement and needs to defend itself, since it will be able to demonstrate that (i) the work of the third party was not used; or (ii) the work of the third party was used only to an extent (decrease the value of damages, if possible).

Confidential Information

10. *What legal principles govern the protection of company confidential information disclosed within AI prompts, in this territory?*

- Trade secret dispositions in the Brazilian IP Act

- Prohibition of unfair competition acts

- Privacy and data protection laws

In Brazil, the protection of company confidential information disclosed through AI prompts is governed by a combination of legal principles and regulations. Key among them is the **duty of confidentiality and the protection of trade secrets**, as established by the Brazilian Industrial Property Law (Law No. 9,279/96), which prohibits the unauthorized use or disclosure of business secrets.

The misuse of such confidential data may also constitute an act of **unfair competition**, especially when it results in competitive advantage obtained through illicit means.

When personal data is involved, the Brazilian General Data Protection Regulation (LGPD – Law No. 13,709/18) applies, requiring that data be processed with **transparency, purpose limitation, and security**. Additionally, general civil law principles such as **good faith and contractual obligations** also play a role. Companies are expected to implement internal governance policies to control the use of AI tools and ensure that sensitive information is not inadvertently shared with third-party platforms, especially

when those tools may retain or process user input. Failure to comply with these obligations can result in civil and even criminal liability.

CANADA

Patents

1. *Does the law of this territory recognise patent rights in AI-generated inventions and/or AI-assisted inventions? If so, briefly what are the particular criteria for patentability and inventorship and who owns the patent rights?*

Canadian law has not yet formally recognized patent rights in AI-generated or AI-assisted inventions. The Canadian *Patent Act* does not expressly define an "inventor" of a patent. However, we can infer from the definition of "inventions" under section 2 of the *Patent Act*, and through Canadian jurisprudence, that an "inventor" is the person who conceived of the new and useful process that is the subject of the invention. To qualify as an inventor under the *Patent Act*, a human must have contributed to the substance of the invention and cannot be merely involved in the verification of an invention. This aligns with jurisprudence in the UK, US and EU that preclude AI from being the sole inventor of a patent.

We can look to caselaw for further insight into how AI-generated inventions and/or AI-assisted inventions may be treated in Canada. In *Apotex Inc. v Wellcome Foundation Ltd.,* 2002 SCC 77, the Supreme Court of Canada, at paragraph 97, stated that, "Of course, in the steps leading from conception to patentability, the inventor(s) may utilize the services of others, who may be highly skilled, but those others will not be co-inventors unless they participated in the conception as opposed to its verification." Further, in *Arctic Cat Inc. v Bombardier Recreational Products Inc.,* 2016 FC 1047, at para 329, the Federal Court stated that, "[s]imply postulating a problem will not contribute enough to be considered an inventor." Canadian jurisprudence assumes that an inventor must be human, and that human must contribute more than simply proposing a problem, which may preclude individuals prompting an AI system from being considered an inventor of an AI-generated output or even an AI-assisted output.

We can also look to proceedings at the Canadian Patent Appeal Board for clarity on patent rights in AI-generated inventions. On December 16, 2020, a patent application designating an AI system, specifically a machine called "DABUS", as the inventor entered Canada. The national entry request for said PCT patent also listed the last name of the inventor as, "the invention was automatically generated by a machine." The Canadian Intellectual Property Office ("**CIPO**") issued a compliance notice detailing that listing "DABUS" as an inventor was not compliant with subsection 27(2) of the *Patent Act*, which requires that a patent application be filed by an inventor or the legal representative of an inventor. CIPO further stated in its correspondence that, "[b]ecause for this application the inventor is a machine, and it does not appear possible for a machine to have rights under Canadian law or to transfer those rights to a human, it does not appear this application is compliant." On August 15, 2024, this matter was referred by CIPO to the Patent Appeal Board for review and recommendation. On June 5, 2025, the Patent Appeal Board rendered a decision on this matter in Commissioner's Decision #1689 (Thaler, Stephen L. (Re), 2025 CACP 8) that confirmed that the AI system "DABUS" could not be recognized as an inventor under current Canadian law. This decision aligns Canada with the US and other jurisdictions affirming that, without legislative reform, only humans can be recognized as inventors under applicable law.

The current legal framework in Canada prohibits the possibility of AI-generated inventions without any human input. However, with no official guidance from CIPO or relevant decisions from Canadian courts, we have yet to see how the law will develop in this area. We do note, however, that the current federal government appointed a new

Minister of Artificial Intelligence and Digital Innovation which signals that Canada is committed to developing a comprehensive AI legislative regime, promoting a digital future and privacy reform bolstered by drawing clearer lines with respect to the use of AI.

2. *Does the law, or patent office practice, address whether AI-generated, artificial 'prior art' could affect validity of patents?*

When assessing the validity of a patent in Canada, the obviousness test is used to determine whether or not a technician skilled in the art would, in light of the state of the art and of common general knowledge at the claimed date of invention, have come directly to the solution taught by the patent. If the prior art establishes that the patent was obvious, the patent may be invalidated. Under Section 34.1(1) of the *Patent Act*, "prior art" consists of patents, applications for patents open to public inspection and printed publications, that the person believes has a bearing on the patentability of any claim in an application for a patent.

The proliferation and increased accessibility of AI systems complicates the patent validity landscape. Jurisdictions, like the US, have seen companies, like "All Prior Art", enter the market and attempt to algorithmically create and publish all possible new prior art for existing patents, which could affect the validity of future innovation of published concepts. Canada has yet to see any equivalent services enter the Canadian marketplace and CIPO has not provided any guidance on this matter.

Copyright and Related Rights (training or output infringement)

3. *Does this territory have a copyright registration system, and if so, can AI-generated works be registered? What, if any, are the criteria for registration?*

Yes, Canada has a copyright registration system. Section 5 of the *Copyright Act* outlines the conditions for the subsistence of copyright in Canada. Copyright exists in Canada in every original literary, dramatic, musical and artistic work upon creation, where, pursuant to section 5(1) of the *Copyright Act*, the author was, at the date of creation, a citizen or subject or, or a person ordinarily resident in a treaty country. To register a copyright in a work, an application must be filed with CIPO, and the registration fee must be paid. CIPO does not verify authorship upon application for copyright registration and simply grants registrations instantaneously following the completion of the form and payment of the fee.

Technically, an AI-generated work may obtain copyright registration by completing the applicable form and paying the applicable fee. However, such a copyright registration may be subject to challenge. In December 2021, copyright in the artistic work "Suryast" was registered with CIPO. The listed co-authors of "Suryast" are Ankit Sahni and RAGHAV Artificial Intelligence Painting App, an artificial intelligence system. In July 2024, the Samuelson-Glushko Canadian Interest Policy and Public Interest Clinic ("**CIPPIC**") challenged the "Suryast" copyright registration by filing an application with the Federal Court of Canada under section 57(4) of the *Copyright Act*. CIPPIC seeks a declaration that there is no copyright in the artistic work "Suryast" and in the alternative, if there is copyright in the artistic work "Suryast," that Ankit Sahni is the sole author of the work. The ruling of the Federal Court of Canada with respect to the validity of the "Suryast" registration is highly anticipated and will shape Canada's approach to ownership in AI-generated works.

4. *Aside from any copyright registration system, does the law recognise the subsistence of copyright (and/or related IP rights) in works generated (a) entirely by an AI*

system, and (b) with the assistance of AI tools? If so, who is the author and who is the first owner of the rights?

The Canadian statutory intellectual property regime has not expressly recognized the subsistence of copyright in AI-generated works and Canadian courts have yet to rule on this issue.

Although the term "author" is not defined in the *Copyright Act,* Canadian jurisprudence restricts an AI system from being the sole author of a work as it sets out that an author is the person who composes the work or is otherwise responsible for putting it into a concrete form that exercises skill and judgment in creating the work. This interpretation is also reflective of the fact that the *Copyright Act* ties in the term of protection of copyright in a work to the life and death of a human author. In *CCH Canadian Ltd. v Law Society of Upper Canada*, 2004 SCC 13, the Supreme Court of Canada stated that skill and judgment must "not be so trivial that it could be characterized as purely a mechanical exercise." Even where an artistic work is entirely generated by an AI system, it is not clear who should be the first owner in the work and what term of copyright protection would be afforded to that work.

Prior to generative AI becoming readily accessible, Canadian courts recognized that a person who creates a work using a computer as a tool can be an author as such person is responsible for giving form or expression to the work. For example, in *Geophysical Service Incorporated v. Encana Corporation*, 2016 ABQB 230, affirmed 2017 ABCA 125, the Court found that even though technical instruments were used, human intervention and an expert scientific skill were required to create the work, which satisfied the human authorship element and afforded copyright protection in the work. This creates a possibility for copyright to subsist in Canada for AI-assisted works.

Currently, there is no clarity in Canada as to whether copyright in works generated entirely by an AI system or with the assistance of AI tools are afforded copyright protection. As stated above in Question 3, the first challenge of a copyright registration for a work generated with the assistance of AI tools was brought forward in July 2024, the outcome of which will surely shed light on the recognition of AI-generated or AI-assisted works in Canada.

5. *Does this territory protect against unauthorised use of copyright-protected works for training AI? In what circumstances will unauthorized use of copyright-protected works for training AI constitute copyright infringement?*

The owner of a copyrighted work in Canada, pursuant to section 3(1) of the *Copyright* Act, has the exclusive right to produce or reproduce the work or any substantial part thereof in any material form, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof. Under section 27 of the *Copyright Act*, copyright in a work is deemed to be infringed by any person who, without consent of the owner of the copyright, does anything that according to the *Copyright Act* only the owner of the copyright has the right to do as set out in section 3(1).

Canada does not currently provide an exception to copyright infringement for works used in training AI systems. A public consultation paper conducted by Innovation, Science and Economic Development Canada, a federal department of the Government of Canada ("**ISED**"), "Consultation on Modern Copyright Framework for Artificial Intelligence and the Internet of Things" reiterates this uncertainty regarding what exceptions in the Canadian copyright framework apples to training data for works that are publicly available online. ISED further recognized that due to the large quantity of data required

to adequately train an AI system, obtaining necessary authorization from rights holders would impose a significant burden.

6. *What, if any, copyright exceptions or defenses apply to the unauthorised use of protected material in training AI (e.g., fair use in US)?*

There are certain exceptions to copyright infringement permitted under the *Copyright Act* in Canada. There are two exceptions in particular that have been raised with respect to use of protected material in training data for an AI system are: (1) the fair dealing exception for research; and (2) the exception for temporary reproductions for technological processes.

(1) Fair Dealing

Section 29 of the *Copyright Act* outlines the fair dealing exception for the purpose of research, private study, education, parody or satire. This permits use of a copyrighted work for research purposes without permission from the copyright owner. The Supreme Court of Canada in *CCH Canadian Ltd. v Law Society of Upper Canada*, 2004 SCC 13, established a fact-specific framework to analyse whether a dealing is fair and for an allowable purpose. The Supreme Court of British Columbia applied this statutory framework in *Century 21 Canada Limited Partnership v Rogers Communications Inc.*, 2011 BCSC 1196 ("**Century 21**"). This case involved a company, Zoocasa, which was using "scraping" or "web crawling" technology to take details from another website and reproduce the information on its own website. Ultimately, the Court found that Zoocasa was liable for both copyright infringement and breach of contract as the scraping activity was found to be in breach of the applicable website's terms of use. While not quite akin to the use of information to train an AI system, there is clearly a risk in Canada that using publicly available information found online for training data may have some level of risk, including a potential claim for copyright infringement if the outputs are directly copied from source material or an action for breach of contract pursuant to the terms of use of an applicable website that has been infringed.

(2) Temporary Reproductions for Technological Purposes

Section 30.71 of the *Copyright Act* contains an exception to copyright infringement for temporary reproductions, where it is not an infringement of copyright to make a reproduction of a work or other subject matter if (a) the reproduction forms an essential part of a technological process; (b) the reproduction's only purpose is to facilitate a use that is not an infringement of copyright; and (c) the reproduction exists only for the duration of the technological process. The Copyright Board of Canada has interpreted this provision and found that it simply refers to a technological process and not a business process or an economic activity and this exception was intended to capture copies that happen automatically, or without direct control of the user, which is applicable to training data used by an AI system. However, it is not readily clear that training data used by an AI system facilitates use "that is not an infringement of copyright" or if the training data exists only for the duration of the technological process. There is no guarantee that an AI system trained using copyrighted works will not create an output that infringes those copyright works. Further, use of training data by an AI system is completely at the discretion of the developers of the system and may include retaining copies of certain training data in perpetuity.

7. *Is there a prescribed and legally recognised mechanism to opt-out copyright or other IP-protected work from any such exceptions or defenses?*

In Canada, there is no permitted opt-out of the fair dealing exception to copyright infringement nor to the exception for temporary reproductions for technological

purposes, as stated above. However, in order to avoid use of a work under these exceptions, companies should adequately protect their copyrighted works, or other IP-protected works, by way of contract that prohibits unauthorized use of a copyrighted work and, as seen in the Century 21 case discussed above in Question 6, establishing terms of service for the company website that mitigates risk of web scraping by expressly prohibiting unauthorized use of any content therein.

8. *What is the test for whether the output of a generative AI system infringes works that were used in its training? If there is infringement in such a situation, would the tool provider or the user of the tool be liable (or both)? How is this affected by the location of servers, providers and users respectively?*

The test for whether the output of a generative AI system infringes works that were used in its training is the same as the test for traditional copyright infringement. In Canada, under section 27(1) of the *Copyright Act*, it is an infringement of copyright for any person to, without the consent of the copyright owner, do anything that the copyright owner is permitted to do. Further, the *Copyright Act* at section 27(1) outlines secondary infringement, where it is an infringement of copyright to: (a) sell or rent out, (b) distribute to such an extent as to affect prejudicially the owner of a copyright, (c) by way of trade distribute, expose or offer for sale or rental, or exhibit in public, (d) possess for the purpose of doing anything referred to in paragraphs (a) to (c), or (e) import into Canada for the purpose of doing anything related to paragraphs (a) to (c), a copy of work a work… that the person knows or should have known infringes the copyright or would infringe copyright if it had been made in Canada by the person who made it.

The test for secondary copyright infringement contains three elements: (1) a primary infringement; (2) the secondary infringer should have known that he or she was dealing with a product of infringement; and (3) the secondary infringer sold, distributed or exposed for sale the infringing goods. A user of AI-generated output may be exposed to some risk of a claim for copyright infringement if they use the AI-generated output in a manner that infringes the rights of a third party, and the user knew or should have known that the output could be a product of infringement. It is also worth noting that a user would be bound by the applicable license or terms of service of the AI system, which may include common disclaimers that: limit commercial use of any AI-generated output, deem use of any AI-generated output is at the users sole risk, or language that disclaims that due to the nature of AI systems, any AI-generated output may not be unique.

Any activities that are outside of Canada's jurisdiction are not enforceable under Canadian copyright law. However, where an infringing act occurs within Canada, for example where the servers of an AI system is located in Canada or a use of an infringing AI-generated output is in Canada, those who contributed to the act, such as the developers of the AI system or the end user, may be liable for infringement in Canada.

Finally, Bill C-27, the *Digital Charter Implementation Act, 2022* introduced Canada's first piece of legislation intended to regulate the development and use of AI systems, called the *Artificial Intelligence and Data Act* ("**AIDA**"). Unfortunately, due to the prorogation of the Canadian Parliament in January 2025, AIDA died on the order paper. While the death of AIDA left a legislative gap in the development of AI law in Canada, Canada has since appointed a new Minister of Artificial Intelligence and Digital Innovation. On September 26, 2025, the federal government launched an AI Strategy Task Force and a 30-day national sprint running from October 1 to October 31, 2025, that will help shape Canada's future governance of AI systems. Canada now awaits the results of the national sprint, the reintroduction of legislation governing use of AI systems and reform of

current privacy law to address the legal issues that have emerged from use of novel generative AI systems.

9. *If copyright protected work is used to train AI, is there any established obligation to maintain copyright management information in the outputs or liability for failing to do so?*

In Canada, there is no express copyright management framework that would apply to the outputs of an AI system. However, section 14.1 of the *Copyright Act* defines moral rights as the author's right to the integrity of the work, the author's right to create the work under his or her own name, pseudonym or anonymously, otherwise known as the right of attribution. Moral rights last the length of the term of copyright and cannot be transferred. An act of omission may include failing to identify the author's name in association with the work as its author. To the extent that a copyright protected is integrated in AI-generated output, failing to appropriately identify the original author of a work may expose the user of the AI-generated output to a claim for moral rights infringement.

Confidential Information

10. *What legal principles govern the protection of company confidential information disclosed within AI prompts, in this territory?*

In Canada, there is no specific statutory regime governing the protection of confidential information. Instead, companies protect confidential information, sensitive information and trade secrets through various means, including limiting disclosure of such information to individuals on a need-to-know basis and putting in place the appropriate contractual protections, such as non-disclosure or confidentiality agreements.

Where companies employ the use of an AI system in day-to-day business operations, there is potential for company confidential information to be disclosed to the AI system by an uninformed employee. Further, there is a risk that an AI system uses the confidential company information entered to generate an output. The test for failure to protect a trade secret would fall under the test for breach of confidence, as established by the Supreme Court of Canada in *Lac Minerals Ltd. v International Corona Resource Ltd.* The following three elements must be established by the plaintiff in an action for breach of confidence: (1) the information conveyed was confidential and had economic value; (2) the confidential information was communicated in confidence; and (3) the confidential information was misused by the party to whom it as communicated.

It is critical for companies to ensure their contracts, including employment and service provider contracts, adequately protect trade secrets and confidential information and prohibit disclosure, especially to an AI-system. A possible civil remedy for disclosure of a trade secret or breach of confidential information obligations is for a plaintiff to bring a claim alleging breach of confidence. When a trade secret is breached, the court has jurisdiction to grant a remedy that is highly fact specific. A successful plaintiff in a breach of confidence action may seek the following types of remedies: (1) injunctions, either on an interlocutory or permanent basis; (2) damages; (3) accounting of profits; and (4) imposition of a constructive trust. Please also note that criminal penalties may also apply for theft of trade secrets in Canada.

Considering the lack of statutory protection of trade secrets in Canada, companies employing AI systems should limit the disclosure of company confidential information or trade secrets to an AI system, as failing to do so may risk their confidential information being incorporated into the AI-generated outputs.

COLOMBIA

Patents

1. *Does the law of this territory recognise patent rights in AI-generated inventions and/or AI-assisted inventions? If so, briefly what are the particular criteria for patentability and inventorship and who owns the patent rights?*

Colombian law does not currently recognize patent rights for inventions generated entirely by AI. The legal framework requires a human inventor for patent applications, as reflected in the Andean Manual for Patent Examination (*Manual Andino para el Examen de Patentes*), which defines an inventor as the natural person to whom the patent right belongs.

In practice, if an AI is listed as an inventor or co-inventor on a patent application, the application will be rejected at the formal stage, as only a human can be recognized as an inventor. The discussions surrounding inventions generated by AI, with or without human intervention, remain largely academic. To date, the Colombian Patent Office (*Superintendencia de Industria y Comercio*) has explicitly stated that only humans can be considered inventors, without elaborating on what would happen if the AI's technical contribution were deemed sufficient to qualify it as an inventor, as if it were a human, and whether, in that case, the human inventor would remain the sole listed inventor on the application.

Art 22 of Andean Decision 486 of 2000 establishes that the right to the patent belongs to the inventor.

Notwithstanding the above, this right may be transferred by agreement between living persons or by succession.

Criteria for Patentability:

Novelty: An invention shall be considered novel if it is not included in the prior art. (Art. 16, Andean Decision 486 of 2000)

Inventive step: An invention shall be considered to involve an inventive step if, for a person in the trade who is normally well-versed in the relevant technical field, that invention would not have been obvious and would not have been derived in an obvious manner from the prior art. (Art. 18, Andean Decision 486 of 2000)

Industrial application: An invention shall be considered to be capable of industrial application when its subject matter can be produced or used in any type of industry, industry being understood to mean any productive activity, including services. (Art. 19, Andean Decision 486 of 2000)

2. *Does the law, or patent office practice, address whether AI-generated, artificial 'prior art' could affect validity of patents?*

Colombian patent law does not explicitly address AI-generated prior art. Nonetheless, the novelty requirement is absolute.

The Andean Manual for Patent Examination (*Manual Andino para el Examen de Patentes*) establishes that the state of the prior art includes all information that, on the filing date or priority date (the relevant date), was accessible to the public by any means. There is no restriction on the manner of disclosure, which may include prior divulgation carried out by AI systems. (page 139)

Copyright and Related Rights (training or output infringement)

3. *Does this territory have a copyright registration system, and if so can AI-generated works be registered? What, if any, are the criteria for registration?*

Colombia maintains a copyright registration system administered by the Colombian Copyright Office (*Dirección Nacional de Derecho de Autor*, DNDA). Registration has a declaratory purpose and does not confer rights. However, it creates a presumption of truth regarding the facts and acts recorded, unless proven otherwise, and serves as a mechanism for publicity and enforceability against third parties.

Currently, the DNDA does not accept registration of AI-generated works. This is because outputs produced exclusively by AI programs do not meet the originality requirement, which is that the creation reflects the author's own individual expression, as established in Andean Decision 351 of 1993 and Law 23 of 1982.

A relevant example is Resolution 42 of 2025, in which the DNDA denied registration of an audiovisual work featuring scenery and music generated by artificial intelligence. The authority found that the work lacked originality, which requires that the work: (i) actually belong to the author; (ii) not be a copy of another work; and (iii) bear the imprint of the creator's personality.

For the DNDA, originality entails a creative and individual contribution resulting from independent thought, a standard not met when a work is generated exclusively by AI.

4. *Aside from any copyright registration system, does the law recognise the subsistence of copyright (and/or related IP rights) in works generated (a) entirely by an AI system, and (b) with the assistance of AI tools? If so, who is the author and who is the first owner of the rights?*

Colombia does not recognize the subsistence of copyright in works generated entirely by an AI system.

Regarding works created with the assistance of AI tools, the DNDA has clarified that it is essential to distinguish between the use of AI as a support tool within the human creative process and the use of AI to autonomously generate a result (Resolution 069 of February 17, 2025).

This may suggest that if an AI program is used merely as an auxiliary tool, and the resulting work reflects human modification and a sufficient degree of originality, it may be eligible for copyright protection. However, to date, no formal registration has confirmed this interpretation.

On the other hand, depending on the case, an AI-generated work that functions as a trademark, that is, a distinctive sign capable of identifying a product or service in the market, may be eligible for protection if the national authority, the *Superintendencia de Industria y Comercio* (SIC), grants the proper registration.

5. *Does this territory protect against unauthorised use of copyright-protected works for training AI? In what circumstances will unauthorized use of copyright-protected works for training AI constitute copyright infringement. ?*

Colombian copyright law protects original works against unauthorized reproduction, transformation, and public communication. The use of such works to train AI systems without permission may constitute infringement if the training involves acts covered by moral rights and/or economic rights (e.g., reproduction, public communication (*puesta a disposición)*, or transformation).

6. *What, if any, copyright exceptions or defenses apply to the unauthorised use of protected material in training AI (e.g., fair use in US)?*

R/ Colombian law does not currently provide a specific exception comparable to "fair use" in the U.S. or "text and data mining" in the EU. Moreover, there are no limitations or exceptions expressly applicable to the unauthorized use of protected material for AI training.

Art 21 of Andean Decision 351 of 1993 establishes that limitations and exceptions to copyright under domestic legislation, such as Law 23 of 1982 and Law 1915 of 2018, must comply with the three-step test:

(i) they must not prejudice the normal exploitation of the work;

(ii) must not cause unjustified harm to the legitimate interests of the right holder; and

(iii) must be limited to specific cases.

Importantly, **it is the legislator of each member country** who is empowered to define these limitations and exceptions. In Colombia, this means that the list of exceptions is exhaustive.

In addition, the DNDA has clarified that: *"a principle governing limitations and exceptions is that their exercise must be carried out taking into account honest use."* (uso honrado) (Rad. 2-2024-62784)

Regarding enforcement, Articles 270, 271, and 272 of the Colombian Criminal Code establish sanctions for violations of moral rights, economic rights, and technological protection measures. Additionally, rightsholders may file a civil claim before a civil judge or the DNDA, the latter acting under its jurisdictional functions and both empowered to impose protective measures (*medidas cautelares*).

7. *Is there a prescribed and legally recognised mechanism to opt-out copyright or other IP-protected work from any such exceptions or defenses?*

Colombia does not currently offer a legally recognized mechanism for rightsholders to opt out of exceptions or automated data processing.

8. *What is the test for whether the <u>output</u> of a generative AI system infringes works that were used in its training? If there is infringement in such a situation, would the tool provider or the user of the tool be liable (or both)? How is this affected by the location of servers, providers and users respectively?*

The Colombian Supreme Court has not yet established a definitive test to determine whether the output of a generative AI system infringes upon works used in its training.

From a civil law perspective, in ruling SC3179-2021, Rad. 11001-31-03-007-2008-00601-01 (July 28, 2010), the Court referenced the *look and feel* test, the *substantial similarity* test, and the *abstraction and filtering* test to assess potential plagiarism, frameworks that may be applicable to generative AI outputs. Although other tests, such as *copying vs. independent creation*, *role of the training data*, and *tool provider liability*, might also apply.

Regarding plagiarism, the Andean Tribunal has stated: *"With regard to the concept of plagiarism, it should be noted that although Decision 351 does not define it, it does contain provisions that tend to prevent it from occurring and having harmful effects on the rights of the author of the work."* (139-IP-2003). Additionally, Articles 270 and 271 of the Colombian Criminal Code regulate violations of authors' moral and economic rights.

The doctrinal definition of plagiarism refers to the act of offering or presenting as one's own, the work of another, wholly or partly, in a more or less altered form or context (WIPO Glossary[1]). Infringement is assessed based on similarity and whether the AI output reproduces protected content. Literal reproduction may give rise to a claim of slavish plagiarism (*plagio servil*), while appropriation of substantial and original elements with modifications intended to conceal the unauthorized copying may constitute intelligent plagiarism (*plagio inteligente*). Both literal and non-literal elements that reflect the author's original expression are protected under copyright law. However, plagiarism may not be alleged if the person does not claim authorship and transparently acknowledges that the content was generated by an AI system

As for liability, the DNDA has stated: *"When a third party intends to use an artistic or literary work through reproduction, public communication, distribution, transformation, or any other form of exploitation, they must obtain the prior and express authorization of the owner of the economic rights, as enshrined in domestic legislation."* (Rad. 2-2024-62784).

From a civil law standpoint, infringement may arise from unauthorized reproduction in both the inputs and outputs of an AI system, thereby violating economic rights. However, such conduct does not necessarily infringe moral rights, such as the right of paternity, unless authorship is falsely attributed.

This suggests that tool providers may face liability based on the use of infringing datasets or model architecture. To date, however, no case law has confirmed such liability. Users may also be liable, particularly when the use is commercial and the output infringes protected content.

Finally, jurisdictional analysis will depend on the terms of the relevant contract, the location of servers, users, and rights holders. Server location may influence enforcement mechanisms and applicable law.

9. *If copyright protected work is used to train AI, is there any established obligation to maintain copyright management information in the outputs or liability for failing to do so?*

Colombian law does not currently impose an obligation to preserve copyright management information in AI-generated outputs.

Confidential Information

10. *What legal principles govern the protection of company confidential information disclosed within AI prompts, in this territory?*

Certain confidential information may qualify as a trade secret. Article 260 of Andean Decision 486 of 2000 defines trade secrets as undisclosed information that meets the following criteria:

[1] WIPO Glossary of Terms of the Law of Copyright and Neighboring Rights

a. It is secret, meaning that, as a whole or in the precise configuration and assembly of its components, it is not generally known or readily accessible to those within the circles that normally deal with such information;

b. It has commercial value because it is secret; and

c. It has been subject to reasonable measures by its legitimate owner to maintain its secrecy.

Accordingly, the disclosure of trade secrets through AI prompts without appropriate safeguards may result in the loss of legal protection. It is important to note that the unauthorized disclosure or exploitation of confidential information that qualifies as a trade secret, without the owner's consent, may constitute an act of unfair competition under Article 16 of Law 256 of 1996.

GERMANY

Patents

1. *Does the law of this territory recognise patent rights in AI-generated inventions and/or AI-assisted inventions? If so, briefly what are the particular criteria for patentability and inventorship and who owns the patent rights?*

Generally, yes, at least for AI-assisted inventions. Purely AI-generated inventions likely may be unpatentable, but so far, courts and IPOs found no need to answer this question.

Regarding inventorship, one can identify at least three categories of AI inventions (i) human-made inventions using AI in a supplementary function, e.g. for the verification of the outcome, (ii) inventions in which a human identifies a problem and uses AI to find a solution, or (iii) AI-made inventions, in which AI identifies a problem and proposes a solution without human intervention (see e.g. here: Artificial intelligence | epo.org). In the first two categories, AI is used as a tool for human inventors, augmenting their capabilities. This goes along well with the common understanding that the inventor is a human being: the person who created the invention by their own creative activity. Under the European Patent Convention (EPC), the designated inventor has to be a person with legal capacity. There is no reason to assume that the EPC uses the term in a special way departing from its ordinary meaning (EPO decision J 0008 /20 point 4.3.1 of the Reasons).

The legal concept of inventorship requiring a human being to be the inventor was challenged when two applications indicating instead (solely) an AI system (DABUS) as the inventor were filed with various patent offices worldwide. In 2019, the EPO refused these applications (EP 18275163, EP 18275174) on the ground that the EPC requires the inventor to be a natural person. The applicant filed appeals, which were dismissed by the EPO Legal Board of Appeal in oral proceedings on 21 December 2021 (cases J 0008/20 and J 0009/20). The Legal Board confirmed that under the EPC the inventor has to be a person with legal capacity and that a statement indicating the origin of the right to the European patent must specify the inventor's successor in title. The German Federal Patent Court and Federal Supreme Court, as an example for a national European jurisdiction, confirmed that the inventor must be a human being in a decision concerning one of the DABUS applications.

No objections to patentability of (partly) AI-generated inventions were raised, provided that at least some minimum human contribution can be ascribed. In its final DABUS decision, the German Federal Supreme Court on 11.6.2024 - X ZB 5/22 - bundesgerichtshof.de) explicitly left open what exactly such a human contribution should look like. It merely had to influence the overall result. The court did not elaborate on the exact nature and intensity of the human contribution, so that at this stage it can be assumed that any human contribution is sufficient without high requirements. Citing from the reasoning, "In particular, there is no need to conclusively determine whether the position as manufacturer, owner or possessor of such a system is sufficient or whether actions with a closer connection to the technical teaching found are required, such as special measures of programming or data training, the initiation of the search process that brought the claimed teaching to light, the review and selection from several results proposed by the system or other activities … Irrespective of how these questions are to be assessed, it remains possible to identify such human contributions even when using systems with artificial intelligence and to derive the status of inventor from this through legal assessment. A system that searches for technical teachings without any human preparation or influence does not exist according to the current state of scientific

knowledge ...” Accordingly, it was assumed that according to the current state of scientific knowledge, there are simply no systems that can make inventions without any human influence. Therefore, it would be always possible to infer a human being as the inventor, even if an invention was developed by an AI, with all respective consequences on ownership of the patent rights.

Of course, the question arises: what if one day AI becomes so “strong” that (i) no human contribution at all would be necessary, raising problems on the contribution aspect of inventorship and ownership, and (ii) AI develops a form of consciousness, in which case it could theoretically be considered a legal subject and thus could qualify as both inventor and applicant?

2. *Does the law, or patent office practice, address whether AI-generated, artificial ‘prior art’ could affect validity of patents?*

As of mid-2025, this is not yet settled in public law or patent office practice.

While the EPO focuses on questions of AI and patentability, inventorship of AI inventions, use of AI in EPO tools and international cooperation regarding AI, including respective convergence of practice at national European patent offices and the EPO, to this author’s knowledge, there is no public discussion by the EPO or national European PTOs regarding whether AI generated art could potentially not qualify as “prior art” in the patentability assessment. In contrast, the USPTO commenced open discussion thereon as early as in their RFC of April 30, 2024, certainly stimulated by the prominence of companies offering services in the field of AI generated combinatory art with impact on the US market.

Evidently, while there is scholarly and institutional discussion on the “AI-augmented” skilled person and “state of the art”, considerations at the European national IPO or EPO level on implications on prior art status of AI-generated documents or the legal standard of the “person skilled in the art” may be under way, but did not yet reach the public domain.

On the other hand, PTOs, including UKIPO, and the EPO require not only prior disclosure, but also enablement for anticipation, so that this question may be dealt with indirectly in the future – a disclosure of a certain combination of teachings and or feature sets which is fully AI-made may be presented in a coherent manner and in adequate language, but raise doubts as to enablement, particularly where the origin is marked as AI or circumstances point to AI-only generation. Similar thoughts have been presented by the IP Owners’ Association (IPO), in its response to said RFC of the USPTO, pointing out that in many cases AI-generated disclosures could be considered “non-enabled, inoperative and irrelevant”.

However, in July 2025, the EPO’s Enlarged Board clarified in G 1/23 that a product disclosed before the priority date cannot be excluded from the state of the art simply because its internal structure could not be reverse-engineered by the skilled person. While G 1/23 is not about AI-generated prior art, its logic is relevant: it shows that the EPO is reinforcing a relatively generous view of what counts as state-of-the-art disclosure, even where reproduction or reverse-engineering is difficult. This may somewhat push against arguments that AI-generated prior art should be disregarded because it is “non-reproducible.”

On a related note, while not pertaining to AI-generated prior art as such, a recent EPO Board of Appeal decision T 1193/23 (April 2025) addressed the admissibility of ChatGPT-generated content as evidence in claim interpretation, and thus pertains to AI-supported interpretation of claims and/or prior art. In that case, the Board held that one cannot simply rely on LLM outputs as evidence of how a skilled person would interpret a term,

because the internal workings, training data, and context-sensitivity are opaque. The Board stressed that AI-generated responses must be corroborated with technical literature or other evidence.

Copyright and Related Rights (training or output infringement)

3. *Does this territory have a copyright registration system, and if so can AI-generated works be registered? What, if any, are the criteria for registration?*

Germany does not have a copyright registration system. According to Article 5(2) of the Berne Convention for the Protection of Literary and Artistic Works (as amended on 28 September 1979), copyright in protected works does not require registration or any other formalities. There is not even an optional official registration procedure. Only a few private (i.e., unofficial) providers offer some kind of "registration" services on a purely contractual basis.

The same applies to most other EU Member States. The national IP offices of a few EU Member States offer optional registration procedures, albeit with limited legal effect (e.g., the French INPI's "e-Soleau" timestamp service).

4. *Aside from any copyright registration system, does the law recognise the subsistence of copyright (and/or related IP rights) in works generated (a) entirely by an AI system, and (b) with the assistance of AI tools? If so, who is the author and who is the first owner of the rights?*

(a) Almost all legal commentators agree that under German law only human beings can create works that are protected by copyright. This understanding is not only based on the traditionally human-centered nature of German copyright law, but also supported by Section 2(2) German Copyright Act which explicitly requires a "personal" intellectual creation for copyright protection. At the time of writing, there is no German case law dealing with this issue, but the German Federal Court of Justice has already decided the related question that an AI system cannot be named as (co-)inventor under German patent law (decision of 11 June 2024 in case no. X ZB 5/22, see #1 above for details).

This understanding is not universal among EU Member States. For example, Section 2 of the Irish Copyright and Related Rights Act, 2000 explicitly defines a "computer-generated" work as one that "is generated by computer in circumstances where the author of the work is not an individual".

(b) It is possible for a human being – the author – to use AI tools to create a copyrighted work. It is a generally accepted concept that tools such as (traditionally) a brush, a camera, or a typewriter can be used to create a protected work. The same applies today to the use of an AI system as an assistive tool. The key question is whether the human influence on the creative process is so significant that the result can be considered the "personal intellectual creation" of the author under Section 2(2) German Copyright Act. In order for a particular work product to be considered the author's own intellectual creation (and thus protected by copyright), it must

"reflect the author's personality, which is the case if the author was able to express his creative abilities in the production of the work by making free and creative choices"

(see, for example, the CJEU's judgement of 29 July 2019, Funke Medien, Case C-469/17, ECLI:EU:C:2019:623, paragraphs 19 and 23 or the judgement of 12 September 2019, Cofemel, Case C-683/17, ECLI:EU:C:2019:721, paragraph 30). A study commissioned by the EU Commission applied these established principles of the CJEU case law and the CJEU's further reasoning in the Painer case (judgement of 1 December 2011, Painer, C-

145/10, ECLI:EU:C:2011:798, paragraph 91) to distinguish three distinct phases of the creative process in AI-assisted production, namely:

- conception (design and specifications),
- execution (producing draft versions), and
- redaction (editing, finalisation).

While the AI system is likely to play a dominant role in the execution phase, the "intellectual creation" of a human being – usually the prompt engineer – may still be essential in the conception phase. In addition, in many cases a human will also be responsible for the final redaction. This influence on the end result may allow the human being involved sufficient creative choices, and if such choices are expressed in the final AI-assisted output, the output will qualify as a copyrighted work (cf. pp. 70 et seq. at European Commission: Directorate-General for Communications Networks, Content and Technology, Hartmann, C., Allan, J., Hugenholtz, P., Quintais, J. et al., Trends and developments in artificial intelligence – Challenges to the intellectual property rights framework – Final report, Publications Office of the European Union, 2020, https://data.europa.eu/doi/10.2759/683128).

The author and first owner of the rights is the human being whose creative choices are expressed in the work result.

5. *Does this territory protect against unauthorized use of copyright-protected works for training AI? In what circumstances will unauthorized use of copyright-protected works for training AI constitute copyright infringement?*

Any unauthorized reproduction of copyrighted work may constitute copyright infringement (cf. Section 16 German Copyright Act and Article 2 of the EU InfoSoc Directive) if the user has no applicable defense. AI training necessarily requires, at least temporarily, the reproduction of training material in order to feed it as input into the training algorithm. Note that both Section 16 German Copyright Act and Article 2 of the EU InfoSoc Directive specifically mention "temporary" reproductions as covered by the reproduction right. See #6 below for potential copyright exceptions to justify such reproductions.

Another – and much more difficult – question is whether the trained AI system itself may contain a copy (or a derivative work) of works that have been used for training and can then be reproduced by the AI system through appropriate prompts (see #8 below).

6. *What, if any, copyright exceptions or defenses apply to the unauthorized use of protected material in training AI (e.g., fair use in US)?*

German and EU copyright law do not recognize the US concept of "fair use", but following copyright exceptions might apply:

a) Temporary acts of reproduction (Section 44a German Copyright Act, Article 5(1) of the EU InfoSoc Directive): In a German court case concerning the LAION AI training datasets (cf. https://laion.ai/), the defendant had argued that its temporary reproduction of works (i.e., the downloading of such works from their original internet source location and their subsequent processing by the defendant) was permitted by this exception. In its decision of 27 September 2024, the District Court Hamburg (case no. 310 O 227/23) rejected this argument because the processing was neither transient nor incidental (see paragraphs 58-64 of the decision). The court did not even discuss the remaining conditions of this copyright exception (i.e., is the sole purpose of the reproduction to enable a lawful use or a transmission in a network between third parties by an

intermediary; does the reproduction have no independent economic significance?), but it seems highly unlikely that AI training could meet these conditions. Upon appeal, the Higher Regional Court Hamburg confirmed the assessment of the District Court in its decision of 10 December 2025 (case no. 5 U 104/24). This copyright exception therefore appears to be a weak defense to justify AI training.

b) Text and data mining for the purposes of scientific research: This exception in Section 60d German Copyright Act and Article 3 of the EU DSM Directive permits "reproductions and extractions

(i) made by research organisations and cultural heritage institutions

(ii) in order to carry out, for the purposes of scientific research [provided it is]

(iii)text and data mining of works or other subject matter

(iv)to which they have lawful access."

Condition (i) limits the scope of this exception to certain organizations and institutions (which are further defined in Article 2(1) and (3) of the DSM Directive and which exclude, for example, normal profit-making companies). Condition (ii) limits the scope of this exception to scientific research purposes (excluding, for example, profit-oriented purposes). Condition (iv) ensures that the beneficiaries cannot, for example, circumvent a paywall protecting the training materials. The difficult question is whether AI training can be considered "text and data mining" under condition (iii), which is further defined in Article 2(2) of the DSM Directive as:

"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".

There is disagreement in German legal literature as to whether AI training falls under this definition of text and data mining, particularly because it is unclear what the "information" generated by the training process might be (perhaps the adjusted weights of the neural network being trained? Even though these weights are primarily internal parameters of the network?). At the time of writing, the following relevant cases are pending:

- The District Court Hamburg explicitly left this open in its decision of 27 September 2024 on the LAION AI training datasets (case no. 310 O 227/23, see paragraph 68), but did find that the downloading and processing of web images for the purpose of compiling an AI training dataset in the form of hyperlink-to-image/text-describing-the-image pairs is indeed permitted under this text and data mining exception. Upon appeal, the Higher Regional Court Hamburg confirmed the assessment of the District Court in its decision of 10 December 2025 (case no. 5 U 104/24). The case is currently pending in the third instance before the Federal Court of Justice, which is the highest civil law court in Germany.
- The German music rights collecting society GEMA has filed two lawsuits against providers of generative AI systems that have used copyrighted musical works to train their systems without having acquired licenses: In November 2024, GEMA sued OpenAI regarding the reproduction of protected song lyrics in ChatGPT; in January 2025, GEMA sued Suno AI because of output generated by Suno that is very similar to world-famous songs in terms of melody, harmony and rhythm. OpenAI and Suno AI offer commercial products and therefore can only invoke the non-scientific text and data mining

exception (see subsection c) below) in their defense, but the main open legal questions are identical for both defenses. The District Court Munich I ruled against OpenAI in its decision of 11 November 2025 (case no. 42 O 14139/24) but appeal proceedings are pending (Higher Regional Court Munich case no. 6 U 3662/25 e). The first-instance decision in the case against Suno AI is expected for 12 June 2026.

c) Non-scientific text and data mining: Companies performing AI training for non-scientific purposes may try to rely on another exception for text and data mining in Section 44b German Copyright Act and Article 4 of the EU DSM Directive, even if they do not meet conditions (i) and/or (ii) in b) above. Instead, they must

(i) promptly delete the training materials when they are no longer "necessary for the purposes of text and data mining"; and

(ii) respect the rightsholder's opt-out reservation of rights, if any (as discussed in #7 below).

Conditions (iii) and (iv) in b) above apply identically to this exception, so that the legal uncertainty regarding the meaning and scope of "text and data mining" also applies.

d) Licensed use: Finally, the user may argue that their specific use of the copyrighted content to train an AI model is within the scope of their rights under a valid license agreement.

7. *Is there a prescribed and legally recognized mechanism to opt-out copyright or other IP-protected work from any such exceptions or defenses?*

There is no opt-out for the text and data mining exception for purposes of scientific research (above b) in #6), always provided that the beneficiary of this exception has "lawful access" to the copyrighted material (so that, for example, preventing such lawful access by technical means could be considered a limited form of opt-out).

Text and data mining for other purposes (above c) in #6) is not permitted if the use of the copyrighted materials for text and data mining has been

"expressly reserved by their rightsholders in an appropriate manner, such as machine-readable means in the case of content made publicly available online."

There is disagreement in German legal literature as to how such a "machine-readable" reservation of rights can be made. Some argue that a reservation is "machine-readable" only if it follows a defined technical standard, e.g. by excluding the relevant web crawlers using the "robots.txt" standard (or at least by including the reservation language in the "robots.txt" file as the most "natural" place for such reservations). However, the District Court Hamburg argued – albeit only obiter dictum – in its decision of 27 September 2024 on the LAION AI training datasets (case no. 310 O 227/23, see paragraphs 95-102) that natural language reservation wording in the normal website terms and conditions may suffice for a valid opt-out because finding and interpreting such wording should not be a problem for today's large language models (LLMs). Upon appeal, the Higher Regional Court Hamburg disagreed with this assessment of the District Court in its decision of 10 December 2025 (case no. 5 U 104/24), at least for the year 2021 in which LAION had crawled the disputed image data. The case is currently pending in the third instance before the Federal Court of Justice.

8. *What is the test for whether the output of a generative AI system infringes works that were used in its training? If there is infringement in such a situation, would the*

tool provider or the user of the tool be liable (or both)? How is this affected by the location of servers, providers and users respectively?

There is disagreement in German legal literature as to whether an AI system may contain a "copy" (or a derivative work) of individual works that were used to train the system (which would then have to be encoded in a very complex way in the combination of weights of the AI system's neural network). It is equally controversial whether the output of an AI system that is very similar to a piece of original training material can be considered a derivative work (falling under Section 23 German Copyright Act) or, in case of immaterial differences, perhaps even a copy (falling under Section 16 German Copyright Act) of the original work used for training, or whether the AI system may have "independently (re-)created" its output without infringing any rights. The two GEMA cases against OpenAI and Suni AI (see above b) in #6) are both dealing with this question.

Assuming that it is generally possible for the output of an AI system to infringe the copyright of similar training materials, CJEU case law suggests that the relevant test for whether a particular output infringes the original work may be if the original work is "unrecognizable" in the output of the AI system (cf. the CJEU's judgement of 29 July 2019, Pelham, Case C-476/17, ECLI:EU:C:2019:624, paragraphs 31-39). If the original work is still "recognizable" in the output, it may infringe the original work unless an appropriate copyright exception applies (e.g., one of the exceptions in Article 5(3)(k) and 5(4) of the EU InfoSoc Directive, which allow use of copyrighted materials for the purposes of caricature, parody or pastiche).

Depending on the facts of the case, either the tool provider or the user, or both, may be liable for copyright infringement.

From a general IP perspective, activities that take place entirely outside Germany are not actionable under German copyright law (cf. Article 8(1) of the Rome II Regulation; this also applies in relation to non-EU countries, cf. Article 3 of the Regulation). However, if part of an infringing act takes place within Germany, even if it is completed in a foreign jurisdiction, those who have contributed to the act in Germany may be liable for infringement under German copyright law. From a regulatory perspective it is worth noting that Article 53(1)(c) of the EU AI Act obliges providers of general-purpose AI ("GPAI") models that are used in the EU (or even if only their output is used in the EU, cf. Article 2(1)(c) of the AI Act) to:

"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" [i.e., the opt-out reservation discussed in #6 above].

This obligation applies regardless of the location of servers, providers, users, or where the AI model was trained. Recital 106 of the AI Act explicitly states: "Any provider placing a general-purpose AI model on the Union market should comply with this obligation, regardless of the jurisdiction in which the copyright-relevant acts underpinning the training of those general-purpose AI models take place. This is necessary to ensure a level playing field among providers of general-purpose AI models where no provider should be able to gain a competitive advantage in the Union market by applying lower copyright standards than those provided in the Union." The AI Act – when applicable – may therefore impose a regulatory obligation on providers of GPAI models to handle their training materials as if they were subject to EU copyright law. The precise scope of the obligations imposed by Article 53(1)(c) of the Act is subject of considerable controversy among legal scholars. The EU has published a "GPAI Code of

Practice", a voluntary tool prepared by independent experts in a multi-stakeholder process to help industry comply with the AI Act's obligations for providers of GPAI models. Chapter 2 of this GPAI Code of Practice deals with copyright questions.

9. *If copyright protected work is used to train AI, is there any established obligation to maintain copyright management information in the outputs or liability for failing to do so?*

Section 95c German Copyright Act (based on Article 7 of the EU InfoSoc Directive, which in turn is based on Article 12 WCT and Article 19 WPPT) makes it illegal to "remove" or "alter" electronic rights-management information without authorization. Violation of this provision may result in tortious claims for injunctive relief and/or damages under Sections 1004, 823(2) German Civil Code (cf. Higher Regional Court Cologne, decision of 2 June 2023 in case no. 6 U 17/23). It may also be a criminal offense under Section 108b(1)(2) German Copyright Act.

If (i) the trained AI system itself and/or its output can be regarded as copies of an original work that was used for training (which is not clear, see #8 above) and (ii) the original work contained electronic rights-management information (e.g., in the form of EXIF metadata contained in the original image files, cf. Higher Regional Court Cologne, decision of 20 January 2017 in case no. 6 U 105/16), then the creation of such copies without the electronic rights-management information may constitute a violation of Section 95c German Copyright Act. However, this aspect has hardly been discussed in German legal literature so far.

Confidential Information

10. *What legal principles govern the protection of company confidential information disclosed within AI prompts, in this territory?*

The protection of confidential company information is governed by the German Act on the Protection of Trade Secrets ("Geschäftsgeheimnisgesetz" or "GeschGehG", which is based on the EU Trade Secrets Directive). If a company employee using the AI system is not permitted to disclose the confidential information to the AI service provider (e.g., in cases where the employer has not approved the employee's use of the AI system), the employee's disclosure within the prompt may constitute a violation of Section 4(2)(b) and/or (c) GeschGehG (which is based on Article 4(3)(b) and/or (c) of the Directive). If an employer wants to allow its employees to use an AI system and also to disclose (certain) confidential company information in the course of such use, the employer must ensure that adequate confidentiality provisions are agreed with the AI service provider. Without such confidentiality provisions, the disclosed confidential company information may lose its protection under the Act because it may no longer be secret and/or subject to reasonably steps to keep it secret (as required by Section 2(1) a) and c) GeschGehG, Article 2(1) a) and c) of the Directive).

If a prompt contains confidential information in the form of personal data (as defined in Article 4(1) GDPR), this disclosure of personal data within the prompt must also comply with all applicable GDPR requirements (in particular, the need for a sufficient legal basis pursuant to Article 6(1) GDPR and, if the AI service provider is located outside the EU, the requirements of Articles 44 et seq. GDPR for international transfers of personal data to non-EU countries).

INDIA

Patents

1. *Does the law of this territory recognise patent rights in AI-generated inventions and/or AI-assisted inventions? If so, briefly what are the particular criteria for patentability and inventorship and who owns the patent rights?*

Under Indian patent law, inventions generated entirely by artificial intelligence (AI) without any human input are not eligible for patent protection. The Patents Act, 1970 stipulates that a "patentee" must be a "person claiming to be the true and first inventor," as per Section 6, and a "true and first inventor" under Section 2(1)(y) must be a *natural person*, excluding AI systems from this definition. This legal position has been reinforced by the rejection of the DABUS application (No. 202017019068), in which the Indian Patent Office concluded that AI cannot be recognized as an inventor because it lacks legal personhood and cannot possess rights or obligations under the law. Hence, inventions autonomously created by AI are currently not patentable in India, as there is no legally recognized entity to claim such a right.

However, AI-assisted inventions, where human involvement is evident in formulating the inventive concept or directing the AI system, are eligible for patent protection. In such cases, humans who contribute to the inventive step are considered the inventors, with AI regarded as a tool. The standard criteria of patentability—novelty, inventive step (non-obviousness), and industrial applicability—apply to such inventions. Thus, as long as a human can be identified as having contributed intellectually to the invention, the presence of AI in the process does not disqualify the patent application.

In terms of ownership, Section 6 of the Patents Act states that rights to a patent belong to the inventor, their assignee, or their employer if the invention is developed during employment. As AI lacks legal status and capacity to own or assign property, AI cannot own patent rights. Therefore, the ownership of AI-assisted inventions continues to follow the traditional model, attaching to the human inventor or their legal successor.

When it comes to computer-related inventions (CRIs) and software-based innovations—which often intersect with AI-based technologies—Section 3(k) of the Act excludes "a mathematical or business method or a computer programme per se or algorithms" from patentability. The term "per se" was introduced via the Patents (Amendment) Act, 2002, and clarified by the Joint Parliamentary Committee (JPC), which stated that while software by itself is not patentable, inventions that apply such programs and demonstrate technical advancement or a technical effect may be eligible.

Case law has played a crucial role in shaping the understanding and enforcement of this provision. In Accenture Global Service GMBH v Assistant Controller of Patents & Designs (2012), the erstwhile IPAB overruled the Patent Office's assertion on "novel hardware" and clarified that technical effect or improvement in technology suffices to meet the threshold. This view was upheld in several decisions.

In response to these rulings, the Patent Office has revised its CRI Guidelines multiple times—most recently in 2017—to provide a more balanced approach. These guidelines now state that a CRI will be considered patentable if it provides a technical solution to a technical problem and exhibits technical advancement, aligning the Indian framework more closely with international standards such as those of the USPTO and EPO.

Under Indian patent law, there is no special rule for "AI-generated" prior art. What matters is not who or what created the information, but whether it was publicly available before the patent application was filed. If the information—whether made by a human or an AI—was published and is relevant to a new patent claim, it can be used as prior art to challenge the patent's novelty or inventive step. In short, if it is public and relevant, it would be considered—no matter the source.

Section 25(1)(b) of the Patents Act, 1970 expressly provides that a patent may be opposed on the ground that the invention was "published before the priority date of the claim" in "any other document" in India or elsewhere. Similarly, Section 29 and Section 13 reinforce that any publicly disclosed material—regardless of its format, author, or publication channel—can anticipate a patent claim if it discloses the invention in whole or in part. Therefore, if an AI system generates technical content (such as scientific data, chemical formulae, or engineering designs) and that content is published on a publicly accessible platform—like a website, journal, repository, or patent database—it may qualify as prior art under Indian law.

The key legal threshold for prior art is public availability. Indian patent practice does not inquire into the authorship or "intent" behind the disclosure. Thus, a technical document or design automatically generated by an AI model and posted online—regardless of whether it was intended to serve as a disclosure—can be used against the novelty or inventive step of a later patent filing. The Indian Patent Office, like other major patent offices, focuses on the technical substance and availability of the material, not the identity or nature (human or machine) of its creator.

It is also important to note that there is no current Indian legislation, guidance, or case law that treats AI-generated disclosures differently or more leniently than human-generated ones. The same rules of anticipation and novelty apply, and the Indian Patent Office has not issued special instructions or exemptions for AI content.

Copyright and Related Rights (training or output infringement)

2. *Does this territory have a copyright registration system, and if so can AI-generated works be registered? What, if any, are the criteria for registration?*

India has a copyright registration system which is governed by the Copyright Act, 1957. It allows authors and rights holders to voluntarily register a wide range of works, including literary, dramatic, musical, artistic works, and cinematograph films or sound recordings. Although registration is not mandatory for copyright protection—since copyright subsists automatically upon creation and fixation of the work—it provides evidentiary value in legal proceedings by serving as prima facie proof of authorship and ownership. Registration is handled by the Copyright Office, which functions under the Ministry of Commerce and Industry.

With the rise of computer-generated content, the Copyright (Amendment) Act, 1995 introduced the concept of "computer-generated works" into Indian copyright law. These are works produced by a computer in circumstances where there is no human author, such as when an AI system autonomously generates content. In such cases, Section 2(d)(vi) of the Act deems the "author" to be the person who causes the work to be created. This is interpreted to mean the natural person who initiated or arranged the process that led to the generation of the work—such as by providing prompts, programming the system, or selecting the output. Thus, while an AI system cannot be considered an author, the human who controlled or directed its operation may be recognized as the author for legal and registration purposes.

In practice, however, the Copyright Office has shown reluctance to register works without a clear human author. A notable example is the Raghav case (2020), in which an applicant sought to register an artwork generated by his AI system, listing only the AI (RAGHAV) as the author. The Copyright Office rejected the application, stating that an AI cannot be granted authorship because it lacks legal personality and capacity. The applicant then resubmitted the application, this time listing himself and the AI as co-authors. While this second application was initially accepted, it was later voluntarily withdrawn after the Office expressed legal concerns over recognizing a non-human entity as co-author. This case illustrates that, although Indian law conceptually permits registration of computer-generated works, the author or applicant must be a natural person who can claim responsibility for causing the creation.

At present, there are no official guidelines from the Copyright Office specifically addressing AI-generated works. However, based on the statutory language and past office practice, the prevailing position is that purely AI-generated works can be registered only if a human author is named—either as the person who initiated the AI process or exercised control over it. The AI system itself cannot be listed as author or co-author. The criteria for registration remain the same as for traditional works: the work must be original, fixed in a tangible medium, and must fall within a recognized category of copyrightable subject matter. The originality requirement implies some minimal degree of human creativity or direction, which supports the Office's insistence on having a human author.

3. *Aside from any copyright registration system, does the law recognise the subsistence of copyright (and/or related IP rights) in works generated (a) entirely by an AI system, and (b) with the assistance of AI tools? If so, who is the author and who is the first owner of the rights?*

Under Indian copyright law, copyright protection is inherently tied to human authorship. The Copyright Act, 1957, while amended over the years to account for technological developments, does not recognize machines or non-human entities—such as AI systems—as legal authors. This foundational principle means that for a work to be protected under copyright, there must be a natural person who can be identified as the author. In the context of works generated by AI, the law does make a statutory allowance through the concept of "computer-generated works" under Section 2(ffc), which includes literary, dramatic, musical, or artistic works generated by a computer where no human author is evident.

In the case of a **work generated entirely by an AI system**, the law stipulates that the author shall be "the person who causes the work to be created". This is a legal fiction that allows copyright to subsist despite the absence of traditional human authorship. The "person who causes the work to be created" is typically interpreted as the human who initiated, programmed, or prompted the AI system to produce the work. This could be someone who inputs data, selects prompts, triggers the generation, or otherwise plays a causal role in the process. This provision ensures that AI-generated works can, in practice, receive copyright protection so long as a human can be reasonably identified as having initiated the creation. The first owner of such a work is also the same human, as stated in Section 17 of The Copyright Act, 1957, unless an employment or commissioning arrangement overrides this default rule.

However, where an AI system creates a work without any identifiable human involvement—for instance, where a machine learns, evolves, and outputs content entirely autonomously—there is legal uncertainty. In such a scenario, no "causer" may be clear, and hence, no "author" in the eyes of the law. Since Indian copyright law strictly limits authorship to human beings, and since copyright cannot subsist without an

author, such a work would arguably fall outside the scope of protection. Indian courts have not yet directly addressed this hypothetical, but the judicial emphasis on human creativity and authorship in past cases suggests that a purely machine-created work—absent human direction—would not enjoy copyright protection.

In contrast, **works created with the assistance of AI tools**—where a human provides creative input—are treated as ordinary copyright works. In these cases, the AI is considered a tool or instrument in the hands of the human creator, much like a camera, word processor, or photo-editing software. If a human selects the prompt, curates or edits the output, or otherwise injects creativity or judgment into the final form of the work, that person is the legal author. The issue of joint authorship may arise where multiple human contributors are involved, even indirectly through AI systems. In such cases, Section 2(z) of the Copyright Act defines joint authors as "two or more authors who collaborate in the creation of a work, and the contribution of one author is not distinct from the contribution of the other author or authors." Therefore, if multiple people are involved in designing prompts, curating outputs, or finalizing the expression, they may be considered co-authors, provided their contributions are interdependent and creative.

As for ownership, Section 17 of the Act provides that the first owner of copyright is usually the author, unless the work was created in the course of employment, in which case the employer or commissioning party may own the rights. For computer-generated works, Section 17 provides that the first owner is "the person who causes the work to be created," again reinforcing the centrality of human involvement even in technologically mediated creation.

4. *Does this territory protect against unauthorised use of copyright-protected works for training AI? In what circumstances will unauthorized use of copyright-protected works for training AI constitute copyright infringement?*

Indian copyright law grants exclusive rights to the copyright owner under Section 14 of the Copyright Act, 1957, including the rights to reproduce, adapt, and communicate the work to the public. Training AI models typically involves copying large volumes of existing works—such as text, images, or software code—into digital memory, databases, or datasets. Even though this copying may not result in a direct reproduction for public display, the act of storing and processing these works for machine learning purposes often constitutes reproduction in the legal sense. Therefore, unless the copyright holder has granted permission (via license or contract), or a statutory exception applies, such copying may amount to prima facie copyright infringement.

As of 2025, India does not have a specific exception in its copyright law for text and data mining (TDM) or AI training. This differs from jurisdictions like the UK, EU, or Japan, where limited exceptions allow for certain data mining activities under prescribed conditions. In India, however, the unauthorized scraping or crawling of websites, databases, or publications containing copyrighted works—whether done manually or through automated tools like bots—would likely infringe the owner's rights, particularly under Section 51(a)(i), which prohibits reproduction without authorization. Because the training process involves copying and storing works, it typically meets the threshold for direct infringement.

This issue is now under judicial scrutiny. In ANI v. OpenAI (filed in 2024), ANI News has alleged that OpenAI infringed its copyright by using news articles without permission to train AI models, including ChatGPT. The Delhi High Court has admitted the case and is examining key legal questions, such as whether storing copyrighted content for training purposes qualifies as infringement, and whether generating new outputs based on such

training violates the original work's rights. OpenAI has argued that its use falls within the bounds of "fair dealing" and that it used publicly available facts in a transformative manner. The outcome of this case could significantly shape India's future legal position on AI training and copyright.

Under current law, India's fair dealing exception (Section 52) is narrowly defined. It allows limited use of copyrighted material for purposes like private study, research, criticism, or review, but these exceptions generally apply to individuals and not commercial entities. For example, an individual conducting non-commercial AI research in a university may potentially claim fair dealing. However, bulk data copying by companies for commercial AI development—such as for chatbots, recommendation engines, or automated content generators—would likely fall outside the fair dealing scope. Courts would examine whether the use is transformative, the amount and substantiality of copying, and the effect on the market for the original work.

It is also important to understand that under Indian law, infringement is "strict liability"—which means intent is not necessary. If unauthorized reproduction occurs, it can constitute infringement regardless of whether the user believed they were acting lawfully. In the context of AI, even though the machine "reads" or tokenizes content, the person or company operating the AI system is legally responsible, since the copying action originates from their design or instruction. Some have drawn analogies between AI training and human reading for research or education, but the legal weight of that analogy is weak in Indian law, especially when large amounts of copyrighted material are copied and stored digitally during AI training.

5. *What, if any, copyright exceptions or defenses apply to the unauthorised use of protected material in training AI (e.g., fair use in US)?*

Indian copyright law does not include a general "fair use" doctrine like the one found in the United States. Instead, India follows a "fair dealing" model, which offers limited and specific exceptions listed under Section 52 of the Copyright Act, 1957. This section provides a closed list of permitted uses where a person can use a copyrighted work without needing permission from the copyright holder. These exceptions are meant to balance public interest with creators' rights but are interpreted narrowly by courts, particularly when it comes to commercial or large-scale uses.

Some of the most relevant exceptions under Section 52 include: (i) personal or private use including research (Section 52(1)(a)(i)), (ii) reproduction for research or private study by scholars (Section 52(1)(i)), and (iii) use by educational institutions for classroom teaching (Section 52(1)(j)). Other recognized exceptions include use for criticism, review, or reporting current events, and temporary copying in the course of lawful use by IT systems (Section 52(1)(o)). However, none of these provisions specifically addresses large-scale text or data mining (TDM) for AI model training, and there is currently no exception in Indian law that directly supports machine learning activities involving the bulk reproduction of content.

In theory, individual researchers working in academic or non-commercial contexts may try to rely on Section 52(1)(a)(i) or Section 52(1)(i) if they are using copyrighted material for private study or scholarly research. For example, if a university researcher trains a small AI model using limited copyrighted text for non-commercial experimentation, that might be protected under existing exceptions. But these provisions are unlikely to protect commercial developers or tech companies that engage in massive automated scraping or copying of data to build large AI models, such as those used in consumer-facing applications like chatbots or image generators.

Indian courts have emphasized that Section 52's exceptions are grounded in public interest, and that any use of these defenses must strictly conform to the exact language and intent of the provision. In other words, they are not flexible or open-ended, and courts have routinely refused to extend them to contexts not clearly mentioned in the statute. This approach differs sharply from jurisdictions like the United States, where the "fair use" doctrine allows courts to consider the purpose, nature, amount, and effect of the use on a case-by-case basis.

The ongoing ANI v. OpenAI litigation is a landmark case testing these boundaries. ANI, a major Indian news agency, claims that OpenAI used its copyrighted news articles without authorization to train ChatGPT. The Delhi High Court is currently considering whether such use could ever fall under the "fair dealing" provisions of Section 52. OpenAI's defense reportedly includes arguments about transformative use, public accessibility of data, and lack of direct reproduction, but Indian law currently provides no clear support for the idea that TDM for commercial AI models is exempt.

6. *Is there a prescribed and legally recognised mechanism to opt-out copyright or other IP-protected work from any such exceptions or defenses?*

In India, there is currently no specific legally recognized mechanism to opt-out of having copyrighted works included in AI training data. The use of copyrighted content for training AI systems remains a contentious issue, especially regarding what constitutes fair use and the rights of content creators versus the needs of AI developers.

- Indian copyright law, similar to many other jurisdictions, includes provisions for "fair dealing" which allows for limited use of copyrighted material without permission from the rights holders under certain conditions, such as for private use, criticism, or review. However, using copyrighted material for training AI systems doesn't clearly fall under these exceptions.
- The use of web crawlers by AI developers to collect data, including copyrighted content, is often done without explicit permission from the content creators. Some industry bodies and legal experts recommend that creators add specific "no AI training" notices to their works to explicitly prohibit their use for AI training purposes.
- Discussions and recommendations are ongoing in India about the need for more explicit legal mechanisms to protect the rights of content creators. This includes the potential for new regulations or amendments to existing laws to address the unique challenges posed by AI and machine learning technologies

In summary, while there is no formal opt-out mechanism for copyrighted works in AI training data in India, content creators can take proactive steps to limit unauthorized use, such as adding explicit notices to their works and blocking web crawlers. Legislative changes may be needed to provide clearer protections and guidelines in the future.

7. *What is the test for whether the output of a generative AI system infringes works that were used in its training? If there is infringement in such a situation, would the tool provider or the user of the tool be liable (or both)? How is this affected by the location of servers, providers and users respectively?*

Under Indian copyright law, whether the output of a generative AI system infringes on existing works used in its training depends on the traditional "substantial similarity" test. Courts assess whether the AI output reproduces a qualitatively or quantitatively significant portion of a copyright-protected expression. If the AI merely imitates a style, theme, or idea, this does not constitute infringement, as ideas and styles are not

protected—only the specific expression of those ideas is. However, if the AI generates content that contains verbatim passages, detailed paraphrasing, replicas of visual elements, or code segments from training materials, and those parts are recognizably lifted from protected sources, the output is likely to be found infringing.

The issue of liability in such cases is complex and depends on the roles of the AI user and the AI tool provider. If a user actively prompts the AI system and receives infringing output—such as copied text or images—and then downloads, stores, or shares that content, they may be seen as having caused the act of reproduction. Under Section 51(a)(i) of the Copyright Act, this makes the user a direct infringer, since they performed an act reserved for the copyright holder without a license. This would apply even if the user did not intend to infringe, as infringement involves strict liability under Indian law.

The AI provider—that is, the developer or operator of the generative AI model—could also be liable, but typically only in certain scenarios. If the provider has "volitional control" over the specific infringing output—such as by deliberately configuring the model to reproduce protected content—they may be held directly liable. More commonly, however, the provider may face secondary liability under Section 51(a)(ii) if it knowingly facilitates the public communication of infringing content for profit. Courts often analogize such situations to a photocopy shop: the shop is not liable just because it provides the equipment, but it may be liable if it actively makes infringing copies or encourages customers to do so. Similarly, a provider that fails to remove known infringing outputs or markets the tool for infringing use could be exposed to liability.

Jurisdiction is another key factor in determining how Indian law applies. Indian copyright law is territorial, meaning it applies to acts committed within India. If an AI tool is developed and hosted on servers outside India, but a user in India accesses it, inputs prompts, and receives infringing output, the infringing act is considered to occur in India. Thus, Indian courts would generally have jurisdiction over the user and potentially the provider, if the provider's tool is accessible to Indian users or affects Indian rights holders. This issue is at the heart of the ANI v. OpenAI case, where the Delhi High Court is examining whether Indian courts can assert jurisdiction over a foreign AI provider based on use and impact within India.

However, if the entire process—model training, prompting, and use—occurs outside India, and no infringing output enters Indian territory, Indian courts may lack jurisdiction, though this remains a legally unsettled area. In practice, Indian courts are likely to assert jurisdiction as long as infringing AI-generated content is accessed, viewed, or distributed within India, regardless of where the servers or developers are located.

In conclusion, Indian law treats AI-generated content like any other creative work for purposes of infringement. If an AI output includes a substantial and recognizable part of a protected work, it can infringe copyright. In such a case, the user is most often directly liable, while the provider may be secondarily or directly liable depending on their control, intent, and conduct. As for jurisdiction, Indian copyright law will likely apply whenever the infringing content is used or accessed in India, even if the tool was developed abroad.

8. *If copyright protected work is used to train AI, is there any established obligation to maintain copyright management information in the outputs or liability for failing to do so?*

Indian copyright law does not recognize Copyright Management Information (CMI) but it protects digital identifiers such as the author's name, title of the work, copyright notices,

license terms, and watermarks. These protections were introduced through the Copyright (Amendment) Act, 2012, particularly under Sections 65A and 65B. These provisions were primarily designed to address digital media environments, such as the distribution of music, e-books, or photographs online, and their application to AI-generated content remains legally untested. However, the statutory language provides guidance on when CMI must be preserved and when its removal could lead to liability.

Under Section 65B, it is an offense to knowingly remove or alter rights management information from a digital copy of a work without authority. It is also an offense to distribute copies of a work knowing that CMI has been removed or altered. This means that if an AI system outputs content that is derived from or includes material taken directly from a copyrighted work, and the original work contained CMI—such as a photographer's watermark or an embedded copyright notice—then stripping that metadata or failing to include it in the output could violate the law. This would apply especially where the output amounts to a substantial reproduction of the original work.

However, Indian law does not impose an affirmative obligation to include or preserve CMI in new or generative outputs that are not actual copies of existing works. For example, if an AI system generates new text, images, or code based on learning from prior training data, but does not replicate any identifiable portion of the original content, there is no CMI in that output to preserve, and thus no liability arises under Section 65B. In such cases, because the output is a new creative work rather than a copy, the legal requirement to preserve or include CMI does not come into play.

Similarly, Section 65A makes it a punishable offense to circumvent technological protection measures (TPMs) used by copyright owners to prevent unauthorized use. This is relevant where a work is protected by digital locks or access restrictions, but again, this provision applies only to direct use or manipulation of protected content, not to new generative works that do not bypass such systems. In the context of AI, these provisions could be triggered only if the AI system or the user bypasses TPMs or removes embedded CMI while copying original works, such as while ingesting images or documents into a training dataset.

In practice, most AI models do not retain or transmit CMI from the works they are trained on. The systems typically extract patterns and statistical associations rather than storing or reproducing metadata tags, unless the output happens to contain a portion of the original work. If, for instance, an AI reproduces a stock photo containing a watermark, or a snippet of code with a license header, and that identifying information is omitted in the output, this could raise concerns under Section 65B. However, if the AI output is not a recognizable reproduction, no CMI would exist to be removed, and thus no violation occurs.

Confidential Information

9. *What legal principles govern the protection of company confidential information disclosed within AI prompts, in this territory?*

In India, the protection of confidential information disclosed within AI prompts is governed by several legal principles and frameworks:

1. **Indian Contract Act, 1872**:

Section 27 of the Indian Contract Act, 1872 established that parties are bound not to disclose information contrary to the terms of the contract between the parties i.e., Non-Disclosure Agreements.

Section 73 of the Indian Contract Act, 1872 is related to compensation for loss or damage caused by the breach of a contract. In the context of NDAs, if confidential information is disclosed in breach of the agreement, the aggrieved party can seek damages as per this section.

While Indian law does not require NDAs to be registered, doing so can enhance their legal strength and enforceability.

2. Digital Personal Data Protection Act, 2023

The DPDP Act permits entities to process digital personal data only with individual consent, or for specific legitimate purposes. It is unclear how autonomous AI tools sourcing users' personal information from third-party apps, in contravention of the DPDP Act, would be punished under that act. The ability of an AI tool to erase or edit personal data on the withdrawal of consent by an individual is also challenging, considering the difficulties involved in isolating such personal data from the pre-fed training parameters of an AI tool, and AI's general ability to unlearn.

3. Trade Secrets Protection:

India does not have a specific statute dedicated to trade secrets. However, the 22nd Law Commission of India issued a report titled "Trade Secrets and Economic Espionage" ("LCR"), on March 5, 2024, to recommend a new legal framework to adjudicate claims related to disclosure of trade secrets, and the key provisions that it should encompass.

IRELAND

Patents

1. *Does the law of this territory recognise patent rights in AI-generated inventions and/or AI-assisted inventions? If so, briefly what are the particular criteria for patentability and inventorship and who owns the patent rights?*

The recognition of patent rights in AI-generated inventions or AI-assisted inventions remains untested in the Irish courts. However, some key elements in existing law provide insight into the likely approach.

Further to the definition of "inventor" under section 2(1) of the Patents Act 1992 (the "**Patents Act**"), as "the actual deviser of an invention", Section 17 mandates that the applicant must identify to the Controller of the Intellectual Property Office of Ireland "the person or persons" he believes to be the owner. There are several other references in the Act to the inventor being a 'person' including Section 80's reference to co-owners as "two or more persons" confirming the position that the inventor must be a person. In relation to European patents which are enforceable in Ireland, the European Patent Office's position—that an inventor must have legal capacity—reinforces the exclusion of AI systems from being named inventors.

The UK Supreme Court ruling in the DABUS case, where the court upheld that only natural persons could be recognised as inventors, further exemplifies this human-centric stance. While not binding on Irish courts, the DABUS decision could be persuasive given the close alignment between Irish and UK patent legislation. The case demonstrates a judicial trend against recognising AI systems as inventors, a stance Irish courts may be inclined to follow unless the law changes to specifically accommodate AI-generated inventions.

To date the Intellectual Property Office of Ireland has not issued guidance for examining patent applications relating to artificial intelligence nor is there Irish case law regarding the validity of such patents. Irish patents can only be granted for inventions that satisfy four conditions set out under the Patents Act (Section 9): the invention must be new; it must involve an 'inventive step'; it must be capable of industrial application; and it must not be excluded subject matter – inventions that are computer programs are an example of excluded subject matter. AI inventions can be seen as computer-implemented inventions. As such the question yet to be determined is whether an Irish Court will adopt a strict interpretation of this Section (which we expect it will not) or whether it will adopt a broader approach in considering 'inventive step'.

2. *Does the law, or patent office practice, address whether AI-generated, artificial 'prior art' could affect validity of patents?*

Currently, Irish law and the Intellectual Property Office of Ireland practice/guidance does not address the impact of AI-generated content as prior art on patent validity.

With the rise of AI-generated content, a question emerges as to whether such material, especially if created without human intent or authorship, qualifies as prior art.

Given the complexities AI introduces to the field, legislative or judicial clarification may be required to address AI-generated prior art's role in assessing patent validity in Ireland.

Copyright and Related Rights (training or output infringement)

3. *Does this territory have a copyright registration system, and if so can AI-generated works be registered? What, if any, are the criteria for registration?*

In Ireland, copyright protection is automatic and does not require a formal registration system.

4. *Aside from any copyright registration system, does the law recognise the subsistence of copyright (and/or related IP rights) in works generated (a) entirely by an AI system, and (b) with the assistance of AI tools? If so, who is the author and who is the first owner of the rights?*

Irish copyright law appears to afford protection to AI generated works. However, Irish laws on computer generated works pre-date generative AI by 20 years and do not appear to have been drafted with generative AI technologies in mind. Irish legislation does not differentiate between (a) and (b) above, but the legislation relates to a situation where there is no human author. The Copyright and Related Rights Act 2000 (Copyright Act) includes specific provisions for computer-generated works. Section 2(1) defines "computer-generated" as a work created by a computer where the author is not an individual.

Section 21(f) clarifies that in the case of a computer-generated work, the "author" is defined as "the person by whom the arrangements necessary for the creation of the work are undertaken."

These provisions imply that AI-generated works can receive copyright protection, with authorship attributed to the individual or entity responsible for the arrangements behind the work's creation.

Pursuant to s.23 of the Copyright Act, the first owner of copyright is typically the author of the work. However, if the work is created by an employee within the scope of employment, the employer is deemed the first owner, unless there is an agreement to the contrary. Additional exceptions apply to works produced under Government or Oireachtas (Irish Parliament) copyright, by international organisations, or where legislation assigns ownership to another party.

Given that these provisions lie far outside the EU copyright *acquis*, and given that they were not drafted with generative AI in mind, it is unclear as to how the courts would interpret these provisions.

5. *Does this territory protect against unauthorized use of copyright-protected works for training AI? In what circumstances will unauthorized use of copyright-protected works for training AI constitute copyright infringement?*

Ireland protects against unauthorised use of copyright-protected works for training AI.

In the context of text and data mining (TDM) under Irish copyright law, the primary right impacted is the "reproduction right." Section 37 of the Copyright and Related Rights Act 2000 grants copyright owners the exclusive right to authorise or restrict certain acts, including the right to copy their work. This right is defined broadly and includes any act of storing, reproducing, or making incidental or transient copies of the work as part of another process, such as TDM.

Under Section 37(1), reproductions, including those created through TDM processes, are "acts restricted by copyright" and require authorisation from the copyright owner unless an exception applies. Section 39 further clarifies that "copying" includes all forms of

reproduction, whether direct or indirect, and covers storing a work in any medium, even if the copy is incidental to another process. This directly applies to TDM, as reproducing or extracting data from copyright works without permission typically requires at least incidental copying or storage.

Section 53B of the Copyright and Related Rights Act 2000 transposed the TDM exception from the EU's Copyright in the Single Digital Market Directive 790/2019 (the "**CDSM Directive**"), and outlines the requirements for TDM for commercial purposes. If copyright owners expressly reserve their rights through machine-readable means (such as metadata) for works online, or through direct communication for offline works, TDM for commercial purposes becomes restricted – but unless this opt-out is made, TDM for commercial purposes is permitted. This means that unauthorised use of such reserved works for TDM would constitute copyright infringement.

For commercial TDM, reproductions and extractions made under this provision may only be retained as long as necessary for mining purposes. Notably, Irish law currently specifies "author" rather than "rightholder" as the party responsible for reserving rights, creating practical challenges. Since authors often transfer rights to other entities, this language has led to confusion, and the Irish government is actively reviewing this aspect.

In contrast, for research-based TDM, the law allows for lawful access and retention of copies for verification. Such copies must be securely stored, accessible only to those with lawful access, and overseen by designated individuals responsible for maintaining security measures. Authors must be notified of the copies made, informed of security protocols, and have the right to request additional safeguards.

6. *What, if any, copyright exceptions or defenses apply to the unauthorized use of protected material in training AI (e.g., fair use in US)?*

Outside the TDM-specific provisions outlined above, other copyright exceptions, such as those for private study or educational purposes, are generally interpreted narrowly and may not readily extend to AI training, particularly when it involves substantial or systematic copying.

In Ireland, general defences to copyright infringement primarily arise from specific exceptions outlined in the Copyright Act. These defences include:

i. **Fair Dealing**: Certain acts are permitted under "fair dealing" exceptions, notably for the purposes of research, private study, criticism, review, and news reporting. For these defences to apply, the use must be reasonable and proportionate, avoiding excessive copying that could harm the copyright owner's rights.

ii. **Temporary Copies**: Transient or incidental copies created as part of a technical process (e.g., browsing or caching) may be allowed, provided they are temporary and essential for the lawful use of the work.

iii. **Educational and Research Use**: Legislation provides exceptions for educational institutions, allowing them to use protected works for teaching and research within specific limits. This includes making copies of works for instruction or examination purposes, although systematic or commercial use would not be covered.

iv. **Library and Archival Use**: Libraries, archives, and museums have limited rights to make copies for preservation, replacement, or research purposes, especially when copies are unavailable through commercial channels.

v. **Parody, Satire, and Caricature**: While not explicitly detailed in the Act, there is a developing recognition for parody and satire under EU influence, although this defence remains untested in Irish courts.

vi. **Public Domain and Government Works**: Works in the public domain or under specific government copyright provisions (such as Oireachtas or State publications) are generally not subject to infringement claims.

7. Is there a prescribed and legally recognized mechanism to opt-out copyright or other IP-protected work from any such exceptions or defenses?

The legally recognised mechanism for opting copyright works out of TDM exceptions is outlined in s.53B(3) of the Copyright Act, which transposed Article 4 of the CDSM Directive. It states that an author reserves the use of a work for reproduction or extraction for the purposes of TDM in an appropriate manner where the reservation concerned –

(a) is machine-readable in the case of content made publicly available online, including metadata and terms and conditions of a website or a service, and

(b) in case of content not made publicly available online, is clearly communicated to all persons who have lawful access to it.

8. What is the test for whether the <u>output</u> of a generative AI system infringes works that were used in its training? If there is infringement in such a situation, would the tool provider or the user of the tool be liable (or both)? How is this affected by the location of servers, providers and users respectively?

In Ireland, there is no specific statutory test for determining whether the output of a generative AI system infringes copyright in works used in its training. Infringement is generally assessed based on principles of substantial similarity and derivation, where courts consider whether protected elements of an original work have been reproduced or re-used without authorisation in a recognisable form.

For generative AI, infringement could be argued if the AI output substantially replicates expressive elements of copyrighted works in a way that goes beyond mere inspiration and constitutes a direct or indirect reproduction. If infringement is found, liability could potentially fall on both the tool provider and the user. The extent of liability depends on each party's role in producing or distributing the infringing material.

The question of liability in cases where generative AI outputs infringe copyright could also be influenced by the contractual arrangements between the AI provider and the user. Such contracts often set terms on the permissible use of the AI tool, the extent of liability each party assumes, and any disclaimers or indemnities regarding infringement risks.

i. **Tool Provider Liability**: The AI provider might limit liability through contractual clauses, specifying that users bear responsibility for how the output is used or that the provider offers the tool "as is." If the provider explicitly includes terms absolving them of liability for copyright infringement by users, the contractual language could play a key role in limiting or clarifying the provider’s exposure to liability. However, if the provider knowingly enabled or encouraged users to create outputs closely replicating protected works, this could still attract liability, regardless of contractual disclaimers.

ii. **User Liability**: Contractual terms could also clarify the user's responsibility. For instance, contracts may specify that users must ensure their outputs do not infringe third-party rights or that they indemnify the provider against claims arising from infringement. Such terms place the burden of lawful use on the user, particularly in commercial settings, where misuse may expose users to direct liability.

iii. **Jurisdictional Impact**: The effect of contractual terms may vary based on the jurisdictional reach of the AI provider, user, and server location. Irish courts would consider not only where the work was accessed or disseminated but also the terms of the contract if infringement impacts rights holders within Ireland. Contractual arrangements may influence whether Irish law applies or whether foreign jurisdictions govern disputes.

9. *If copyright protected work is used to train AI, is there any established obligation to maintain copyright management information in the outputs or liability for failing to do so?*

In Ireland, there is no explicit, established obligation within copyright law to maintain copyright management information (CMI) specifically in the outputs of AI systems trained on copyrighted material. However, sections 375 and 376 of the Copyright and Related Rights Act 2000 provide rights and remedies concerning the removal or alteration of CMI.

Under these provisions, removing or altering CMI with the knowledge or intention that it may enable, facilitate, or conceal copyright infringement is unlawful. This applies to any instance where CMI identifying the work, author, or rights owner is knowingly removed or altered from a copy of a copyrighted work, recording, or database. Additionally, making such modified copies available to the public, importing them, or handling them commercially, while aware of the CMI alteration, is both a civil and criminal offence.

If applied to AI training contexts, the removal of CMI from training data—where it enables or conceals infringement—could trigger liability, though this remains untested with AI outputs specifically. Liability could include fines or imprisonment on indictment, depending on the intent and scale of distribution.

Confidential Information

10. *What legal principles govern the protection of company confidential information disclosed within AI prompts, in this territory?*

In Ireland, the protection of company confidential information, such as trade secrets disclosed in AI prompts, is primarily governed by the European Union (Protection of Trade Secrets) Regulations 2018, which implement the EU Trade Secrets Directive (Directive (EU) 2016/943). Under this framework, a trade secret is defined as information that meets three criteria: it must (i) be secret, meaning it is not generally known or readily accessible to those in relevant business circles; (ii) have commercial value due to its secrecy; and (iii) be subject to reasonable measures to maintain its confidentiality.

The Regulations grant trade secret holders the right to seek remedies for the unlawful acquisition, use or disclosure of their trade secrets, including orders to cease infringing activities, damages, and protective measures during legal proceedings to preserve confidentiality. Unlawful acquisition of a trade secret can include unauthorised access to

or copying of materials containing the trade secret, while unlawful use may involve breach of confidentiality agreements or contractual obligations.

In addition to statutory protections, contract law provides another layer of security. Organisations typically use confidentiality agreements or contractual terms to restrict how sensitive information, including data used in AI systems, can be accessed and utilised. Such contracts can impose enforceable obligations on parties handling trade secrets, complementing the legal protections under the Trade Secrets Regulations.

Where confidential information disclosed in AI prompts contains personal data, the Data Protection Act 2018 and GDPR also apply, adding requirements around lawful processing, data minimisation, and security safeguards.

ISRAEL

Patents

1. *Does the law of this territory recognise patent rights in AI-generated inventions and/or AI-assisted inventions? If so, briefly what are the particular criteria for patentability and inventorship and who owns the patent rights?*

Currently there is no specific law relating to AI-generated nor AI-assisted inventions. In his decision of March 19, 2023, The Patent Commissioner has rejected Stephen Thaler's patent applications (Nos. 268604 and 268605) for inventions created by DABUS (in scope of the Artificial Inventor Project), stating that only a human can be considered an "inventor" and that only a human can convey rights and therefore no one can effectively obtain proprietary rights to a patent application in such regard. An appeal against the Commissioner's decisions was made before the District Court in Tel-Aviv and rejected in a reasoned decision on December 31, 2025. The Court found to support the Commissioner's position that a machine cannot be considered as an inventor for the purposes of the Israeli Patents Law while indicating (and referring to DE and EPO decisions) that were the applications to note a co-inventorship of machine and human the applications may have been considered patentable.

2. *Does the law, or patent office practice, address whether AI-generated, artificial 'prior art' could affect validity of patents?*

The law and the ILPO (both in practice and via circulars) do not currently address artificially generated prior art. As a matter of fact, any prior art presented to the examiner or found by examiner will be equally considered.

Copyright and Related Rights (training or output infringement)

3. *Does this territory have a copyright registration system, and if so can AI-generated works be registered? What, if any, are the criteria for registration?*

Israel does not have a copyright registration system.

4. *Aside from any copyright registration system, does the law recognise the subsistence of copyright (and/or related IP rights) in works generated (a) entirely by an AI system, and (b) with the assistance of AI tools? If so, who is the author and who is the first owner of the rights?*

The law does not currently address AI generated/assisted works, whether entirely or partially. It is well worth noting that according to section 33(1) of the Israel Copyright Law 5768-2007, the creator of the work is its first owner. The law does not include a definition of a creator. Per copyright related case law, creation is a matter of fact and causal connection. Nevertheless, no current case law in direct connection with AI involvement in the creation is available.

5. *Does this territory protect against unauthorised use of copyright-protected works for training AI? In what circumstances will unauthorized use of copyright-protected works for training AI constitute copyright infringement?*

Unauthorized copying, reproduction, distribution, display, or performance of a copyrighted work, or creation of a derivative work based on a copyrighted work, may constitute copyright infringement if the user does not have an applicable defense such as a fair use defense. The Copyright Law 5768-2007 specifies an open list of actions that would be considered "fair use". Thus, a fair use defense may apply if the use meets the law's criteria.

Accordingly, The Ministry of Justice issued an opinion on December 18, 2022, which states that the use of copyrighted materials for training AI is generally permitted under the existing copyright doctrines. First, in most circumstances, such use will be covered by the fair use doctrine, as it falls under the circumstances for "self-learning", "research" or at the very least purposes "such as these". Second, in some instances, such use may fall under the doctrine that permits incidental uses of copyrighted materials. Third, under circumstances where the copyrighted materials are erased at the end of the machine learning process, such use may be covered by the doctrine of transient use.

6. *Is there a prescribed and legally recognised mechanism to opt-out copyright or other IP-protected work from any such exceptions or defenses?*

There is no opt-out of a fair use defense in copyright. However, companies may, depending on the circumstances, potentially protect against unauthorized use of their content for training AI models through, for example, proper license agreements or terms of service. It is possible that in certain circumstances, even if the user has a fair use defense under copyright law, they may still potentially be subject to liability for a breach of contract claim.

It should be noted that according to the copyright law, an agreement for transferring the copyright or providing a unique license for its use, must be done in writing.

The Ministry of Justice's abovementioned opinion does not address the issue of the existence of specific licenses. However, it does mention the difficulty in obtaining the required mass number of licenses as one of the reasons to allow the use of copyright-protected works for training AI purposes.

7. *What is the test for whether the <u>output</u> of a generative AI system infringes works that were used in its training? If there is infringement in such a situation, would the tool provider or the user of the tool be liable (or both)? How is this affected by the location of servers, providers and users respectively?*

Currently, there is no case law in connection with output of a generative AI system. Generally speaking, to establish a claim for copyright infringement, the claimant must show: 1) that they own copyright in the training material; 2) that the tool provider had access to the copyrighted work; and 3) that substantial similarity exists between the expression in the output and the protected elements in the training material. Most likely, such criteria will be employed also in such infringement matters which in any event will be subject to the fair use discussion above.

8. *If copyright protected work is used to train AI, is there any established obligation to maintain copyright management information in the outputs or liability for failing to do so?*

According to the Israeli law, a copyright owner has a moral right in the creation. Therefore, the owner must be credited regardless of the fair use protection. Having said that, note that the obligation to accredit the original creator should be reasonable in scope and made in accordance to the custom in the field – such criteria are yet to be shaped in this area.

Confidential Information

9. *What legal principles govern the protection of company confidential information disclosed within AI prompts, in this territory?*

The Commercial Torts Law, 5759-1999 provides for trade secrets protection. Although not referring to AI related secrets, such provisions would govern. Having said that, confidentiality can be evoked, or dismissed, by way of a written undertaking (i.e. NDA) or through action. Therefore, AI prompts' platforms terms and conditions would govern these outcomes.

There is no specific regulation in such regard, although in December 2023 the Ministry of Innovation, Science and Technology published general guideline suggestions for future AI regulation and ethics. These recognized, inter alia, the need to consider the respect and maintenance of trade secrets and other intellectual property rights. However, no concrete recommendations have been made and in any event such guidelines have no obligatory effect.

ITALY

1. *Does the law of this territory recognise IP rights in AI-generated content and/or inventions? If so, briefly what are the criteria and who owns the rights?*

Italian law, as currently evolving, does recognize intellectual property rights in works of authorship and inventions generated through the use of artificial intelligence, but with important conditions and limitations.

- ***Recognition of IP Rights in AI-Generated Content and Inventions in Italy***

Copyright Protection: according to the Italian copyright law (Law No. 633/1941), the concept of "author" necessarily implies the intervention of a human being capable of expressing creativity. However, the Supreme Court has analyzed the case of a work generated by AI software through prompts elaborated by the author based on her own original creative idea. The Court introduced an innovative principle of law, according to which "the recognition of copyright will have to be evaluated on a case-by-case basis, considering the rate of creativity." The Court specified that if the use of AI has absorbed the artist's creative elaboration, rendering the human input negligible, copyright protection may not be granted. However, if the artist was able to consciously direct, instruct, correct and use the AI, this activity is considered an integral part of the work, deserving of legal protection under copyright law. This principle of law was subsequently incorporated into the ***Italian law*** on artificial intelligence (Law 132/2025), which amends Article 1 of the Italian copyright law, granting authorial protection even to works created with the aid of AI tools as long as "they are the result of the author's intellectual effort." Purely AI-generated works without meaningful human intellectual input are not eligible for copyright protection.

- ***Patent Protection***

Italian patent law currently does not explicitly address inventions autonomously generated by AI systems. Patent protection generally requires an inventor who is a natural person.

Since the Italian patent system is closely aligned with the European Patent Convention (***EPC***) and European Patent Office (***EPO***) practice, the prevailing view is that only human inventors can be recognized.

Ownership of patent rights typically vests in the inventor or their assignee/employer, meaning that inventions generated with AI assistance are owned by the human or legal entity responsible for the inventive activity or the AI tool's deployment, not by the AI itself.

2. *Does the law, or patent office practice, address whether AI-generated, artificial 'prior art' could affect validity of patents?*

Italian law and Italian Patent and Trademark Office (***UIBM***) practice do not explicitly address AI-generated artificial "prior art" in a distinct manner from traditional prior art, but existing principles apply to any publicly available disclosure regardless of its origin. Under Article 46 of the Italian Industrial Property Code, prior art includes everything made publicly available anywhere in the world before the patent application date, including written or oral descriptions, uses, or any means of disclosure. This means that if AI-generated content is publicly accessible, it could, in principle, qualify as prior art and affect the validity of patents.

3. *Does this territory have a copyright registration system, and if so can AI-generated work be registered?*

Italy does have a copyright registration system, although copyright protection arises automatically upon creation of the work and registration is not mandatory. Registration can be done with the Italian Association of Authors and Publishers (***SIAE***), serving mainly as evidence of authorship and date. However it merely gives a presumption of ownership and a (challengeable) priority date but does not imply *per se* that the subject matter is original or otherwise entitled to protection under copyright laws. Therefore there is no hindrance in filing an AI-generated matter as it would not be reviewed by the SIAE and its eligibility for copyright protection would be in any case assessed at Court.

4. *Aside from any copyright registration system, does the law recognise the subsistence of copyright (and/or related IP rights) in works generated (a) entirely by an AI system, and (b) with the assistance of AI tools? If so, who is the author and who is the first owner of the rights?*

Article 1 of the Italian copyright law, as recently amended by Italian law on artificial intelligence (Law 132/2025), states that intellectual works "of a creative character" are "human creative works" protected, i.e., those works that bear the imprint of the author's personality, reflecting the author's personal way of representing and expressing facts, ideas and feelings, and has individual characteristics that reveal the contribution of a particular author. As a result, Italian copyright law does not provide for the explicit recognition of property rights for works or inventions created exclusively by AI without human intervention.

As mentioned above, however, copyright protection for works created with the aid of AI tools is granted as long as "they are the result of the author's intellectual effort." Before this legislative update, the Supreme Court, analyzed a case involving the use, without the author's consent, of a work generated by means of AI software, which had been used as a set design in the 2016 edition of the Sanremo Festival. The Court introduced an innovative principle of law according to which the creative contribution of the artist in the creation of the work should be assessed on a case-by-case basis. Where the work is in fact created by means of AI systems but is the result of significant creative choices made by the artist in the selection of parameters, control of output and manual finishing of the result, a human creative contribution deserving of protection under Article 1 of the Copyright Law is discernible. This principle, which is also followed by European and non-European courts, has recently been incorporated into the Italian law on artificial intelligence with the above-referenced principle, where, however, the threshold for protection is raised, requiring not only the degree of creativity normally required for intellectual works and its demonstrability, but also the criterion of the derivability of the work from the human contribution. According to Italian laws and general principles, the (human) author is the first owner of the copyright in the work even if it is created with the aid of AI tools.

5. *Does this territory protect against unauthorised use of copyright-protected works for training AI? In what circumstances will unauthorized use of copyright-protected works for training AI constitute copyright infringement?*

Currently, in Italy there are no case law precedents on unauthorised use of copyright-protected works for training AI. The use of copyrighted material and content for the purpose of training AI systems is among the reproduction rights exclusively attributed to the author of the work itself, the use of which by third parties would, therefore, be subject to the author's consent, as provided for in Article 13 of the Copyright Law. This would affect downstream users if the output they generate is assessed at Court as a copy or a derivative work of a copyrighted content ingested by the AI System among training data.

- **Text and Data Mining Exceptions (Articles 70-ter and 70-quater of Italian Copyright Law)**

Similiarily to some U.S. implications of the fair use exception (although In Italy, unlike the United States, there is no general "fair use" doctrine), the European Union, in Articles 3 and 4 of the Directive on Copyright and Related Rights in the Digital Single Market, introduced the principle that copyright holders and database builders cannot enforce their exclusive rights to prevent "text and data mining". That is, "automated analysis aimed at analyzing text and data in digital format with the purpose of generating information including, but not limited to, patterns, trends and correlations." The Directive was transposed into Italian law through the introduction of Art. 70 ter and 70 quater of the Copyright Law. Art. (which clarifies that "text and data mining" is "any automated technique designed to analyze large amounts of text, sound, images, data, or metadata in digital format with the aim of generating information, including patterns, trends, and correlations"). These provisions are also referenced in connection with AI by the new Art. 70-Septies, recently introduced by the Italian law on artificial intelligence (Law 132/2025), according to which the reproduction and extraction of works or other materials made available online or contained in databases to which one has lawful access, for the purpose of text and data mining through artificial intelligence models and systems, including generative ones "shall be permitted in accordance with Articles 70-ter and 70-quater".

Art. 70 ter allows only extraction for scientific research purposes (and communication to the public of the research outputs where expressed in original works) by research organizations and cultural heritage protection institutions, provided that (a) access to the works contained in networks or databases for extraction has taken place legitimately, and (b) adequate security measures are adopted, while art. 70 quater allows the extraction of text and data, by anyone and also for profit, provided that (a) access to the works contained in networks or databases for extraction has taken place legitimately, (b) the use of such works has not been expressly reserved by the copyright holders or owners of the databases, (c) such extractions are kept only for the time necessary for the purposes of text and data extraction, and (d) adequate security measures are adopted.

On this point, the AI Act also recently intervened by clarifying once and for all that the exceptions for TDM in the directive include AI training.

- **Criminal Sanctions for Unauthorized Use**

The Italian law on Artificial Intelligence (Law 132/2025) introduces the use of AI systems as both a general aggravating circumstance and a specific aggravating factor for certain crimes, including criminal impersonation, market manipulation, fraud, computer fraud, money laundering, self-laundering, and the use of illicit funds, assets, or benefits.

In addition, Article 171 of the Italian Copyright Law and Article 185 of Legislative Decree No. 58/1998 (the Consolidated Law on Financial Intermediation) are amended to include two new criminal offenses. The first pertains to breaches of the aforementioned Articles 70-ter and 70-quater of the Italian Copyright Law, while the second relates to market manipulation.

Lastly, the above-referenced Italian recent law introduces a new criminal offence into the Italian Criminal Code: the unlawful dissemination of AI-generated or AI-manipulated content. This new offence punishes whoever causes (or aims to cause) harm or causes unfair damage to a party by sending and disseminating deepfakes.

In conclusion, unauthorized use of copyright-protected works for AI training will constitute infringement in Italy if:

- the use falls outside the scope of the TDM exceptions (e.g., no lawful access or exceeds permitted use);
- the copyright owner has exercised the opt-out right to exclude their works from AI training datasets;
- the use is commercial and no fair remuneration or license has been agreed upon;
- the reproduction or extraction is done without authorization and does not meet the conditions of the statutory exceptions.

6. What, if any, copyright exceptions or defenses apply to the unauthorised use of protected material in training AI (e.g., fair use in US)?

In Italy, unlike the United States, there is no general "fair use" doctrine. Instead, Italy provides specific, narrowly interpreted copyright exceptions that may apply to certain uses of protected material, including in the context of training AI models—but only under clearly defined conditions (see above at 5).

7. Is there a prescribed and legally recognised mechanism to opt-out copyright or other IP-protected work from any such exceptions or defenses?

Yes, the opt-out mechanism is governed by Article 70 quater of the Copyright Law under which the copyright owner or database owners may reserve the extraction of text and data thus maintaining the activities of TDM in their exclusive control. The express reservation must be exercised in an appropriate manner, such as through machine-readable instructions published online compliant with the Copyright Directive i.e., "in an appropriate manner, such as through means that allow for automated reading in the case of content made publicly available online." Finally, express reservation can also be included in a special clause in a contract.

Recently SIAE has claimed to have exercised a "collective opt-out" from the text and data mining exception set forth in Article 70-quater of the Italian Copyright Law on behalf of the authors it represents. More specifically, the main Italian collecting society (SIAE) has publicly stated that "taking into account that the new Article 70-quater of Law No. 633/1941 liberalises the reproduction and extraction of works or other materials made available online or in databases, unless 'the extraction of text and data (...) has been expressly reserved by the owners of copyright and related rights, as well as by the owners of the databases', in order to proceed swiftly, SIAE has exercised a collective opt-out on the basis of two key arguments: (i) SIAE is the owner of a database represented by its repertoire and is therefore entitled to prohibit the unauthorised extraction of data/metadata relating to the works; (ii) the reproduction right covered by the mandate originally granted to SIAE by the authors does not extend to this new form of

use/reproduction". This decision by SIAE has been criticized by some stakeholders arguing that SIAE lacks the legal authority to validly exercise a "collective opt-out" from the TDM exception provided for under both Italian and EU copyright law on behalf of all represented authors.

8. *What is the test for whether the output of a generative AI system infringes works that were used in its training? If there is infringement in such a situation, would the tool provider or the user of the tool be liable (or both)? How is this affected by the location of servers, providers and users respectively?*

In order to prove that the output generated by the AI is the result of copyright infringement of the works used to train the AI in Italy, the general rules provided for copyright infringement apply. The plaintiff must prove ownership of copyright, originality of the work, the existence of infringement through substantial similarity to the offending work, and the fact that the infringed work was used without permission. Liability may be attributed individually to the user or the provider or both. The potentially applicable liability regimes under the Italian legal framework are:

- contractual liability (particularly relevant in relations between AI system providers and users), governed by the Civil Code (art. 1218 et seq.);
- extracontractual liability governed by art. 2043, also in connection with the so called liability for dangerous activities (art. 2050 of the Italian Civil Code) pursuant to which "*any person who causes damage to others while performing an activity that is dangerous by its nature or by the means employed is liable for the damage caused*", which Italian courts have already applied to harm arising from the large-scale processing of personal data, liability of the custodian (could apply to those in actual control of the system), governed by Art. 2051 of the Civil Code, and liability of masters and principals (art. 2049 Civil Code), according to which "masters and principals are liable for damages caused by the wrongful act of their servants and committed in the performance of the duties to which they are assigned".

The location of servers, providers and users affects jurisdiction and applicable law: copyright infringement is assessed based on the jurisdiction where the act of copying or infringement occurs. The Italian AI Law and EU directives apply primarily within Italy and the EU, but cross-border issues arise due to the global nature of AI services. Providers that host servers or offer AI services within Italy or the EU are subject to Italian and EU copyright and liability rules. Likewise, users based in Italy or the EU can be held liable under local law for infringing uses of AI tools, regardless of where the AI provider or servers are located.

The complexity of proving access to copyrighted works and the black-box nature of AI systems complicate enforcement, especially when training data sources or server locations are outside Italy

9. *If copyright protected work is used to train AI, is there any established obligation to maintain copyright management information in the outputs or liability for failing to do so?*

A new work that incorporates or transforms an existing work protected by copyright is a derivative work. In Italian law, a derivative work enjoys independent authorial protection as long as it constitutes creative elaboration of the original work and as long as it has been authorized by the author of the original work. In this context, in order to prevent the derivative work from constituting a counterfeit of the original work, developers of generative AI systems should obtain prior and full authorization from the copyright owners of the original work, which precisely defines the type of derivative work

authorized and the perimeter of its permitted use, with provision for related indemnity and compensation systems in case of infringement, circumstances that are very difficult to implement in practice.

In the absence of prior consent from the author of the original work, the derivative work may be considered lawful only if different and additional elements of creativity to the basic work are discerned in them, such that the derivative work presents itself as new and different from the original work. However, such an arrangement is incompatible with Italian copyright law since otherwise it would have to be admitted that AI systems are endowed not only with creativity, but even with a critical capacity such that they express new and autonomous artistic sensibilities with respect to the source work.

Exceptions may apply:

- ***Citation (Art. 70 Copyright Law):*** *In some cases, fragments of a protected work may be used without permission, provided that the quotation is for the purpose of criticism, review, discussion or teaching, and not for commercial purposes and is limited to short excerpts from the work, proportionate to the purpose of the use. In all cases, the name of the author and the source from which the quotation is taken must be indicated.*
- ***Creative Commons licenses:*** *some works may be released under open licenses, such as Creative Commons licenses, which specify the conditions under which the work may be reused. These licenses may allow the creation of derivative works, as long as the restrictions imposed by the license are followed (e.g., citing the author, not using the work for commercial purposes, or releasing the new work under a similar license).*

On this point, the AI Act through Articles 53(1)(c) and Recital 106 required providers of general-purpose AI (***GPAI***) models to "*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*". This means that the provider of GPAI models should at least have a copyright policy to ensure the respect of the copyright related rights.

10. What legal principles govern the protection of company confidential information disclosed within AI prompts, in this territory?

The protection of company confidential information disclosed within AI prompts in Italy is governed by a combination of statutory provisions, contractual mechanisms, and emerging AI-specific regulations.

- **Trade Secrets and Confidential Information:** According to Articles 98 and 99 of Italian Industrial Property Code, technical and commercial confidential information is protected as a trade secret if it meets three requirements:
    - the information must be secret (not generally known or readily accessible to experts in the field);
    - the information must have economic value because it is secret;
    - the information must be subject to reasonable measures to keep it secret.

If these requirements are met, the legitimate holder can prohibit third parties from acquiring, disclosing, or abusively using the information, except where the information was obtained independently.

- **Unfair Competition (Article 2598 of Italian Civil Code):** Even if information does not qualify as a trade secret, its unlawful acquisition, disclosure, or use by a competitor can constitute unfair competition, especially if the information was not meant to be disclosed outside the company.
- **Non-Disclosure Agreements (NDAs) and Contractual Protections:** NDAs are enforceable in Italy and are a primary tool for protecting confidential information, including that which may be disclosed in AI prompts. For enforceability, NDAs must be specific about what information is confidential, the obligations of the parties, and the duration of confidentiality.
- **AI-Specific and Data Protection Regulations:** Italy's AI law (enacted on October 10, 2025) anticipates the EU AI Act and requires AI systems to comply with principles of transparency, security, protection of personal data, and confidentiality. This means that AI systems must be developed and operated with processes ensuring the confidentiality of any business information processed or disclosed within prompts.
- **Data Protection (GDPR and Italian Privacy Code):** If confidential information includes personal data, its processing within AI prompts is also subject to GDPR and the Italian Data Protection Code. This imposes requirements such as data minimization, explicit consent, security measures and transparency, enforced by the Italian Data Protection Authority.

JAPAN

Patents

1. *Does the law of this territory recognise patent rights in AI-generated inventions and/or AI-assisted inventions? If so, briefly what are the particular criteria for patentability and inventorship and who owns the patent rights?*

In Japan, inventors are eligible to receive a patent, and inventors are limited to natural persons, so AI is considered not to meet the criteria for inventorship. In the DABUS case, the Tokyo District Court ruled on 16 May 2024 that an AI system cannot be recognised as an inventor under the Patent Act. This decision was upheld by the Intellectual Property High Court on 30 January 2025, confirming that "inventor" under the Patent Act is limited to natural persons, while also noting the need for legislative discussion on AI inventorship.

Given the current level of AI technology, it has not yet been confirmed that AI itself can engage autonomously in creative activities without human involvement. It remains common practice for AI to be utilised in the invention process primarily as a tool to assist natural persons. Therefore, the prevailing view is that inventorship should be recognized in accordance with traditional principles, identifying the human who creatively contributes to the essential part of the invention. This means that while AI-generated or AI-assisted inventions may qualify for patents, the patent will be awarded to the natural person who utilised the AI. As such, AI-generated or AI-assisted inventions are evaluated for inventorship based on the degree of human involvement, similar to other types of inventions.

2. *Does the law, or patent office practice, address whether AI-generated, artificial 'prior art' could affect validity of patents?*

On this point, in order to obtain a patent, the invention must demonstrate an "inventive step", which means that a person with ordinary knowledge in the relevant technical field could not have easily invented it based on prior art, as specified in Article 29, Paragraph 2 of the Patent Act. It has been noted that, in the future, it may be possible for AI to autonomously aggregate prior art, select materials, define numerical ranges, and perform substitutions at high speed and on a large scale, scoring technical effects based on big data composed of technical literature. AI might then further compare these results with examination standards and past examination cases of the Japan Patent Office, ultimately scoring and predicting patentability.

Moreover, concerns have been raised that mass production of AI-generated inventions could lead to an overflow of new technologies and improvements. In such a scenario, these AI-generated new and improved technologies could serve as prior inventions, potentially causing human-made inventions to be denied novelty or having an inventive step more frequently. However, it is believed that this does not necessitate immediate changes in current practices.

On the other hand, if advancements in AI technology allow AI to autonomously complete essential parts of an invention in the future, it is considered desirable for the Japan Patent Office, in coordination with other relevant agencies, to continue examining potential impacts on the recognition of inventorship as necessary. This would be done while taking into account technological progress, international trends, and user needs.

In this context, the Act on Promotion of Research, Development and Utilisation of AI-Related Technology was enacted in May 2025, and the Intellectual Property Promotion Plan 2025, published in June 2025, explicitly identifies the examination of the definition

of inventors for inventions made using AI as a policy matter requiring further consideration. Purely AI-generated outputs, where natural persons have not been sufficiently involved in the creative process to be recognised as inventors, are not considered to be protected under the Patent Act.

Copyright and Related Rights (training or output infringement)

3. *Does this territory have a copyright registration system, and if so can AI-generated works be registered? What, if any, are the criteria for registration?*

The Copyright Act in Japan provides a registration system for (i) the real name of the author, (ii) the date of the first publication, (iii) the transfer of copyright, and (iv) the establishment of publication rights (Articles 75 to 77 of the Copyright Act). In Japan, copyright arises naturally at the time a work is created. The copyright registration system was established to secure the safety of transactions by publicly announcing the date of a work's first publication and recording transfers.

While it is possible to register works generated by AI, AI itself cannot be registered as the author. Instead, only a natural person to whom the copyright is attributed can be registered as the author.

4. *Aside from any copyright registration system, does the law recognise the subsistence of copyright (and/or related IP rights) in works generated (a) entirely by an AI system, and (b) with the assistance of AI tools? If so, who is the author and who is the first owner of the rights?*

In summary, AI cannot be considered an "author" under the Copyright Act. The Copyright Act defines a "work" as "a production in which thoughts or emotions are creatively expressed, falling within the realm of literature, science, art, or music" (Article 2, Paragraph 1, Item 1 of the Copyright Act). Thus, even if a work is generated solely by AI or with the use of AI tools, copyright will arise as long as the output qualifies as a "work."

The Act also defines an "author" as "a person who creates a work" (Article 2, Paragraph 1, Item 2). Since AI lacks legal personhood, it does not meet the criteria of a "person who creates." Consequently, even if an AI-generated output is deemed a copyrightable work, the AI itself cannot be the author. Instead, the individual who used AI to "create the work" is recognized as the author of the AI-generated work.

5. *Does this territory protect against unauthorised use of copyright-protected works for training AI? In what circumstances will unauthorized use of copyright-protected works for training AI constitute copyright infringement?*

Although the exceptions discussed in point 6 below may frequently apply, recent public commentary has noted specific cases where certain exceptions under copyright law may not apply, thereby leaving unauthorised use of copyright-protected works unprotected.

For instance, where internet data (database works) is made available for a fee in a form that can be used for data analysis, or where an API is available for purchase, allowing structured access to data that can be easily analysed for informational purposes, it could constitute copyright infringement to copy portions of a database work's creative expression from freely accessible articles on a website without purchasing the API, for data analysis purposes. In such cases, the exceptions do not apply, and the unauthorised reproduction may be deemed an infringement of copyright.

6. *What, if any, copyright exceptions or defenses apply to the unauthorised use of protected material in training AI (e.g., fair use in US)?*

Firstly, Japanese law does not have a provision equivalent to the "fair use" doctrine in the U.S. However, when a case falls under the Copyright Act's limitations on copyright, the exercise of copyright may be restricted, permitting certain unauthorised uses.

In this regard, Article 30-4 of the Copyright Act stipulates that "It is permissible to exploit a work, in any way and to the extent considered necessary, in any other case in which it is not a person's purpose to personally enjoy or cause another person to enjoy the thoughts or sentiments expressed in that work; provided, however, that this does not apply if the action would unreasonably prejudice the interests of the copyright owner in light of the nature or purpose of the work or the circumstances of its exploitation". This article broadly restricts copyright use in cases of "non-enjoyment purposes" and explicitly lists data analysis as a type of such usage. Data used in the training phase of AI, therefore, may fall under this non-enjoyment use for data analysis, potentially allowing some degree of unauthorised use of copyrighted material.

However, if the use involves "enjoyment" of the "thoughts or emotions expressed in the work," the exception does not apply. "Enjoyment" refers to accepting and savouring something spiritually enriching or materially beneficial; for instance, reading in the case of texts, viewing in the case of art or film, listening in the case of music, and running in the case of programs, are considered acts of enjoyment. When enjoyment purposes coexist with non-enjoyment purposes, the provision does not apply, and permission from the rights holder is required. For example, if an AI training process intentionally outputs entire or partial creative expressions from copyrighted works within the dataset (known as 'overfitting'), such usage would require permission.

In cases similar to the example of unauthorised use in point 5 above, where the nature, purpose and manner of use would unduly harm the copyright holder's interests, Article 30-4 is also inapplicable. For the balancing of interests with copyright holders, please also refer to the answer to Q5.

Additionally, Article 47-5 of the Copyright Act limits rights for minor uses that are incidental to providing the results of information processing by computers for creating new insights or information. Actions covered by this provision include "performing information analysis by a computer and providing the results thereof" (Article 47-5, Paragraph 1, Item 2). However, this restriction is limited to uses where the "portion used is minor in proportion, quantity, display accuracy, and other elements." Also, use of pre-existing works under this provision must be "incidental to" the specified actions, meaning that if the primary purpose is to provide the creative expression of a pre-existing work, this exception does not apply.

7. *Is there a prescribed and legally recognised mechanism to opt-out copyright or other IP-protected work from any such exceptions or defenses?*

Although a clear and universally applicable mechanism does not exist, where measures have been taken to restrict access by crawlers that copy content for AI training purposes, such as through descriptions in "robots.txt" files on websites or through ID and password authentication, this may be evaluated as unreasonably prejudicing the interests of the copyright holder. There is ongoing debate regarding whether contractual terms or terms of use can exclude the application of copyright limitations, such as those in Article 30-4 (the "override issue"). Ultimately, this would be determined by a court in the event of a dispute. However, since copyright limitations are considered mandatory provisions of the Copyright Act, they generally cannot be excluded through contractual agreements.

This point has been raised in public comments on the draft guidelines "Considerations on AI and Copyright." The guidelines state: "Given the legislative purpose behind general copyright limitations and Article 30-4, it would be challenging to interpret an expression of the copyright holder's opposition as automatically excluding the applicability of these limitations. Therefore, the mere fact of such opposition cannot be seen as constituting an exception under Article 30-4." (Considerations on AI and Copyright, p. 25 and following).

8. *What is the test for whether the <u>output</u> of a generative AI system infringes works that were used in its training? If there is infringement in such a situation, would the tool provider or the user of the tool be liable (or both)? How is this affected by the location of servers, providers and users respectively?*

- What is the test for whether the output of a generative AI system infringes works that were used in its training?

(1) General

The primary question is whether the work used in AI training qualifies as a "work" under copyright law. The determination of whether something constitutes a "work" depends on whether it is an "expression of thoughts or emotions in a creative way, falling within the scope of literature, science, art, or music."

If the work does qualify as a "work" and the AI-generated output closely resembles the original work, then the use of the output may constitute an infringement of reproduction rights (Article 21 of the Copyright Act) or adaptation rights (rights to create derivative works, Article 27 of the Copyright Act). These rights determine whether such use is considered an unauthorised reproduction or adaptation of the original work.

In this context, "reproduction" under copyright law refers to creating a tangible copy of a work by methods such as printing, photography, copying, recording, or other means (Article 2, Paragraph 1, Item 15 of the Copyright Act). "Reproduction" involves relying on an existing work to create something that conveys the essential features of the original expression to the observer.

In contrast, acts of creating derivative works—known collectively as "adaptation"—include translation, arrangement, transformation, dramatisation, filming, or other modifications (Article 27). The resulting works are termed "derivative works" (Article 2, Paragraph 1, Item 11). "Adaptation" is understood to mean altering, adding to, or changing the concrete expression of an existing work while preserving its essential expressive features. Through adaptation, a creator expresses new thoughts or emotions creatively, enabling the observer to sense the essential features of the original work.

The distinction between reproduction and adaptation lies in whether the act adds new creativity to the existing work. A "dead copy," or an exact replica, is considered reproduction, even with minor modifications, if no new creativity is added. Without such added creativity, the result is classified as reproduction rather than adaptation.

Therefore, determining whether someone has infringed another person's reproduction or adaptation rights depends on two main criteria: (i) whether the creation is based on the other person's work (dependence) and (ii) whether it allows one to directly perceive the essential expressive features of the original work (similarity).

(2)

(i) Dependence

While there are various interpretations, court precedents generally suggest that mere knowledge of the existence and content of the original work is sufficient to establish dependence.

For AI-generated outputs, dependence is a key issue. If a user of generative AI is aware of an existing work's expressive content and intentionally generates an output containing the creative expression of that work, dependence may be recognized, potentially resulting in copyright infringement.

Additionally, even if the AI user is unaware of the existing work's content, if it is part of the training dataset used to develop the AI, there is a presumption of access to the work. Thus, if the AI generates an output similar to the copyrighted work, dependence is generally presumed, and the AI user may be liable for copyright infringement.

(ii) Similarity

The determination of similarity involves comparing the works to extract common elements and examining those elements. Since copyright protects only "creative" "expressions," not ideas, even if someone uses an illustration similar to another's, such as a "bear illustration," the abstract "idea" of a bear does not establish expressive similarity. Therefore, this alone would not constitute copyright infringement (known as the expression-idea dichotomy). Additionally, if only non-creative elements are shared, it does not lead to infringement. For similarity to be established, there must be an identity in the essential expressive features of the works.

- If there is infringement in such a situation, would the tool provider or the user of the tool be liable (or both)?

In principle, liability for copyright infringement caused by AI-generated outputs rests with the individual who physically used the generative AI to produce or employ the AI-generated content. However, in certain cases, AI developers or providers may also bear liability. This responsibility depends on various factors, including the purpose and manner of the use, as well as the nature and degree of involvement.

Factors that increase the likelihood of AI developers or providers being held liable include:

- the generative AI frequently produces infringing content; or
- the developer or provider was aware of a high probability that the AI could generate infringing content but failed to implement measures to prevent it.

Conversely, factors that decrease the likelihood of liability for developers or providers include:

- implementation of measures to prevent the generation of infringing content; or
- cases where infringing content was generated due to the specific prompts or inputs of an AI user intending to create infringing works.

A claim for damages based on copyright infringement is considered a tort under Japanese civil law. According to Article 17 of the Act on the General Rules for Application of Laws, the law of the place where the harmful result occurred (the "result place law") generally governs such claims.

- How is this affected by the location of servers, providers and users respectively?

Assuming Japan's private international law applies, for injunctions based on copyright infringement, under the third sentence of Article 5(2) of the Berne Convention, the law of the country that provides substantive protection for the copyright (the "protecting country law") is often applied. Based on these principles, if the result of a copyright infringement (e.g. loss to the copyright holder) is deemed to have occurred in Japan, Japanese copyright law applies as the result place law for claims for damages (and the application of copyright limitations regarding the infringement determination). Additionally, if the act of use is deemed to have taken place within Japan, Japanese copyright law as the protecting country law would apply to injunction claims (and the application of copyright limitations in determining infringement).

If the place of the result of the infringement is not clear, the issue of determining the governing law regarding the act of use of a copyrighted work, etc. will ultimately be decided by the court according to each individual case. For example, the following circumstances are considered to be factors that increase the possibility of the application of Japanese copyright law to the legal relationship in question.

- In the development and learning phase of the generated AI, a program for collecting learning data for AI learning must be running on a server located in Japan, and reproduction of existing works, etc. must be conducted in connection with the collection of such data.

- In the generation/utilization stage of the generated AI, the generated AI must be running on a server located in Japan, and it must generate products including existing works, etc.

- In the generation and use stage of generated AI, the generated AI service provided on the Internet is publicly transmitting generated materials, including existing copyrighted works, to users in Japan.

As of early 2026, major newspaper publishers sued Perplexity AI in the Tokyo District Court in August 2025, alleging infringement of reproduction rights and public transmission rights.

9. *If copyright protected work is used to train AI, is there any established obligation to maintain copyright management information in the outputs or liability for failing to do so?*

While there are no explicit legal provisions, guidelines such as "Considerations on AI and Copyright" and the "Checklist & Guidance on AI and Copyright", published by the government, advise against training methods that could lead to the direct output of copyrighted works used as training data. Copyright management information is generally considered unaffected in this context.

In cases where the reproduction of copyrighted works for AI training data collection might constitute infringement, there is no immediate right to demand the deletion of the trained model. However, if the trained model is highly likely to generate content closely resembling the original training data, it may be regarded as a “reproduction” of the copyrighted work, allowing for possible requests for deletion. Thus, it is necessary to train AI in a way that avoids generating outputs identical to copyrighted training data.

From the perspective of non-enjoyment purposes (as discussed in point 6), implementing technical measures to prevent outputs resembling the training data could positively influence the judgement that the reproduction was made with a "non-enjoyment" purpose. To mitigate copyright infringement risks from generative AI

outputs, preventing the generation of content similar to copyrighted training data can reduce the likelihood of infringement, given that both "similarity" and "reliance" are essential for a finding of copyright infringement.

In cases of copyright infringement from generative AI outputs, AI developers may also be held liable alongside users. However, taking preventive measures during AI development to avoid producing outputs resembling existing works may reduce the likelihood of developer liability.

In addition, as of early 2026, the Intellectual Property Strategy Headquarters of the Cabinet Office is developing the "Principles and Code on Intellectual Property Protection and Transparency for the Appropriate Utilisation of Generative AI (*tentative name*)" (the "Principles/Code"). A public comment period was conducted between December 2025 and January 2026. While the final version has not yet been confirmed, the draft Principles/Code was developed having also considered the measures under the EU AI Act, including those for ensuring transparency and for copyright protection, and adopts a "comply or explain" approach, requiring AI developers and AI service providers to disclose on their corporate websites information such as the types of training data, collection methods, and policies for compliance with intellectual property rights (including copyright). The Principles/Code is also positioned as a form of soft law to be developed pursuant to the Act on Promotion of Research, Development and Utilisation of AI-Related Technology (enacted May 2025), representing Japan's emerging approach of supplementing existing copyright limitations under the Copyright Act with soft-law transparency mechanisms anchored in its new AI governance framework.

Confidential Information

10. What legal principles govern the protection of company confidential information disclosed within AI prompts, in this territory?

The key applicable legislation includes the Unfair Competition Prevention Act and the Act on the Protection of Personal Information.

Under the Unfair Competition Prevention Act, the first question is whether the information input into a prompt qualifies as a trade secret (Article 2, Paragraph 6) or as limited-access data (Article 2, Paragraph 7). If so, the next question is whether the input act constitutes an unauthorised use or disclosure of trade secrets or limited-access data, thus being an act of unfair competition (Article 2, Paragraph 1).

For information to qualify as a "trade secret," it must meet the following criteria: (a) it is managed as a secret (secrecy management), (b) it is valuable business or technical information (usefulness), and (c) it is not publicly known (non-public nature). For information to qualify as "limited-access data," it must: (a) be provided to specific individuals as part of a business (limited provision), (b) be accumulated and managed by electronic means (electronic management and substantial accumulation), (c) be business or technical information, and (d) not qualify as a "trade secret." The Intellectual Property Policy Office of the Ministry of Economy, Trade, and Industry has released guidance on these points including in the Handbook for the Protection of Confidential Information (revised February 2024), which added guidance on measures to establish systems for preventing unintended leakage risks from inputs into generative AI. The Trade Secret Management Guidelines were also revised in March 2025, expanding coverage of generative AI risks and clarifying that, to the extent that secrecy management measures are in place, the secrecy management requirement for trade secrets is not negated even where information is exchanged through generative AI.

Under the Act on the Protection of Personal Information, if the input into a generative AI service includes personal data, it must be determined whether this constitutes an outsourcing of personal data (Article 27, Paragraph 5, Item 1). Where subcontractor management is not conducted with respect to the generative AI service provider, or where the generative AI service provider uses personal information for its own development purposes, consent or a (limited) exception under Article 27, Paragraph 1, would be required as a third-party provision of personal data. The Personal Information Protection Commission has issued a caution regarding the use of generative AI services in this context.

SOUTH KOREA

Patents

1. *Does the law of this territory recognise patent rights in AI-generated inventions and/or AI-assisted inventions? If so, briefly what are the particular criteria for patentability and inventorship and who owns the patent rights?*

Korean law has not yet formally recognized patent rights in AI-generated or AI-assisted inventions. The Korean Patent Act expressly defines "the person eligible to obtain a patent" as "the person who has made the invention or their successor" (Article 33(1) of the Patent Act).

Steven Thaler, a U.S. AI developer, filed a patent application in Korea listing an AI named "DABUS" as the inventor. However, the Korean Intellectual Property Office (KIPO) rejected the application, stating that an AI cannot be an inventor because it is not a natural person.

An administrative lawsuit was filed in response to this decision. Both the trial and appellate courts ruled that only natural persons can be inventors. The case is currently pending before the Supreme Court of Korea.

There are no clear criteria yet regarding AI-assisted inventions in Korea. However, according to existing Korean case law, in order to be recognized as an inventor, one must have made a substantial contribution to the creation of the technical idea (see, e.g., Supreme Court Decision 2009Da75178 issued on July 28, 2011).

Therefore, patent protection may be difficult to obtain if the result is primarily the product of AI. However, if a natural person uses AI as a tool and makes a substantial contribution to solving the problem independent of the AI, that person may be recognized as the inventor.

2. *Does the law, or patent office practice, address whether AI-generated, artificial 'prior art' could affect validity of patents?*

As of now, there is no established practice at KIPO as to whether AI-generated or artificial "prior art" can affect the validity of patents.

Under the Korean Patent Act, the following are not eligible for patent protection under Article 29(1) of the Patent Act: (i) an invention publicly known or practiced in the Republic of Korea or in a foreign country prior to the filing of a patent application, and (ii) an invention published in a publication distributed in the Republic of Korea or in a foreign country or an invention disclosed to the public via telecommunications lines prior to the filing of a patent application,.

With the growing ability of AI systems to generate and disclose large amounts of information, and the possibility that such information could be deemed publicly known prior to a patent filing in Korea or abroad, discussions are ongoing as to whether such AI-generated information can be considered prior art under the existing patent framework.

In 2024, KIPO commissioned a research project on this issue. Some proposals from the study suggested that additional requirements should be imposed in order for AI-generated information to be recognized as prior art. However, no official standards have yet been announced.

Copyright and Related Rights (training or output infringement)

3. *Does this territory have a copyright registration system, and if so, can AI-generated works be registered? What, if any, are the criteria for registration?*

Yes, Korea has a copyright registration system.

However, in Korea, a copyright shall commence from the time of its creation and shall not require a fulfilment of any procedures or formalities (Article 10(2) of the Copyright Act). In other words, the existence of copyright is not affected by whether or not the work is registered.

If a work is registered, the registered author is presumed to be the author of the registered work, and the date of creation or the date of first publication is presumed to be the date stated in the registration (Article 53(3) of the Copyright Act).

That said, only works that are the result of human expression of thoughts or emotions are eligible for copyright registration. Therefore, works generated solely by AI without any creative human contribution are not considered "works" under the Copyright Act and cannot be registered for copyright.

However, in the case of works created using AI that include creative human contribution, copyright registration is possible.

In Korea, there have been cases where a human selected, arranged, and combined images generated by generative AI, and such works were recognized as compilation works, with copyright registration granted ("AI 수로부인" - English translation "AI Wife of Suro"). In other words, registration was granted where a human selected and re-edited AI-generated images to create a scene composition, and the creative contribution was recognized.

4. *Aside from any copyright registration system, does the law recognise the subsistence of copyright (and/or related IP rights) in works generated (a) entirely by an AI system, and (b) with the assistance of AI tools? If so, who is the author and who is the first owner of the rights?*

A work protected under Korean Copyright Act is defined as a "creative production that expresses human thoughts or emotions" (Article 2(1) of the Copyright Act).

In other words, for a work to be protected under Korean copyright law, it must
i) express human thoughts or emotions, and
ii) be recognized as having creativity.

If a work is entirely generated by an AI system, it would be difficult to meet the requirement of "expression of human thoughts or emotions,' and, thus, such a work would be interpreted as not falling under the works protected by copyright law.

However, if AI is used as a tool, and human thoughts or emotions are expressed with the assistance of AI, the work may be recognized as copyrightable subject matter. This standard is similar to that recognized by the U.S. Copyright Office – which recognized a compilation work in the case of the graphic novel (Zarya of the Dawn), where the story was written by a human and the images were created using generative AI, and the human selected, arranged, and combined the text and images.

For example, if a human makes a creative contribution in selecting, arranging, or composing various materials, including AI-generated outputs, such selection, arrangement, or composition may be regarded as an expression of human thoughts or emotions, thereby qualifying for copyright protection. In such cases, the copyright belongs to the natural person who made the creative contribution to the selection, arrangement, or composition.

5. *Does this territory protect against unauthorised use of copyright-protected works for training AI? In what circumstances will unauthorized use of copyright-protected works for training AI constitute copyright infringement. ?*

The training for developing AI models requires a large amount of data, where the training data may include works protected by copyright law.

However, if someone uses another person's copyrighted work for AI training without obtaining permission from the copyright owner, the Korean courts will most likely find such unauthorized use as constituting copyright infringement. Nevertheless, if the use falls under fair use, liability for copyright infringement may be avoided.

In response to such copyright infringement, the copyright owner can seek an injunction to stop the infringing activity (Article 123(1) of the Copyright Act) and may claim damages (Article 125(1) of the Copyright Act). Additionally, criminal charges can be filed, and if copyright infringement is recognized, the infringer may be subject to imprisonment for up to five years or a fine of up to 50 million Korean won (Article 136(1) of the Copyright Act).

6. *What, if any, copyright exceptions or defenses apply to the unauthorised use of protected material in training AI (e.g., fair use in US)?*

Although an amendment to the Copyright Act introducing a TDM (Text and Data Mining) exception was proposed, it expired with the close of the legislative session. The proposed amendment would have allowed the use of automated analysing technology with computers to analyse large amounts of information, including multiple copyrighted works, by extracting data such as rules, structures, trends, and correlations to generate additional information or value without enjoying the thoughts or emotions expressed in the works, and permitting reproduction and transmission of the works to the necessary extent. Currently, no new legislative developments on this matter have been identified.

There is no specific law in Korea that exempts liability for copyright infringement when using others' copyrighted works for AI training.

However, similar to the fair use provisions in the United States, Korean copyright law also includes a fair use clause. According to Article 35-5(1) of the Korean Copyright Act, fair use of copyrighted works without the copyright holder's permission does not constitute infringement if it does not conflict with the normal exploitation of the work and does not unjustly harm the legitimate interests of the copyright holder. Fair use considers factors such as the purpose and nature of the use, the type and use of the work, the proportion and significance of the portion used relative to the entire work, and the impact of the use on the current or potential market or value of the work.

The Korean Supreme Court has clarified the criteria for this provision (See Supreme Court decision 2021Da272001 issued on July 11, 2024):

- Regarding "the purpose and nature of the use," this factor considers whether the use transforms the original work to express new meanings or messages beyond mere substitution, whether it has a distinct purpose and nature from the original, whether

the transformation exceeds what is necessary for creating a secondary work, and whether the use is for public interest or non-profit purposes.

- For "the type and use of the work," these factors include whether the original work is factual or informational in nature and whether it has been published or released.
- Regarding "the proportion and significance of the portion used," this factor considers whether the quantity or qualitative importance of the portion used is small relative to the entire original work, and whether the user used only the necessary amount.
- Concerning "the impact on the market or value," this factor assesses whether the use substitutes or damages the current or reasonably expected market demand for the original work or its derivative works.

Whether using copyright works for AI training qualifies as fair use remains to be decided by the civil courts, and no relevant rulings have been made yet.

The Korean Ministry of Culture, Sports and Tourism, in its "Guide to Copyright for Generative AI," advises that, since the application of fair use is unclear, there is a possibility of copyright infringement when using copyrighted works for AI training without permission from copyright holders. Therefore, it recommends obtaining appropriate compensation and legal authorization from rights holders in advance, whenever possible.

On January 13, 2025, Korea's three major terrestrial broadcasters (KBS, MBC, and SBS) filed a lawsuit against Naver at the Seoul Central District Court. They claim that Naver used their news articles without permission in the development of its generative AI systems "Hyper CLOVA" and "Hyper CLOVA X."

The broadcasters argue that unauthorized use of their news articles for generative AI development constitutes copyright infringement and seek injunctions and damages. The case will focus on whether Naver's copying and transmission of the news articles to build its training dataset constitutes copyright infringement and whether Naver's actions can be exempted under Korea's fair use provisions. The court's decision is being eagerly awaited by Korean stakeholders.

7. *Is there a prescribed and legally recognised mechanism to opt-out copyright or other IP-protected work from any such exceptions or defenses?*

In Korea, there is no "opt-out" system of the exceptions or defense for copyright infringement.

However, some copyright holders explicitly indicate their intent to protect their rights by including statements such as "Prohibited from AI training use" alongside copyright notices at the bottom of their websites.

In other words, copyright holders may clearly express that they do not permit the use of their content for AI training without explicit authorization. Some also embed metadata in their works, specifying copyright holder information and the scope of permitted use.

Although there has been no court ruling yet on the legal effect of such statements, rights holders may rely on these notices as grounds to claim that unauthorized use of their works was against their clearly expressed intent.

8. *What is the test for whether the output of a generative AI system infringes works that were used in its training? If there is infringement in such a situation, would the tool provider or the user of the tool be liable (or both)? How is this affected by the location of servers, providers and users respectively?*

The test for whether the output of a generative AI system infringes works that were used in its training is the same as the test for traditional copyright infringement.

To determine whether copyright infringement has occurred, the first step is to assess whether the portion of the original work in question constitutes a creative expression (Supreme Court decision 2013Da14828 issued on Aug. 13, 2015).

This is because the Copyright Act protects "creative expressions" and not mere ideas. For example, in the case of a painting, the painting style, or in a novel, the theme or literary technique, are considered ideas and thus not subject to copyright protection.

Next, a comparison is made between the two works to determine whether the parts deemed creative expressions are substantially similar. Since the types of works and ways they are used vary widely, the determination of substantial similarity must consider the specific context of each individual case.

In addition to substantial similarity, to establish copyright infringement, the copyright owner must show that the allegedly infringing work was created based on the existing copyrighted work. This relationship of derivation may be presumed if the alleged infringer had access to the original work and the two works are similar.

In particular, if there is a level of striking similarity that makes it highly unlikely the two works were independently created, such similarity alone may be sufficient to presume derivation (Supreme Court decision 2013Da8984 issued on July 24, 2014).

In regard to liability, if a work generated by a generative AI system is found to be substantially similar to another's copyrighted work and thus constitutes infringement, the general view in Korea is that the user who generated the output is primarily liable for the infringement.

However, if the AI developer trained the model by heavily using a specific author’s works, it is also widely accepted that the AI developer or provider may share liability for the copyright infringement along with the user.

9. *If copyright protected work is used to train AI, is there any established obligation to maintain copyright management information in the outputs or liability for failing to do so?*

Korea does not have an established obligation to maintain and disclose copyright management information used to train AI in the outputs from the AI, i.e., Korea does not have any specific legal requirements for generative AI developers to keep and maintain copyright management information and correlate that information in the AI outputs.

If the output generated by AI is not substantially similar to the works used for training and is considered an independent work, we think the risk of liability will be low when rights management information about the training works is not included in the AI outputs.

However, if the output is substantially similar, we think the risk of liability would be much higher if rights management information for the similar training works is not provided in the AI outputs, as failure to provide that information may result in civil and/or criminal liability.

Under the Korean Copyright Act, "rights management information" (or "copyright notice") is defined as information used to identify works, copyrights, and other rights protected under the law, as well as information regarding the methods and conditions for using the works. Furthermore, the intentional removal, alteration, or false addition of rights management information is prohibited (Copyright Act Article 104-3). Violations allow the rights holder to seek injunctions or damages similar to copyright infringement claims (Copyright Act Article 104-8).

In addition, if the intentional removal, alteration, or false addition of rights management information is done for commercial purposes or as a business, the offender may face imprisonment of up to five years or a fine of up to 50 million KRW. However, if the alleged infringer unintentionally causes or conceals copyright infringement or infringement of rights protected by this law, and the alleged infringer was unaware of such facts, the alleged infringer is not subject to punishment (Copyright Act Article 136, Paragraph 2, Subparagraph 3-4)

Confidential Information

10. What legal principles govern the protection of company confidential information disclosed within AI prompts, in this territory?

In Korea, trade secrets are protected under the Act on the Prevention of Unfair Competition and Trade Secret Protection ("Trade Secrets Act"). If a company's confidential information is disclosed through AI prompts, such information would also be protected under this Act.

Trade secrets protected in Korea refer to production methods, sales methods, or other technical or business information useful for business activities that (i) are not publicly known, (ii) have independent economic value, and (iii) are managed as secrets.

- "Not publicly known" means that the information is not generally accessible to an unspecified number of people through media such as publications, so it cannot be ordinarily obtained without going through the holder of the information. Therefore, even if the holder manages the information as a secret, if the content of the information is already generally known, the information cannot be considered a trade secret (Supreme Court decision 2007Do6772 issued on October 29, 2009).
- "Having independent economic value" means that the holder can gain a competitive advantage over competitors by using the information or that considerable cost or effort was required to acquire or develop the information (Supreme Court decision 2008Do3435 issued on July 10, 2008).
- Regarding the meaning of "managed as a secret," the Trade Secret Act previously required that the secret be maintained "by considerable efforts," but on January 28, 2015, it was amended to "maintained by reasonable efforts," and again on January 8, 2019, it was changed to "managed as a secret," thus relaxing the degree of secret management required. However, the courts have held that, even if the legislative intent to relax the requirement is considered, the holder's secret management actions are necessary for specific information to be recognized as a trade secret, thereby requiring some form of management effort (Seoul Central District Court decision 2025Gahap20063 issued on April 9, 2025).

MEXICO

Patents

1. *Does the law of this territory recognise patent rights in AI-generated inventions and/or AI-assisted inventions? If so, briefly what are the particular criteria for patentability and inventorship and who owns the patent rights?*

No, until today, the Federal Law for the Protection of Industrial Property does not recognize inventions created with artificial intelligence.

It is important to point out that Mexican legislation only recognizes the status of inventor to one or several natural persons, without the possibility of recognition to a legal entity or artificial intelligence. However, the ownership of the patent rights may correspond to either a natural person or to a legal entity.

The above in no way excludes the possibility that a natural person, through the assistance of AI, may create an invention. In these cases, the status of inventor will be attributed to the natural person who managed or made key decisions within the inventive process.

2. *Does the law, or patent office practice, address whether AI-generated, artificial 'prior art' could affect validity of patents?*

No, as of today, it has not been considered in the Mexican legislation, nor has there been any official pronouncement regarding such situation.

However, in practice, as it works so far, any information that is publicly available before the filing date of the patent application may be prior art, regardless of whether it was generated by human beings or artificial intelligence.

In order for such information to be accepted, the Mexican Institute of Industrial Property must ensure that:

- The information is public and accessible prior to the filing date.

- It has a clear and verifiable technical content that may influence the assessment of innovation or inventive activity of the invention.

Therefore, if an AI-generated creation is public and technically relevant, it could be considered prior art, and consequently, affect the granting of a patent.

Copyright and Related Rights (training or output infringement)

3. *Does this territory have a copyright registration system, and if so can AI-generated works be registered? What, if any, are the criteria for registration?*

Yes, Mexico has a copyright registration system, which is managed by INDAUTOR (Copyright Authority).

On the other hand, works generated entirely by artificial intelligence are not considered protectable works under Mexican law and therefore cannot be registered.

Several individuals have attempted to obtain copyright protection for materials created using AI tools. Nevertheless, INDAUTOR has consistently denied these requests on the grounds that such materials lack originality.

Under Mexican law, a work must be an original creation, and authorship can only be attributed to a natural person. As such, only human authors can be recognized as the legitimate creators of works.

It is important to note that this position is not exclusive to INDAUTOR. The Specialized Chamber on Intellectual Property of the Federal Court of Administrative Affairs recently upheld this interpretation in case 788/24-EPI-01-2, confirming the denial of copyright registration for an AI-generated work on the grounds that it lacked sufficient human creative control.

Moreover, the Supreme Court of Justice of Mexico has recently endorsed this same approach in *Amparo en Revisión* No. **6/2025**, reaffirming that the concept of authorship under Mexican law necessarily requires human creativity and intellectual contribution. Accordingly, works generated autonomously by artificial intelligence systems cannot be considered "original works" protected by copyright, as they lack a human author capable of exercising moral and economic rights.

That said, there is still no clear criterion regarding works created with the assistance of AI where human creativity is significantly involved and reflected in the final product. In such cases, it will be necessary to determine how the AI tool was used and the extent of human intervention, to determine whether the resulting work qualifies for protection under the concept of authorship in Mexican law.

4. *Aside from any copyright registration system, does the law recognise the subsistence of copyright (and/or related IP rights) in works generated (a) entirely by an AI system, and (b) with the assistance of AI tools? If so, who is the author and who is the first owner of the rights?*

As previously noted, under Mexican law, works created entirely by artificial intelligence are not eligible for copyright protection, as they lack the element of originality.

To assess originality, Mexican authorities consider two main criteria:

- **Objective originality**: The work must be unique.
- **Subjective originality**: The work must reflect the personal imprint of the author — that is, characteristics that originate from human creativity and expression, which AI systems cannot possess.

Accordingly, current legal interpretation does not recognize AI systems as authors or rights holders.

However, when a work is created with the assistance of AI tools — but where a human is actively involved in the creative process and the human contribution is evident in the final result — such a work may qualify for protection. In these cases, the human creator is recognized as the author and initial rights holder.

5. *Does this territory protect against unauthorised use of copyright-protected works for training AI? In what circumstances will unauthorized use of copyright-protected works for training AI constitute copyright infringement?*

There is currently no specific provision under Mexican law that expressly regulates the unauthorized use of copyright-protected works for training artificial intelligence systems. However, the general rules on copyright protection and infringement still apply.

Under Mexican law, the unauthorized use or exploitation of any copyright work may constitute a copyright violation or, in some cases, a commercial infringement.

There is an important distinction between copyright infringements and commercial infringements.

Copyright infringements refer to breaches that affect the moral or administrative aspects of authorship — for example, publishing a work without crediting the author or omitting legal notices. These acts are usually not aimed at obtaining profit and are sanctioned by INDAUTOR through administrative fines.

Commercial infringements, on the other hand, involve the unauthorized use of protected works for profit, such as reproducing, distributing, or selling copies without permission. These acts fall under IMPI's jurisdiction and have a commercial purpose, often linked to piracy or unfair competition.

In short, copyright infringements protect the author's moral rights, while commercial infringements address the unauthorized economic exploitation of creative works.

Therefore, if AI systems are trained using protected works without prior authorization from the rights holder, such acts may be considered infringements. Legal actions could potentially be brought against both the individual who carried out the unauthorized use and the party that facilitated it.

Whether such use constitutes an actual infringement will depend on how the work was used in the AI training process — particularly whether the use qualifies as reproduction, public communication, or another exclusive right under Mexican copyright law.

6. *What, if any, copyright exceptions or defenses apply to the unauthorised use of protected material in training AI (e.g., fair use in US)?*

As noted above, Mexican copyright law does not currently include specific provisions addressing the use of protected works in the context of artificial intelligence. However, general exceptions and limitations on copyright may apply, depending on the circumstances.

Under Mexican law, certain uses of literary and artistic works may be carried out without the authorization of the rights holder, provided that:

- The normal exploitation of the work is not adversely affected,
- The use is non-commercial,
- The source is properly cited.

These exceptions include, among others:

- Short quotations,
- Reproduction for purposes of criticism, commentary, teaching, or academic research,
- Use in legal proceedings,
- Accessibility for persons with disabilities,
- Promotion in commercial establishments,
- Ephemeral recordings by broadcasters,
- Free public performances, and

- Use of excerpts in news reporting.

Some of these uses are permitted without requiring payment, provided there is no direct commercial benefit.

In the context of AI training, unauthorized use could potentially fall within one of these exceptions, but only if it strictly meets all the legal requirements. To date, Mexican authorities have not issued clear guidance on whether such uses qualify under these exceptions.

A user may also argue that their specific use of the copyright content (e.g., to train an AI model) is within the scope of their rights under a valid license agreement or other document authorizing/permitting such use.

7. *Is there a prescribed and legally recognised mechanism to opt-out copyright or other IP-protected work from any such exceptions or defenses?*

Mexican copyright law does not provide a formal mechanism to "opt out" of statutory exceptions or limitations, such as those allowing limited, non-commercial uses without authorization.

However, titleholders may, depending on the circumstances, take certain measures to protect their works against unauthorized use, including for AI training purposes. This may include:

- Implementing technical protection measures (TPMs),
- Using explicit license terms or terms of service that restrict specific uses,
- Pursuing contractual remedies in the event of a breach.

In this context, even if a user attempts to rely on a statutory exception, they could still be liable for breach of contract if their use violates agreed-upon licensing terms or digital platform policies. Therefore, while the exceptions under the law cannot be waived, rights holders can reinforce their rights through private agreements and technological controls.

8. *What is the test for whether the <u>output</u> of a generative AI system infringes works that were used in its training? If there is infringement in such a situation, would the tool provider or the user of the tool be liable (or both)? How is this affected by the location of servers, providers and users respectively?*

To establish a claim for copyright infringement under Mexican law, the rights holder must demonstrate:

- That they own valid copyright in the original work used in training, and
- That the AI-generated output constitutes a violation of copyright, consisting of a modification, alteration, use of original elements, or other unauthorized use of protected elements of that work.

Even if the data provided for AI training is infringing, if the result of the AI does not substantially reproduce the work, it may not be considered infringing.

Either the tool provider or the user or both may be liable for copyright infringement, depending on the facts.

The provider may be directly liable in cases where it trains the AI tool through unauthorized use of copyrighted works. It may also be liable if it designs the AI tool to generate infringing results.

The user may also be liable, particularly if they commercially exploit or publicly distribute AI-generated content that infringes copyright. Even if the user did not build or train the model, they remain responsible for ensuring that the output does not violate third-party rights.

Not only these subjects may be liable, but there is also liability for owners or distributors of platforms, developers or engineers, advertising agencies or marketing companies.

In all cases, the specific circumstances must be carefully considered. However, it is important to bear in mind that there is always a risk of infringing copyright-protected works when using or distributing AI-generated content.

9. *If copyright protected work is used to train AI, is there any established obligation to maintain copyright management information in the outputs or liability for failing to do so?*

Mexican copyright law does not currently impose a specific obligation to retain or include copyright management information (CMI) in outputs generated by artificial intelligence systems. However, liability may arise where such information is intentionally removed and this leads to, facilitates, or conceals an infringing use.

Confidential Information

10. *What legal principles govern the protection of company confidential information disclosed within AI prompts, in this territory?*

In Mexico, the confidential information of companies is protected by different provisions:

IP Law

In this case, within the Federal Law for the Protection of Industrial Property, confidential information of companies is recognized as a trade secret, provided that it complies with the following characteristics:

- It is **confidential** (not publicly known or easily accessible);
- It has **commercial value** due to its secrecy; and
- Reasonable **measures have been taken to maintain its confidentiality**.

Once such information is made available to third parties on a voluntary basis without any measures to maintain its confidentiality, it automatically loses that status.

If such information is included in an AI prompt, and is disclosed, misused and/or accessed without authorization, it could be considered an industrial property infringement.

Civil Liability

If the disclosure of confidential information of a company causes any moral damage to the company, the payment of compensatory damages may be claimed, in addition to claims for material damage.

Moral damage is understood as the harm that a person suffers in its feelings, affections, beliefs, decorum, honor, reputation, private life, physical configuration and appearance, or in the consideration that others have of themselves.

Data Protection

If the confidential information used contains personal data, it will also be protected by the provisions contained in the Federal Law for the Protection of Personal Data in Possession of Private Parties.

In the event of providing information containing personal data, without the authorization of the data owner, the said Law may be violated.

Criminal Law

If any confidential information is in the possession of public officers, and they disclose it without any authorization or justification, they may be subject to a prison sentence of 4 to 10 years, as well as a financial penalty.

Likewise, anyone who discloses, appropriates or uses a trade secret, without legal right and without the corresponding authorization, in order to cause damage and/or obtain a benefit, may be subject to a prison sentence of 2 to 6 years, plus a financial penalty.

NIGERIA

Patents

1. *Does the law of this territory recognise patent rights in AI-generated inventions and/or AI-assisted inventions? If so, briefly what are the particular criteria for patentability and inventorship and who owns the patent rights?*

The current legislation in Nigeria is the Patent & Design Act (PDA) of 1971, which does not expressly address AI-generated or AI-assisted inventions. Under Section 1 of the Act, an invention is patentable if its is new, results from an inventive activity and is capable of industrial applications. Improvements on prior patented inventions are also protectable, where they satisfy the same tripartite criteria.

While the foregoing section addresses patentability, inventorship is addressed in Section 2 of the Act which distinguishes between the 'statutory inventor' that filed for a patent and the 'true inventor' that created the invention. Under the Act, the true inventor is a person to be named on the patent and such requirement cannot be modified by contract.

As the law envisages that the 'True Inventor' is a human, it is clear that purely AI generated inventions are unlikely to qualify for patentability.

However, AI-assisted work may qualify for patentability if the above criteria are met, particularly where the human effort is properly documented and is substantial.

2. *Does the law, or patent office practice, address whether AI-generated, artificial 'prior art' could affect validity of patents?*

Under Section 3(2) of the PDA on patentability, "*an invention is new if it does not form part of the state of the art*". The next subsection then proceeds to provide ample and encompassing description of the specific terms as follows:

> "…."the art" means the art or field of knowledge to which an invention relates and "the state of the art" means everything concerning that art or field of knowledge which has been made available to the public anywhere and at any time whatever (by means of a written or oral description, by use or in any other way) before the date of the filing of the patent application relating to the invention or the foreign priority date validly claimed in respect thereof, so however that an invention shall not be deemed to have been made available to the public merely by reason of the fact that, within the period of six months preceding the filing of a patent application in respect of the invention, the inventor or his successor in title has exhibited it in an official or officially recognised international exhibition."

From the foregoing Sections, particularly the reference to the underlined phrases and the express exclusion of only inventions publicised six months before filing in an official exhibition, it is apparent that the PDA is unconcerned about the source or mode of generation of the publicly available prior art. As long as the AI-generated or assisted work is publicly available, it would be sufficient to exclude an invention from being granted a patent, for lack of novelty.

Copyright and Related Rights (training or output infringement)

3. *Does this territory have a copyright registration system, and if so can AI-generated works be registered? What, if any, are the criteria for registration?*

Under the Nigerian Copyright Act 2022 (as with previous legislations in this area), artistic, musical, literary and other such works enjoy automatic copyright upon creation and fixation. Section 4 of the Act expressly states that "*Eligibility for copyright under this Act shall not require any formality*."

However, Section 87 of the Act indicates that persons may register works to ease evidence in court, but expressly indicate that '*the registration of a work does not confer copyright*.' Therefore, registration is entirely voluntary and is often referred to as a 'notification' system.

Regarding the criteria for such registration, the Act does not give precise guidance but merely states that only works 'eligible for copyright' may apply for such registration in the prescribed manner. In turn, Section 2 of the Act provides the criteria for eligibility as follows:

- some effort has been expended on making the work, to give it an original character and
- the work has been fixed in any medium of expression known or later to be developed, from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device.

Given the human-centric nature of copyright law, fully AI-generated works without human creative input are unlikely to be registrable

4. *Aside from any copyright registration system, does the law recognise the subsistence of copyright (and/or related IP rights) in works generated (a) entirely by an AI system, and (b) with the assistance of AI tools? If so, who is the author and who is the first owner of the rights?*

   (a) The Nigerian Copyright Act envisages that a work subject to copyright is authored by a 'person' and in fact Section 5 expressly confers copyright work by an author who is 'an individual' who is a citizen or habitual resident in Nigeria. The forgoing strongly indicates that work generated entirely by an AI system would not be eligible for copyright protection.

   (b) However, in the case of AI systems, the law does not probe the method by which a copyrightable work is created, the tools employed nor the extent of the effort expended in making the work. The implication is that work created by human authors with the assistance of AI would still be considered eligible for copyright protection.

In such an instance, the author would be the human that applied AI to generate the work who would generally have first ownership of the work, unless already transferred by agreement or by virtue of their employment that requires creation of such work.

5. *Does this territory protect against unauthorised use of copyright-protected works for training AI? In what circumstances will unauthorized use of copyright-protected works for training AI constitute copyright infringement. ?*

While the law does not expressly proscribe unauthorised use of copyright-protected works for training AI, inferences of some limitations to this may be gleaned from various sections of the Act. For instance, Sections 9 through 13 of the Act proscribe the unauthorised creation of adaptations, communication and reproduction of even parts of work subject to copyright, whether through wired or wireless means. As AI training may often involve adaptations, communication and reproduction, the same can be argued to be copyright infringement under the current wordings of the Nigerian Copyright Act.

6. *What, if any, copyright exceptions or defenses apply to the unauthorised use of protected material in training AI (e.g., fair use in US)?*

Under Section 20 of the Nigerian Copyright Act, one of the exceptions to copyright is fair dealing for purposes such as:

(a) private use ;

(b) parody, satire, pastiche, or caricature ;

(c) non-commercial research and private study ;

(d) criticism, review or the reporting of current events.

The Act however restricts the reliance on the 'fair dealing' grounds by the following proviso:

> "Provided that in determining whether the use of a work in any particular case
>
> is fair dealing, the factors to be considered shall include the —
>
> (i) purpose and character of its usage,
>
> (ii) nature of the work,
>
> (iii) amount and substantiality of the portion used in relation to the work as a whole, and
>
> (iv) effect of the use upon the potential market or value of the work."

While the courts are yet to determine whether training AI using copyright protected works as well as text and data mining (TDM) would fall under this exception, it would be difficult to justify the use of such works in training AI under the fair dealing criteria, which is significantly narrower than the fair use doctrine in the US.

7. *Is there a prescribed and legally recognised mechanism to opt-out copyright or other IP-protected work from any such exceptions or defenses?*

There is no prescribed mechanism to opt out from any such exception or defences. Accordingly, rights holders can control access through licensing or technical measures (e.g., paywalls), but there is no formal opt-out framework. The absence of such a mechanism leaves rights holders reliant on contractual agreements or litigation to enforce their rights.

8. *What is the test for whether the output of a generative AI system infringes works that were used in its training? If there is infringement in such a situation, would the tool provider or the user of the tool be liable (or both)? How is this affected by the location of servers, providers and users respectively?*

The test for infringement would likely follow traditional principles, that is, whether the output is substantially similar (substantial copy) to the protected work. Given AI wide access, it is likely that the question of 'opportunity to copy' (i.e. access to the work) would generally be decided in favour of copyright holder, once it is shown that the work has been published.

Liability could fall on the tool provider or user, depending on their involvement and knowledge of the use of copyright-protected material.

While the location of servers or parties may affect the question of jurisdiction, the location of the server does not affect the substantive test of infringement, particularly when the 'infringing output' is accessible or produced in Nigeria or the 'infringing input' is sourced from Nigeria.

9. *If copyright protected work is used to train AI, is there any established obligation to maintain copyright management information in the outputs or liability for failing to do so?*

Section 51 of the Act protects copyright management information (CMI), prohibiting its removal or alteration if done to conceal infringement. Since the law ties the unlawfulness of removal or alteration of CMI to infringement, the question of whether the exclusion of such CMI is unlawful is determined by whether the use of such work amounts to infringement, a question yet to be answered by judicial authority.

However, if the use of AI for training is found to be infringement, the device involved in such violations may be impounded, and user, sellers and other such persons (depending on their knowledge and intention) may be criminally liable.

Confidential Information

10. *What legal principles govern the protection of company confidential information disclosed within AI prompts, in this territory?*

Confidential information disclosed in AI prompts is governed by common law principles of confidentiality and contractual agreements. Nigerian courts may enforce non-disclosure agreements or equitable remedies for breach of confidence, but there is no specific caselaw on AI-related confidentiality issues.

POLAND

Patents

1. *Does the law of this territory recognise patent rights in AI-generated inventions and/or AI-assisted inventions? If so, briefly what are the particular criteria for patentability and inventorship and who owns the patent rights?*

Polish law recognises patent rights for inventions, but there is no specific regulation addressing AI-generated inventions. For an invention to be patentable, it must be novel, involve an inventive step, and be industrially applicable. The inventor is typically a natural person, and ownership of the invention and the right to apply for a patent initially belongs to the inventor unless assigned or transferred.

In the context of AI-assisted inventions, the human who contributed to the inventive process would likely be considered the inventor. AI is not excluded from patentability if it provides a technical contribution.

2. *Does the law, or patent office practice, address whether AI-generated, artificial 'prior art' could affect validity of patents?*

Polish patent law does not specifically address AI-generated artificial 'prior art'. Prior art generally includes anything that has been made publicly available before the filing date of a patent application. The Polish Patent Office (UPRP) typically focuses on the substance of the disclosure (whether and when it became available to the public) rather than the specific method of generation.

The validity of patents could be affected if AI-generated content is considered prior art, but this would depend on whether such content meets the criteria for prior art under existing laws.

Copyright and Related Rights (training or output infringement)

3. *Does this territory have a copyright registration system, and if so can AI-generated works be registered? What, if any, are the criteria for registration?*

Poland does not have a formal copyright registration system. Copyright protection is automatic upon the creation of a work.

4. *Aside from any copyright registration system, does the law recognise the subsistence of copyright (and/or related IP rights) in works generated (a) entirely by an AI system, and (b) with the assistance of AI tools? If so, who is the author and who is the first owner of the rights?*

Polish law recognises copyright in works that are original and result from human creativity. Therefore, works created entirely by AI would not have copyright protection.

For AI-assisted works, the human involved in the creation process would typically be considered the author and first owner of the rights. However, it will be necessary to conduct an individual analysis each time to determine whether the human contribution (human input) was sufficient to warrant protection under copyright law. Furthermore, the scope of protection is unclear (i.e. whether only the "human input" to an AI-generated work is to be protected, or whether the protection extends to the entirety of the work).

5. *Does this territory protect against unauthorised use of copyright-protected works for training AI? In what circumstances will unauthorized use of copyright-protected works for training AI constitute copyright infringement. ?*

In principle, to lawfully use such works for AI training, prior consent from the right holder must be obtained unless the use is clearly covered by an existing exception or limitation. Traditionally, exceptions under Polish law (such as the private use exception) are interpreted narrowly, and commercial-scale activities or large-scale data collection and reproduction would generally not fall under these exceptions.

However, the recently implemented text and data mining (TDM) exception can be relevant to AI training (see reply to question 6 below).

If the work is used beyond the scope of any applicable exception, unauthorised reproduction or alteration of the copyright material may constitute infringement. Whether a specific AI training activity amounts to infringement would depend on the particular facts of the case, including the purpose and extent of the use of the protected work and whether permission was obtained. Since Polish law does not yet provide specific rules for AI-related data processing, courts would likely apply the general framework of copyright protection, including assessment of originality, copying of a substantial part, and whether the use is covered by any recognised statutory permission.

6. *What, if any, copyright exceptions or defenses apply to the unauthorised use of protected material in training AI (e.g., fair use in US)?*

Under Polish law, there is no general "fair use" exception comparable to that in the United States. Instead, Poland recognises a set of narrowly construed exceptions and limitations (*dozwolony użytek*), which may allow limited uses of protected works without the right holder's permission. Relevant exceptions include private use, quotation, and some educational or research-related use. However, these exceptions are typically interpreted restrictively and are unlikely to cover large-scale or commercial AI training.

Recently, Poland has implemented provisions on text and data mining (TDM), which may allow the unauthorised use of protected materials in AI training under certain conditions. Under this exception, publicly disclosed works may be reproduced and processed automatically in order to identify patterns, trends, or correlations.

There are two paths:

- Scientific/academic research: under certain conditions, cultural heritage institutions, universities, and other research-focused entities may use works for TDM without needing the rights holder's authorisation;
- Commercial TDM: Polish law permits the reproduction of publicly disclosed works for TDM as long as the right holder has not opted out.

Significantly, right holders can block TDM by issuing an explicit reservation for their works. Further, works used for TDM can only be stored for the necessary duration of the analysis; indefinite retention is not permitted.

7. *Is there a prescribed and legally recognised mechanism to opt-out copyright or other IP-protected work from any such exceptions or defenses?*

There is a mechanism allowing right holders to opt out of text and data mining (TDM) for their works. Polish copyright law permits duplication of publicly disclosed works for TDM purposes but also grants rights holders the option to opt-out of TDM. This mechanism requires that the reservation be:

- clearly stated;

- appropriate to the manner in which the work is made available;
- presented in a machine-readable format (together with relevant metadata, but the law does not specify exactly how such metadata should be structured).

Although the statutes outline the core requirements, practical frameworks or industry standards for implementing such reservations have not yet been fully developed. Nevertheless recently some industry associations and collective copyright management organisations, such as ZAiKS (which manages rights to musical works including lyrics and compositions) and Izba Wydawców Prasy (*Chamber of Press Publishers*) recommend that creators and publishers include opt-out clauses to protect their works from unauthorized use in AI training; they also provide guidance on how to effectively prevent such use. This includes placing opt-out notices in website terms of service or using a robots.txt file to signal to web crawlers that the content must not be used for text and data mining (TDM). Major Polish publishers like Agora have implemented these protections among other things by displaying opt-out notices directly on their websites, at the bottom of pages and by linking to detailed policies. These notices explicitly prohibit the use of published content for TDM, except for indexing by search engines.

8. *What is the test for whether the output of a generative AI system infringes works that were used in its training? If there is infringement in such a situation, would the tool provider or the user of the tool be liable (or both)? How is this affected by the location of servers, providers and users respectively?*

Test regarding copyright infringement

There is no specific statutory test designed exclusively for assessing whether the output of a generative AI system infringes works used in its training. Instead, courts and legal practitioners would apply the general principles of copyright infringement. The core question focuses on whether the generated output reproduces or closely resembles protectable, original elements of the source works, rather than merely replicating ideas or concepts. If the allegedly infringing material proves to be a recognisable and substantial reproduction of the copyrighted work and falls outside the scope of any statutory exception or valid licence, infringement may be found.

Liability

Under Polish copyright law, liability in cases of alleged infringement by a generative AI system can extend to both the user and the tool provider, depending on each party's actions and level of knowledge.

- User's liability: a person who reproduces, disseminates, or otherwise exploits a copyright work without authorisation can be directly liable (civilly and potentially criminally) if the exploitation exceeds the scope of any available statutory exceptions, such as text and data mining (TDM).
- Tool provider's liability: tool providers can under certain circumstances be held liable for contributory or secondary infringement if they knowingly facilitate, encourage, or fail to address repeated infringements by their users.

It seems that more often we will be dealing with user's liability as tool providers could claim lack of knowledge of infringing content, limited control over users, etc.

Location of servers, providers and users

- Jurisdiction: Pursuant to the Brussels I Recast Regulation (Regulation (EU) No 1215/2012), Polish courts could assume jurisdiction if the harm (i.e., infringement) occurs or is felt in Poland, or if the defendant is domiciled or has assets in Poland. This can apply even if the AI tool sits on servers located abroad.
- Applicable Law: The Rome II Regulation (Regulation (EC) No 864/2007) generally determines that the law governing non-contractual obligations (like copyright infringement) is that of the country where the damage occurs or is likely to occur. If infringing output is accessible in Poland, Polish law may govern at least part of the claim.
- Enforcement: Any judgment rendered by a Polish court may need to be enforced in a foreign jurisdiction where the provider or user has its principal place of business or assets. This typically involves recognition and enforcement procedures under the relevant EU or international agreements, or the foreign country's local laws if that jurisdiction is outside the EU.

9. *If copyright protected work is used to train AI, is there any established obligation to maintain copyright management information in the outputs or liability for failing to do so?*

Under Polish copyright law, it is prohibited to remove or alter electronic rights-management information placed on or provided with a work, if such removal is carried out knowingly or leads to, enables, facilitates, or conceals copyright infringement. While there is no explicit rule tailored to preserving copyright management information in AI outputs, the general principle remains that one must not remove or falsify copyright information if attached to or associated with the work.

The facts of each case would be assessed to determine whether the user or provider unlawfully removed or failed to maintain copyright information and whether that removal facilitated or concealed an infringement.

Confidential Information

10. *What legal principles govern the protection of company confidential information disclosed within AI prompts, in this territory?*

Under Polish law, the protection of confidential company information is primarily governed by the Act on Combatting Unfair Competition of 16 April 1993 (as amended). This statute defines a trade secret as information of a technical, technological, organizational, or other commercial nature that has economic value, is not generally known or easily accessible, and is subject to reasonable confidentiality measures. If the information disclosed within an AI prompt meets this definition, it will be treated as a trade secret.

Accordingly, any unauthorised use, disclosure, or acquisition of such information in a manner contrary to fair market practice may constitute an act of unfair competition, entitling the harmed party to legal remedies such as injunctive relief, damages, or the publication of a judgment. Contractual arrangements, including non-disclosure agreements (NDAs) or internal policies, often underscore the obligation to maintain the confidentiality of such information, and may impose additional duties on employees, contractors, or partners.

Although there is no AI-specific Polish legislation dictating how information shared with large language models or similar AI tools must be handled, the general rules concerning

trade secrets, contractual obligations, and data protection laws remain fully applicable and impose a duty to ensure that confidential material is properly safeguarded.

SWITZERLAND

Patents

1. *Does the law of this territory recognise patent rights in AI-generated inventions and/or AI-assisted inventions? If so, briefly what are the particular criteria for patentability and inventorship and who owns the patent rights?*

Yes for AI-assisted inventions (i.e., where a human contributes to the inventive concept), but purely AI-generated inventions (with no human inventor) are not considered patentable under Swiss law.

Swiss patent law operates under the principle that an inventor must be a human person. The Swiss Federal Patent Act (**PatA**) implicitly requires that a patentable invention results from human intellectual effort. In practice, this means the inventor is defined as the natural person who originated the technical teaching (Art. 3 and article 5 para. 2 PatA; Federal Patent Court, 24 August 2018, Decision S2018_003, cons. 11 – in French language).

In effect, Swiss law does not recognize AI as an inventor or co-inventor, and inventorship is strictly human. This was confirmed by the Swiss Federal Institute of Intellectual Property (IPI) in a patent application involving the AI system "DABUS" (**D**evice for the **A**utonomous **B**ootstrapping of **U**nified **S**entience). The IPI refused a patent application that named an AI as the sole inventor, on the ground that a machine cannot be an inventor under the Patent Act. The applicant, who asserted that he owned the AI's output, has appealed this refusal to the Federal Administrative Court, which upheld the refusal absent a human inventor (Federal Administrative Court, 26 June 2025, Decision B-2532/2024, cons. 4.9 – in German language, press release in English).

AI-assisted inventions are evaluated under the same patentability criteria as any other invention (novelty, inventive step, industrial applicability) in accordance with article 1 para. 1 and 2 PatA.

The natural person mentioned as the inventor in the patent register benefits from the legal presumption that he/she is indeed the inventor. Nevertheless, because the accuracy of the mention of the inventor is not examined by the IPI, this presumption may be reversed by the true inventor in a civil action (article 74 para. 6 PatA).

Ownership of the patent initially vests in the inventor. However, for employee inventions, article 332 of the Swiss Code of Obligations (**CO**) provides that inventions made in the course of employment for performance of contractual work belong to the employer. In such cases the employer is the original patent owner, though the employee is still the inventor of record.

An ongoing joint project by the IPI and the University of Zurich has been assessing the effect of inventions generated by AI on the patent system. It is expected to be closed with a workshop in the coming months. In addition, the Federal Council on 31 August 2024 has issued a legal baseline analysis (report as such in German language) which examines the requirements of the Council of Europe's AI Convention and the EU's AI Act, as well as their impact on Switzerland. It also analyses selected areas of Swiss legislation. The report concludes that no legislative action be required in the area of patent law.

2. *Does the law, or patent office practice, address whether AI-generated, artificial 'prior art' could affect validity of patents?*

There is no explicit rule or published guidance in Switzerland specifically on AI-generated prior art. In general, any information that has been made available to the public is considered prior art under Swiss patent law (as Switzerland is aligned with the European standard on the definition of prior art). This notion is technology-neutral – it does not matter how or by whom the information was generated. Therefore, if an AI system autonomously produced some publication or output and that output was publicly accessible before a given patent's filing date, it could in principle be cited as prior art against a patent application, just as a human-authored publication would be. There is no requirement that prior art be authored by a human, in order to count for novelty/obviousness purposes.

Copyright and Related Rights (training or output infringement)

3. *Does this territory have a copyright registration system, and if so can AI-generated works be registered? What, if any, are the criteria for registration?*

Switzerland does not have a copyright registration system. In line with the Berne Convention, Switzerland grants copyright protection automatically upon creation of a qualifying work, with no need for registration or formalities. A work is protected by copyright as soon as it is created in tangible form (or even if not fixed, as Swiss law does not require fixation), as long as it meets the criteria for protection pursuant to article 2 of the Swiss Federal Copyright Act (CopA).

4. *Aside from any copyright registration system, does the law recognise the subsistence of copyright (and/or related IP rights) in works generated (a) entirely by an AI system, and (b) with the assistance of AI tools? If so, who is the author and who is the first owner of the rights?*

To be protected under the Copyright Act, a creation must be an "intellectual creation" in the literary or artistic domain with an individual character. In practice this has always been understood to require human intellectual effort. The law explicitly states that "the author is the natural person who has created the work" (article 6 CopA).

Works generated entirely by an AI with no human involvement are not protected by Swiss copyright law. Such AI-generated outputs lack a human creator, and thus fail the requirement of being the expression of a person's intellectual creation. Swiss commentators and the IPI take the view that if the "creative service" or activity is performed by a machine, the result does not originate from a human mind and falls outside copyright protection. It enters the public domain upon creation – anyone may use it freely, provided it does not infringe the copyright of a third party.

Works created with the assistance of AI tools can be protected by copyright – provided that a human author's own creative choices sufficiently determine the final form of the work. Using AI as a tool is analogous to using any other tool or software in the creative process. The key question is whether the human user exercised creative control or made free and creative choices that give the work an "individual character". If yes, the resulting work is considered the human author's intellectual creation and is protected. For example, if a person uses an image-generating AI, but the person devises the prompt (concept), selects or curates the output, or edits the AI-produced draft in a creative way, the final output may reflect that person's personal contribution and thus qualify as a work authored by that person. On the other hand, if the AI's role dominates to the extent that the human's input is minimal or not creative, the output might not

reach the threshold of being the human's own intellectual creation, and therefore might not be protected.

In cases of AI-assisted creation that do qualify as works, the author is the human who carried out the creative activity (article 6 CopA). That human author is the first owner of copyright in the work. If multiple people contributed (e.g. two people jointly guided the AI), they could be joint authors/owners, assuming each made an authorship-level contribution (article 7 CopA). Ownership can be transferred or licensed.

In an employment context, if an employee creates a work using AI tools as part of their job, the default Swiss rule is that the employee remains the author, but the employer may enjoy a license or even by contract an assignment of economic rights – except for software, where article 17 CopA provides that computer programs created by an employee may exclusively be used by the employer.

5. *Does this territory protect against unauthorised use of copyright-protected works for training AI? In what circumstances will unauthorized use of copyright-protected works for training AI constitute copyright infringement?*

Using copyrighted material to train an AI without permission can infringe copyright, because the training process involves creating copies of the protected works. Under Swiss law, the copyright owner has the exclusive right to reproduce their work (article 10 para. 2 CopA). This covers any form of copying, including creating a corpus for use in AI training.

Any unauthorized reproduction of a protected work is an infringement unless a specific exception or license applies.

6. *What, if any, copyright exceptions or defenses apply to the unauthorised use of protected material in training AI (e.g., fair use in US)?*

Swiss copyright law has no open-ended "fair use" doctrine. It provides only specific exceptions ("limitations") where certain uses of works are permitted without authorization. These exceptions are exhaustively listed in the Copyright Act (articles 19–28b CopA). In the context of the training of AI models, the following exceptions are pertinent: (i) the exception for internal use (article 19 CopA), (ii) the scientific research exception (article 24d CopA), and (iii) the exception for temporary reproductions (article 24a CopA).

The internal use exception (article 19 para. 1 letter c CopA) allows the reproduction of works within companies for the purposes of internal information or documentation. These reproductions may also be performed by third parties on behalf of the company. However, this reproduction right is subject to significant limitations; in particular, it does not cover the (largely) complete reproduction of commercially available copies of works (article 19 para. 3 letter c CopA). In addition, the exception does not apply if the reproduction of content and subsequent training of AI systems goes beyond the collection, storage, and transfer of knowledge within the same organization. Therefore, the internal purpose is exceeded if an AI model is trained with the intention of offering the application outside the organization.

Article 24d CopA allows for the reproduction of works for scientific research without charge. This includes subsequent storage for backup and archiving purposes. The exception is designed to facilitate text and data mining and applies if reproduction is necessary for performing a specific technical procedure. Works must be lawfully obtained, whether made freely available on the internet by the owner or properly borrowed or purchased. The primary purpose of reproduction must be scientific research,

which can be either academic or commercial. Reproduction as part of training an AI model relies on a technical process, suggesting that providers of AI applications may rely on this exception. The main challenge will be ensuring the use remains primarily for scientific purposes.

To use works in digital form, intermediate storage is often necessary, such as in the CPU. To allow this without the author's consent, the exception for temporary reproductions (article 24a CopA) was introduced. This exception permits a transient or incidental reproduction if it constitutes an integral and essential part of a technological process, serves exclusively to enable transmission in a network between third parties by an intermediary or for lawful use of the work, and has no independent economic significance. The processing of copyrighted works for training AI models does not meet these criteria.

In conclusion, the exception provisions permit the use of copyright works for the training of AI models without the owner's consent under specific circumstances only. The Federal Council's legal baseline report on AI finds potential room for legislative action: it must be examined how the (further) development of AI can be ensured without infringing copyright and to what extent the interests of the copyright holders must be taken into account.

7. *Is there a prescribed and legally recognised mechanism to opt-out copyright or other IP-protected work from any such exceptions or defenses?*

There is no opt-out mechanism for any of the copyright exceptions, which are mandatory limitations of copyright. However, the owner of the work may implement technical protections preventing reproductions and conversions of digital copies of the works (digital rights management or **DRM**). To level the playing field, the user, by virtue of article 39a para. 4 CopA, has a "right to hack" in order to circumvent DRM protections, but its relevance is very limited in practice.

8. *What is the test for whether the output of a generative AI system infringes works that were used in its training? If there is infringement in such a situation, would the tool provider or the user of the tool be liable (or both)? How is this affected by the location of servers, providers and users respectively?*

Even though an AI-generated output itself might not be protected by copyright, it can infringe an existing work's copyright if it reproduces protected content from that work. This is the case if the AI output contains elements copied from a prior copyright work, such that those elements represent an expression of that work's individual character. If so, the output is an infringing reproduction or adaptation of the original work.

Under Swiss law, any person who participates in an infringing act can be liable:

- The end-user who requested or uses the output could be directly liable for infringement if they took the output and distributed it or otherwise exploited it in a manner that infringes copyright (the generation of the copy as such would be exempt from copyright protection because of the private use exception).
- The AI provider can also potentially be liable, either directly or secondarily. If the AI system is designed in a way that it outputs substantial protected material from training data, one could argue the provider is engaging in an unauthorized act of making the work available to the public (by delivering it to the user) or at least is a contributory infringer facilitating the user's infringement. In particular, the provider can be accused of contributory negligence if there is an original work, in whose scope

of protection the AI application's output falls, which was impermissibly part of the training data and where the AI application simply reproduces this work.

It is also possible both parties are liable: the provider for providing/supplying the infringing material, and the user for actively requesting and using it. Swiss copyright law allows claims against anyone who participated in the infringement, including as an instigator or assistant. In an online context, Swiss courts have held that hosts or platforms can be liable if they do not take action to remove infringing content after notice; access providers on the other hand do not contribute to the infringement (Federal Supreme Court, 8 February 2019, 145 III 72 – in German language).

The location of the server, provider, and user can affect which law applies and whether Swiss courts have jurisdiction. Generally, Swiss copyright law applies to acts of infringement that occur in Switzerland. If the AI service is hosted abroad, the act of reproducing the content might occur on a foreign server – but if the output is delivered to a user in Switzerland or targeted to Swiss users, Swiss courts would still take jurisdiction.

9. *If copyright protected work is used to train AI, is there any established obligation to maintain copyright management information in the outputs or liability for failing to do so?*

Article 39c para. 1 CopA stipulates that electronic rights management information must not be removed or altered. Works from which the rights management information has been removed or altered may not be copied or made available in this form (article 39c para. 3 CopA). Violation of this provision may result in tortious liability or be a criminal offence under article 69a para. 1 letters c or d CopA.

In the unlikely event that the AI system's output can be regarded as copies of an original work that was used for training and the original work contained electronic rights-management information, then the creation of such copies without the electronic rights-management information may be unlawful. However, there is no established doctrine or case law in this regard.

Confidential Information

10. *What legal principles govern the protection of company confidential information disclosed within AI prompts, in this territory?*

In Switzerland, trade secrets and other confidential business information are protected by the Federal Act against Unfair Competition (**UCA**), which in article 6 UCA explicitly prohibits the unauthorized disclosure or exploitation of manufacturing or trade secrets. In addition, article 162 of the Swiss Criminal Code makes it a crime to betray a manufacturing or business secret that one is legally or contractually bound to protect. Furthermore, employees have a duty of loyalty (article 321a CO), which encompasses keeping employer secrets confidential. Statutory secrecy obligations imposed on bankers, attorneys, healthcare or other professionals may apply, too.

The notion of confidentiality is essentially the same under all above-referenced statutes. It requires all of the following elements:

- Not publicly known: Only relatively unknown information can be a secret, i.e. information that is neither well-known nor generally accessible;
- Intent to keep secret: The owner of the secret has the intent to limit knowledge of the secret fact to a certain circle of persons. In addition the intent to keep the

knowledge secret must be discernible, and this may also result from the circumstances; and

- Interest in secrecy: Keeping the fact secret is an interest of the owner of the secret that is worth protecting, based on objective criteria.

Disclosure is not defined. Its meaning is be deduced from a general term of disclosure found in criminal law. In this regard, disclosure always refers to an unauthorised third person, i.e. a person different from the owner of the secret and from the holder of the secret or their employees and service providers. For disclosure to occur, actual revelation to an unauthorized third party is required; merely making it possible for a third person to acquire knowledge of the information is not sufficient (Federal Supreme Court, 8 August 2018, 6B_1403/2017 – in German language).

In the light of the above principles, the unauthorized use of trade secrets or other confidential information within AI prompts may constitute a violation of secrecy obligations, if the prompt is conveyed to a provider that is not bound by an obligation to maintain confidentiality.

If the holder of a secret wants to allow the use of an AI system and also to disclose (certain) confidential information in the course of such use, adequate confidentiality safeguards must be implemented with the AI service provider. Without such confidentiality safeguards, the disclosed confidential company information may lose its protection because it may no longer satisfy the elements of confidentiality outlined above. Moreover, the use of confidential information within AI prompting, if eventually leaked, may then qualify as unauthorized disclosure and as such constitute a criminal offence.

UNITED KINGDOM

Patents

1. *Does the law of this territory recognise patent rights in AI-generated inventions and/or AI-assisted inventions? If so, briefly what are the particular criteria for patentability and inventorship and who owns the patent rights?*

Yes. UK law recognises patent rights for AI-assisted inventions where human inventors are involved, but not for purely AI-generated inventions without human inventors.

The UK Supreme Court has ruled in Thaler v Comptroller-General [2023] UKSC 49 that under the Patents Act 1977, an "inventor" must be a natural person. AI systems cannot be listed as inventors. The Court rejected the argument that ownership of an AI system confers rights to patent its autonomous inventions.

For AI-assisted inventions, patent rights can be obtained if human inventors are named who have made a significant contribution. The humans would need to satisfy the normal criteria for inventorship under UK patent law. However, inventions generated autonomously by AI systems without meaningful human input are not currently eligible for patent protection under UK law. The Supreme Court indicated that legislative changes would be needed to allow patenting of purely AI-generated inventions.

The Court emphasised its ruling was based on interpreting the current Patents Act, not deciding whether AI-generated inventions should be patentable as a policy matter. Any changes to recognise patent rights for autonomous AI inventions would require amending the legislation.

2. *Does the law, or patent office practice, address whether AI-generated, artificial 'prior art' could affect validity of patents?*

While the UKIPO has issued guidance on the patentability of AI-related inventions, such as the need for AI inventions to make a technical contribution and be novel, there has been no formal statement about how AI-generated content could be treated as prior art. However, it is reasonable to explore several key considerations that could shape future discussions.

In the UK, as in many jurisdictions, prior art is generally considered to be any information made available to the public before the priority date of a patent application. Traditionally, this has been limited to human-generated content. However, the potential for AI systems to generate vast amounts of information raises questions about whether such AI-generated content should be considered valid prior art.

Several considerations arise. Verifiability is a key concern - how can the date and content of AI-generated prior art be reliably verified? There is also the question of enablement - would AI-generated disclosures meet the requirement of enabling a person skilled in the art to perform the invention? The concept of a "person skilled in the art" itself might need to evolve if AI tools become commonplace in invention and research.

The sheer volume and searchability of AI-generated content pose practical challenges. Patent examiners and inventors would need to manage and search through potentially vast amounts of AI-generated prior art. There is also the question of intentionality - should there be a distinction between AI-generated content intended as technical disclosure versus incidental generation?

While the UKIPO has not yet issued specific guidance on this matter, it is likely that this topic will need to be addressed in the future.

Copyright and Related Rights (training or output infringement)

3. Does this territory have a copyright registration system, and if so can AI-generated works be registered? What, if any, are the criteria for registration?

No, the UK does not have a copyright registration system. Copyright in the UK is automatically arising and unregistered.

4. Aside from any copyright registration system, does the law recognise the subsistence of copyright (and/or related IP rights) in works generated (a) entirely by an AI system, and (b) with the assistance of AI tools? If so, who is the author and who is the first owner of the rights?

English law may recognise the subsistence of copyright in works which are created entirely or with assistance of AI tools but it this is not entirely straightforward. As set out below.

Whether the law recognise the subsistence of copyright (and/or related IP rights) in a work created entirely by an AI system is currently somewhat unclear. A work generated by an AI system would need to (a) fall within one of the specified categories of work under the Copyright, Designs and Patents Act 1988 (the "CDPA"), and (b) be "original".

An AI created work could meet the first criterion, e.g. an image, a portion of text, software code, or music.

However, it is unclear that an AI generated work could meet the requirement of being "original". A work is original under English law if it is the "author's own intellectual creation". This requirement was first described in EU case law, but has been re-affirmed in post Brexit case law, and means that,

> "the author was able to express their creative abilities in the production of the work by making free and creative choices so as to stamp the work created with their personal touch. This criterion is not satisfied where the content of the work is dictated by technical considerations, rules or other constraints which leave no room for creative freedom"[2]

That said, if an AI created work met these requirements, English law does include a mechanism to allocate authorship for computer-generated works (s.9(3) CDPA, and s.214(2) in relation to unregistered designs). These provide that the author/designer is the person "by whom the arrangements necessary for the creation of the work/design are undertaken". The government has proposed repealing these provisions since they do not sit comfortably with generative AI. Further, the government has stated that incentivising the production of purely computer-generated designs, by protecting them, could also result in human-generated designs losing protection owing to lack of novelty or 'individual character' as required for rights to arise.

In the case of work created with the assistance of AI tools, so long as the work meets the minimum requirements of falling within a recognised category of work and is "original", a work created with the assistance of AI (but with an identifiable human author) will generally be protected as a copyright work under the CDPA.

[2] *THJ Systems Limited, Optionnet LLP v Daniel Sheridan, Sheridan Options Mentoring Corporation* [2023] EWCA Civ 1354

5. *Does this territory protect against unauthorised use of copyright-protected works for training AI? In what circumstances will unauthorized use of copyright-protected works for training AI constitute copyright infringement?*

The UK does not have specific law relating to the unauthorised use of copyright-protected works for training AI. Such use would currently be determined in accordance with wider copyright law issues. The UK protects against unauthorised use of copyright protected works, including for uses which would appear to include training AI. The protection available depends on the nature of the original copyright work. The CDPA sets out the acts which are restricted to copyright owners (or those authorised by them). Of most relevance to this situation is s.17(2) under which,

> "copying in relation to a literary, dramatic, musical or artistic work means reproducing the work in any material form. This includes storing the work in any medium by electronic means.
>
> …
>
> (6) Copying in relation to any description of work includes the making of copies which are transient or are incidental to some other use of the work."

If a literary work such as a novel, journal article or newspaper article is used to train AI without the authorisation of the copyright owner then it may constitute copyright infringement. There remains some uncertainty in this matter because this question has not yet been considered by the English courts. It had been hoped that the High Court would consider this issue in *Getty Images vs Stability AI* ([2025] EWHC 2863 (Ch) but Getty Images withdrew its claims of primary infringement because there was insufficient evidence that the AI at issue was trained in the UK.

6. *What, if any, copyright exceptions or defenses apply to the unauthorised use of protected material in training AI (e.g., fair use in US)?*

This is an area of active policy development in the UK. At the time of writing, the UK's CDPA does not include either a fair use doctrine or an exception to copyright infringement for "text and data mining" (as is the case in the EU). Instead, only a limited number of "fair dealing" defences exist.

The fair dealing defences are unlikely to be relevant to the unauthorised use of protected material in training AI.

The defences include those for: (a) "non-commercial research" which is unlikely to be available to developers of commercial AI systems, (b) use of a copyright work for the purpose of criticism or review, (c) quotation of a copyright work (d) fair dealing with a work for the purposes of caricature, parody and/or pastiche.

There are also some limited exceptions to copyright infringement in relation to software contained in the CDPA. In essence these are:

- the right of a "lawful user" of a computer program to make a back-up copy (s.50A);
- the right to decompile a program in order to create an independent compatible program (s.50B);
- the right of a lawful user to observe, study or test a computer program for certain purposes (s.50BA); and

- a limited right to copy or adapt a program where this is necessary for the lawful use of that program (s.50C).

That said, successive governments have consulted on making changes to the CDPA to liberalise copyright protection in favour of AI providers. This is highly controversial, with copyright owners and creative groups and individuals campaigning against changing the balance of protection in favour of AI providers.

7. Is there a prescribed and legally recognised mechanism to opt-out copyright or other IP-protected work from any such exceptions or defenses?

There is no contracting out from the s. 50 CDPA defences mentioned above. Another provision of the CDPA (s.296) sets out that any agreement which purports to restrict any of these rights will be void in so far as the agreement relates to the s.50 CDPA defences.

It is possible for parties to contract out of the defences for non-commercial research, use of a copyright work for the purpose of criticism or review, quotation of a copyright work, and fair dealing with a work for the purposes of caricature, parody and/or pastiche.

8. What is the test for whether the <u>output</u> of a generative AI system infringes works that were used in its training? If there is infringement in such a situation, would the tool provider or the user of the tool be liable (or both)? How is this affected by the location of servers, providers and users respectively?

To establish a claim for copyright infringement, the claimant must show: 1) that they own copyright in the training material; 2) that the tool provider had access to the copyrighted work; and 3) that the infringing work reproduces (copied) the whole or a substantial part of the training material.

The test of substantial part, as in copyright infringement more generally, is not a quantitative test but rather a qualitative test of whether the infringing material reproduces material comprising, "the author's own intellectual creation".

For the infringement to have taken place in England (and/or Wales), the claimant must be able to show a connection with the UK (in particular, it would likely be necessary for the AI system to have been trained in the UK).

It is conceivable that either or both, the tool provider and user of the tool would be liable in this scenario but the main case in this area, Getty Images vs Stability AI ([2025] EWHC 2863 (Ch), considered whether the AI model developer (Stable Diffusion) was liable for secondary copyright infringement. However, it was judged that the AI model weights do not embody or store copies of the original works, and additionally, that the models were trained outside the UK, and as a result the court determined that Stable Diffusion was not liable for secondary copyright infringement.

9. If copyright protected work is used to train AI, is there any established obligation to maintain copyright management information in the outputs or liability for failing to do so?

There is no specific obligation in the Copyright Designs and Patents Act 1988 to maintain copyright management information in the outputs from the AI system.

Confidential Information

10. What legal principles govern the protection of company confidential information disclosed within AI prompts, in this territory?

Again, the UK does not have specific legislation on this question in relation to AI prompts, but rather this would be considered within the general laws of confidentiality and trade secrets. The United Kingdom has two separate regimes for protecting trade secrets, which operate in parallel:

- common law of confidentiality (breach of confidence); and
- Trade Secrets (Enforcement, etc) Regulations 2018 (SI 2018/597) (the Regulations).

The Regulations came into force in the United Kingdom on 9 June 2018 and implemented the EU Trade Secrets Directive (EU) 2016/943.

The essential principles of common law doctrine of the law of confidence have been long settled, with the three-stage test set out in Coco v AN Clark Engineers Limited[1969] RPC 41 defining confidential information (and breach thereof) as information that:

- has a 'necessary quality of confidence';
- was provided in circumstances giving rise to an obligation of confidence; and
- was used without the authorisation of the holder.

A trade secret (under common law) is best defined as set out in the Regulations. Regulation 2 defines a 'trade secret' as information that:

- is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among, or readily accessible to, persons within the circles that normally deal with the kind of information in question;
- has commercial value because it is secret; and
- has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

The definition of 'trade secrets' in the Regulation is derived from article 39(2) of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

UNITED STATES

Patents

1. *Does the law of this territory recognise patent rights in AI-generated inventions and/or AI-assisted inventions? If so, briefly what are the particular criteria for patentability and inventorship and who owns the patent rights?*

Yes. The USPTO has issued guidance indicating that AI-assisted inventions are not categorically unpatentable, but purely AI-generated inventions likely are unpatentable. This is in line with the Federal Circuit's holding that an "inventor" must be a human individual (see Thaler v. Vidal, Fed. Cir. 2022). Specifically, AI-assisted inventions are patentable "if one or more natural persons significantly contributed to the invention." Still, the inventors listed on the patent application must be natural persons; the AI system used to assist in the invention cannot be listed as an inventor. To determine whether a natural person significantly contributed to the invention, courts look to three factors (the Pannu factors): the natural person must "(1) contribute in some significant manner to the conception or reduction to practice of the invention, (2) make a contribution to the claimed invention that is not insignificant in quality, when that contribution is measured against the dimension of the full invention, and (3) do more than merely explain well-known concepts and/or the current state of the art." Inventorship Guidance for AI-Assisted Inventions, 89 Fed. Reg. 10043 (Feb. 13, 2024). This means that while AI can be used as a tool in the inventive process, a human must have masterminded the core idea or its realization.

2. *Does the law, or patent office practice, address whether AI-generated, artificial 'prior art' could affect validity of patents?*

Not yet. However, on April 30, 2024, the USPTO issued a request for comments ("RFC") regarding, among other things, "how the proliferation of AI could affect certain evaluations made by the Office, including what qualifies as prior art." The RFC recognizes the potential for AI-generated disclosures to massively expand the volume of prior art references (e.g. AI-written publications or code that might be technically available to the public) and raises the question of whether AI-generated disclosures should be afforded the rebuttable "presumption of operability/enabling disclosure." The USPTO specifically asked whether "AI-generated disclosure be treated differently than a non-AI-generated disclosure for prior art purposes." As such, the Office is asking for public input on whether prior art must be authored by humans and how, if at all, AI-generated disclosures should be treated differently from non-AI generated disclosures. Based on this request for comments, it is expected that the USPTO will eventually issue guidance on whether AI-generated disclosures can constitute prior art.

In addition, the RFC acknowledges that AI is likely to impact the existing legal standard for a "person having ordinary skill in the art" ("PHOSITA"). Thus, the USPTO seeks comments regarding, inter alia, whether a PHOSITA must be a natural person and how the required skill level of a PHOSITA should be moderated because of the availability of AI tools (e.g., if AI search or problem-solving tools are commonly used by practitioners in a field, should the knowledge/abilities of a PHOSITA be considered higher?).

These are open questions. No court ruling or statute has addressed AI-generated prior art or an AI-augmented PHOSITA standard. The USPTO held a public listening session in July 2024 to gather stakeholder views. (Impact of the Proliferation of AI on Prior Art and PHOSITA: Notice of Public Listening Session, 89 Fed. Reg. 48,467 (July 5, 2024), available at https://www.federalregister.gov/documents/2024/07/05/2024-14691/impact-of-the-proliferation-of-ai-on-prior-art-and-phosita-notice-of-public-

listening-session).It is expected to issue guidance or recommendations after reviewing public feedback. As of November 2025, however, no new rule or formal guidance has been implemented yet. For now, AI-generated content could in theory be cited as prior art if it was publicly accessible, but its weight and how examiners or courts handle such references remain under careful consideration by the USPTO.

Copyright and Related Rights (training or output infringement)

3. *Does this territory have a copyright registration system, and if so can AI-generated works be registered? What, if any, are the criteria for registration?*

Yes, the US has a copyright registration system.

The U.S. Copyright Office issued a policy statement: Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence (2023). It issued a further report: Copyright and Artificial Intelligence, Part 2 Copyrightability.

The report confirms that questions of copyrightability and AI can be resolved under existing law, without the need for legislative change. Using AI tools to assist rather than stand in for human creativity does not affect the availability of copyright protection for the output.

Copyright protects the original expression in a work created by a human author, even if the work also includes AI-generated material. Copyright does not extend to purely AI-generated material, or material where there is insufficient human control over the expressive elements. Whether human contributions to AI-generated outputs are sufficient to constitute authorship must be analyzed case by case.

Based on the functioning of current generally available technology, prompts do not alone provide sufficient control. 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.

In determining whether AI-generated works have sufficient human authorship, the Copyright Office will consider whether the AI contributions result from "mechanical reproduction" or 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.*

The Copyright Office has advised that:

- If a work's traditional elements of authorship (e.g. the actual expressive content such as text, images, music) were produced by a machine, the work lacks human authorship and the Office will not register it (e.g., when AI technology receives solely a prompt from a human and produces complex written, visual, or musical works in response)
- Where a work containing AI-generated material also contains sufficient human authorship to support a copyright claim, copyright will only protect the human-authored aspects of the work, which are "independent of" and do not affect the copyright status of the AI-generated material itself (e.g., a human may select or arrange AI-generated material in a sufficiently creative way that the resulting work as a whole constitutes an original work of authorship or an artist may modify material originally generated by AI technology to such a degree that the modifications meet the standard for copyright protection.)

Examples of material that may be protected by copyright are human-authored modifications of AI-generated material, and works for which a human author selected, arranged, or modified AI-generated material in a sufficiently creative way.

Copyright applicants seeking protection for works that contain more than a de minimis (more than trivial) amount of AI-generated content must disclose and disclaim the AI-generated material in new and pending applications as well as for registered works.

Additionally, recent legal developments have underscored the human authorship requirement: in Thaler v. Perlmutter (D.C. Cir. Mar. 18, 2025), a U.S. appellate court affirmed that copyright law requires a human author, rejecting an argument that an AI could be the author of a copyrighted work.

4. *Aside from any copyright registration system, does the law recognise the subsistence of copyright (and/or related IP rights) in works generated (a) entirely by an AI system, and (b) with the assistance of AI tools? If so, who is the author and who is the first owner of the rights?*

See Response to No. 3. Only natural persons can be an author, and the author is the first owner of the rights.

5. *Does this territory protect against unauthorised use of copyright-protected works for training AI? In what circumstances will unauthorized use of copyright-protected works for training AI constitute copyright infringement?*

In the US, any unauthorized reproduction, distribution, display, or performance of a copyrighted work, or creation of a derivative work based on a copyrighted work, may constitute copyright infringement if the user does not have an applicable defense such as a fair use defense. A fair use defense might apply to using protected materials to train AI models. A fair use defense is highly fact dependent and will be evaluated on a case-by-case basis. Factors that must be considered in evaluating the defense include: (1) the character and purpose of the use, including whether it is for commercial or nonprofit educational use, and whether it is transformative in nature (2) the nature of the copyrighted work, including whether it is creative or factual, (3) the amount and substantiality of the portion of the copyrighted work used, and (4) the effect of the infringing use on the potential market for or value of the copyrighted work.

Also, it is not clear if training alone constitutes infringement or if the model must be used to produce an infringing work. In some pending lawsuits, claims have been dismissed if there is no evidence or at least an allegation of infringing output.

Several cases have rendered decisions on fair use regarding the training of AI using copyrighted content. There is no per se rule. Each case is fact dependent.

In Thomson Reuters Enter. Ctr. GMBH v. Ross Intel. Inc., 765 F. Supp. 3d 382 (D. Del. 2025) (on appeal before the 3rd Circuit), the court found against a finding of fair use because Ross copied Thomson Reuters's Westlaw headnotes to train Ross' new AI legal-research search engine. The court found that Ross' use was not transformative because Ross copied headnotes from a legal research tool to create a competing legal research tool and there was market harm because Ross' tool directly competes with the tool from which it copied.

In Bartz v. Anthropic PBC, No. 24-cv-05417 (N.D. Cal. June 23, 2025) the court held that training an AI model on lawfully obtained, copyrighted books constituted fair use, finding the use exceedingly transformative. However, the court denied summary judgment on pirated books used to train AI, because while the use of these books for training was

transformative, the creation and maintenance of a permanent, general-purpose digital library of pirated works was not protected by fair use.

In Kadrey v. Meta Platforms, Inc., No. 23-cv-03417 (N.D. Cal. June 25, 2025), the court ruled that the use of the plaintiffs' works in training the AI model qualified as fair use because the training was highly transformative and because the plaintiffs had not provided sufficient evidence of harm. However, the court noted that more compelling evidence of market harm in future cases could lead to a different result.

6. *What, if any, copyright exceptions or defenses apply to the unauthorised use of protected material in training AI (e.g., fair use in US)?*

Fair use – see above.

Licensed use – the user may argue that their specific use of the copyrighted content (i.e. to train an AI model) is within the scope of their rights under a valid license agreement.

7. *Is there a prescribed and legally recognised mechanism to opt-out copyright or other IP-protected work from any such exceptions or defenses?*

There is no opt-out mechanism. However, companies may potentially protect against unauthorized use of their content for training AI models through, for example, using technical means to limit access, and use license agreements or terms of service. It is possible that in certain circumstances, even if the user has a fair use defense under copyright law, they may still potentially be subject to liability for a breach of contract claim (e.g., if they web scrape content in violation of terms of use).

8. *What is the test for whether the <u>output</u> of a generative AI system infringes works that were used in its training? If there is infringement in such a situation, would the tool provider or the user of the tool be liable (or both)? How is this affected by the location of servers, providers and users respectively?*

To establish a claim for copyright infringement, the claimant must show: 1) that they own copyright in the training material; 2) that the tool provider had access to the copyrighted work; and 3) that substantial similarity exists between the expression in the output and the protected elements in the training material.

Either the tool provider or the user or both may be liable for copyright infringement, depending on the facts. Direct liability may attach to the person responsible for reproducing, displaying or distributing the infringing work. In the US, secondary liability, including contributory and vicarious liability, may also attach. Liability for contributory infringement may apply where the actor knows of the direct infringement and encourages, induces, causes, or materially contributes to the direct infringement. Liability for vicarious infringement may apply when the actor has the authority and ability to control the direct infringer and profits from the infringement.

However, the U.S. Supreme Court has held that if a device has a legitimate purpose and has a substantial non-infringing use, its manufacturer will not be liable under copyright law for potential infringement by its users.

Generally, activities that occur entirely outside the United States are not actionable under US copyright law. Importation into the United States, without the authority of the owner of copyright, of a work that has been acquired outside the United States is an infringement.

Where some part of the infringement occurs in the U.S. and part outside (e.g., a user in the U.S. accessing a model on a foreign server, or vice versa), U.S. courts have held that, to the extent part of an infringing act occurs within the United States, even if completed in a foreign jurisdiction(s), those who contributed to the act within the US may be liable for infringement under US copyright law. Also, if an AI platform's servers are abroad but it delivers an infringing output to a user in California (for example) who then downloads or uses it, the act of distribution or reproduction in the U.S. could trigger copyright infringement under U.S. law.

9. *If copyright protected work is used to train AI, is there any established obligation to maintain copyright management information in the outputs or liability for failing to do so?*

Removing copyright management information (CMI) on protected works used to train AI may result in liability under the Digital Millenium Copyright Act (DMCA) depending on the factual circumstances. Section 1202(b) of the DMCA provides that one cannot, without authority, (1) "intentionally remove or alter any" CMI, (2) "distribute . . . [CMI] knowing that the [CMI] has been removed or altered," or (3) "distribute . . . copies of works . . . knowing that [CMI] has been removed or altered" while "knowing, or . . . having reasonable grounds to know, that it will induce, enable, facilitate, or conceal" infringement. 17 U.S.C. § 1202(b).

Various recent cases have reached different conclusions. In Raw Story Media, Inc. v. OpenAI, the court dismissed CMI claims, finding that the plaintiffs did not have standing because they had no injury-in-fact. In Intercept Media, Inc. v. OpenAI, Inc., the court allowed similar claims under Section 1202(b)(1) to proceed.

In another case, involving allegations related to Github Copilot, the court found no DMCA CMI violation despite the output not including CMI of the training materials where the output was not identical to the copyrighted training materials. See J. Doe 1, et al. v. Github, Inc., et al., No. 4:22-cv-6823-JST, Dkt. No. 253 (N.D. Cal. June 24, 2024). However, other cases have found the DMCA requirement applied even if the output is only substantially similar to the copyrighted work. The Doe v. Github case is on appeal at the Ninth Circuit.

Confidential Information

10. *What legal principles govern the protection of company confidential information disclosed within AI prompts, in this territory?*

In the US, trade secret laws as well as confidentiality and data use agreements may protect confidential business information. Information may qualify for trade secret protection if it derives independent (actual or potential) economic value because it is not generally known or readily ascertainable, and it is the subject of reasonable efforts to maintain secrecy. Companies may also protect the confidentiality of information by including confidentiality and data use and retention restrictions in their agreements. Thus, when inputting company information into an AI model, it is important to consider whether such inputs would jeopardize the trade secret status of information or constitute an unauthorized disclosure of information. To analyze these issues, it is important to review and understand the terms of service of the tool as well as the company's restrictions and obligations regarding the subject information and internal policies governing the same. Companies should carefully evaluate what information is input into AI systems and consult legal experts for specific guidance.