

Kluwer Copyright Blog

Top 10 Posts on the Kluwer Copyright Blog in 2023

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As we enter a new year, we would like to take this opportunity to pass on our best wishes for 2024 to all of our readers, as well as reflect on developments in copyright over the past year. Last year was another busy one in the copyright world, with ongoing European copyright reform, a number of landmark CJEU decisions and notable developments in a number of jurisdictions.

Here is a quick look back at our 10 most-read posts last year:

1. [Generative AI, Copyright and the AI Act](#) by João Pedro Quintais

Generative AI is one of the hot topics in copyright law today. In the EU, a crucial legal issue is whether using in-copyright works to train generative AI models is copyright infringement or falls under existing text and data mining (TDM) exceptions in the Copyright in Digital Single Market (CDSM) Directive. In particular, Article 4 CDSM Directive contains a so-called “commercial” TDM exception, which provides an “opt-out” mechanism for rights holders. This opt-out can be exercised for instance via technological tools but relies significantly on the public availability of training datasets. This has led to increasing calls for transparency requirements. In response to these calls, the European Parliament is considering adding to its compromise version of the AI Act two specific obligations with copyright implications on providers of generative AI models: on (1) transparency and disclosure; and (2) on safeguards for AI-generated content moderation. There is room for improvement on both.

2. [A first look at the copyright relevant parts in the final AI Act compromise](#) by Paul Keller

On Friday evening, after 38 hours of negotiations, representatives of the European Parliament, EU member states and the European Commission reached a provisional agreement on the proposed AI Act. The deal reached on Friday night now paves the way for the adoption of the AI Act in the first half of 2024, bringing to an end a legislative process that has lasted more than two and a half years and during which the scope of the Act has been significantly expanded.

3. AI and copyright in 2022 by Matt Hervey

This post looks back at the key developments in AI and copyright in 2022, covering generative AI, text and data mining exceptions, the pastiche exception, deep fakes, voice cloning and infringement and enforcement of copyright using AI.

4. The Pastiche in Copyright Law – Towards a European Right to Remix by Till Kreutzer and Felix Reda

Pastiche is one of the newer harmonized user rights in EU copyright law. The exception for caricature, parody and pastiche was made mandatory as part of Article 17 of the Copyright in the Digital Single Market Directive (CDSMD) in 2019. Although the implementation deadline passed in 2021, several Member States have yet to transpose the directive. In the absence of any jurisprudence from the Court of Justice of the European Union (CJEU) on pastiche, the concept remains under-examined in the copyright literature and national courts have little guidance when applying this user right, which is novel to many national copyright laws, including that of Germany. To fill this gap, German fundamental rights NGO Gesellschaft für Freiheitsrechte e.V. (GFF) has commissioned Dr. Till Kreutzer (iRights.Law) to propose a copyright-specific definition of pastiche as transposed into German copyright law. Although the study “The Pastiche in Copyright Law” concerns section 51a of the German Copyright Act (UrhG), we believe that it is relevant beyond the German context.

5. AI and Copyright: A Reply to Matt Hervey by Daniel Gervais

The recent blog post by Matt Hervey provides an interesting summary by someone who clearly has a good understanding of the subject matter. It does seem a bit one-sided in making it sound (to me, anyway) like people, governments or courts who oppose copyright protection of AI-generated works are fighting a rear guard battle and that at some point copyright protection of such works will almost “naturally” happen. If this was the author’s intent, I beg to differ.

6. Protecting creatives or impeding progress? Machine learning and the EU copyright framework by Paul Keller

As generative machine learning (ML) systems become more mainstream, the discussion about copyright and ML input is back in the spotlight. At the heart of this discussion is the question of whether authors, creators, and other rightholders need to give permission before their works can be used as input for generative ML systems that produce outputs based on the works on which they have been trained.

7. Generative AI: the US Copyright class action against OpenAI by Gianluca Campus

There is a huge debate around Generative AI and the need to regulate such disrupting technology.

Very different approaches have been adopted in the European Union, which is going to introduce an EU AI Act by the end of 2023, in the UK, which is mainly working on some guiding principles to be further developed by the UK regulators, and in the US, where the NSTC (National Science and Technology Council) is coordinating science and technology policies across the diverse entities that make up the federal research and development enterprise.

8. Copyright for AI-generated works: a task for the internal market? by Alina Trapova

Works generated through complex AI systems, such as machine learning and text-to-image generation models, have recently stirred up many discussions and even given rise to lawsuits. Voices emerged questioning whether current EU copyright laws should be amended in light of the many AI-generated works that have come about. One important question has been whether copyright law should be extended in order to protect such works. The academic debate has revolved mostly around copyright law rationales, the human-centred authorship requirement, as well as the notions of creativity and originality.

9. Should AI be attributed as an author of AI-generated works? by Rita Matulionyte

Recently, the German photographer Boris Eldagsen won a prestigious Sony World Photography Awards competition. After the winner was announced, the photographer disclosed that the image he submitted to the photography competition was generated through the use of an AI system and refused to accept the award. This has provoked a public discussion on whether AI should be attributed or mentioned when a work is generated by AI or using AI.

10. The dawn of pastiche: First decision on new German copyright exception by Susan Bischoff

“No artist starts from scratch in a vacuum”. This finding of the Berlin Regional Court seems obvious. But copyright law faces daunting challenges when copyrighted material not only inspires a creative process, but becomes the very object of it. From Italian opera to Andy Warhol to memes – incorporating and referencing other works has always been an integral part of the way people engage with the world around them through artistic means. The copyright exception for pastiche has received little attention in this regard. But the first decision on the new German pastiche provision reveals its potential.

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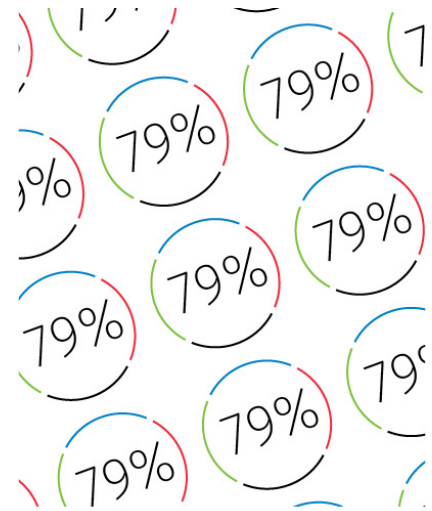
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