Kluwer Copyright Blog

Report on LSE event – Artificial Intelligence, Intellectual Property, and the Creative Industries

Marianna Foerg (Potter Clarkson LLP and King's College London) · Monday, June 9th, 2025

On 4 March 2025, the London School of Economics (LSE) hosted an event dedicated to exploring the intersection of AI and IP within the creative industries. The discussion has been prompted by the recent developments in this area in the EU, the UK and the US. Four distinguished academics shared their insights on this complex and evolving topic.

The Generative AI Question

Martin Kretschmer opened the discussion by highlighting the main trends in generative AI. He emphasised that reproductions occur at various stages of the AI lifecycle, from data scraping to output generation, prompting legislators to steer the development of technology to address these challenges.

Photo by Aidin Geranrekab on Unsplash

The UK aims to align its system with the EU by linking obligations at the data scraping and collecting stage (the AI Act) with exceptions from the Copyright in the Digital Single Market Directive (CDSM Directive). This involves providing sufficiently detailed summaries of the training material for AI models and clarification of the opt-out mechanisms, ensuring training activities are only possible if rights have been reserved (Article 53(1) and Recital 105 of the AI Act).

Reproductions During Training and Output Stages

The question of whether reproductions of copyright works occur at the training stage and, if so, whether this constitutes copyright infringement, is a significant point of debate. One needs to consider whether the outputs generated by AI are substantially similar to copyright works and whether such outputs are potentially infringing.

At the end of February 2025, the UK government closed a consultation on copyright and AI, proposing a data mining exception (see Option 3 below) that allows rights holders to reserve their

rights, supported by transparency measures. This approach is similar to the EU's framework (the AI Act).

Licensing Agreements and Legal Trends

Regardless of the legal system, there is a rise in licensing deals, which can be linked to the adoption of the AI Act in the EU and a sharp increase in litigation in the US. Interestingly, Professor Kretschmer pointed out that "new" content creation and distribution companies make the majority of licensing deals, with the news and media sector dominating.

Economic Impact on Creatives

There is a general trend towards licensing due to legal uncertainty and a drive towards a licensing economy. This trend has contributed to the halving of income for artists and literary authors, even before the advent of AI. Factors such as the platform economy and oversupply of services exacerbate this issue. With AI, this trend is expected to continue, and professional career options for creatives remain bleak. The current opt-in/out mechanisms are unlikely to improve the situation, necessitating alternative solutions to enhance the position of creatives.

Copyright and AI Consultation in the UK

Tanya Aplin focused on the UK government's consultation on copyright and AI, which closed on 25 February 2025. She outlined the options proposed by the UK Intellectual Property Office (UKIPO):

- **Option 0:** Do nothing. The UKIPO deemed this option undesirable, not least because something needs to be done in respect of the current text and data mining (TDM) exception in Section 29A of the Copyright, Designs and Patents Act (CDPA).
- **Option 1:** Licensing in all cases, leaving it entirely to the market without exceptions. The UKIPO thought this option was also unwise.
- **Option 2:** Broad data mining exception, allowing TDM for any purpose with lawful access without rights holders' permission. Professor Aplin thought that following the Hargreaves report, there is generally an opportunity for introducing a fair use exception, but this needs a wider consultation regarding the structure and scope for the UK exceptions with the wider scope of stakeholders and users.
- **Option 3:** Introduce a TDM exception with lawful access, underpinned by transparency. This would permit TDM for any use by anyone, but rights holders would be able to opt-out individual works, sets of works or all of their works that they do not want to be used for commercial purposes. This is the UKIPO's preferred option, as it provides a balance between encouragement of AI development and copyright. However, the opt-out mechanism has a level of complexity, unworkability and nuance. Relying on opt-outs may also conflict with the international copyright law.

Professor Aplin also discussed some other options reflected in literature.

Compulsory Licensing (Christophe Geiger and Vincenzo Iaia, see here: Part 1 and Part 2)

This approach would involve introducing a statutory remuneration right for the use of works protected by copyright for commercial machine learning purposes in place of the opt-out right under Article 4(3) of the CDSM Directive, ensuring that issues are handled in a manner compliant with fundamental rights. However, this solution faces significant challenges, particularly in calculating the value of the works used. Therefore, this approach may be too extreme and difficult to implement effectively.

Levy System (Martin Senftleben, see here)

Another option is to move away from statutory licensing and adopt a levy system applied to AI tools themselves. Levies could be applied uniformly, either as a lump sum or a percentage of revenue, with licensing organisations responsible for collecting these levies. This system aims to address issues of trust and transparency. However, there are concerns that the levy system may not work effectively, as evidenced by its complications in the context of private copying. Implementing such a system for AI tools could prove even more challenging.

Amending Section 29A CDPA

This section currently restricts TDM to non-commercial research and does not allow for the transfer of copies or knowledge exchange. It also does not apply to database rights. Professor Aplin's proposal is to amend Section 29A to widen its scope to include any type of scientific research and extend its application to database rights. This option, preferred by Professor Aplin, aims to enhance scientific research using AI while addressing legal uncertainties and potential workarounds. However, she thought there was legal uncertainty regarding what would constitute scientific research purposes, which still needs discussing.

Disruption Caused by Generative AI

Luke McDonagh addressed the disruption caused by generative AI, particularly in the creative industries.

The Impact on Creative Industries

Generative AI has led to a decline in employment opportunities for voiceover actors, as AI technologies can replicate and alter voices.

For instance, OpenAI allegedly used Scarlett Johansson's voice without her permission, leading to a dispute, which then settled. Similarly, David Attenborough's voice has been cloned. These examples highlight the extent to which AI can modify creative outputs post-production.

Legal Protections and Challenges

In the UK, there is no specific personality right, resulting in a patchwork of protections for performers' rights. The law relating to performers' rights is limited in scope, making it difficult to enforce rights over one's voice or image. While there is potential for the UKGDPR protection (which replaced the GDPR following Brexit), its scope is also limited. The most promising legal avenue for people in the UK to protect their own image appears to be the law of passing off. However, passing off requires meeting the goodwill standard and proving misrepresentation and damage, which can be challenging.

The Need for New Statutory Rights

Given the limitations of existing legal frameworks, there is a growing discussion about whether new statutory rights are needed to address the gaps in protection. Established practices for digital replicas currently exist, but the scope of these rights requires careful consideration.

US Publicity Rights and AI

Madhavi Sunder discussed the US perspective on publicity rights in the context of AI.

Right of Publicity in the US

When OpenAI asked Scarlett Johansson to be the voice of ChatGPT's "Sky" and she refused (see, e.g. The New York Times), they used a similar voice anyway, possibly violating her right of publicity. In the US, the right of publicity is a tort recognised in most states, allowing individuals (mainly celebrities) to control the commercial value of their identity. Right of publicity is a broad legal concept that includes name, image, and likeness. There is no single, federal right of publicity, but instead a collection of state-level rights that together protect an individual's identity. Right of publicity is particularly strong in California. California Assembly Bill 1836 updated Section 3344.1 of the California Civil Code, which governs the post-mortem publicity rights of deceased individuals.

The Need for Stronger Protections

The Johansson case underscores the need for stronger protections against digital replicas, such as deepfake pornography. The Take it Down Act initiated by Melania Trump is aimed at speeding up the removal of non-consensual intimate imagery (NCII) and "deepfakes" online. Although drafted with good intentions in mind, the Act could lead to overreach and censorship.

Legislative Efforts and Proposals

New federal legislation is needed to address the challenges posed by digital replicas. Two notable pieces of proposed federal legislation aim to strengthen protections:

1. **No AI Fraud Act:** This Act would create a federal right in voice and likeness, protecting against deepfakes and allowing rights to be transferred during an individual's lifetime. It includes secondary liability for social media hosts and balances free speech considerations.
2. **No Fakes Act:** This Act would establish a federal right to control image, voice, and likeness, applying to all individuals, not just celebrities. It includes freedom of expression exclusions and requires platform providers to remove materials once notified.

There is also a push to extend copyright protections to traditionally non-IP matters, such as deepfake pornography.

Conclusion

The event at LSE underscored the need for thoughtful and balanced approaches to AI and IP within the creative industries. As AI continues to evolve, policymakers must navigate the complexities of copyright, performers' rights, and publicity rights to ensure fair and equitable outcomes for all stakeholders. A recording of the LSE's event is available to view here.

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