

Important Questions in AI Image Generator Lawsuits

By Cooper Karras

Copyright law has adapted over time to protect the original works of authors and creators who utilize new developments in technology. Critical advancements in what we now see as simple everyday technologies such as audio recordings, photography, and digitally created works each raised pensive copyright questions in their time. Questions about how, and whether, these new works would be protected generated legal change via new legislation and judicial interpretation of existing copyright law.¹ Today a new philosophical issue challenges legislatures and courts to determine how, and whether, works generated via artificial intelligence (AI) should receive copyright protection. Another crucial question to be answered surrounding AI generated works is how the courts should react when a machine infringes on the valid copyright of an actual person.

Recent lawsuits filed against AI image generator companies Stability AI Ltd., Midjourney Inc., and DeviantArt Inc., pose these questions.² A group of artists and Getty Images, a major holder of compilations of copyrighted images, have filed several different suits in the United States and the United Kingdom against the image generating companies for using their copyrighted works.³ Getty Images provides licenses to different technology innovators who want to use their images; however, Getty Images wrote in a statement that Stability AI did not seek a license and chose to ignore licensing options for their own commercial interests.⁴ AI art tools like Stability AI's product rely on human-created images for training data and they scrape these images from the web, often without their creators' knowledge or consent.⁵ Stability AI Ltd. has responded to copyright infringement allegations by saying, "anyone that believes that this isn't fair use does not understand the technology and misunderstands the law."⁶

Copyright infringement cases are very fact dependent, and AI generated images may be determined to be infringing in some situations and ruled transformative or fair use in other

¹ See *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 4 S. Ct. 279, 28 L. Ed. 349 (1884) (the court rejected the argument that photographs are not a valid medium of copyright protection because they can be original works fixed in a tangible medium); 17 U.S.C.A. § 102 (West) (the Copyright Act of 1976 lists the appropriate subject matter categories for copyright protection and requires that works of authorship be original and fixed in any tangible medium of expression).

² Riddhi Setty, *First AI Art Generator Lawsuits Threaten Future of Emerging Tech*, BLOOMBERG LAW (Jan. 20, 2023, 5:05 AM), <https://www.bloomberglaw.com/bloomberglawnews/exp/>.

³ *Id.*

⁴ Jennifer Korn, *Getty Images suing the makers of popular AI art tool for allegedly stealing photos*, CNN.COM, <https://www.cnn.com/2023/01/17/tech/getty-images-stability-ai-lawsuit/index.html> (last updated Jan. 18, 2023, 947 AM).

⁵ James Vincent, *Getty Images is suing the creators of AI tool Stable Diffusion for scraping its content*, THEVERGE.COM (Jan. 17, 2023, 5:30 AM), <https://www.theverge.com/2023/1/17/23558516/ai-art-copyright-stable-diffusion-getty-images-lawsuit>.

⁶ Setty, BLOOMBERG LAW (Jan. 20, 2023, 5:05 AM) <https://www.bloomberglaw.com/bloomberglawnews/exp/> (made in a statement to Bloomberg Law).

situations. The following questions are the kinds of questions likely to be discussed to decide infringement:

Was the AI generated image transformative?

Does the use of the AI generated image significantly vary from the original?

Does the AI generated image meet originality requirements?

Are the plaintiffs relying on style if they're claiming derivative use? Or will plaintiffs be able to adequately identify elements of their work in infringing images?

Are plaintiffs seeking to protect their ideas?

These suits appear to be among some of the first steps in creating a precedent for AI generated intellectual property. The resulting conversations and court holdings might be the necessary catalyst to introduce new legislative actions to accommodate exciting advances in AI. Legislatures, industry professionals, and the general public will be interested to see how these cases will impact the broader implications that AI will have in the world of IP.