

Artificial Intelligence and Emerging U.S. Intellectual Property Issues

&

THE WHITE HOUSE



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Selected Intellectual Property Aspects of the Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence



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By

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Bio: Gary Rinkerman is a partner at the law firm of Pierson Ferdinand LLP, an Honorary Professor of US Intellectual Property Law at Queen Mary University in London, UK, and a Senior Fellow at the Center for Assurance Research and Engineering ('CARE') in the College of Engineering and Computing at George Mason University, Virginia, U.S. For those interested in 'digital archeology,' Professor Rinkerman also successfully argued one of the first cases in which copyright in object code was enforced and he co-founded and served as Editor-in-Chief for *Computer Law Reporter*, one of the first legal publications (in the 1980s) to focus exclusively on law and computer technologies. **This presentation should not be considered legal advice. The facts and the opinions contained in this presentation are attributable solely to the author and do not necessarily reflect the views of any persons, organizations or entities with which he is affiliated or whom he represents.**

Brief Biography

Gary Rinkerman is a partner at the law firm of Pierson Ferdinand LLP, an Honorary Professor of U.S. Intellectual Property Law at Queen Mary University in London, and a Senior Fellow at the Center for Assurance Research and Engineering (“CARE”) in the College of Engineering and Computing at George Mason University, Virginia. For those interested in “digital archeology,” Mr. Rinkerman also successfully argued one of the first cases in which copyright in object code was enforced in a U.S. forum. He also co-founded and served as Editor-in-Chief for Computer Law Reporter, one of the first legal publications (in the 1980s) to focus exclusively on law and computer technologies. He has lectured widely and has worked with clients on transactions (such as intellectual property licenses, transfers, co-ventures, and development agreements), clearance opinions, best practices in, *e.g.*, open source and AI projects and operations, and dispute resolution, including investigations under 19 U.S.C. §1337 at the United States International Trade Commission. His clients range from Fortune 10 companies to start-ups, and he has worked in areas involving digital technologies and content, communications, consumer products, supply chain, retail, entertainment, advertising, and bio-industries.

INTRODUCTORY DIGRESSION

Depending On Your Industry Or Use, You May Need To Consider The IP-like Regimes In Union And Guild Contracts. Such Organization Also Have A Role In Shaping IP Laws

1. Trade Secrets ~ Confidential Information

2. Copyright

3. Patent

4. Trademark

5. Rights of Publicity ~ Misrepresentation

6. Guilds/Unions

FUTURE PRESENTATION:
Contracts & Best Practices



Writers Guild of America – AI Agreement Summary

Artificial Intelligence

We have established regulations for the use of artificial intelligence (“AI”) on MBA-covered projects in the following ways:

- AI can't write or rewrite literary material, and AI-generated material will not be considered source material under the MBA, meaning that AI-generated material can't be used to undermine a writer's credit or separated rights.
- A writer can choose to use AI when performing writing services, if the company consents and provided that the writer follows applicable company policies, but the company can't require the writer to use AI software (e.g., ChatGPT) when performing writing services.
- The Company must disclose to the writer if any materials given to the writer have been generated by AI or incorporate AI-generated material.
- The WGA reserves the right to assert that exploitation of writers' material to train AI is prohibited by MBA or other law.

NOTE: There are a number of other applicable terms – this is just a sample.



Creation of a Digital Replica of Your Voice or Likeness

If you are asked to do work, such as a scan, to create a digital replica you have the right to informed consent and be paid for it. The producer has to notify you at least 48 hours before your services are required (unless you are engaged less than 48 hours, then at the time of engagement) The informed consent cannot be buried in the “standard terms and conditions” of your contract or background voucher. It can be in your contract (or a separate rider), but it has to be clear and conspicuous, such as BOLD AND ALL CAPITALS, and you have to specifically sign or initial the section. The time you spend creating the replica is work time.

General Information

In the 2023 TV/Theatrical Contracts negotiations, SAG-AFTRA secured protections for the creation and use of digital replicas of performers, as well as protections relating to digital alterations of your performance.

A “**Digital Replica**” is a replica of your voice and/or likeness that is created using digital technology, such as artificial intelligence.

There are **two types** of principal performer digital replicas and one type of background actor digital replica in the CBA and TVA —

- An “Employment-Based Digital Replica” is one created in connection with your employment on a motion picture (i.e. a movie, a TV or streaming show, etc.). You might be asked to participate in the creation, such as being scanned.
- An “Independently Created Digital Replica” is one created without your participation and used in a motion picture in which you did not work.
- A “Background Actor Digital Replica,” like the Employment-Based Digital Replica, is one created with your participation.

A “Synthetic Performer” is not a digital replica, it is a *wholly digital* reproduction that appears to be a person, but does not resemble a recognizable performer and is not voiced by a person.

You have the right to **consent** to whether a digital replica of you is used or altered, and the right to **information** about the specific use or alteration prior to granting consent. We describe this as “informed consent.”

You have the right to be **paid** when your digital replica is used.

SELECTED AI ISSUES REGARDING TRADE SECRETS AND CONFIDENTIAL INFORMATION

“SHOCK & AWE” (MAYBE) INTRODUCTION



<https://www.samsung.com/us/about-us/brand-identity/logo/>

According to industry reports published in early April 2023, Samsung employees submitted source code and internal meeting notes to OpenAI’s ChatGPT on at least three separate occasions after the company approved employee use of the AI tool.

- ~ An employee copied the source code from a faulty semiconductor data set into ChatGPT and asked it to help find a fix for the fault;
- ~ An employee shared confidential code to try and find a fix for defective equipment; and
- ~ An employee reportedly submitted notes from an entire internal meeting to a chatbot and asked it to create meeting minutes.



See, e.g., <https://gizmodo.com/chatgpt-ai-samsung-employees-leak-data-1850307376>.

WHY IS THIS AN ISSUE? WHAT CONCERNS ARE RAISED? ~ NEXT SLIDE

CORE TRADE SECRET “TAKE AWAY”: THIRD PARTY AI SERVICE PROVIDER TERMS & USER’S BEST PRACTICES

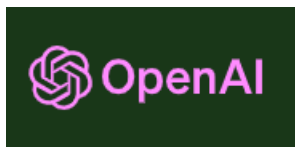
coPilot is a GitHub code generation tool driven by AI.

Because you retain ownership of and responsibility for Your Content, we need you to grant us — and other GitHub Users — certain legal permissions, listed in Sections D.4 — D.7. These license grants apply to Your Content. If you upload Content that already comes with a license granting GitHub the permissions we need to run our Service, no additional license is required. You understand that you will not receive any payment for any of the rights granted in Sections D.4 — D.7. The licenses you grant to us will end when you remove Your Content from our servers, **unless other Users have forked it**.

<https://docs.github.com/en/site-policy/github-terms/github-terms-of-service#d-user-generated-content>. (Last Visited 5/14/23)



NOTE: Forking a project creates a copy of an existing project and its components.
https://www.google.com/search?q=definition+of+%22forked%22+in+AI+system&rlz=1C1GCEA_enUS859US859&oq=definition+of+%22forked%22+in+AI+system&aqs=chrome..69i57j33i160l2.11344j1j15&sourceid=chrome&ie=UTF-8. (Last Visited 5/14/23)



OpenAI – ChatGPT Selected Sample Terms:

You can read more here about how Non-API Content may be used to improve model performance. [If you do not want your Non-API Content used to improve Services, you can opt out by filling out this form](#). Please note that in some cases this may limit the ability of our Services to better address your specific use case.

<https://openai.com/policies/terms-of-use>. (Last Visited 5/14/23)

ChatGPT

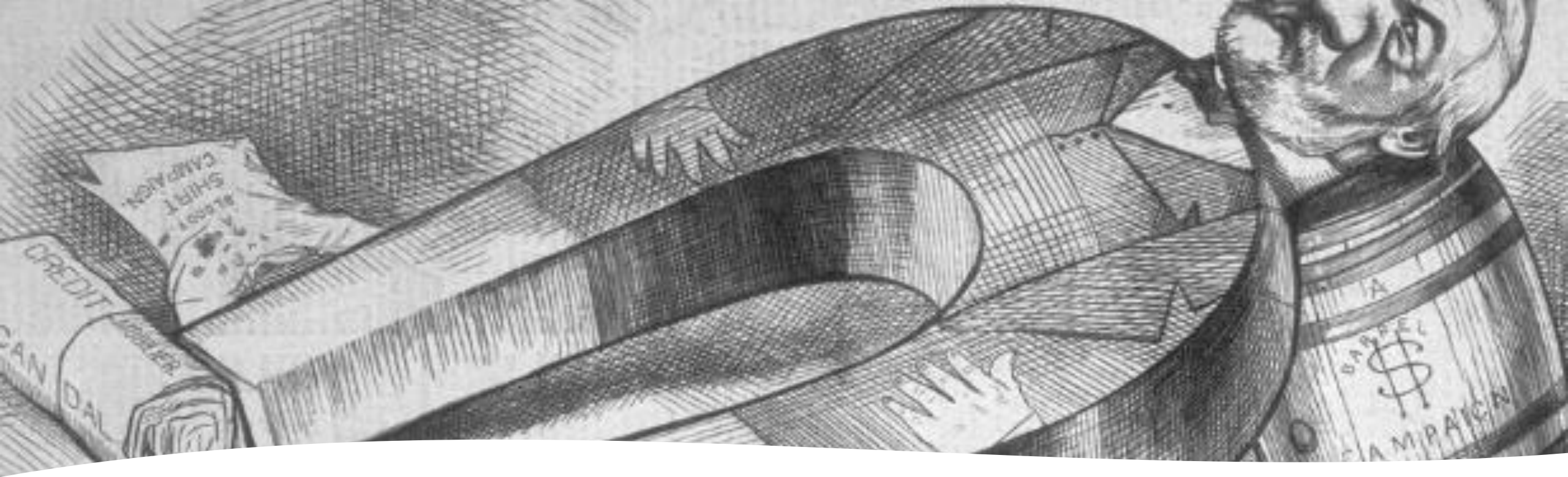
When you use our non-API consumer services ChatGPT or DALL-E, we may use the data you provide us to improve our models. You can switch off training in ChatGPT settings (under Data Controls) to turn off training for any conversations created while training is disabled or you can submit this form. Once you opt out, new conversations will not be used to train our models.

<https://help.openai.com/en/articles/5722486-how-your-data-is-used-to-improve-model-performance> (Last Visited 5/14/23)

Codex and Code Generation

(a) **Output generated by code generation features of our Services, including OpenAI Codex, may be subject to third party licenses, including, without limitation, open source licenses.**

<https://openai.com/policies/service-terms>. (Last Visited 5/14/23)



- **AI SYSTEMS AND SERVICES MAY SERVE AS “DATA DRAINS” THAT PLACE TRADE SECRET OF CONFIDENTIAL INFORMATION IN THE HANDS OF, OR UNDER CONTROL OF, THIRD PARTIES WITHOUT ADEQUATE RESTRICTIONS**

ADDITIONAL AI TRADE SECRET POINTS

Systems that operate through application of artificial intelligence (AI), and their components – such as “predictive algorithms” and “proprietary behavioral analysis methods” – can qualify as proper subjects of trade secret protection.

See, e.g., (cf) LivePerson, Inc. v. 24/7 Customer, Inc., 83 F.Supp.3d 501, 514 (S.D.N.Y. 2015); *see also, Broker Genius, Inc. v. Zalta*, 280 F.Supp.3d 495, 517 (S.D.N.Y. 2017)(“unique and synergistic system architecture” qualifies as the proper subject of trade secret protection); *see Wellogix v. Accenture, L.L.P.*, 726 F.3d 867, 875 (5th Cir. 2013)(technology described as including “dynamic templates’ that adjusted cost and supply estimates based on ‘intelligence built into’ the underlying source code”).

AI-generated output can qualify for trade secret protection.

See, e.g. (cf), Airfacts, Inc. v. De Amezaga, 909 F.3d. 84, 96 (4th Cir. 2018) (trade secret can be a combination of characteristics and components, each of which, by itself, is in the public domain, but the unified process, design and operation of which, in unique combination, affords a competitive advantage and is a protectable secret).

Data Scraping to reproduce a portion of a website’s database, deemed to be a trade secret, can constitute misappropriation.

See, e.g., Compulife Software, Inc. v. Newman, 959 F.3d 1288 (11th Cir 2020).

INTRODUCTORY REACTION TO EXECUTIVE ORDER – From The Law and Political Economy (LPE) Project At Yale Law School. Provided by Courtesy of LPE - <https://lpeproject.org/about/> & <https://lpeproject.org/blog/seven-reactions-to-bidens-executive-order-on-artificial-intelligence/>

BONUS REACTION/INTRODUCTION: CHATGPT

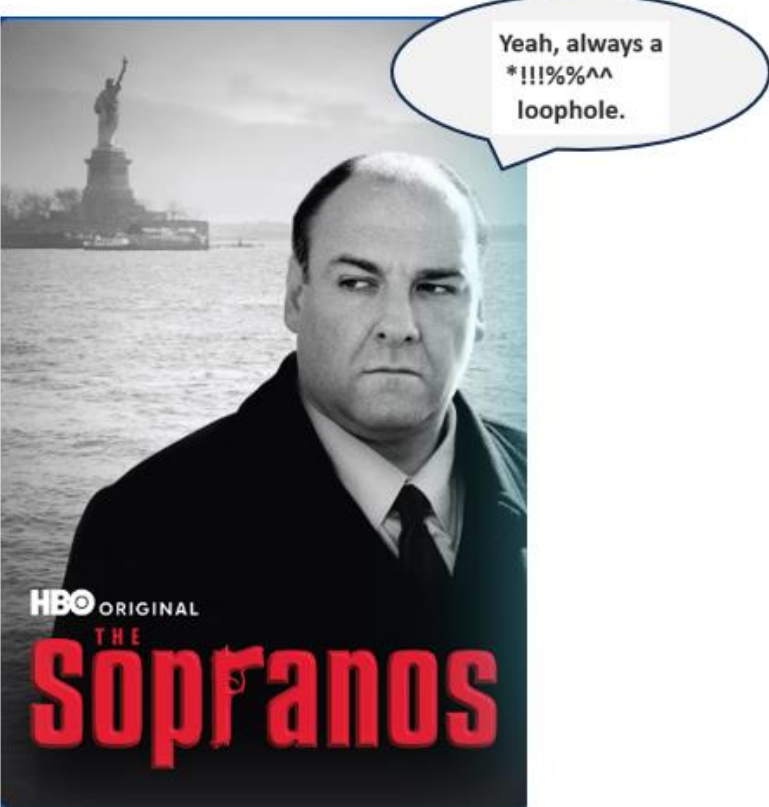
To conclude our rapid roundtable, we asked ChatGPT to tell us which aspect of the executive order was the most interesting. However, the answer it generated was quite boring, so we asked it to re-write the response in the style of Tony Soprano:

“Hey, listen up. You see this executive order thing from President Biden on AI? It’s like he’s telling everyone, ‘We’re not just gonna play around with fancy tech; we’re gonna do it the right way, capisce?’ What stands out the most is this strong push for responsible and ethical AI. It’s like he’s saying, **‘We’re not gonna let these machines run wild, screwing with people’s privacy and messing things up.’**”

It’s kinda like the boss telling his crew, **‘We operate within the rules. We don’t want any funny business, no biases, and everyone’s gotta be held accountable for their actions.’ This ain’t just about tech; it’s about principles, values, and making sure the people come first.**”

Biden’s saying, **‘We’re gonna be leaders in AI, but we’re gonna do it the right way. No shortcuts, no shady stuff.’ It’s like running a family business – you wanna be on top, but you gotta have respect, you gotta play fair. This focus on ethical AI, it’s like the boss setting the tone for the whole operation. It’s not just about the technology; it’s about how you use it, and making sure it’s in line with what we stand for.’**”

As the actual Tony Soprano once said, “All this from a slice of gabagool?”



From: <https://www.hbo.com/series>

On October 30, 2023, U.S. President Joe Biden issued his *Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*.

The Order defines “artificial intelligence” or “AI” in accordance with the language of the National Artificial Intelligence Initiative, 15 U.S.C. 9401(3): a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. Artificial intelligence systems use machine- and human-based inputs to perceive real and virtual environments; abstract such perceptions into models through analysis in an automated manner; and use model inference to formulate options for information or action.

The Order is largely premised on the view that Artificial Intelligence (AI) **urgently** requires pervasive federal government inquiry, oversight and monitoring to ensure that AI is properly developed and used in conformity with approved technological, industrial and societal goals.

Among the Order’s ambitious regime is a sweeping set of directives and deadlines aimed at ensuring that there are “coordinated Federal Government wide” efforts to ascertain the current state of AI development and determine how best to understand, direct and regulate it – **AND IT’S MOVING FAST. Target dates of 90 to 270 days from October 30, 2023.**



GENERAL
ASPIRATIONAL
STUFF



The Order sets out eight “**guiding principles and priorities**” that will underlie the anticipated efforts to advance and govern the development and use of AI. These principles are:

- 1) AI must be safe and secure;
- 2) AI development and use must be “responsible” **in accordance with government notions of how best to define and address “some of society’s most difficult challenges”**;
- 3) responsible development and use of AI requires a commitment to supporting American workers;
- 4) AI policies must be consistent with **approved notions of equity and civil rights**;
- 5) consumers must be protected against fraud, unintended bias, discrimination, infringements on privacy, and other harms;
- 6) Americans’ privacy and civil liberties must be protected from improper collection and use of people’s data;
- 7) the Federal Government must take steps to attract, retain, and develop public-service oriented AI professionals, **including from underserved communities**, across disciplines – including technology, policy, managerial, procurement, regulatory, ethical, governance, and legal fields; and
- 8) the U.S. should lead international efforts to ensure AI benefits the **whole world**, rather than exacerbating inequities, threatening human rights, and causing other harms.

Although the Order sweeps across a vast field of areas and endeavors – from social engineering to intellectual property, immigration, and cybersecurity – the following discussion will focus on the Order’s assessment of and potential impact on intellectual property (IP) issues that are shaped or affected by developments in AI or the Federal Government’s attempts to regulate or direct it. The three basic IP rights at the forefront of the Order’s potential regulatory tsunami are **TRADE SECRET**, **COPYRIGHT** and **PATENT** rights.

IP AND HUMAN RESOURCES – ATTRACTING AND RETAINING NON-U.S. TALENT



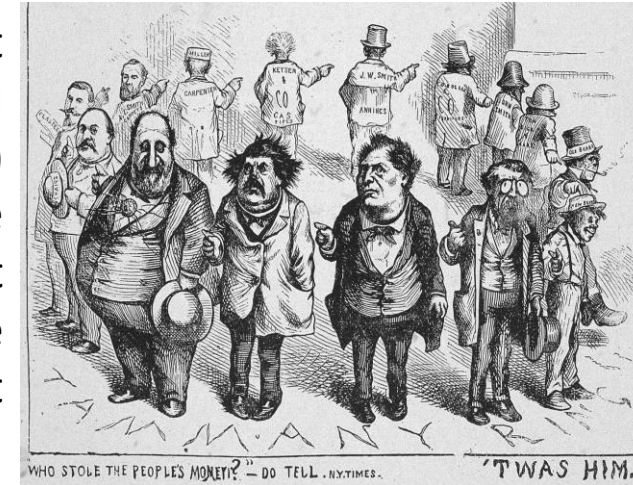
Before addressing specific IP rights, it is notable that the Order seeks to structure and direct U.S. **immigration polices and processes** to encourage immigration and, in the alternative, temporary residence by individuals who have **talent in AI and other critical and emerging technologies**.

The Order directs the Secretary of State and the Secretary of Homeland Security to take appropriate steps within 90 days from issuance of the Order to:

- 1) streamline processing times of visa petitions and applications**, including by ensuring timely availability of visa appointments, for noncitizens who seek to travel to the United States to work on, study, or conduct research in AI or other critical and emerging technologies; and
- 2) facilitate continued availability of visa appointments** in sufficient volume for applicants with expertise in AI or other critical and emerging technologies.

TRADE SECRET & CONFIDENTIAL INFORMATION PREVIEW – SPOILERS

The recent Biden White House Executive Order on artificial intelligence is a sweeping attempt to assess, monitor, regulate, and direct developments in this important area of technological growth. However, while the Order contemplates massive and thorough (arguably intrusive) collections of information, including information that will be trade secret and otherwise commercially valuable, it does not specifically address the issue of how better to ensure that government officials, employees, agents, and contractors have proper training to make sure that third-party proprietary rights in that information are preserved and the information is not “leaked” or otherwise improperly published by those acting under color of federal authority.



RUM DISTILLERY STORY -

Threatened Order Of Closure – **NO LIST OF GRAIN PURCHASES!**

WHAT'S WRONG WITH THIS SCENARIO?

HINT: The official definition of rum as qualified by the United States Government Federal Standards states, “Rum’ is an alcoholic distillate from the fermented juice of sugarcane, sugarcane syrup, sugarcane molasses and other sugarcane by-products, produced at no less than 190 proof in such manner that distillate possess the taste, aroma and characteristic generally attributed to rum, and bottles at no less than 80 proof; and includes mixture solely of such distillates.”

Warner-Lambert Pharm. v. John J. Reynolds, Inc.,
178 F.Supp. 655 (S.D.N.Y. 1959)

It is then alleged that the "trade secret" (the formula for Listerine) has gradually become a matter of public knowledge through the years following 1881 and prior to 1949, and has been published in the United States Pharmacopoeia, the National Formulary and the Journal of the American Medical Association, and also as a result of proceedings brought against plaintiff's predecessor by the Federal Trade Commission. Such publications were not the fault of plaintiff or its predecessors



TRADE SECRETS & CONFIDENTIAL INFORMATION

The Uniform Trade Secrets Act ("UTSA") is a piece of legislation created by the Uniform Law Commission (ULC), a non-profit organization. The USTA defines trade secrets and describes claims related to trade secrets. To date, 47 states and the District of Columbia have adopted the UTSA.

The USTA defines a "trade secret" as:

Information, including a **formula, pattern, compilation, program, device, method, technique, or process** that:

Derives independent economic value, actual or potential, **from not being generally known to, and not being readily ascertainable by proper means by**, other persons who can obtain economic value from its disclosure or use; and

Is the **subject of efforts that are reasonable under the circumstances to maintain its secrecy.**



ECONOMIC ESPIONAGE ACT IN 1996 - INCLUDES CRIMINAL PROVISIONS – ORIGINAL FORM

[T]he term “trade secret” means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if—

(A) the owner thereof has taken reasonable measures to keep such information secret; and

(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

ENFORCING AGENCIES:

- Federal Bureau of Investigation (FBI)
- National Counterintelligence and Security Center (NSCS)
- United States Department of Justice (DOJ)
 - Computer Crime and Intellectual Property Section
 - Intellectual Property Rights Branch
- United States Attorney General’s Office (USAG)

PENALTIES:

- Prison Sentences:** Up to 10 years in federal prison
- Fines:** Fines up to \$500,000
- Forfeiture:** Surrender of any money or property gained from the violation
- Civil Suit** – Victim can still sue violator Under Applicable Trade Secret Law



THE DEFEND TRADE SECRETS ACT OF 2016 (DSTA)

Provides Federal Basis For A Civil Suite By A Victim Of Trade Secret Misappropriation.

Remedies: Damages, Punitive Damages, Injunctions, Seizure, Attorneys Fees

“Whistleblower Immunity”: The DSTA provides a safe harbor for whistleblower employees that provides for immunity from any criminal or civil liability under any **federal or state** trade-secret law for disclosure of a trade secret that is made in confidence to an attorney or federal, state, or local governmental official “solely for the purpose of reporting or investigating a suspected violation of law,” or in a filing in a lawsuit made under seal.



NOTE: If a trade secret owner does not provide notice of whistleblower immunity in its employment agreements or other agreements, it may be precluded from certain remedies (punitive damages – attorneys fees) under the DSTA. The Notice should be used in agreements between employers and their employees, consultants, and independent contractors that govern the use or disclosure of the employer's confidential information or trade secrets.



THE MAGIC OF AI - REPRESENTATIVE TRADE SECRET CASE

Neural Magic Inc. v. Meta Platforms, Inc., 659 F.Supp.3d 138 (D. Mass. 2023) (Massachusetts Law)

1. Plaintiff Neural Magic, Inc. (“NMI”), a start up company working in neural network technologies (*i.e.*, AI) sued Defendants Meta Platforms, Inc. (“Meta”) and Dr. Aleksandar Zlateski (“Zlateski”) (collectively, “Defendants”), a former NMI employee, for Zlateski’s alleged disclosure of **trade secrets** to Meta and Meta’s internal use and posting of same on an open-source forum, GitHub.

2. Because running neural networks on large data sets typically involved the use of Graphic Processing Units (“GPU”), which are large and expensive, NMI’s founders started to work on algorithms that would allow ML-based neural networks to run faster at GPU speeds on commodity Central Processing Units (“CPU”)—the standard processors in most computers.

3. Factors Determining Reasonableness Of Trade Secret Claimant’s Measures To Maintain Secrecy:

- (1) the existence or absence of an express agreement restricting disclosure,
- (2) the nature and extent of security precautions taken by the possessor to prevent acquisition of the information by unauthorized third parties,
- (3) the circumstances under which the information was disclosed ... to [any] employee to the extent that they give rise to a reasonable inference that further disclosure, without the consent of the possessor, is prohibited,
- (4) the degree to which the information has been placed in the public domain or rendered “readily ascertainable” by the third parties.



DeepSparse

Sparsity-aware inference runtime for GPU-class performance on CPUs.



SparseML

Open-source libraries for applying sparsification recipes to neural networks.



SparseZoo

Open-source model repository for sparse and sparse-quantized models.

There Was An Employee Confidentiality Agreement – BUT then Zlateski left – and the issue raised by Zlateski is whether MNI’s subsequent actions regarding Zlateski were reasonable.

Defendants’ primary argument is that NMI allowed Zlateski to keep his company laptop, did not remove confidential information from the laptop, did not conduct an exit interview with him, and allowed him to maintain access to its source code and one of its Slack channels. The context in which this occurred, however, suggests that a jury could find that NMI’s actions might not have been unreasonable. All parties agree that, on Zlateski’s last day at NMI, both parties voiced interest in continued collaboration and Zlateski staying on as a consultant at NMI – **Factual Issue Precluding Summary Judgment.**

One of the co-founders of NMI stored a copy of the allegedly trade secret code on his own GitHub page – the Court found that public access and the ability to remove it created a factual issue - **Factual Issue Precluding Summary Judgment.**



IMPORTANT SAFETY TIP: Inputting or storing trade secret materials on a third-party site or via a third-party service can, in some instances, cause loss of proprietary status. **BE FAMILIAR WITH THE TECHNOLOGY AND TERMS OF USE – BE FAMILIAR WITH CONTRACTOR’S PRACTICES.**

HOW DOES THIS RELATE TO THE RECENT BIDEN AI EXECUTIVE ORDER – LET’S SEE:



TRADE SECRETS

There are several sections of the Order that require government gathering and assessment of information that will necessarily include private entities' trade secret information.

For example, the determinations of whether particular AI systems are appropriately secure and acceptably correct from a policy standpoint, through *e.g.*, “AI red teaming,” will likely or necessarily result in disclosure of commercially valuable data, algorithms, and analyses to the Federal Government and its designated contractors.

Along with defining “AI red teaming,” the Order states that: “Artificial Intelligence red teaming is most often performed by dedicated “red teams” that adopt adversarial methods to identify flaws and vulnerabilities, such as harmful or discriminatory outputs from an AI system, unforeseen or undesirable system behaviors, limitations, or potential risks associated with the misuse of the system.”

COMMENT – DIGRESSION(?): This raises the specter that empirically correct AI output can nonetheless be deemed “misinformation” if it does not serve a particular political agenda. Depending on the observer’s point-of-view, the anticipated operation and effects of the Order implicates democracy’s ever-present question: “Who regulates the regulators?”

Notwithstanding the federal concern for protecting trade secrets, including in international industrial espionage contexts, **tensions** can arise between protection of **trade secrets** disclosed to the federal government and the government's obligations of public disclosure under the **Freedom of Information Act (FOIA)**.



Notably, Exemption 4 of FOIA recognizes and addresses the need for the government to protect from disclosure under FOIA **“trade secret and commercial or financial information obtained from a person and privileged or confidential.”** In 2016, Congress passed the FOIA Improvement Act of 2016 (“FIA”), which imposes an additional “foreseeable harm” requirement on an agency seeking to withhold records under a FOIA exemption.

FOIA Exemption 4 shields from disclosure “trade secrets’ **AND** commercial or financial information obtained from a person [that is] privileged or confidential.” 5 U.S.C. § 552(b)(4). Thus, to claim this Exemption for information other than trade secrets, the information must be “(1) commercial or financial, (2) obtained from a person, and (3) privileged or confidential.”

NOTE: In *First Look Institute, Inc. v. U.S. Marine Corp.*, the court refused to order disclosure of agency records that would reveal information about Lattice, an artificial intelligence defense system developed by defense start-up Anduril and deployed at multiple U.S. Marine Corps bases and along the U.S.–Mexico border. 2022 WL 2784431 (C.D. Cal. 2022).



Step-by-Step Guide for Determining if Commercial or Financial Information Obtained from a Person is Confidential Under Exemption 4 of the FOIA

1. Does the submitter customarily keep the information private or closely-held? (This inquiry may in appropriate contexts be determined from industry practices concerning the information.)

- If no, the information is *not* confidential under Exemption 4.
- If yes, answer question 2.

2. Did the government provide an express or implied assurance of confidentiality when the information was shared with the government?

- If no, answer question 3.
- If yes, the information is confidential under Exemption 4 (this is the situation that was present in *Argus Leader*).

3. Were there express or implied indications at the time the information was submitted that the government would publicly disclose the information?

- If no, the information is "confidential" under Exemption 4 (the government has effectively been silent – it hasn't indicated the information would be protected or disclosed – so a submitter's practice of keeping the information private will be sufficient to warrant confidential status).
- If yes, and no other sufficient countervailing factors exist, the submitter could not reasonably expect confidentiality upon submission and so the information is *not* confidential under Exemption 4.

Agencies should feel free to contact OIP if they have any questions or for assistance in applying this analysis.



OPEN SOURCE AI ISSUES:



POTENTIAL DANGER(?):

In *New York Times Co. v. U.S. Food and Drug Administration*, 529 F.Supp. 3d 260 (S.D.N.Y. 2021), the court considered the records of JUUL Labs, Inc., the court discussed the “foreseeable harm” requirement that the FIA imposed. In a broad reading of the requirement, the court stated:

The foreseeable harm standard prohibits agencies from withholding information unless (i) the agency reasonably foresees that disclosure of the record would harm an interest protected by an exemption, or (ii) disclosure is prohibited by law. Pursuant to this new requirement, agencies must release a record — even if it falls within a FOIA exemption — if releasing the record would not reasonably harm an exemption-protected interest and if its disclosure is not prohibited by law.



KEY POINT: The Executive Order can operate to set up federal policies and actions that can gather, discuss and store AI-related trades secrets and confidential information – whether in the form of system architecture, input, output or analysis! Does AI create a special category that gives the Government increased options to publish?

THIS NEEDS TO BE WATCHED VERY CAREFULLY.

“The only thing worse than training your employees and having them leave is not training them and having them stay.” — Henry Ford

“In theory, there is no difference between theory and practice. In practice there is.” — Yogi Berra

There are sections in the Order that mandate training, but routine, intensive, and regularly updated training programs, as contemplated in this discussion, are not clearly addressed. *See e.g.*, Order. Sec. 5.2, Sec. 10.2(g). However, there are a number of Sections in the Order that can be interpreted broadly enough to authorize consideration of such training programs. The key is that there needs to be an emphasis on such “introspective” programs and their formulation.

Section 4 of the Order – titled “Ensuring the Safety and Security of AI Technology” – treats the development of best practices and guidelines, but the focus does not include an express directive to emphasize training of federal officers, employees and contractors on measures to avoid (and penalties for) inappropriate disclosures of third-party trade secrets and otherwise proprietary confidential information.



OCT 04, 2023

ARTICLE

<https://www.nasa.gov/organizations/ogc/disclosure-of-confidential-information-18-u-s-c-1905/>

Disclosure of Confidential Information – 18 U.S.C. 1905

Sec. 1905. Disclosure of confidential information generally -

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Office of Federal Housing Enterprise Oversight, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311- 1314), or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 of title 5, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than \$1,000, or imprisoned not more than one year, or both; and shall be removed from office or employment.



NOTE: There are other laws and applicable cases – not within the scope of this presentation.

SELECTED AI ISSUES IN COPYRIGHT AND PATENT LAW

Preliminary Observation

Under Article 1 Section 8, Clause 8 of the U.S. Constitution, Congress has the power “[t]o promote the Progress of Science and useful Arts, by securing for limited Times to **Authors** and **Inventors** the exclusive Right to their respective Writings and Discoveries.”

This provides Congress with exclusive power to promulgate copyright and patent law – although there is still some lingering state “common law copyright” in the area of recorded audio works.

The types of works covered ~ including the implicit definitions of **Authors** and **Inventors** ~ have evolved over time to ensure that the goal to promote progress is maintained.

Selected Copyright Examples

March 3, 1865 – A new law extends copyright protection to photographs and photographic negatives.

February 16, 1972 - Sound Recordings get federal protection.

December 12, 1980 – Copyright statute is amended to confirm copyrightability of computer programs.



Selected Patent Examples

First Computer Program Patent:

April 23, 1968	M. A. GOETZ	3,380,029
	SORTING SYSTEM	
Filed April 9, 1965		8 Sheets-Sheet 1

March 17, 1980 – Supreme Court – Certain Types Of Life Forms:

United States Patent [19]	[11]	4,259,444
Chakrabarty	[45]	Mar. 31, 1981

[54] MICROORGANISMS HAVING MULTIPLE COMPATIBLE DEGRADATIVE ENERGY-GENERATING PLASMIDS AND PREPARATION THEREOF

Attorney, Agent, or Firm—Leo I. MaLossi; James C. Davis, Jr.
[57] ABSTRACT

COPYRIGHT

The Order directs the U.S. Copyright Office to issue recommendations to the President on potential executive actions relating to copyright and AI: “The recommendations shall address any copyright and related issues discussed in the United States Copyright Office’s study, including the scope of protection for works produced using AI AND the treatment of copyrighted works in AI training.”

NOTE: Such recommendations will likely need to tread the (sometimes) fine line between the domains of the Executive Branch, Congress, and the Judiciary.

At present, the Copyright Office DOES NOT recognize items created solely through AI (*i.e.*, without sufficient human authorship) as qualifying for copyright protection.

2022 - The applicant, Steven Thaler, did not claim direct authorship of any aspect of *A Recent Entrance to Paradise*. Rather, Thaler claimed status as author of the work based on his ownership of the Creativity Machine. In essence, Thaler argued that the machine, with its AI-implemented decision processes, was the equivalent of a regular employee under U.S. copyright’s work made for hire doctrine. Therefore, according to Thaler, authorship of *A Recent Entrance to Paradise* should be attributed to him.



Paintings by elephants

Photographs by monkeys

SELECTED AI ISSUES IN COPYRIGHT LAW

“Authors” and AI

– Point 1:

On November 3, 2018, Steven Thaler filed an application to register his claim of copyright in a two-dimensional artwork titled *A Recent Entrance to Paradise*.

1. The work was described by Thaler as having been “autonomously created by a computer algorithm running on a machine” which Thaler described as a “Creativity Machine.”

2. Thaler did not claim direct authorship of any aspect of *A Recent Entrance to Paradise*. Rather, Thaler claimed status as author of the work based on his ownership of the Creativity Machine.



3. On February 14, 2022 the Review Board of the United States Copyright Office issued its opinion rejecting Thaler’s claim that the creations of his Creativity Machine qualified as copyrightable subject matter. In the Board’s words: “[T]he [Copyright] Office is compelled to follow Supreme Court precedent, which makes human authorship an essential element of copyright protection.”

“Authors” and AI –

Point 2:

On February 21, 2023, in a letter signed by Robert J. Kasunic, Associate Register of Copyrights and Director of the Office of Registration Policy and Practice (the *Kashtanova Letter*), the Copyright Office affirmed ~ and provided additional analysis on ~ its position that copyright will not extend to works in which “the traditional elements of authorship” were generated by a machine.

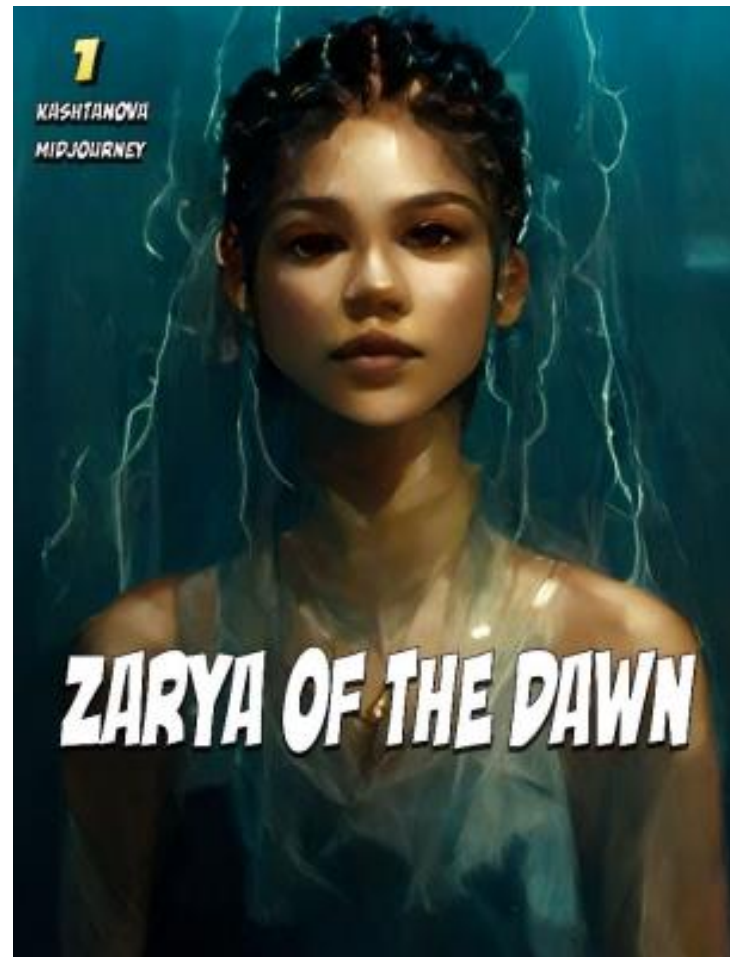


Kristina Kashtanova

<https://www.rappler.com/technology/artificial-intelligence-created-images-lose-united-states-copyrights-kris-kashtanova/> (Last Visited 5/15/23)

1. The *Kashtanova Letter* concerned the correction of its Certificate of Registration for a comic book titled *ZARYA OF THE DAWN*.

2. *ZARYA OF THE DAWN* is a comic book created by artist Kristina Kashtanova using elements of her own authorship as well as elements provided by Midjourney, an AI system capable of generating images in response to text “prompts” provided by a user.



3. In arguing against cancellation of the certificate of registration, Kashtanova asserted that: (1) she authored every aspect of the work, with Midjourney serving as an assistive tool; and (2) alternatively, portions of *ZARYA OF THE DAWN* are registrable because the text was authored by Kashtanova and the full work is a copyrightable compilation due to her creative selection, coordination, and arrangement of the text and images.

4. Kashtanova undertook the following actions: (1) she entered a text prompt to Midjourney, which she described as “the core creative input” for the image, providing as an example an image generated in response to the prompt “dark skin hands holding an old photograph; (2) she then “picked one or more of these output images to further develop;” and (3) she “tweaked or changed the prompt as well as the other inputs provided to Midjourney” to generate new intermediate images, and ultimately what she determined would be the final image.”

5. Despite Kashtanova’s participation in the process, the Copyright Office adhered to the view that she contributed no authorship in the images generated by Midjourney. As stated in the Copyright Office’s *Kashtanova Letter*:



Midjourney response to prompt:

White bunny with low ears, rainbow background, love, cute, happy

Rather than a tool that Ms. Kashtanova controlled and guided to reach her desired image, **Midjourney generates images in an unpredictable way. Accordingly, Midjourney users are not the “authors” for copyright purposes of the images the technology generates.** . . . A person who provides text prompts to Midjourney does not “actually form” the generated images and is not the “master mind” behind them. Instead, Midjourney begins the image generation process with a field of visual “noise,” which is refined based on tokens created from user prompts that relate to Midjourney’s training database. The information in the prompt may “influence” *[sic]* generated image, but prompt text does not dictate a specific result. . . . **Because of the significant distance between what a user may direct Midjourney to create and the visual material Midjourney actually produces, Midjourney users lack sufficient control over generated images to be treated as the “master mind” behind them.**

6. The process as described by Kashtanova also included several changes that she made to two of the images generated by Midjourney. In response, the Copyright Office noted that, “[t]o the extent that Ms. Kashtanova made substantive edits to an intermediate image generated by Midjourney, those edits could provide human authorship and would not be excluded from the new registration certificate.”

7. In particular, Kashtanova stated that she intervened and modified the image of the character Zarya to change the lips and mouth depicted in the image generated by Midjourney. The specific modifications to the Zarya character image are shown below.

8. **The Copyright Office opined that the changes to Zarya’s mouth, particularly her upper lip, are too minor and imperceptible to supply the necessary creativity for copyright protection.**

KEY POINT: The Copyright Office will engage in a “balancing test” to see if the human input is sufficient to support a determination of whether there was at least the minimum required human originality.

Detail before Photoshop



Detail after Photoshop



9. Kashtanova also argued that she used the Photoshop program to show aging of the face, smooth gradients, and modify lines and shapes to produce the image of the old woman below.

10. With regard to the image of the old woman, the Copyright Office stated that **Kashtanova’s description of her changes was insufficient for the Office to determine what expression in the image was contributed through her use of Photoshop as opposed to being generated by Midjourney.** Therefore, rather than relying on Kashtanova’s statements and judgments, the Copyright Office placed the burden on Kashtanova to show with specificity the nature and extent of her alleged changes to the underlying image(s).

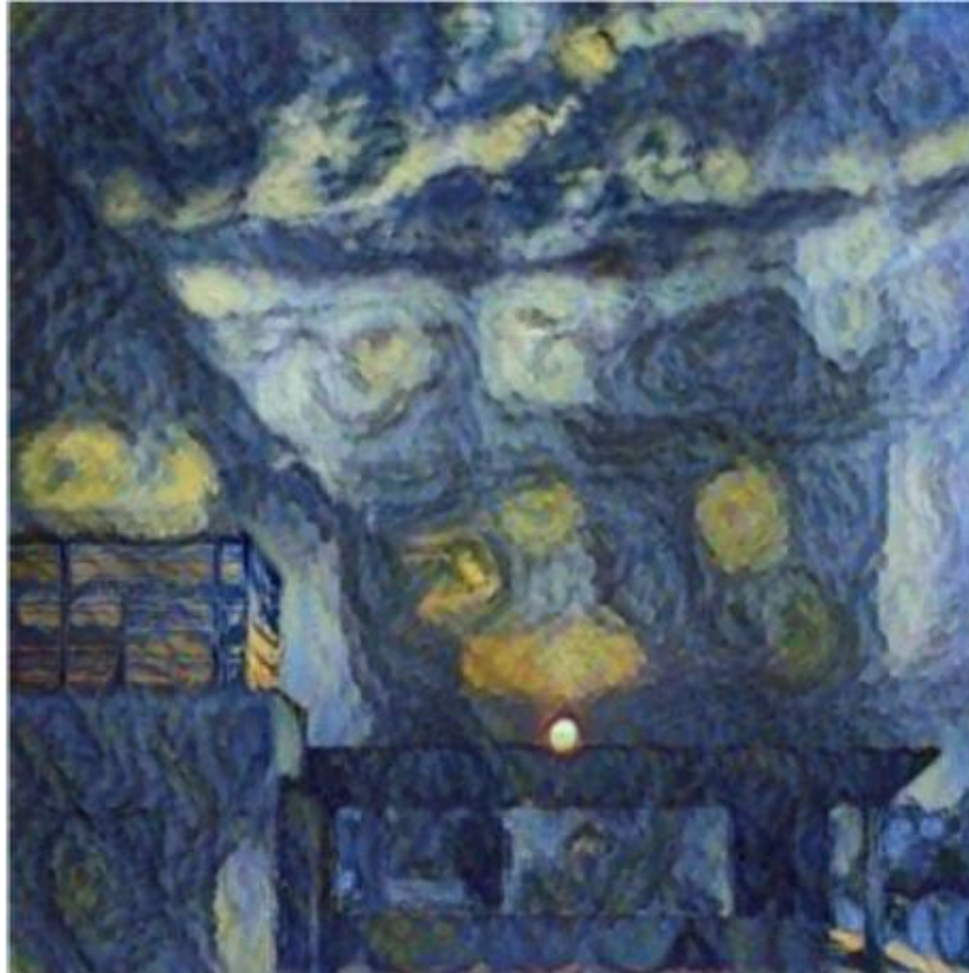


KEY POINT: The application to register the copyright for a work in which an AI tool was used should point out the respective contributions of the AI system and the human **Author(s).** **THIS ALSO APPLIES TO CORRECTING ALREADY-ISSUED CERTIFICATES OF REGISTRATION VIA THE CERTIFICATE CORRECTION PROCESS.**

11. **BOTTOM LINE:** Ultimately, the Copyright Office acknowledged that Kashtanova’s creation of the “text” in *Zarya of the Dawn* and her “selection, coordination, and arrangement of text created by the author and artwork generated by artificial intelligence” qualifies for copyright protection, *i.e.*, they comprise traditionally recognized works of authorship – **BUT THE MACHINE-CREATED ELEMENTS NEEDED TO BE EXCLUDED.**

On December 11, 2023, the Copyright Review Board at the U.S. Copyright Office issued its response to artist Ankit Sahni’s Second Request for Reconsideration for Refusal to Register SURYAST (SR # 1-11016599571; Correspondence ID: 1-5PR2XKJ). **The work at issue – titled SURYAST – is shown below:**

1. In the application, Sahni listed two authors: himself as the author of “photograph, 2-D artwork” and “RAGHAV Artificial Intelligence Painting App” (“RAGHAV”) as the author of “2-D artwork.”

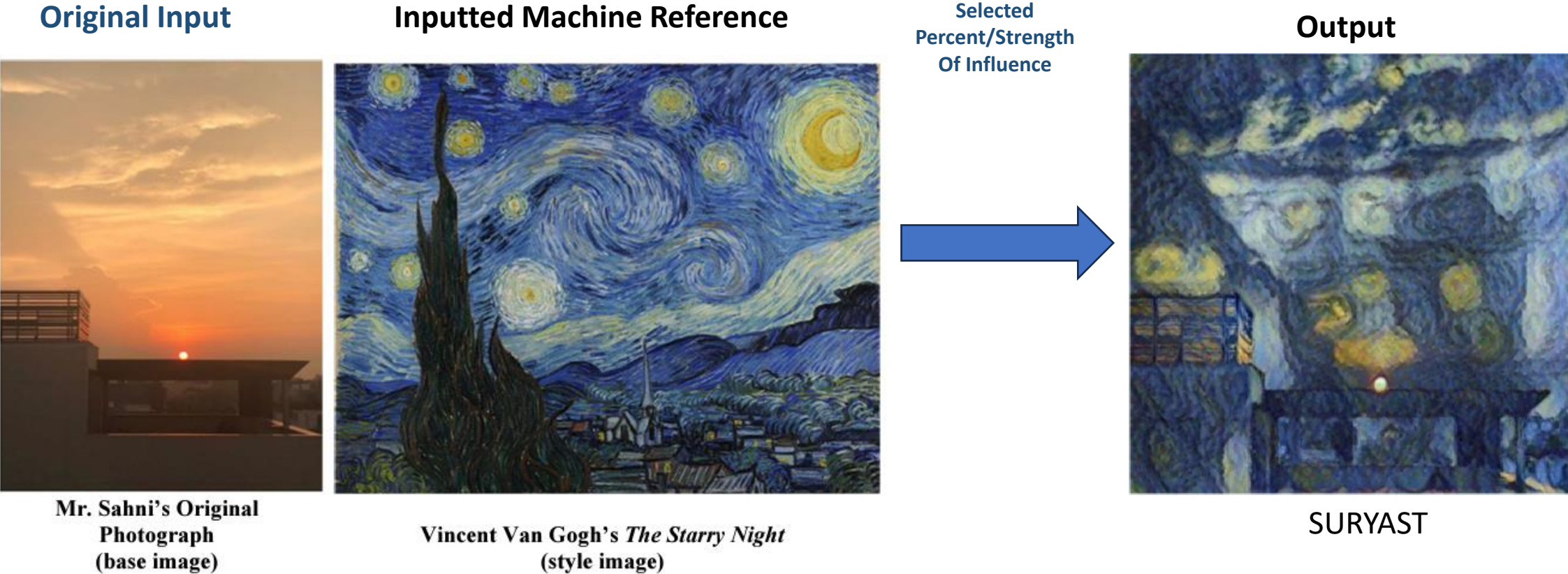


2. Mr. Sahni was identified in the application to register as the sole copyright claimant.

3. Because the application identified an artificial intelligence (“AI”) “app” as an author of the work, the Copyright Office registration specialist assigned to the application requested additional information from Mr. Sahni about his use of the RAGHAV painting app in the creation of the Work.

4. Mr. Sahni does not claim to have modified the Work after it was generated.

5. Mr. Sahni explained that he generated the Work by taking an original photograph that he authored, inputting that photograph into RAGHAV, then inputting a copy of Vincent van Gogh’s *The Starry Night* into RAGHAV as the “style” input to be applied to the photograph, and choosing “a variable value determining the amount of style transfer.”



Mr. Sahni further explained that he named RAGHAV as a co-author because its “contribution is distinct, disparate and independent” from his contribution to the Work.

After considering the information provided by Mr. Sahni regarding his creation of the Work, including his description of RAGHAV, the Board concludes that the Work is not the product of human authorship. Specifically, the Board finds that the expressive elements of pictorial authorship were not provided by Mr. Sahni. As Mr. Sahni admits, he provided three inputs to RAGHAV: a base image, a style image, and a “variable value determining the amount of style transfer.” Sahni AI Description at 11. **Because Mr. Sahni only provided these three inputs to RAHGAV, the RAGHAV app, not Mr. Sahni, was responsible for determining how to interpolate the base and style images in accordance with the style transfer value.** The fact that the Work contains sunset, clouds, and a building are the result of using an AI tool that “generate[s] an image with the same ‘content’ as a base image, but with the ‘style” of [a] chosen picture.” Id. at 6. But Mr. Sahni did not control where those elements would be placed, whether they would appear in the output, and what colors would be applied to them—RAGHAV did.



Suzanne V. Wilson
U.S. Copyright Office Review Board
Suzanne V. Wilson, General Counsel and
Associate Register of Copyrights
Maria Strong, Associate Register of Copyrights and
Director of Policy and International Affairs
Mark T. Gray, Assistant General Counsel



Suzanne V. Wilson

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CREATED BY
POWERPOINT
DESIGNER FUNCTION

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ADDITIONAL SELECTED AI COPYRIGHT ISSUES

“**Ingestion**” of third-party copyrighted content into AI training materials – is this infringing, unauthorized copying or is it “fair use.”

Regarding potential infringement at ingestion, an Authors Guild representative proposed a compulsory licensing system for AI training references.

Cast in the AI context, the question would then become whether the training set is best viewed as the socially-beneficial machine equivalent of an artist’s memory of sources and inspirations or (in the case of third party copyrighted works) an unauthorized “pirated” library of third-party works – the product being output that may, to some degree, compete with the copyrighted works that were ingested by the system.



KEY POINT: The question whether the infringement analysis should begin at the front end of the process (the training input), the backend of the process (the resulting content), or both.

STAY TUNED.

Training Materials

The Executive Order notes a particular concern about how third party copyrighted works should be used, if used at all, to **train AI systems**.

There is, at least, an administrative convenience factor in the “input equals infringement” approach. It also opens up potential new income streams for the creators whose works are used as inputs. However, if the resulting work is not a derivative work or is a fair use or *de minimis* use under established copyright law, are we going too far?



Regarding potential infringement at ingestion, an Authors Guild representative proposed a compulsory licensing system for AI training references.



KEY POINT: The Executive Order can operate to set up Executive-Branch-origin federal policies that can have massive economic and cultural effects with regard to the use of third party works for AI training!

SELECTED AI ISSUES IN PATENT LAW

1. On July 29, 2019 the United States Patent and Trademark Office (“the PTO”) received two patent applications listing a “creativity machine” called DABUS (a/k/a “Device and Method for the Autonomous Bootstrapping of Unified Sentience”) as the sole inventor with regard to each of the applications.
2. The assignee of the DABUS applications was identified as (the now familiar) Stephen L. Thaler.
3. The PTO responded by issuing a Notice to File Missing Parts of Nonprovisional Application because, in the PTO’s view, Thaler needed to supply an identification of the human being or human beings who invented the claimed subject matter.

THE PTO: What is an inventor? “This case presents the question of who, or what, can be an inventor. Specifically, we are asked to decide if an artificial intelligence (AI) software system can be listed as the inventor on a patent application. At first, it might seem that resolving this issue would involve an abstract inquiry into the nature of invention or the rights, if any, of AI systems. In fact, however, we do not need to ponder these metaphysical matters. Instead, our task begins – and ends – with consideration of the applicable definition in the relevant statute.”

THE PTO: The granting of a patent under 35 U.S.C. § 151 for an invention that covers a machine does not mean that the patent statutes provide for that machine to be listed as an inventor in another patent application – any more than a patent on a camera allows the camera [to] hold a copyright.

BOTTOM LINE: The PTO determined in its *Thaler* opinion that the U.S. patent statute does not permit the listing of a non-human entity as an inventor.

United States Court of Appeals for the Federal Circuit

STEPHEN THALER,
Plaintiff-Appellant

v.

KATHERINE K. VIDAL, UNDER SECRETARY OF
COMMERCE FOR INTELLECTUAL PROPERTY
AND DIRECTOR OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE, UNITED
STATES PATENT AND TRADEMARK OFFICE,
Defendants-Appellees

2021-2347

Appeal from the United States District Court for the
Eastern District of Virginia in No. 1:20-cv-00903-LMB-
TCB, Judge Leonie M. Brinkema.

Decided: August 5, 2022

When a statute unambiguously and directly answers the question before us, our analysis does not stray beyond the plain text. Here, Congress has determined that only a natural person can be an inventor, so AI cannot be. Accordingly, the decision of the district court is affirmed.

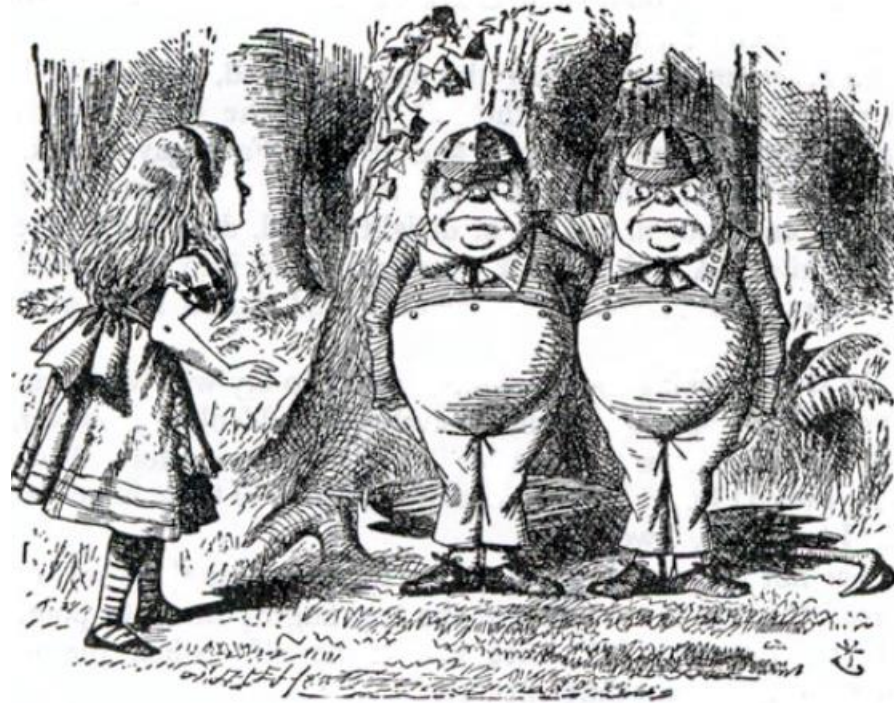
AFFIRMED

COSTS

Cert. den'd

Proper AI Labelling

The Order recognizes the growing generation and use of “**synthetic content**” in expressive content, such as images, videos, audio clips, and text. As defined in the Order, “synthetic content” means information, such as images, videos, audio clips, and text, that has been significantly modified or generated by algorithms, including by AI.



The general approach is to **identify and assess “science-backed standards and techniques” for: (1) authenticating content and tracking its provenance; (2) labeling synthetic content, such as using watermarking; (3) detecting synthetic content; (4) preventing generative AI from producing child sexual abuse material or producing non-consensual intimate imagery of real individuals (to include intimate digital depictions of the body or body parts of an identifiable individual); (5) testing software used for the foregoing purposes; and (6) auditing and maintaining synthetic content.** As defined in the Order, “watermarking” means the act of embedding information, which is typically difficult to remove, into outputs created by AI — including into outputs such as photos, videos, audio clips, or text — for the purposes of verifying the authenticity of the output or the identity or characteristics of its provenance, modifications, or conveyance.

PATENTS



To **promote innovation and clarify issues related to AI and inventorship of patentable subject matter**, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (USPTO Director) shall:

(i) within 120 days of the date of this order, publish guidance to USPTO patent examiners and applicants addressing inventorship and the use of AI, including generative AI, in the inventive process, including illustrative examples in which AI systems play different roles in inventive processes and how, in each example, inventorship issues ought to be analyzed; and

(ii) subsequently, within 270 days of the date of this order, issue additional guidance to USPTO patent examiners and applicants to address other considerations at the intersection of AI and IP, which could include, as the USPTO Director deems necessary, updated guidance on patent eligibility to address innovation in AI and critical and emerging technologies.

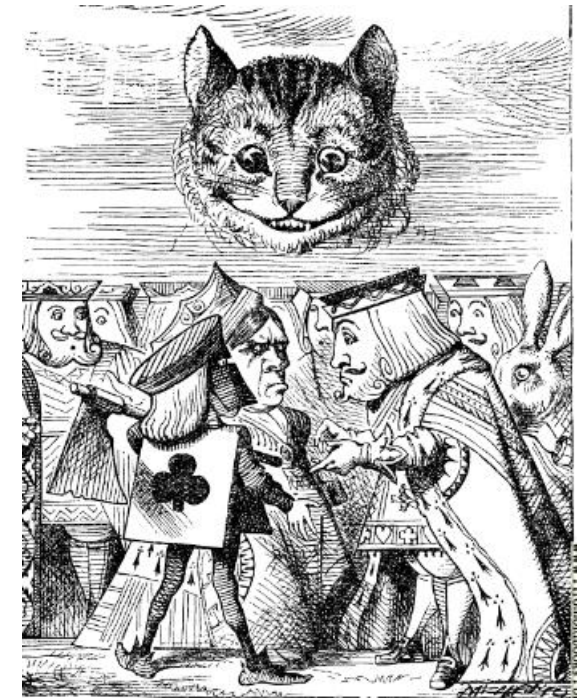
THALER TAKES A SECOND SHOT AT PARADISE



On July 29, 2019 the United States Patent and Trademark Office (“the PTO”) received two patent applications listing a “creativity machine” called **DABUS** (a/k/a “Device and Method for the Autonomous Bootstrapping of Unified Sentience”).

The PTO determined that the U.S. patent statute does not permit the listing of a non-human entity as an inventor:

The granting of a patent under 35 U.S.C. § 151 for an invention that covers a machine does not mean that the patent statutes provide for that machine to be listed as an inventor in another patent application – any more than a patent on a camera allows the camera [to] hold a copyright.



NOTE: The interface of U.S. patent law and AI is not, however, limited to critical issues of inventorship. Recently, for example, there has been concern that the use of an on-line AI tool to assist in the drafting of a patent application can cause an **inadvertent publication** that triggers the “countdown” to the U.S. bar date for filing the application.

SELECTED ADDITIONAL AI-RELATED PATENT ISSUES

RISK OF INADVERTANT DISCLOSURE/PUBLICATION ~ UNINTENTIONAL ASSISTING IN THIRD-PARTY IMPROVEMENT EFFORTS REGARDING YOUR INVENTION

The use of an on-line AI tool to assist in the drafting of a patent application can cause an inadvertent publication that triggers the “countdown” to the U.S. bar date for filing the application.

Potential Legal Concern: Depending, *e.g.*, on the terms of use that apply to the AI tool, including potential third-party access to the user’s input, there can be a risk of unintended disclosure that triggers the running of a bar date ~ even possibly first-to-file concerns.

Potential Practical Concern: Ingestion of draft claims and disclosures can lead to use of ingested content to assist third-party invention or drafting efforts.



~ ASSESS THE TERMS
~ ASSESS THE OPERATION OF THE AI TOOL.



Suddenly,
my input
seems to be
everywhere!

(ii) implement a policy of **sharing information and coordinating** on such work, as appropriate and consistent with applicable law, with the **Federal Bureau of Investigation; United States Customs and Border Protection**; other agencies; State and local agencies; and appropriate international organizations, including through work-sharing agreements;

(iii) **develop guidance** and other appropriate resources to **assist private sector actors** with mitigating the risks of AI-related IP theft;

(iv) **share information and best practices with AI developers and law enforcement personnel** to identify incidents, inform stakeholders of current legal requirements, and evaluate AI systems for IP law violations, as well as develop mitigation strategies and resources; and

(v) assist the Intellectual Property Enforcement Coordinator in **updating** the Intellectual Property Enforcement Coordinator Joint Strategic Plan on Intellectual Property Enforcement to address AI-related issues.



NOTE: Subsection (iv) includes the directive to facilitate efforts to “evaluate AI systems for IP law violations.” This provision is a bit “murky,” but it appears to contemplate that there will be increased government-facilitated efforts to identify civil as well as criminal violations of intellectual property in selected (*e.g.*, targeted) AI systems. [CONTINUED ON NEXT SLIDE]



NOTE (continued): From an IP perspective, this provision, and its potential implementation, deserves special attention. It can have great utility to U.S. companies who may be overwhelmed by what appears to be unprecedented levels of industrial espionage and IP theft. On the other hand, if used as a **political weapon** against selected companies or as a means of “**over-harvesting**” important trade secret information, this supposed enforcement power can be seriously abused.

CLOSING NOTE: In essence, the Order is an invitation for participants in AI industries, legislators, State officials, members of academia, and private citizens to have input into, and to scrutinize, AI-related deliberations in the Executive Branch of the U.S. government. The economic and social consequences of these developments can be enormous. Things are moving quickly – especially as regards AI – and we need to move quickly to monitor and ensure that the actions of the Executive Branch are properly based and work within the Legislative-Executive-Judicial framework of the U.S. government as well as within current U.S. treaty obligations.

A RECENT AI “FRONTIER DEVELOPMENT” THAT IMPLICATES RIGHTS OF PUBLICITY AND MISREPRESENTATION LAWS

Potential Entertainment ~ Advertising Industry Issues

AI TOOL TRAINED ON DRAKE’S VOICE CAN TRANSFORM OTHER PEOPLE’S VOCALS TO SOUND LIKE DRAKE – THE NEXT STEP AFTER AUTOTUNE



Ghostwriter - Heart on my sleeve (Lyrics) Drake & The Weeknd AI Song

INFINITE LYRICS 70K subscribers Subscribe 1.6K Share Download

147K views 2 weeks ago

Ghostwriter - Heart on my sleeve (Lyrics) Drake & The Weeknd AI Song

A request for subscribe and press bell icon which means a lot for us. Thank You 😊 Show more



SCREENGRABS: TIKTOK/@GHOSTWRITER977

<https://www.vice.com/en/article/wxj5gw/heart-on-my-sleeve-ai-ghostwriter-drake> (Last Visited 5/14/23)



Drake performing in 2016

[https://en.wikipedia.org/wiki/Drake_\(musician\)](https://en.wikipedia.org/wiki/Drake_(musician)) (Last Visited 5/14/23)



The Weeknd in 2021

https://en.wikipedia.org/wiki/The_Weeknd (Last Visited 5/14/23)

Midler v. Ford Motor Company And Young & Rubicam Inc., 849 F.2d 460 (9th Cir. 1988)(California Law Tort)

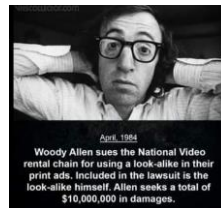
Allen v. National Video, Inc., 610 F. Supp. 612 (S.D.N.Y. 1985)(Lanham Act)



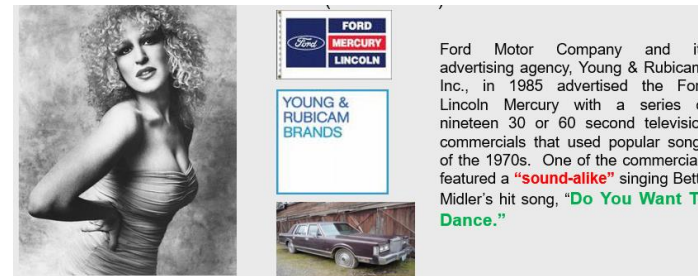
Woody Allen

Woody

Not Woody



Phil Boroff



<https://secondhandsongs.com/performance/46488/all>

NOTE: Each state has statutory and/or common law “Right of Publicity” prohibiting certain unauthorized advertising/commercial uses of a person’s name, likeness or other attributes. See, e.g., Rinkerman, Gary, *Rights of Publicity in the United States, Intellectual Property, Unfair Competition and Publicity – Convergences and Development*, 2014, Edward Elgar Publishing, pps. 118-150. Note: Subjects here are Canadian.

<https://time.com/3418447/woody-allen-comedy-stand-up-1960s/>

<https://m.facebook.com/vhscollector/photos/in-april-of-1984-woody-allen-sues-the-national-video-rental-chain-for-using-a-lo/2852297568141209/>

FINISHED

