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Universal's suit against Anthropic fuels genAI debate

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Marisa Woutersen

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While Universal and Concord accuse the AI platform of training its systems using copyrighted music lyrics for Claude, the case for harmonised regulation of generative AI builds, finds Marisa Woutersen.

Universal Music and Concord Music Group have sued artificial intelligence (AI) firm Anthropic, accusing it of stealing copyrighted song lyrics to train its AI systems.

The case is one of many to be brought against AI platforms by creators for alleged theft of copyrighted material to train generative AI models.

The music publishing pair brought the action in a Tennessee district court on October 18, to address what they describe as "systematic and widespread" copyright infringement by the $5-billion-dollar company.

Anthropic's product, the Claude series of AI models, is claimed by the publishing pair to be built by scraping and ingesting massive amounts of text from the internet.

This dataset, claim the plaintiffs, is used to train their AI models and generate output, including copyrighted song lyrics.

The publishers argued that Anthropic's refusal to license the content it copies and distributes not only deprives rights holders of control over their works, but also competes unfairly with legitimate websites.

Concord and Universal also argue that while they fully embrace innovation and the potential of AI when used ethically and responsibly, Anthropic violated these principles by unlawfully copying and disseminating copyrighted works—including lyrics from numerous musical compositions.

They also claim that despite the complexity of AI technology, the legal issues in this case are straightforward and grounded in long-standing copyright law.

Changes afoot

The recent explosion in the development of AI portends extraordinary changes in the way people and businesses operate—but critics say that those advances cannot come at the expense of the existing and future creators.

Neil Parkes, a partner at Lewis Silkin, believes we are going "to see more cases of this type, including in the UK, particularly as the development and use of AI tools trained using data continues at a significant pace".

That data, he told *WIPR*, includes copyright-protected works.

"Although it can require some lateral thinking by the lawyers and courts, these cases can be and are being pursued using the existing framework of IP law—even if those laws were drafted long before the current uses of AI," he added.

Parkes also noted that "claims of infringement arise from both the input and output of AI, both of which can cause issues".

In terms of input, text and data mining is an essential part of training AI systems but this can lead to IP infringement if it includes protected works, he explained.

Some parties, added Parkes, argue that findings of infringement on the input side can stifle the development of AI, and conflict with national governments whose aim is to encourage innovation and investment.

"Such cases will therefore likely add to the call for the inevitable amendment of existing IP laws as part of the regulation of AI," he said.

Those amendments are expected to "include clarifying the position regarding the use of text and data mining," he continued. "Various proposals to create an exception to copyright infringement for such text and data mining have already been considered".

Fair dealing

Marcus Collins, partner at Irwin Mitchell, highlights the issue facing courts in the US, UK and EU—that the use of copyrighted material used without a licence to educate an AI platform constitutes 'fair dealing' with the work.

"The US is less restrictive than the UK as to what may constitute fair dealing," he told *WIPR*.

"The courts in the UK are most likely to consider unauthorised copying of a work in a commercial context to be inconsistent with the concept of fair dealing as it would tend to exploit the work for the gain of another."

"However, the assumption that there will be a commercial gain for the owner of the AI platform may be muddied due to the output of the work created by the AI being of less commercial value than a human-created work," he added.

This, says Collins, is due to the debated argument of whether an AI can copyright work.

"If it does not, then the lack of exclusivity means that anyone could use it, depriving the party using the AI of a commercial monopoly over the AI's output."

Additionally, there is the issue of whether a non-human can create an original work, which is the essential aspect of copyright protection, explained Collins.

"A machine doesn't express true intellectual endeavour or creativity—it spots patterns in data and applies these patterns in accordance with correlations learnt through exposure to new data.

"Perhaps in the future, AI will be able to make judgments like humans."

Harmonisation

Parkes added: "A concern is that, whatever approach is taken by the courts, there should be a degree of harmonisation across the globe."

That way, a scenario where safe harbours for AI training are established to the enormous detriment of IP rights holders whose works are used to build and hone the skills of AI can be avoided, he said.

Collins suggested that "in the music world, the prospect of copyright-collection societies providing AI training licences could become a licence offering.

"Having said that, the potential competition between human songwriters and musicians and AI might make the industry as a whole less amenable to this," he concluded.

The suit was filed in the US District Court for the Middle District of Tennessee. The publishers are seeking injunctive relief and damages.

The counsel for the plaintiffs are Steven Riley and Tim Harvey from Riley & Jacobson; Matthew Oppenheim, Nicholas Hailey, Audrey Adu-Appiah, Jennifer Pariser, Andrew Guerra, and Timothy Chung from Oppenheim + Zebrak; and Richard Mandel, Jonathan King, and Richard Dannay from Cowan, Liebowitz & Latman.

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