Can a computer infringe your copyright?

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Many readers will now be familiar with generative AI models. You might use them for everyday tasks ranging from planning a holiday itinerary, to finding a restaurant, to producing a first draft of an email. You might even rely on an AI model as an automated research assistant, or you might ask an AI to create a work of fiction or artwork based on your personal preferences.

The success of generative AI models raises the question of whether the owners of the intellectual property used in training AI models should be compensated. Generative AI models are trained on vast libraries of content, including books, websites, artwork, films and musical compositions, which then enables them to create new content in response to user prompts by identifying patterns identified in the training data. Unsurprisingly, many content creators believe they deserve compensation for the use of their works, given the immense valuations that are now routinely attributed to AI models.

Two recent lawsuits brought in the US District Court for the Northern District of California raise precisely this issue. In both cases, a group of well-known authors issued proceedings against a developer of generative AI models (Meta and Anthropic, respectively), alleging that the use of their works for training AI models amounted to copyright infringement.

The interim judgments handed down in both of these cases last week were largely in favour of the defendant AI developer in each case, yet they rely on very different reasoning. In the first judgment (*Bartz et al. v Anthropic PBC*), the Court granted summary judgment in favour of Anthropic as regards the use of copyrighted works to train generative AI models. The Court found this to be no different to teaching a human being how to read and write by exposing them to well-regarded works of literature. Claude learned from and adopted *"grammar, composition and style...distilled from thousands of works"* in much the same way that human authors have always done.

By contrast, in the second judgment of *Kadrey et al. v Meta Platforms Inc.*, the Court suggested (albeit *obiter*) that it would generally be illegal to use copyrighted works for training generative AI models without permission, as such use would be liable to dramatically reduce demand for human-created works of literature, music and film in the long-run. Contrary to what was held in *Anthropic*, the Court held training generative AI models is distinct from the process of teaching a human author how to improve their writing skills, as AI enables a single individual to produce large quantities of works with a fraction of the time and creativity that it would otherwise take. Nonetheless, the Court ruled against the authors on the grounds that Meta's AI model

(Llama) did not reproduce the authors' original content in sufficient quantities to amount to direct infringement, nor were the authors entitled to monopolise a hypothetical market for licensing their works as AI training data. Given that the authors' case only paid "*lip service*" to market dilution, the Court thus had no option but to enter summary judgment in Meta's favour. The *Meta* judgment nonetheless appears to be a pyrrhic victory for developers of generative AI models, as the Court clearly took the view that the authors were likely to have succeeded at trial had they based their case on market dilution instead.

The question underpinning both cases is whether AI-generated content competes directly with works created by human writers, threatening the livelihoods of the latter. That threat is particularly acute, given that AI-generated content can be created at virtually no cost. In *Meta*, the Court noted that even though the market for works by well-known authors, such as Agatha Christie or Robert Caro, might never vanish, a flood of AI-generated content might make it exceedingly difficult for newer writers to establish themselves – depriving future generations of the next Agatha Christie or Robert Caro.

Given the different reasoning adopted by the District Court in *Anthropic* and *Meta*, it seems likely that a definitive judgment from the US Supreme Court will ultimately be required. In Britain, similar debates are playing out in Westminster. Intuitively, it seems arbitrary to distinguish between using copyrighted works to teach a student how to write and doing the same thing with an AI model. At the same time, there are immense real-world complications that arise with the latter, as highlighted in *Meta* – even if the way in which an AI learns is analogous to how human beings learn how to read and write, no single person can hope to "*generate literally millions of secondary works*" as an AI model is capable of doing. The law, in both Britain and the United States, must evolve as technological advancement reshapes society to ensure that the purpose of copyright protection is not undermined. That does not mean putting a halt to the development of generative AI (as noted in *Meta*), but it does entail the creation of a regulatory framework under which the rights of content creators are clearly specified such that there is no ambiguity as to whether they need to be compensated for the use of their works in training AI models.

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