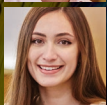




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AI Training Data Cases Outside the United States

By Dominic Bray & Sevine Dandan

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Authors: Dominic Bray and Sevine Danden



In contrast to the high volume of cases brought in the US, there have been very few cases issued in other jurisdictions in connection with training AI models.

In the UK, whilst other claims have been threatened, the case of *Getty Images (US), and others v. Stability AI Ltd* (issued in January 2023) is currently the only case in relation to training AI models before the UK courts. The case runs parallel to the US litigation. Getty alleges that Stability AI infringes their rights as copyright owners or exclusive licensees in the millions of works held in the Getty database in order to train Stability AI's image generation AI model, Stable Diffusion.

Getty's claim focuses on copyright infringement, database right infringement, trade mark infringement and passing off under UK law. Getty argues that Stable Diffusion was trained using the LAOIN-5B Dataset and its subsets, which themselves were created by scraping links to millions of works held on various websites, including copyright works held in the Getty database. Getty Images also claims that some of the AI-generated images produced by Stable Diffusion copy a substantial part of one or more of Getty Images' copyright works and have used, by way of example, a selection of images produced by Stable Diffusion which also feature the GETTY IMAGES and ISTOCK trade mark signs as watermarks.

This case has been set a trial window for July 2025. In 2023, Stability AI applied to the UK High Court for strike out/summary

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judgment of two aspects of the Getty Images’ claim; (a) a jurisdiction challenge on the basis that because the training and development of Stable Diffusion allegedly took place outside of the UK, there could be no infringing act within the jurisdiction and (b) that the claim for secondary infringement (importing an infringing article i.e. the model into the UK) was bound to fail on the basis that an ‘article’ only relates to physical, tangible imports and not, for example, making available software on a website.

In December 2023, the UK High Court rejected Stability AI’s summary judgment application. The court noted on the jurisdiction point that although on the face of it there appears to be strong support for the finding that no development and training of Stable Diffusion took place in the UK, there is also conflicting evidence, and the issue would need to be resolved at a trial. On secondary infringement, because the point has not been determined previously by the UK court, this too requires consideration at a full trial.

Stability AI have since filed their defence. In addition to the points raised on summary judgment, Stability AI argues that the user, not them, is responsible for the act of generating infringing outputs over which they have no control.

Additionally, they assert that Stability AI has not made use of Getty Images’ trade marks in the course of trade, and that they are entitled to rely on the caching and hosting safe harbours pursuant to regulations 18 and/or 19 of the Electronic Commerce Directive Regulations 2002. Interestingly, Stability AI also relies on the defence under section 30A(1) CDPA of fair dealing for the purposes of pastiche, a defence which has been tested little in the UK courts. UK fair dealing principles are much narrower than US ‘fair

use', and the pastiche defence, as with all other exceptions and limitations, is subject to the three-step test (Directive 2001/29/EC, Article 5.5).

In Germany, the case of *Robert Kneschke v Laion e.V.* was filed on 27 April 2023 in the Hamburg District Court. The claimant is a German stock photographer who found that his images were being used by the defendant, a non-profit organisation based in Hamburg, that provides open-source datasets for use in training AI models, including Stable Diffusion.

The key issue is whether the use of Mr. Kneschke's photographs by the defendant constitutes a copyright-relevant reproduction within the meaning of Section 16 Paragraph 1 Sentence 1 of the German Copyright Act (UrhG). The defendant asserts that there is no copyright infringement on the basis that the datasets only provide links to images which are publicly available via the internet and do not store images within the dataset, and that to the extent they have reproduced any images, they are entitled to rely on the text and data mining exceptions under by §44b and §60d UrhG in relation to the making of temporary reproductions and for research purposes.

Mr. Kneschke is seeking an injunction to stop the defendant's continuing use of his photographs. The hearing for the case has been postponed to 11 July 2024 and should be watched closely, given the defendant's provision of datasets to large AI companies to train high-profile image generation AI models which are publicly available in other jurisdictions.

We are not aware of any court rulings regarding the use of training data outside the US and Europe.