

Forum: GA6

Issue: Appropriate updating of copyright law in the context of the digital age

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Introduction

The world of international copyright law is a highly complex network of multilateral treaties, bilateral agreements, and national legislation. The digital age, though, has ushered in a new era of media consumption, production, and publishing, fundamentally altering the landscape on which the aforementioned copyright systems were initially established. As a result, international legislators must adopt decisive measures in order to bring global copyright law into the modern era.

In general, the purpose of copyright law is to protect the intellectual property rights of those who create, so as to spur innovation and progress in the realm of human intellectual endeavors. Media that fall under copyright protections include films, books, songs, software, photography, and artwork. Legal rights holders (i.e. those entitled to protection of a work) may be the author, individuals, corporations, or organizations that have obtained the legal rights thereof. Possessing the legal rights over a work guarantees full control over its use, through the granting of licenses, initiating legal proceedings, and/or accruing financial compensation.

The digital era has introduced a number of complications in the protection of legal rights holders. Digital platforms such as the popular video streaming platform YouTube have allowed small/independent creators to publish original content at an enormous scale, resulting in a mass influx of copyright holders entitled to the same protections as large media corporations. Moreover, the World Wide Web has become a conduit for protected works to be illegally distributed on public platforms, necessitating new measures by which intellectual property can be given due protection. Additionally, Generative Artificial Intelligence (AI), a recent development of the digital age, has yet to come under meaningful regulation by international bodies, and thus developers of Large Language Models (LLMs) have had free reign to utilize unlicensed content in the training thereof, potentially constituting gross violations of intellectual property.

Definition of Key Terms

Intellectual Property (IP)

The intangible creations of human creativity. Intellectual property include patents, copyrights, and trademarks.

Fair Use

Fair Use is the principle that allows copyrighted works to be used without permission of the copyright holder, though only under certain circumstances considered to be transformative. These may include criticism, commentary, news reporting, and/or teaching.

Public Domain

Creative materials that do not fall under copyright protections are in the Public Domain, meaning that they may be utilized freely without permission/license from the author. Intellectual property may enter the public domain following the expiration of copyright or voluntary placement therein by the rights holder.

Economic Rights

Economic Rights are privileges that allow the owner to gain financial compensation for the use of the copyrighted work by others. They may also be purchased, sold, or transferred at the will of the holder.

Moral Rights

The full privileges of the author to control the use of their work by all external parties are referred to as Moral Rights. Unlike economic rights, they are the sole possession of the author and cannot be transferred.

Large Language Models (LLMs)

The current most widespread use of generative AI, LLMs have the ability to generate text, image, and video via user commands. LLMs such as Chat GPT, Midjourney, and Bard are trained using online data sets which contain billions of pieces of digital media.

Copyright Infringement

An instance in which a copyrighted work has been distributed, displayed, or otherwise appropriated without authorization from the exclusive copyright owner is described as Copyright Infringement.

Background Information

There is currently no unified framework for international copyright law, instead there exists a number of multilateral treaties as well as regional agreements that encompass sections of the global community. The most widely adopted international copyright agreement is the Berne Convention For the Protection of Literary and Artistic Works (1886). It presently has 164 signatories worldwide, holding jurisdictions over the vast majority of United Nations (UN) Member States. The convention is, however, woefully inadequate for addressing the copyright necessities of the modern era. This is due to its lack of

a cohesive enforcement mechanism as well as its mandate of a loose set of principles as opposed to concrete policy. Moreover, the agreement is highly out of date, having not undergone meaningful revision since 1971.

There has, however, been modest progress in furthering protections of digital media within international agreements in recent decades. The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) (1994) echoes several of the mandates of the Berne Convention along with additional protections of digital media, including robust enforcement mechanisms for ensuring compliance among Member States. Moreover, the WIPO (World Intellectual Property Organization) Copyright Treaty (WCT) (2002) became the one of the first binding international treaties to extend protections to digital databases and computer programs.

The Berne Convention, TRIPS, WCT, and other agreements of their kind provide a starting point from which to draft new legislation whereby the demands of the digital era can be met, providing adequate protection to central principles of intellectual property rights. Any new, universal copyright framework must seek to address the following three challenges.

Sub-topic 1: Protection of independent creators on the World Wide Web

The rise of digital platforms operating on the World Wide Web (WWW) on which original content is easily created, published, and consumed has provided millions with the ability to produce and distribute material akin to that of a large corporation. As is stated in the principle of 'Automatic Protection' (a key facet of the Berne Convention, as well as IP jurisdictions worldwide), as soon as an original work is made publicly available it becomes eligible for copyright protections, making every online content creator, whether independent or a large media distributor, a legal rights holder.

This presents a key flaw in mechanisms of modern copyright law. The vast majority of such legislation was drafted at a time in which most stakeholders were corporations, meaning that in the event of a copyright dispute, those involved would have the financial resources to seek legal counsel and resolve the matter in a court of law. The independent creators of the age of the internet, however, lack such resources, spelling disaster for the notion of just dealing in disputes over copyright infringement.

The principle of 'Fair Use' is especially vulnerable to abuse due to the subjective nature as to what qualifies therein. A creator may, for example, upload a video on YouTube (a prominent online streaming platform) containing a brief section from a copyrighted film, doing so under the belief that the provided criticism would qualify their unauthorized inclusion of the clip as Fair Use. The media

company possessing rights over the copyrighted material may, however, issue a 'manual claim' over the video, choosing to either demonetize (prevent creator from accruing revenue from advertisements) or outright request the removal of the claimed content, asserting that the clip does not fall under Fair Use and thus constitutes copyright infringement. The creator may dispute the claim, but nevertheless only the claimant can decide whether or not to rescind it.

In this instance, the creator lacks the legal representation by which he could support what may be a legitimate claim to Fair Use. The corporation, by contrast, has a full team of litigators to rebuff any attempts the creator could make to appeal the claim. The opposite scenario, in which a corporation unaccountably appropriates the content of an independent creator with a flimsy claim to Fair Use, is possible as well, though notably less common.

The current system on which copyright disputes are fielded is severely lacking in terms of the means by which the content of smaller, independent creators characteristic of the digital era can be protected at the same standards as those of media conglomerates. Through altering the legal landscape of copyright from one that values sheer size to one that values justice, key principles of intellectual property protection can be upheld in an age of unprecedented content creation.

Sub-topic 2: Regulation of Artificial Intelligence in the protection of Intellectual Property

In recent years, the field of Artificial Intelligence (AI) has advanced rapidly, growing to be well-integrated into the daily lives of millions worldwide. The essential AI tool of the LLM has provided millions with the ability to easily generate highly complex media at a relatively minimal or non-existent cost. The means by which such tools are designed for this purpose, however, are laden with ethical and legal concerns as to the appropriation of unlicensed intellectual property by LLM developers.

AI tools including Chat-GPT, Midjourney, and Bard are programmed, or 'trained' using digital media available online, such as newspaper articles, academic journals, photography, and feature films. Such media are accessed through datasets, i.e. digital compilations comprising billions of works. Stable Diffusion and Midjourney, for example, train their respective models via LAION-5B, a gargantuan dataset containing over 6 billion images collected from the web. The legal complications arise, however, from the fact that large portions of the media used to train LLMs are protected pieces of intellectual property, and while simply utilizing such media in the creation of models likely does not violate copyright protections, the generation of media via these models constitutes a legal gray area.

In December of 2022, three artists filed a class-action lawsuit in the United States against the generative AI platforms Stable Diffusion, Midjourney, and DeviantArt (*Andersen v. Stability AI et al.*).

The plaintiffs alleged that the LLMs had been trained using their original, copyrighted works in order to generate artwork in their unique style, breaching their intellectual property rights. The lawsuit was, however, dismissed, the court citing a lack of sufficient evidence for the accusation brought forth by the plaintiffs. Still, various lawsuits regarding copyright infringement of generative platforms persist. In September of 2023, Getty, an image licensing company, filed a lawsuit against Stability AI (*Getty Images (US), Inc. v. Stability AI, Inc.*), alleging the unauthorized use of over 12 million copyrighted photographs by Stability Incorporated. As of December 2023, the case remains in litigation. Further lawsuits have additionally been filed by various individuals and organizations alleging AI-related copyright infringement, most of which await final court ruling.

In the majority of cases, the development corporations behind the accused LLMs have argued that AI generated content falls under Fair Use, i.e. is sufficiently transformative. Moreover, the ruling in the matter of *The Authors Guild, Inc. vs. Google, Inc.* is cited as legal precedent for their use of copyrighted content in the creation of online tools. In this lawsuit, the U.S. Court of Appeals for the Second Circuit ruled that Google, a popular search engine, was legally justified in gathering data from entire books in order to improve its database search function.

Additionally, there exists further ambiguity as to the authorship of AI generated content. Much of concurrent copyright law does not identify the person/entity entitled to legal rights over LLM produced content. Whether they may be the developer of the LLM, the user which prompted the material, or, though controversially, the AI itself, remains highly subject to debate. The Copyright Office (the U.S. government copyright authority) has, though, determined that AI generated works may not at all be subject to copyright protections unless there is sufficient evidence of human creative input. Moreover, an American court has further ruled that AI may not be entitled to copyright protections as an author, reaffirming the notion that only humans can possess such rights.

Still, further action is needed in updating copyright legislations in providing a permanent resolution to these legal ambiguities, such that the integrity of intellectual property can be maintained while AI generative technologies remain innovative as well as available for public use.

Sub-topic 3: Enforcement of copyright regulations on digital platforms

Internet copyright infringement is a widespread practice on digital platforms, constituting blatant violations of intellectual property rights on a massive scale. Present copyright provisions, however, lack effective means by which infringement can be quelled and regulations enforced meaningfully.

Much of the widespread infringement present on digital platforms is due to the commonly held

conviction that public access is equivalent to public domain, i.e. that works consumed on publicly available platforms are not subject to copyright protections, and thus can be used indiscriminately. In truth, the state of intellectual property is not dependent on where it has been published but rather the factors that contribute to its status as a copyrighted work, such as date of release. The assertion otherwise has been identified by the American Bar Association as one of the biggest misunderstandings of modern copyright law.

As a result, incidences of copyright infringement on the internet have been rising steadily, with creators inaccurately believing that simply acknowledging the rights holder can serve as legal justification for unauthorized publication of a copyrighted work. Platforms such as YouTube have attempted to implement measures by which copyrighted content can be systematically identified and the infringement resolved efficiently, including Content ID (the system by which all published media is cross-checked on a database of copyrighted works) as well as Manual Claims (the ability of copyright holders to remove/demonetize infringing content on their own accord), though subject to abuse as these systems may be.

Still, such systems have proven insufficient for correcting infringement on the scale of the entire internet. Websites wholly dedicated to trafficking unlicensed content continue to thrive on digital platforms, having allowed for the practice of illegally accessing copyrighted content, i.e. “pirating” to become commonplace. The annual cost of copyright infringement is estimated to be 50 billion USD in lost revenue, meaning that a substantial number of authors/rights holders are being deprived of due compensation for the distribution of their intellectual property as a result of this crisis.

This is due in part to the decentralized nature of monitoring digital platforms for copyright infringement. There currently exists no international authority for the identification of the unauthorized publishing of copyrighted works on the internet. National governments, while possessing the legal jurisdictions to engage in mass internet surveillance, often only do so for the expressed purpose of combating illegal activities outside of the realm of copyright law. As a result, private actors must locate online IP infringement on their own accord, leading to significant inefficiencies in this process which allow for copyright infringement to take place without the knowledge of rights holders.

In order for the principles of copyright law to be impactful in the modern world, enforcement must extend into the digital platforms on which the vast majority of media is now published and accessed. As such, it is highly necessary for the international community to take measures in ensuring that infringement is sufficiently monitored and acted upon, upholding the rights of copyright holders worldwide.

Major Countries and Organizations Involved

World Trade Organization (WTO)

Established in 1995, the WTO is an intergovernmental organization comprising 164 Member States worldwide, the purpose of which is to regulate and facilitate international trade, doing so in close cooperation with the UN. Moreover, the WTO has been a leading body in implementing necessary measures for the protection of copyrighted works in the digital era. The TRIPS agreement, established by the WTO, attempts to achieve this goal through high standards of digital media protection and stringent means by which these standards can be upheld by signatories.

World Intellectual Property Organization (WIPO)

The WIPO was established by the UN in 1967 in order to oversee the protection of Intellectual Property worldwide. It is the principal arm of the international community for the protection of IP, administering 26 international treaties concerning matters of copyright protections. The most significant of these, the WCT, has made important strides in extending protections to digital works and datasets, however has not undergone revision since it was drafted in 1996.

Stability AI Inc.

Stability AI, developer of Stable Diffusion, is an LLM capable of generating highly detailed images and videos. Along with Open AI and Midjourney, Stability has undergone a number of legal proceedings regarding the alleged appropriation of copyrighted works in the training of its model. While having yet to be found liable for any such allegations, Stability remains at the forefront of debates regarding the legal legitimacy of generative AI training systems.

The Authors Guild

The Authors Guild is a US-based professional organization primarily focusing on advocacy for the rights of working writers. In particular, the organization works towards guaranteeing copyright protections. The Authors Guild has been involved in a number of cases regarding alleged violation of intellectual property by LLMs, the most significant of which being a class-action lawsuit being filed against Open AI (developer of Chat-GPT and Dall-E) in September of 2023 over concerns of AI generative platforms utilizing licensed works in the training of their models (Authors Guild vs. OpenAI inc.). The case remains in litigation as of December 2023.

Alphabet Inc.

Alphabet Incorporated is one of the world's largest technology corporations, and most notably the holding company of widely popular search engine and digital service provider Google. YouTube, a subsidiary of Google, has been the primary platform on which independent creators have been able to publish long-form, mainly original content to public audiences. The independent nature of media on the service has drawn YouTube, and thus Alphabet, into a number of controversies regarding copyright infringement.

The United States (US)

As the birthplace of many innovations characteristic of the digital era, not least of which AI, the United States is uniquely positioned to pass key legislation as to the regulation of such technologies and the firms associated with them. Moreover, it is U.S. copyright law which has served as a basis for many of the legal dilemmas emerging as a result of technology-induced legal ambiguities, with the vast majority of AI-related copyright litigation taking place in American courts.

The European Union (EU)

The EU is a key regional organization comprising 28 Member States across the European Union, all of which are bound by common standards for trade, including those pertaining to copyright law. Notably, the Copyright and Information Society Directive 2001 implemented the terms of the WCT, expanding and standardizing copyright protections across much of the continent.

African Intellectual Property Organization (OAPI)

Established in the 1977 Bangui agreement, the OAPI is a regional organization with jurisdiction over the copyright practices of 17 states across West and Central Africa. Echoing the terms of French copyright law, the OAPI mandates notably generous economic and moral rights to copyright holders.

Timeline of Events

Date (start - end)	Name	Description
September 9th, 1886	Berne Convention	The first major treaty to govern international copyright standards was established, guaranteeing universal moral rights and laying the groundwork for subsequent agreements of its kind.
July 14th, 1967	Founding of WIPO	WIPO was founded by order of the UN General Assembly, and has since been a leading

		intergovernmental organization in the attempted implementation of uniform IP protection internationally.
April 30th, 1993	WWW becomes publicly available	The WWW, or 'web' has allowed billions of users across the globe to access and publish content on a scale unseen in history, ushering humanity into the digital age.
January 1st, 1995	TRIPS comes into effect	Established by the WTO, TRIPS became among the first major agreements to extend copyright protections to works contained in datasets as well as computer programs.
December 20th, 1996	WCT established	Established by WIPO, the WCT provides the same protections as the Berne convention, as well as certain economic rights to authors of digital works/IP contained in datasets.
June 22nd, 2001	Information Society Directive passed	Adopted by the European Parliament, the <u>Information Society Directive</u> implemented measures of the WCT and standardized copyright law among EU Member States.
February 14th, 2005	YouTube introduced	A platform on which users can upload, stream, and produce content free of charge, YouTube has been a catalyst for many of the challenges faced by Copyright law in the digital era.
November 30th, 2022	Chat GPT released	OpenAI's ChatGPT marked the first major debut of generative AI technology in the mainstream. ChatGPT and other LLMs train their models via datasets containing billions of works, many of which possess IP protections.
August 18th, 2023	Landmark U.S. court ruling on AI copyright protections	A Washington D.C. court ruled that AI cannot be recognized as an author and thus is not entitled to copyright protections, setting the precedent that

		only humans can be accredited rights holders.
September 19th, 2023	Lawsuit filed by Authors Guild	The Authors Guild, as well as several prominent authors have filed a still-pending lawsuit against OpenAI, alleging breach of their IP in the collection of data from copyrighted novels in the training of text-generation software.

Relevant UN Treaties and Events

Universal Copyright Convention (UCC)

The UCC is an international instrument established by the UN Educational Scientific and Cultural Organization (UNESCO) in 1952 in order to provide a universal system of copyright law to which the international community as a whole can refer. It was created as an alternative to the Berne Convention, as several nations, most notably the United States, objected to the key Berne principle of Automatic Protection. The UCC has not, however, been amended since 1971, causing it to be woefully unequipped to address the modern state of copyright.

Previous Attempts to solve the Issue

Intellectual Property Enterprise Court (IPEC)

IPEC is an instrument of the United Kingdom's legal system by which small creators can file claims against copyright infringement. It does not require legal representation for the claimant, making it highly affordable for those unassociated with a media corporation. While providing a valuable opportunity for independent creators to legally advocate for their intellectual property rights, the process is notoriously difficult and highly limited in scope; only a claim for up to £10,000 is eligible for filing.

Content Identification

Content ID is a system implemented in 2007 by the video streaming service YouTube in order to address rampant copyright infringement occurring on the platform. Every video uploaded to the platform is scanned against a database of copyrighted content submitted by the rights holders, such that any unauthorized publishing of a protected work can be addressed automatically. Once located, videos containing copyrighted content will either be blocked from viewership or demonetized, depending on the request of the owner. Content ID has been considered highly successful, however is only limited to one streaming platform and is unable to

address copyright infringement on the internet as a whole.

Possible Solutions

Sub-topic 1: Protection of independent creators on the World Wide Web

Global system for issuing small claims: A global system for issuing small claims would entail the establishment of an international legal organization by which the independent creators of UN Member States could file small claims for copyright infringement. This would allow rights holders without the backing of a large corporation access to high-quality legal advocacy that can ensure their rights to protected intellectual property.

Clear guidelines of fair use: The ambiguities of what does and does not constitute Fair Use has been subject to abuse by rights holders attempting to claim the revenue of works that contain their content in some form. By laying down clear and specific criteria for what is considered sufficiently transformative, such legal ambiguities can be resolved and the crucial right to fair use be protected.

Sub-topic 2: Regulation of Artificial Intelligence in the protection of Intellectual Property

Mandate transparency in LLMs: The UN may require LLM developers to be transparent with consumers as to the content that they may have, or have not licensed in the creation of generative AI software. This regulation will ensure that consumers and rights holders alike are informed of the legal implications in utilizing the generative AI. Moreover, it will encourage the developers themselves to license appropriated content in order to avoid the potential legal repercussions of disclosing the unauthorized use of copyrighted works in their models.

Require compensation for authors of work used to train generative AI: The UN may mandate that data collection from unlicensed copyrighted works to train LLMs is illegal under international law. As a consequence, LLMs will need to obtain the necessary permissions and/or provide financial compensation for all utilized IP, ensuring fair compensation for all authors/rights holders whose work contributes to the development of generative AI programs.

Sub-topic 3: Enforcement of copyright regulations on digital platforms

Guarantee universal automatic protections: Automatic protection, the principle that the very creation of a work instantly qualifies it for copyright protection under the law, is enshrined in the Berne Convention however is not in place in all legal jurisdictions globally. In the United States, for example, one cannot sue for copyright infringement without having first registered their work with the US Copyright Office. By ensuring universal automatic protection for works on digital platforms, the UN can take a pivotal step forward in discouraging copyright infringement.

Monitoring of digital systems for copyright infringement: The UN may establish a transnational body with the sole purpose of monitoring digital platforms for instances of copyright

infringement. While not possessing the jurisdiction to remove or take legal action on behalf of the rights holder, the information accrued by the monitoring system will be made publicly available such that concerned parties may be made aware of IP violations.

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