AI Art Ruling Shows Courts' Training Data Cases Approach

By **Stuart Levi, Mana Ghaemmaghami and Shannon Morgan** (September 5, 2024)

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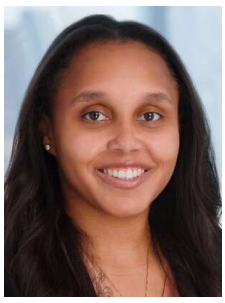

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On Aug. 12, U.S. District Judge William H. Orrick of the U.S. District Court for the Northern District of California issued an order granting in part and denying in part the defendants' motions to dismiss various claims in Sarah Andersen v. Stability AI Ltd., a putative class action brought by artists alleging that their works were used by the defendants without permission, including to train the Stable Diffusion text-to-image AI software tool.

This is the second motion to dismiss decision in this case and concerns the plaintiffs' first amended complaint. The court's analysis provides some important insights into how courts are approaching training data cases.

Background

In early 2023, the plaintiffs filed suit against certain developers that have allegedly either contributed to the development of, or built products that leverage, Stable Diffusion, an AI tool that generates images in response to user text prompts.

The plaintiffs alleged that the Stable Diffusion tool was trained on the plaintiffs' copyrighted images and allowed users to provide prompts that sought to generate images "in the style of" one of the plaintiffs.

The original complaint included allegations of direct and vicarious copyright infringement, violation of the Digital Millennium Copyright Act, violation of statutory and common law rights of publicity, and violation of unfair competition law. Each of the defendants moved to dismiss, and in October 2023, the court largely granted, with leave to amend, the defendants' motions to dismiss.

The plaintiffs subsequently filed an amended complaint, seeking to address some of the shortcomings in their original complaint that were highlighted in the motion-to-dismiss ruling. Specifically, the amended complaint included additional allegations regarding how training images are contained and used in the operation of Stable Diffusion. The defendants again moved to dismiss.

Key Aspects of the Court's Motion to Dismiss Ruling

We highlight below the notable aspects of the court's ruling, and what they might mean for AI-training cases more generally going forward.

The Model and Distribution Theories of Infringement

In their amended complaint, the plaintiffs added a new defendant, Runway AI, which the plaintiffs alleged had worked with co-defendant, Stability AI, to train and distribute Stable Diffusion.

Runway AI did not move to dismiss the plaintiffs' direct copyright infringement claim that it used the plaintiffs' works to train Stable Diffusion.

This is likely because the facts of such copying are not in dispute, and the issue will be one of fair use, which is a fact-specific inquiry not appropriate for a motion to dismiss, and because such claim survived Stability AI's prior motion to dismiss.

However, Runway AI challenged the plaintiffs' two other theories of direct infringement:

1. The "model theory," which is based on the premise that the Stable Diffusion product itself is "'an infringing Statutory Copy' of plaintiffs' works or a 'Statutory Derivative Work' because it represents a transformation of plaintiffs' works"; and

2. The "distribution theory," which alleges that Runway AI infringes the plaintiffs' exclusive rights to distribute the plaintiffs' copyrighted works because distributing Stable Diffusion is the same as distributing the plaintiffs' works.

As the court noted, both the Model Theory and the Distribution Theory turn on whether the plaintiffs' copyrighted works are "contained" in Stable Diffusion, given that visual reproductions of the images themselves are not in the model, but rather the model may include algorithmic or mathematical representations of those works, as alleged by the plaintiffs.

Significantly, the court held that the fact that the plaintiffs' works may be contained in Stable Diffusion in a different medium — i.e., algorithms — to which such works were originally fixed is not an impediment to the direct copyright infringement claim.

In support of this conclusion, the court cited the Nimmer copyright treatise: "A work is no less a motion picture ... whether the images are embodied in a videotape, videodisc, or any other tangible form."

Some will likely question whether the distillation of a visual image into an algorithm can properly be analogized to a motion picture being embodied in a different medium that is designed to display the work itself — an issue that will likely be front and center as the case progresses.

Runway AI also relied on the Northern District of California's decision in Kadrey v. Meta Platforms Inc. last November, which rejected the argument that an AI model itself could be considered a derivative of the model's underlying training data.

The Andersen court rejected the application of Kadrey, based on the fact that the AI models at issue in Kadrey — text generators — were different from the image generator models at issue in this case in that such models do not function the same and require materially different allegations.

The court found that the plaintiffs' allegations were therefore sufficient to allow the direct infringement claims to proceed.

What Does It Mean for an AI Model to Be Open Source?

A key debate within the field of AI development is whether models that are labeled as "open source" can be properly characterized as such.

Open source generally refers to software for which the human-readable source code is made available with broad permissions for reuse under open-source licenses. Some have argued that open-source AI models are not truly "open," since while the source code itself may be available, the model weights and other key components necessary to replicate the model are not.

This issue became relevant in Andersen because the defendants argued that the AI products at issue were open source, and so the plaintiffs should be able to see for themselves where their works were stored — a question that the court posed during oral argument on the defendants' first motions to dismiss.

The implication from the defendants' argument was that since the plaintiffs could not locate their works within the code, their claims should fail.

However, the court agreed with the plaintiffs that asserting that AI models are open source and transparent is misleading given that several components of such models, such as the model weights, are not available to be inspected.

The Intersection of AI and Copyright Management Information Under the DMCA

An argument that plaintiffs have put forward in a number of AI-training data cases is that the use of their copyrighted works in this manner violates Section 1202 of the DMCA.

That section generally prohibits the removal or alteration of, or provision of, false, copyright management information, or CMI, such as the name of the author and title of the work.

In Andersen, the plaintiffs alleged that the outputs generated by Stable Diffusion in response to "in the style of" prompts replicate the plaintiffs' works without including the applicable CMI, thus violating Section 1202(b) of the DMCA. The court recognized that there is disagreement among district courts on whether a work from which the CMI has been removed needs to be an identical copy of the original to sustain a Section 1202(b) claim.

In ADR International Ltd. v. Institute for Supply Management Inc. in the U.S. District Court for the Southern District of Texas last year, a case not involving AI, the court held that the copying only needs to be substantially similar, not identical.

In contrast, in Doe 1 v. GitHub Inc. in the Northern District of California in January, an AI-training case involving the generation of computer code, the court held that Section 1202(b) claims require an identical copy.

Here, the court sided with the Doe decision, and noted that because the plaintiffs had failed to show that Stable Diffusion's output images were identical to the training images, their Section 1202(b) claim was dismissed. We expect that this issue will continue to be argued if courts adopt different views on whether an AI-generated output needs to be identical to the training data to sustain a Section 1202(b) claim.

The plaintiffs also argued that the defendants violated Section 1202(a) of the DMCA by providing and distributing false CMI about the plaintiffs' works. The plaintiffs' theory was that since Stability AI offered its models under the Massachusetts Institute of Technology license, it was claiming copyright in the model, and thus distributing false CMI with respect to the plaintiffs' works that are allegedly contained in the model.

The court rejected this argument and dismissed the claim, noting that the MIT license only

covered the model itself and not any works used to train the model. The court also found that the generic MIT license used by Stability AI does not suggest any association with the plaintiffs' works, and therefore Stability AI did not convey any CMI "in connection with" the plaintiffs' works that is necessary to support a claim under Section 1202(a).

The court also found that the plaintiffs failed to allege facts that Stability AI knowingly provided false CMI with the intent to induce or enable infringement, as is required under Section 1202(a).

Preemption in AI-Training Data Cases

A number of complaints alleging unauthorized use of copyrighted material for AI-training data have included state law claims as well, such as unjust enrichment, raising questions of whether such claims are preempted.

In general, in order to avoid preemption under the Copyright Act, the plaintiffs needed to demonstrate that their claim had an "extra element" that protects rights different from the rights afforded under the Copyright Act. In Andersen, the plaintiffs argued that their state law unjust enrichment claims should not be preempted because Stability AI was unjustly enriched by leveraging the plaintiffs' artistic style, name and reputation in connection with Stable Diffusion.

Therefore, this state law claim did not revolve around the plaintiffs' works but rather the plaintiffs themselves and their "artistic personas," which is not within the subject matter of the Copyright Act.

Although the court granted the defendants' motion to dismiss the unjust enrichment claim because the plaintiffs did not sufficiently allege this point in their amended complaint, the court strongly suggested this theory may have merit and granted the plaintiffs leave to amend their complaint to incorporate it.

"In the Style of" Copyright Claims

A key issue in Andersen, and in a number of other training data cases, will be the scope of protection that copyright holders enjoy with respect to AI models that allow users to generate outputs "in the style of" a copyright holder — in this case in the style of artists' visual images.

Although this issue was not raised in the defendants' motion to dismiss, the U.S. Copyright Office recently weighed in on this question in its recent report on whether there is a need for a federal digital replica law. The Copyright Office acknowledged that copyright law's application is limited in protecting against "in the style of" outputs as it does not protect artistic style.

However, the Copyright Office opined that the Copyright Act may provide a remedy where the output of an "in the style of" prompt reproduces protectable elements of a work, and that there may also be other sources of legal protection against imitations of artistic styles, such as the Lanham Act and state right of publicity statutes.

The report also states that one of its future reports will address situations where using an artist's own works to train AI systems that can generate "in the style" of outputs can support an infringement claim, suggesting that, in the view of the Copyright Office, such situations can exist.

Conclusion

There are currently over 10 different lawsuits brought by copyright holders alleging that their works were used without authorization in connection with AI. Most of these cases, like Andersen, are at the motion-to-dismiss stage.

While decisions on such cases are solely focused on whether the plaintiffs have adequately pled their allegations, decisions like Andersen are providing an early window into how courts are thinking about some of the key issues underlying these cases.

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