Your Intellectual Property and AI

We hope that you found the first three of our four-part artificial intelligence (AI) article series useful and now understand, in the context of your business, what AI is, the UK's approach to it, and the consequences it is having on data protection. This closing article will provide you with the context to help you understand how to protect your business's intellectual property rights in relation to the development and operation of AI.

What are intellectual property rights?

Intellectual property rights are "Intangible property rights which are a result of intellectual effort", including patents, trademarks, designs and copyrights.

Generative AI

Understanding what generative AI is and how it is developed is central to understanding the intellectual property issues that could affect your business.

Generative AI is described as "a type of artificial intelligence that can generate new content, including audio, code, images, text, simulations, 3D objects, and videos".

It operates by responding to user's requests for it to produce video, images, music, and text. This is possible as generative AI is trained using extensive quantities of data, known as *large language models*, through the application of deep learning algorithms and machine learning.

So why exactly are intellectual property issues arising with AI?

The data which generative AI is trained on includes video, images, music, text and more. It is likely that there will be intellectual property rights attached to these data types, including trademarks, copyrights, patents, and registered designs.

It may be the case that the product produced by the generative AI also contains either the whole of or elements of the data which has intellectual property rights attached due to this data having been used to train the AI.

A method by which this data can be collected to train generative AI includes Text and Data Mining (TDM). This involves a computer gathering data through automatic analysis of its information via sources such as website

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pages, PDF documents and plain text. Machines are then programmed to “learn” from this data.

TDM is prohibited in the UK, except where two exceptions apply, including where it is used for non-commercial research and where access to copyright work is permitted. This position has been and continues to be the subject of considerable debate within the creative industry. As it remains, widespread breaching of TDM laws and regulations in the UK is thought to be ongoing.

The case of Getty Images v Stability AI is a current example of how a company may develop generative AI by using another company’s work, which is protected by intellectual property rights, to train and operate their AI. This as Stability AI released an application called Stable Diffusion, an AI which produces images in response to text inputs. Getty Images, a stock photo company, is claiming that Stability AI is using its images for the purpose of training its AI systems and is therefore breaching Getty Images’ copyright. Getty Images is claiming against Stability AI in both the UK and the US.

How to protect your business’s intellectual property rights

We have outlined three considerations to protect your business’s intellectual property rights from infringement caused by AI.

- **Understand what intellectual property your business has:**

Establish what intellectual property rights there are in the work, services, products, or experiences offered by your business which have been or are in the process of being protected in the UK.

This will allow you to identify exactly what intellectual property your business has, and so you will be better able to identify when your business’s intellectual property rights have been infringed by other people’s AI applications.

- **Are there inconsistencies in your business’s trademark registrations?**

You should decide which trademarks are key to your business and check whether these have been registered

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under the relevant classes. You should then update your registered trademark position accordingly.

Where a registered trademark has not been used for a continuous period of 5 years, its registration may be challenged. Therefore, active focus, management and exploitation of your intellectual property assets will ensure that they remain part of your business's intellectual property and will result in the maximisation of their returns.

This will inherently uphold your business's standing and reputation. Additionally, as in consideration 1 above, you will be able to firmly identify your business's intellectual property, which you do not want to be infringed.

- **Make your business's offerings distinctive:**

Whether your business provides services, products, artistic work, or an experience which is protected by intellectual property rights, it is important to make these distinctive.

The aim is to develop a unique offering clearly distinct from your competitors. Clever use of your intellectual property will help assist you with this, the purpose being that you can easily identify whether your business's offerings are being used to train generative AI or have been used to form part of a generative AI's produced output.

Once more, this will allow you to clearly identify whether your business's intellectual property rights have been infringed.

For further information on the legal implications of AI and how it may impact your business, please do not hesitate to get in contact at dean.drew@LA-law.com or 0330 0539 759.

Other articles in the series:

- What the Tech is AI?
- How is AI Regulated in Different Jurisdictions?
- AI and Data Protection in the UK

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