Issue 3 2025

The Trademark Lawyer

GLOBAL REACH, LOCAL KNOWLEDGE
www.trademarklawyermagazine.com

The cat that got the cream: an interview with Desirée Russo, Trademark Counsel at PUMA Group

Desirée sits down with *The Trademark Lawyer* to share her journey into trademark law and discusses the unique challenges and rewarding experiences of working for a globally recognized brand.

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From scraping to sharing: key findings on copyright from EUIPO's Report on generative AI

***The Trademark Lawyer* evaluates the EUIPO's recent report, *The Development of Generative Artificial Intelligence from a Copyright Perspective*, which highlights the need to ensure the copyright framework remains effective in response to the evolving role of AI as a creator, addressing key challenges and potential solutions for protecting intellectual property rights.**

Copyright Law has never been stagnant. The continuous evolution of technology has altered the parameters of creativity, prompting copyright law to adapt and keep pace with the changing times. Generative artificial intelligence (GenAI), however, is not just the next rung on the copyright ladder; it is calling into question key aspects of the copyright framework, such as the origin and use of existing works where the waters have been muddied.

Innovation still needs protection, irrespective of how it was created. But how do we – or perhaps, how should we – protect innovation in a paradigm where machines are creators? How is GenAI using copyrighted content? How can copyright holders reserve their rights?

These, among others, are questions recently addressed by the EUIPO in its report on *The Development of Generative Artificial Intelligence from a Copyright Perspective*[1] (the Report) in pursuit of clarifying "how GenAI systems interact with copyright – technically, legally, and economically." The study behind the report examined how copyrighted works are being used by training models, the applicable EU framework, the reservation of rights and opt-out mechanisms, and technologies to mark or identify AI-generated outputs.

Background context

GenAI and Large Language Models (LLMs) now have the ability to produce synthetic text, code, image, audio, and video content based on end-user inputs, which has prompted the necessary evaluation of existing legal frameworks by policy-makers. The Report provides a technical and legal analysis regarding the development of GenAI from the perspective of EU copyright law, aiming to provide solutions focused on a) the reservation of copyright holders' rights by AI developers, and b) ensuring that the works generated through these AI services are detectable in a machine-readable format.

> **"One of the largest concerns when it comes to the use of copyrighted works for the training of AI models is web scraping."**

Generative AI input findings

One of the largest concerns when it comes to the use of copyrighted works for the training of AI models is web scraping, the automatic extraction of data or content from websites to then analyze and produce the desired information. GenAI requires up-to-date information to perform at its best; many models use Real-time Augmented Generation (RAG) technologies to retrieve information in real-time and build up an answer, including the use of copyrighted works.

The EUIPO report sets out:

> "In the EU, two legal instruments are particularly relevant for framing the implications of GenAI developments from a copyright perspective: **The Copyright in the Single Market Directive** (CDSM Directive) creates a legal framework

for 'text and data mining' (TDM). […] **The EU Artificial Intelligence Act (AI Act)** sets out a regulatory framework for AI technologies in the EU, with specific obligations on the providers of general–purpose AI (GPAI) models.[2]"

Of particular significance is that Article 4 of the CDSM allows rights holders to opt-out to prevent the use of their content by AI models. Due to the now common practice of web scraping, many rights holders are, indeed, opting out. This is causing friction with AI developers due to concerns about insufficient data for training purposes. The Report compares a set of existing measures, highlighting that the Robots Exclusion Protocol (REP) currently in use is non-optimal due to "limited granularity and use-specificity," and the lack of a single opt-out mechanism is resulting in a shortfall, which is leaving stakeholders combining legally driven and technical measures in an attempt to bridge the protection gap. However, it was also found that "Stakeholders on both the right holder and GenAI development sides of the TDM process generally seem to support increased efforts for standardisation of rights reservation measures, as well as the flexibility to incorporate multiple measures to adapt to different use cases,"[3] which suggest a positive trajectory toward a solution.

Generative AI output findings

The study also examined available solutions for identifying and disclosing the nature of synthetic content, including provenance tracking, detection measures, and content processing solutions. The Report presents a comparative analysis of the advantages and limitations of the reviewed generative transparency measures.

Key findings

Crucially, the Report identifies and demonstrates the complexities of copyright in this new era of GenAI from both a technical and legal perspective. It has set the foundation for the issues that should be addressed in the EUIPO Copyright Knowledge Centre, set to launch at the end of 2025. The Centre is being developed to provide comprehensive information resources for copyright holders to help them "to understand how their content may be used by GenAI and the solutions at their disposal to reserve their rights."[4]

While many rights holders are choosing to opt out, the Report does identify the emergence of a direct license market, which could drive new revenues for the creative sectors while protecting copyright from both an input and output standpoint.

Further, the Report emphasizes the importance of accurate information for the effective application and enforcement of copyright from both the rights holders' and AI developers' perspectives. This transparency is vital for correctly identifying the origin and permissible use of works.

It is clear that the current copyright framework needs to remain effective to tackle the swelling complexities developing alongside GenAI. Upon the findings of this Report, the EUIPO Copyright Knowledge Centre is poised to deliver long-awaited guidance.

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1 European Union Intellectual Property Office. *Development of Generative Artificial Intelligence from a Copyright Perspective.* EUIPO, 2025. Web. Accessed June 2025. https://www.euipo.europa.eu/en/publications/genai-from-a-copyright-perspective-2025

2 *Id.* Page 12-13.

3 *Id.* Page 16.

4 European Union Intellectual Property Office. *Executive Briefing: Development of Generative Artificial Intelligence from a Copyright Perspective.* EUIPO, 2025. Web. Accessed June 2025. Page 10. https://www.euipo.europa.eu/en/publications/genai-from-a-copyright-perspective-2025

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