

Generative AI on Trial: Do Models Themselves Infringe Copyright?

Speaker: Prof. Noam Shemtov

Host: Axel Ferrazzini



What do we do?



**Non-Profit
Activities**



**High Quality
Academic
Research**



Education

Find our free materials at www.4ipcouncil.eu

Filter by keyword:

Filter by category:

☒ Show ALL categories

☐ Global/patent systems

☐ Patent value

☐ Competition

☐ Open source

☐ Standards/FRAND

☐ SDO governance / IPR Policy
 ☐ FRAND licensing
 ☐ FRAND determination
 ☐ Patent pools

☐ New technologies

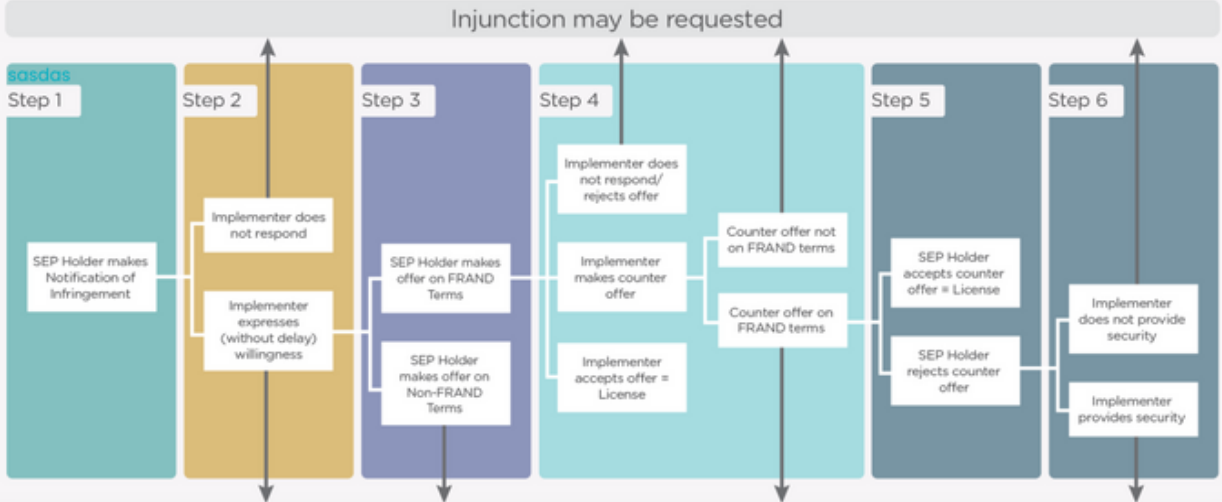
☐ Artificial intelligence

☐ Enforcement
 ☐ Sector specific

☐ Automotive

Title	Authors	Date	
Ambush marketing and major sports events	Lucia Granieri	05/02/2026	View >
SEPs in Brazil: FRAND licensing, antitrust risk, and litigation trends	Igor Simoes	22/01/2026	View >
Resisting the Transplant: Why the EU Must Preserve IPRED's Rule- Based Proportionality in IP Enforcement	Prof. Francesca Ferrari	19/12/2025	View >
GEMA versus OpenAI: The Key Takeaways	Mohammad Ataul Karim LLM.	11/12/2025	View >
Munich AI ruling could reshape EU interpretation of copyright	Santiago Espitia Restrepo and Becky Montesdeoca		
'Pirated Source' for AI Training in Anthropic Copyright Settlement	Mohammad Ataul Karim LLM.		
What Performers Need to Know About AI Voice and Likeness Agreements?	Zizhuo Zhou		
Key insights after two years of the UPC and UP: Q&A for IP managers	Michael Pfeifer and Dirk Schüßler-Langeheine		
Summary: The role of intellectual property rights in economic growth	Patrick Cuka		

Huawei v ZTE process



```

graph TD
    subgraph "Injunction may be requested"
        direction LR
        S1[Step 1: SEP Holder makes Notification of Infringement] --> S2[Step 2: Implementer does not respond / Implementer expresses (without delay) willingness]
        S2 --> S3[Step 3: SEP Holder makes offer on FRAND Terms / SEP Holder makes offer on Non-FRAND Terms]
        S3 --> S4[Step 4: Implementer makes counter offer / Implementer accepts offer = License]
        S4 --> S5[Step 5: Counter offer not on FRAND terms / Counter offer on FRAND terms]
        S5 --> S6[Step 6: SEP Holder accepts counter offer = License / SEP Holder rejects counter offer]
        S6 --> S7[Step 7: Implementer does not provide security / Implementer provides security]
    end
  
```

Find our free materials at www.4ipcouncil.eu



Filter by keyword:

e.g. Frand, IOT, etc

Filter by category:

☒ Show ALL categories

☐ Global/patent systems

☐ Patent value

☐ Competition

☐ Open source

☐ Standards/FRAND

☐ SDO governance / IPR Policy

☐ FRAND licensing

☐ FRAND determination

☐ Patent pools

☐ New technologies

☐ Artificial intelligence

☐ Enforcement

☐ Sector specific

☐ Automotive

Title	Authors	Date	
Ambush marketing and major sports events	Lucia Granieri	05/02/2026	View >
SEPs in Brazil: FRAND licensing, antitrust risk, and litigation trends	Igor Simoes	22/01/2026	View >
Resisting the Transplant: Why the EU Must Preserve IPRED's Rule- Based Proportionality in IP Enforcement	Prof. Francesca Ferrari	19/12/2025	View >
GEMA versus OpenAI: The Key Takeaways	Mohammad Ataul Karim LL.M.	11/12/2025	View >
Munich AI ruling could reshape EU interpretation of copyright	Santiago Espitia Restrepo and Becku	11/11/2025	View >
'Pirated Sou			
Settlement			
What Perfor			
Agreement			
Key insights			
managers			
Summary: T			
economic g			

Webinar + Q&A

Inventorship and AI: Defining the Human Role in Patent Law

Speakers: Prof. Noam Shemtov and Heli Pihlajamaa

Host: Axel Ferrazzini

Step 4

Implementer does not respond/ rejects offer

Implementer makes counter offer

Implementer accepts offer = License

Counter offer not on FRAND terms

Counter offer on FRAND terms

Step 5

SEP Holder accepts counter offer = License

SEP Holder rejects counter offer

Step 6

Implementer does not provide security

Implementer provides security

3

Find our free materials at www.4ipcouncil.eu



Filter by keyword:

e.g. Frand, IOT, etc

Filter by category:

☒ Show ALL categories

☐ Global/patent systems

☐ Patent value

☐ Competition

☐ Open source

☐ Standards/FRAND

☐ SDO governance / IPR Policy

☐ FRAND licensing

☐ FRAND determination

☐ Patent pools

☐ New technologies

☐ Artificial intelligence

☐ Enforcement

☐ Sector specific

☐ Automotive

Title	Authors	Date	
Ambush marketing and major sports events	Lucia Granieri	05/02/2026	View >
SEPs in Brazil: FRAND licensing, antitrust risk, and litigation trends	Igor Simoes	22/01/2026	View >
Resisting the Transplant: Why the EU Must Preserve IPRED's Rule- Based Proportionality in IP Enforcement	Prof. Francesca Ferrari	19/12/2025	View >
GEMA versus OpenAI: The Key Takeaways	Mohammad Ataul Karim LL.M.	11/12/2025	View >
Munich AI ruling could reshape EU interpretation of copyright	Santiago Espitia Restrepo and Becky Montesdeoca	11/11/2025	View >
'Pirated Source Code' for AI Training in Anthropic Copyright Settlement			
What Performers Need to Know About AI Voice and Licensing Agreements?			
Key insights of AI for IP managers			
Summary: The impact of AI on intellectual property rights in economic growth			

#46

Tilman Müller-Stoy

UPC representative & Partner BARDEHLE PAGENBERG

Step 1

SEP Holder makes offer on FRAND terms

Implementer does not respond/ rejects offer

Implementer makes counter offer

Counter offer not on FRAND terms

Counter offer on FRAND terms

Implementer accepts offer = License

SEP Holder accepts counter offer = License

SEP Holder rejects counter offer

Implementer does not provide security

Implementer provides security

Step 4

Step 5

Step 6

Injunction may be requested

Find our free materials at www.4ipcouncil.eu

Filter by

e.g. Frand, ...

Filter by

☒ Show ALL

☐ Global/p...

☐ Patent v...

☐ Competi...

☐ Open so...

☐ Standar...

☐ SDO gov...

☐ FRAND I...

☐ FRAND c...

☐ Patent p...

☐ New tech...

☐ Artifici...

☐ Enforcem...

☐ Sector sp...

☐ Autom...

4 Reasons 4 Plant Variety Protection

1 - MARKET ACCESS

1 - Market Access

Protect your innovation: PVR grant exclusive rights to your new plant varieties, preventing others from reproducing or selling them without permission. This exclusivity can help you establish and maintain a prominent position in the market.

Strengthen your market position: By securing PVR, you protect your unique plant varieties from being copied, helping you maintain and expand your market share.

2 - Unlock Collaboration Opportunities

PVR are valuable in forming partnerships for joint breeding projects, new ventures, or strategic alliances.

As a PVR holder, you can contribute to shaping industry standards, ensuring your innovations are recognised and safeguarded.

3 - FUNDING (OR STRENGTHENED INDUSTRY POSITION)

3 - Funding (or Strengthened Industry Position)

2 - UNLOCK COLLABORATION OPPORTUNITIES

Securing PVR helps position you as a forward-thinking breeder. Also, it can open the door to research partnerships, licensing deals, and expanded market reach.

License your varieties: PVR allow you to license your plant varieties to other growers or companies. Licensing generates additional revenue streams while maintaining control over your innovation.

Boost sales with certified quality: PVR-protected varieties can be marketed as a quality product. It attracts customers willing to pay a premium for exclusive varieties.

Authors	Date
Lucia Granieri	05/02/2026

SMEs Corner

Learn about IP and how it can help your business

WHAT

is intellectual property and which types do I need?

WHY

should I care about intellectual property?

HOW

do I use intellectual property to grow my business?

Tilman Müller-Stoy

UPC representative & Partner BARDEHLE PAGENBERG

requested

Counter offer not on FRAND terms

Counter offer on FRAND terms

Step 5

SEP Holder accepts counter offer = License

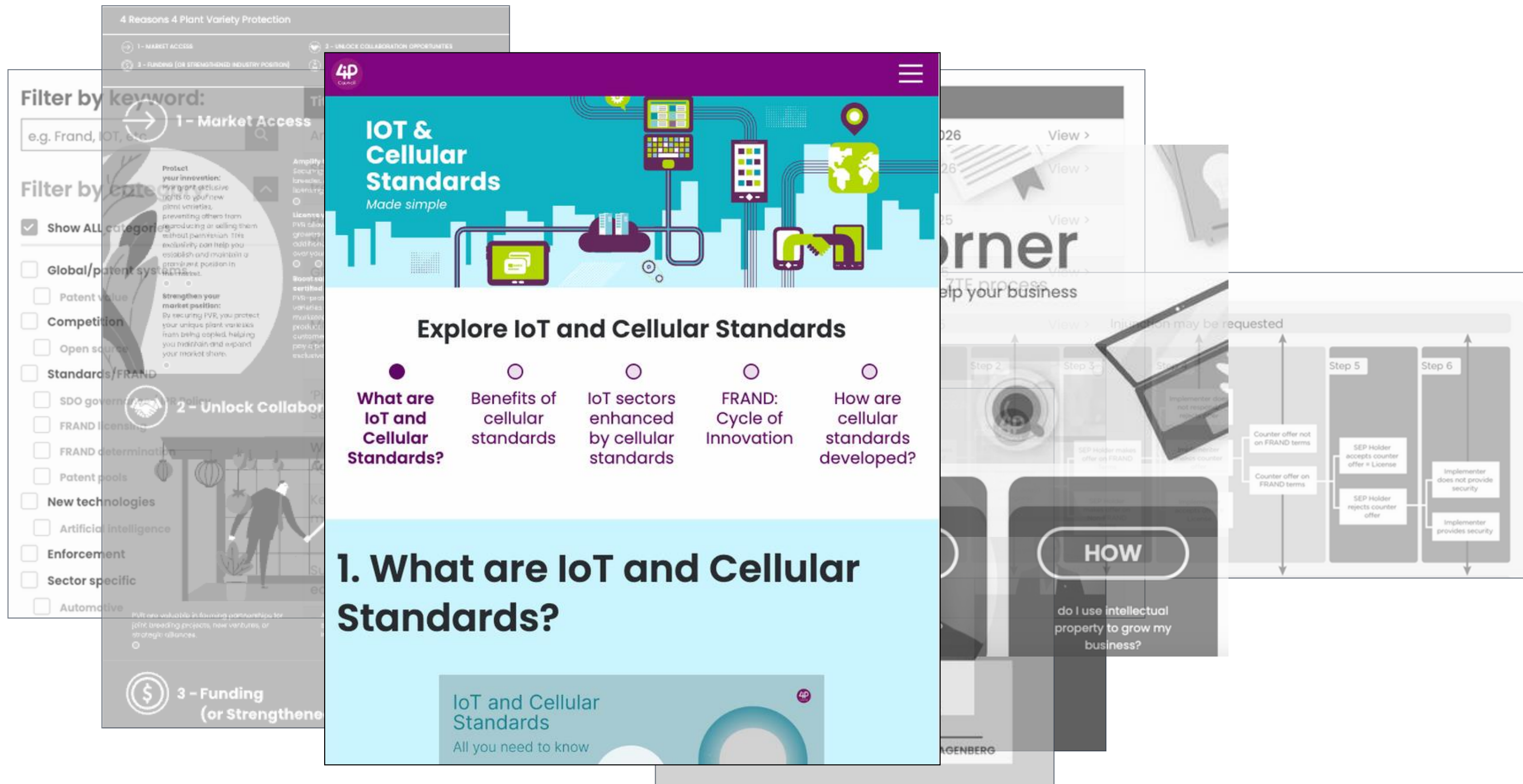
SEP Holder rejects counter offer

Step 6

Implementer does not provide security

Implementer provides security

Find our free materials at www.4ipcouncil.eu



The screenshot displays the 4IP Council website interface. At the top, there's a navigation bar with the 4IP Council logo and a menu icon. Below the navigation bar, there's a section titled "IOT & Cellular Standards" with the tagline "Made simple". This section includes a sub-header "Explore IoT and Cellular Standards" and five circular icons representing different topics: "What are IoT and Cellular Standards?", "Benefits of cellular standards", "IoT sectors enhanced by cellular standards", "FRAND: Cycle of Innovation", and "How are cellular standards developed?". Below this, there's a large blue box with the text "1. What are IoT and Cellular Standards?" and "All you need to know". To the left of the main content, there's a sidebar with filters for keyword and category. The keyword filter shows "1 - Market Access" and "e.g. Frand, IOT, etc.". The category filter shows "Show ALL categories" and "Global/patent systems". Below the category filter, there's a section titled "2 - Unlock Collaboration" and "3 - Funding (or Strengthened)". To the right of the main content, there's a flowchart titled "HOW" with the question "do I use intellectual property to grow my business?". The flowchart shows a process starting with "Step 2" and "Step 3", leading to "Innovation may be requested", then "Counter offer not on FRAND terms", "Counter offer on FRAND terms", "SEP Holder accepts counter offer = License", "SEP Holder rejects counter offer", "Implementer does not provide security", and finally "Implementer provides security".

Find our free materials at www.4ipcouncil.eu



The screenshot displays the 4IP Council website interface. At the top, there's a navigation bar with the 4IP Council logo and a menu icon. Below the navigation bar, a search bar is visible with the text "Filter by keyword:" and a search button. The main content area features a large blue banner with the title "AI and Intellectual Property Rights" and the subtitle "Learn about the basics of AI and how IP rights are adapting to AI innovation". The banner includes an illustration of a stylized human head profile filled with circuitry and gears, with several small figures in business suits interacting with it. Below the banner, there's a section titled "Explore AI Corner" with five circular icons and corresponding text: "The basics about AI", "Patents and AI", "Copyright and AI", "Other IP Rights and AI", and "Discussions on AI". The first icon, "The basics about AI", is highlighted with a solid purple circle, while the others are hollow. To the right of the main content area, there's a vertical sidebar with a diagram showing a process flow with steps 1 through 6, and a box labeled "Implementer does not provide security" and "Implementer provides security".

Generative AI on Trial: Do Models Themselves Infringe Copyright?



Prof. Noam Shemtov
Centre for Commercial Law
Studies (CCLS) at Queen
Mary University of London



MEMORISATION IN AI MODELS: COPYRIGHT LAW IMPLICATION

Professorship of Law

Chair of Law and Technology

Director of the Chair of Law and Technology

Copyright Law

Chair of Law and Technology

WHAT MEMORISATION LOOKS LIKE IN PRACTICE

- Book-length verbatim outputs
- Near-exact image reproductions
- Triggered by strategic yes quite often simple prompts
- Observed across major models

HOW MODELS MEMORISE: LOSSY MEMORY/COMPRESSION

- Training as compression
- Tokens and probabilities
- Storage without files
- Capacity for recall

WHY THE LEARNING METAPHOR BREAKS DOWN

- Humans do not recall verbatim
- Models can reproduce large chunks of works
- Memorisation is inherent
- Not a fixable bug but a feature

COPYRIGHT CONSEQUENCES OF MEMORISATION

- Output-stage infringement risk
- Model as potentially infringing copy
- Questions the applicability of exceptions

MEMORISATION ON TRAIL

RECENT DECISIONS

GEMA V OPENAI: FACTS AND LEGAL FRAMING

- German collecting society vs LLM provider
- Lyrics reproduced after simple prompts
- Court focuses on memorisation
- Claim: reproduction in model and output

GEMA V OPENAI: MEMORISATION AS REPRODUCTION

- Memorisation established as fact
- Model parameters = embodiment
- Indirect perceptibility sufficient
- Probability-based storage irrelevant

GEMA V OPENAI: CONSEQUENCES FOR LLMS

- Model as an infringing copy
- TDM exception rejected
- Operator, not user, liable

GETTY IMAGES V STABILITY AI: THE SECONDARY INFRINGEMENT ROUTE

- UK High Court proceedings
- Model as alleged infringing copy
- Importation and distribution claims

GETTY V STABILITY AI: IS THE MODEL A COPY?

- Getty conceded that no stored images in weights

GETTY V STABILITY AI: CONTRAST WITH GEMA

- No finding of memorisation (but note that **Getty conceded** that no copy was stored)
- Therefore, Getty's arguments focused on Training infringement = infringing product; this was always going to be a longshot
- infringement argument fails

SO WHAT COUNTS AS A “COPY”
UNDER COPYRIGHT LAW?

WHAT COUNTS AS A “COPY”?

CAPTURING EXPRESSIVE VALUE

- Core question:
 - Is it a reproduction to capture expressive value in information that allows later reconstruction (even imperfectly)?
- Reproduction $\neq$ perfect duplication
- Fixation + recoverability as key criteria
- Encoding, compression, transformation: still potentially copying

UNITED STATES & EUROPEAN UNION: BROAD CONCEPTIONS OF REPRODUCTION

- United States
 - 17 U.S.C. §101: “fixed” + machine perception
 - No requirement of exact duplication
 - Imitations/simulations may infringe
- European Union
 - InfoSoc Directive 2001/29/EC, Art. 2 - “direct or indirect... by any means and in any form”
 - Infopaq (C-5/08): partial copying sufficient
 - Focus: capture of “author’s intellectual creation”

WRAP-UP

- GEMA in on appeal is may end up before the CJEU
- Getty could. Have been argued differently; for now it does not provide meaningful commentary on memorisation under copyright law
- More recent research is establishing memorisation as a feature of AI models.
- Capturing expressive value through the retention of probabilistic data in a constructable manner may amount to reproduction under copyright law
- If so, reproductions may be significant:
 - Fair use?
 - Applicability of TDM in Europe?
 - UK exceptions are presently ‘work in progress’ and should take memorization into account.

END

n.shemtov@qmul.ac.uk

Q&A

Open floor for questions and discussion.

THANK YOU!

Follow us! @4iPCouncil



 Follow @4ipcouncil on X >



 Connect with 4iP Council on LinkedIn >



 Subscribe to our YouTube channel >



 Follow us on Instagram