



WINTER 2024 E-NEWSLETTER

At Digital Mountain, we assist our clients with their electronic discovery, digital forensics, cybersecurity, and data analytics needs. For this E-Newsletter, we discuss the development of Generative AI as it approaches two years old and how courts and states are responding to this new age of technology.

Generative AI in the Courtroom

2024 looks to be a big year for Generative AI in the courts. A number of cases were filed against Generative AI (Gen AI) technology firms, particularly with respect to copyright infringement. Those cases could pave the way for future cases, as well as provide some momentum for legislation. In this article, we'll provide updates on the more notable cases and take a brief look at recent developments on AI legislation.



Andersen et al vs Stability AI, Ltd. (No.23-cv-00201-WHO, US Dist Ct, NDCA (2024))

In a February 8, 2024, ruling, Judge William Orrick denied Stability AI's motion to strike the plaintiff's right of publicity claims under California's anti-SLAPP statute. The background on this copyright infringement case where plaintiffs (originally more than one, however the current order reads as a single plaintiff) claimed that Stability AI scraped images of copyrighted works of art created by Plaintiffs and used the images to train their image creation Gen AI model, as well as, used their names to promote use of the product by saying it could create "art in the style of..." Filed in 2023, this case has already seen motions limiting the scope and parties. This most recent development is a win for the plaintiff in that defendants attempted to strike plaintiffs' right of publicity claims under a California statute designed to stop lawsuits aimed at curbing the exercise of First Amendment Rights. The complexity of the legal discussion in the order merits reading the actual text ([Andersen et al v. Stability AI Ltd. et al, No. 3:2023cv00201 - Document 166 \(N.D. Cal. 2024\)](#)), but suffice to say that the plaintiff will continue to fight another day, and we should see some movement in 2024.

The New York Times Company vs Microsoft, OpenAI Inc., et al. (Case 1:23-cv-11195, US Dist Ct, SDNY (2023))

This case might well be retitled as "Clash of the Titans" for the stature of the parties at odds. The New York Times filed suit, in another pleading worth reading the original, (https://nytco-assets.nytimes.com/2023/12/NYT_Complaint_Dec2023.pdf) on December 27, 2023, claiming,

4. ...Powered by LLMs containing copies of Times content, Defendants' GenAI tools can generate output that recites Times content verbatim, closely summarizes it, and mimics its expressive style, as demonstrated by scores of examples. See Exhibit J. These tools also wrongly attribute false information to The Times.

In summary, the Times' claims include copyright infringement, trademark dilution, and unfair competition.

OpenAI published a blog post (<https://openai.com/blog/openai-and-journalism>) on January 8, 2024, defending its position via the following four points:

1. We collaborate with news organizations and are creating new opportunities
2. Training is fair use, but we provide an opt-out because it's the right thing to do
3. "Regurgitation" is a rare bug that we are working to drive to zero
4. The New York Times is not telling the full story

This case should definitely grab headlines in 2024 and it should be a battle of mythic proportions.

States Moving Rapidly on AI Legislation

Outside the courtroom, state legislatures appear to have included "Pass AI Laws" on their New Year's Resolutions and are determined to stick to it. Nearly 200 bills dealing with AI regulation were looking to be voted upon in 2024, and many of those were carry over bills from 2023 (<https://www.lexisnexis.com/community/insights/legal/capitol-journal/b/state-net/posts/state-ai-legislation-off-to-quick-start-in-2024>). Three states in particular have been moving in various directions on AI regulations.

Introduced February 7, 2024, California Senator Scott Weiner of San Francisco's Safe and Secure Innovation for Frontier Artificial Intelligence Systems Act would go where the federal government has been unwilling to go so far. The bill would require developers to conduct safety testing and to inform the State of safeguards within new AI technology products, give California's attorney general the power to sue for harm caused by AI products, and as an incentive, create a research and development "cluster" called CalCompute, designed to foster AI innovation in California. This bill joins Senator Bill Dodd's California AI Accountability Act, which was introduced in January and seeks to provide greater protections for consumers and the general public.

Florida HB 1459 (<https://www.flsenate.gov/Session/Bill/2024/1459/BillText/c2/PDF>) creates the Government Technology 4 Modernization Council to study the developments and implementation of new technologies. It defines Artificial Intelligence as:

...software that is developed with machine-learning, logic and knowledge-based, or statistical approaches and can, for a given set of human-defined objectives, generate or synthesize outputs such as content, predictions, recommendations, or decisions influencing certain environments.

Among other things, the bill requires state agencies to disclose whether those interacting with the agencies' interfaces are doing so via artificial intelligence.

Finally, on February 22, 2024 the Georgia House of Representatives passed a bill which would ban deepfake campaign ads no less than 90 days out from an election. House Bill 986 (<https://www.legis.ga.gov/legislation/66172>), passed by a vote of 148-22, with resistance from some who objected to the bill by arguing that the ban would infringe on freedom of speech

(<https://thehill.com/homenews/state-watch/4485098-georgia-house-approves-crackdown-on-deepfake-ai-videos-before-elections/>).

As 2024 continues, we'll be keeping an eye on the courts, the state legislatures, and even the federal government for more legal developments on Generative AI. If nothing else, we're sure that 2024 will prove to be an interesting year, and we'll keep you informed on new developments.

Please direct questions and inquiries about electronic discovery, digital forensics, cybersecurity, and data analytics to info@digitalmountain.com.

UPCOMING INDUSTRY EVENTS

ASU-ARKFELD E-DISCOVERY, LAW & TECHNOLOGY CONFERENCE
Phoenix, AZ: March 5-6, 2024

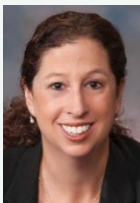
PLANET CYBER SEC CISO-CIO FORUM
Redondo Beach, CA: March 13, 2024

MASTERS CONFERENCE MARCH 2024
Dallas, TX: March 21, 2024

IAPP GLOBAL PRIVACY SUMMIT 2024
Washington, DC: April 3-4, 2024

MAGNET USER SUMMIT 2024
Nashville, TN: April 15-17, 2024

[Click here to see more upcoming events and links.](#)



Digital Mountain, Inc. Founder and CEO, Julie Lewis, will be presenting at various upcoming industry events. Please send requests for speaker or panel participation for her to marketing@digitalmountain.com.

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