



mccarthy
tetrault

Creating Tomorrow Today

AI, Copyright + the Wisdom of Experience:
All In Event

Barry Sookman, McCarthy Tetrault
personal blog @ barrysookman.com

mccarthy
tetrault

How GenAI Promotes Cultural Diversity

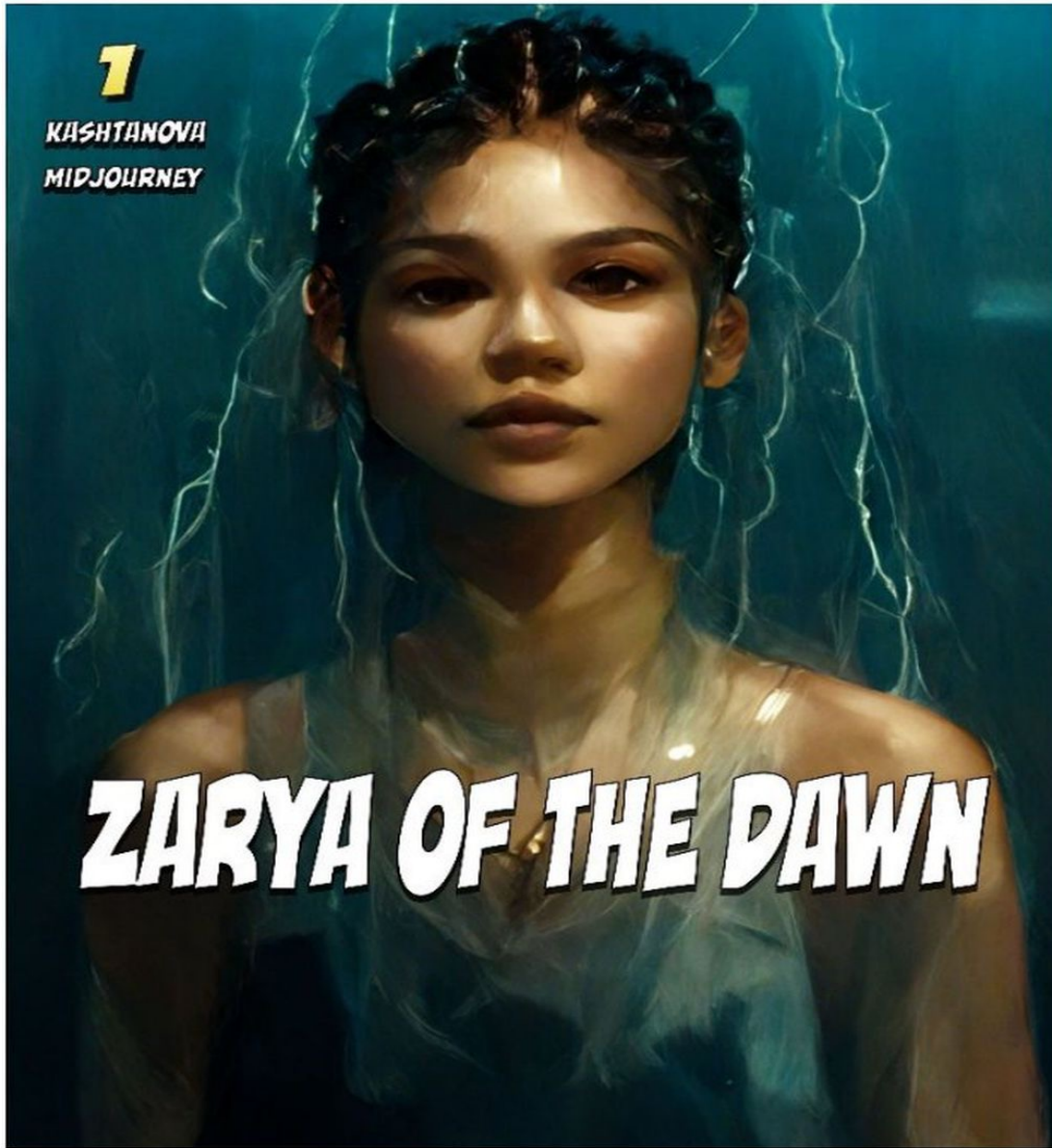
- **“Content Generation:** Generative AI can...create content that reflects a wide variety of cultural experiences and backgrounds, showcasing the diversity of different cultures through digital art, music, literature, and other forms of media.
- **Language Translation:** By translating content into various languages, generative AI can make information accessible to people from different cultural backgrounds, promoting understanding and appreciation of diverse cultures.
- **Education:** Generative AI can produce educational content that is culturally diverse, helping learners to understand and appreciate the richness and diversity of different cultures around the world.
- **Fair Representation:** Generative AI can be designed to ensure fair representation of all cultures in the content it generates, promoting cultural diversity and inclusion.
- **Reducing Bias:** Generative AI can be trained on diverse datasets to reduce cultural bias in AI systems. This can lead to the creation of more diverse and unbiased datasets for other AI systems to learn from, promoting a more inclusive AI environment.” (AI Azure)



picture explaining how generative AI can promote cultural diversity
made by Bing Image Creator



- 3 [U.S. Copyright refusal to register two dimensional artwork "A Recent Entrance to Paradise produced by "Creativity Machine".](#) applied for by Steven Thaler; See, [Copyright does not protect content produced by](#) mccarthy.ca | McCarthy Tétrault LLP



An A.I.-Generated Picture Won an Art Prize. Artists Aren't Happy.

“I won, and I didn't break any rules,” the artwork's creator says.



Midjourney Image



The Work

AI 'FAKE DRAKE' TRACK DELETED ON SPOTIFY, YOUTUBE, TIKTOK AFTER UNIVERSAL MUSIC GROUP COPYRIGHT CLAIM

As **MBW reported yesterday**, the recorded music world was taken by storm over the past few days with the release of several AI-generated music productions that spoofed the vocals of superstar artists Drake, The Weeknd and Rihanna.

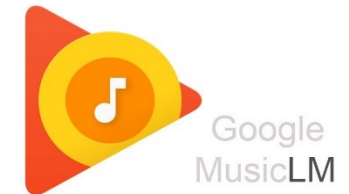
At the center of the storm was an apparently original composition called *heart on my sleeve*, which featured an AI-generated Drake on vocals, accompanied by an equally AI-generated The Weeknd.

The track was uploaded to YouTube and TikTok by its purported author, who goes by the moniker ghostwriter.

“Powerful new engines like OpenAI’s ChatGPT and Jukebox, Google’s MusicLM and Microsoft’s AI-powered Bing have been trained on vast troves of musical compositions, lyrics, and sound recordings... without even the most basic transparency or disclosure, let alone consent from the creators whose work is being used. **Songwriters, recording artists, and musicians today are literally being forced to compete against AI programs trained on copies of their own compositions and recordings...**

The moral invasion of AI engines that steal the core of a professional performer’s identity — the product of a lifetime’s hard work and dedication — without permission or pay cannot be tolerated.”

- **David Israelite & Mitch Glazier, Will AI Value Human Creators? Now’s the Time to Decide the Future of Our Culture (Guest Column), online: [billboard.com/pro/ai-senate-...](https://www.billboard.com/pro/ai-senate-...)**



“AI-art generators are trained on enormous datasets, containing millions upon millions of copyrighted images, harvested without their creator’s knowledge, let alone compensation or consent. This is effectively the greatest art heist in history. Perpetrated by respectable-seeming corporate entities backed by Silicon Valley venture capital. It’s daylight robbery.”

“Generative AI art is vampirical, feasting on past generations of artwork even as it sucks the lifeblood from living artists. Over time, this will impoverish our visual culture. Consumers will be trained to accept this art-looking art, but the ingenuity, the personal vision, the individual sensibility, the humanity will be missing.”

- **Centre for Artistic Inquiry and Reporting (CAIR), AI Open Letter regarding generative AI, online: artisticinquiry.org/ai-open-letter...**

Center for Artistic
Inquiry and Reporting

“Creative works shape our identity, values, and worldview. And there are fundamental elements of our culture that are uniquely human. Only humans are capable of communicating the endless intricacies, nuances, and complications of the human condition through art - whether it be music, performance, writing, or any other form of creativity...

Copyright protection exists to help incentivize and reward human creativity, skill, labor, and judgment - not output solely created and generated by machines.

Human creators, whether they use traditional tools or express their creativity using computers, are the foundation of the creative industries and we must ensure that human creators are paid for their work.”



Hollywood's Fight Against A.I. Will Affect Us All

Screenwriters, actors, authors, and artists are fighting to ensure that human beings are not shunted to the margins of our culture.


“The changes wrought by A.I. may have existential implications not just for scriptwriters and actors but also for audiences—namely all of us. The premise of generative A.I. is that content production is based on what went before. After all, we educate kids by having them imbibe readings, formulas, theories, stories, and pictures that train their brains to generate new words, images, and ideas as needed—whether to complete an assignment, persuade a jury, or forge a friendship. The large language models of artificial intelligence were invented to appear to mimic these brain functions.

Yet, of course, human intellect is more than just the sum of everything we've read and seen. Our very humanity adds unpredictable, individualized flavor and texture to the raw ingredients our education offers.”

[Hollywood's Fight Against A.I. Will Affect Us All | The New Republic](#)

EVA
European Visual Artists

SUPPORTS HUMAN VISUAL ARTISTS




The importance of prior consent

AI thrives on the works created by artists without their consent.
AI-generated art would not exist without the work of real artists.
Prior consent and remuneration for the use of works and their derivatives is vital.


Some transparency in the obscurity

It is hard to see in the dark, but transparency obligations enable artists to see through the use and abuse of their works, and people to discern AI from the unique human artistry.



Strike the (fundamental) right balance

Copyright is a fundamental right to property enshrined in the Universal Declaration of Human Rights. Any use of a work without prior consent of the author or without compensation is a violation of the fundamental right to property.



www.evaartists.org

© Eva Artists 2023

- [Andersen v. Stability AI 3:23-cv-00201](#) U.S. District Court (photographs)
- [Getty Images \(US\) . v. Stability AI](#), U.S. District Court, No. 1:23-cv-00135-UNA (photographs)
- [Getty Images \(US\), v. Stability AI](#), UK High Court (filed 1/16/23) (photographs)
- [Doe 1 v. Github](#) U.S. District Court, No 4:2022cv06823 (filed 11/03/22) (software)
- [J.L. v. Alphabet](#) U.S. District Court, 3:23-cv-03440-LB (website information)
- [Kadrey v. Meta Platforms](#), U.S. District Court, No. 3:23-cv-03417 (books)
- [Silverman v. OpenAI](#), U.S. District Court, No. 3:23-cv-03223 (books)
- [Tremblay v. OpenAI](#), U.S. District Court, No. 3:23-cv-03223 (books)
- [Chabon v. OpenAI](#) U.S. District Court, No-cv-04625-PHK (books)
- [Chabon v. Meta, Platforms](#) U.S. District Court, cv-04663-DMR (books)
- [Authors Guild v. OpenAI](#) U.S. District Court, cv-08292 (books)



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SARAH ANDERSEN, an individual;
KELLY MCKERNAN, an individual;
KARLA ORTIZ, an individual,

Individual and Representative Plaintiffs,

v.

STABILITY AI LTD., a UK corporation;
STABILITY AI, INC., a Delaware
corporation; MIDJOURNEY, INC., a
Delaware corporation; DEVIANTART, INC.,
a Delaware corporation,

Defendants.

Case No.

COMPLAINT

CLASS ACTION

DEMAND FOR JURY TRIAL

“6. All AI Image Products operate in substantially the same way and store and incorporate countless copyrighted images as Training Images.

7. Defendants, by and through the use of their AI Image Products, benefit commercially and profit richly from the use of copyrighted images.

8. The harm to artists is not hypothetical—works generated by AI Image Products “in the style” of a particular artist are already sold on the internet, siphoning commissions from the artists themselves.

9. **Plaintiffs and the Class seek to end this blatant and enormous infringement of their rights before their professions are eliminated by a computer program powered entirely by their hard work.”**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AUTHORS GUILD, DAVID BALDACCI,
MARY BLY, MICHAEL CONNELLY, SYLVIA
DAY, JONATHAN FRANZEN, JOHN
GRISHAM, ELIN HILDERBRAND,
CHRISTINA BAKER KLINE, MAYA
SHANBHAG LANG, VICTOR LAVALLE,
GEORGE R.R. MARTIN, JODI PICOULT,
DOUGLAS PRESTON, ROXANA ROBINSON,
GEORGE SAUNDERS, SCOTT TUROW, and
RACHEL VAIL, individually and on behalf of
others similarly situated,

Plaintiffs,

v.

OPENAI INC., OPENAI LP, OPENAI LLC,
OPENAI GP LLC, OPENAI OPCO LLC,
OPENAI GLOBAL LLC, OAI CORPORATION
LLC, OPENAI HOLDINGS LLC, OPENAI
STARTUP FUND I LP, OPENAI STARTUP
FUND GP I LLC, and OPENAI STARTUP
FUND MANAGEMENT LLC,

Defendants.

No. 1:23-cv-8292

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

2. Plaintiffs seek to represent a class of professional fiction writers whose works spring from their own minds and their creative literary expression. These authors' livelihoods derive from the works they create. But Defendants' LLMs endanger fiction writers' ability to make a living, in that the LLMs allow anyone to generate—automatically and freely (or very cheaply)—texts that they would otherwise pay writers to create. Moreover, Defendants' LLMs can spit out derivative works: material that is based on, mimics, summarizes, or paraphrases Plaintiffs' works, and harms the market for them.
3. Unfairly, and perversely, without Plaintiffs' copyrighted works on which to "train" their LLMs, Defendants would have no commercial product with which to damage—if not usurp—the market for these professional authors' works. Defendants' willful copying thus makes Plaintiffs' works into engines of their own destruction.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PAUL TREMBLAY, an individual;
MONA AWAD, an individual,

Individual and Representative Plaintiffs,

v.

OPENAI, INC., a Delaware nonprofit corporation;
OPENAI, L.P., a Delaware limited partnership;
OPENAI OPCO, L.L.C., a Delaware limited
liability corporation; OPENAI GP, L.L.C., a
Delaware limited liability company; OPENAI
STARTUP FUND GP I, L.L.C., a Delaware limited
liability company; OPENAI STARTUP FUND I,
L.P., a Delaware limited partnership; and OPENAI
STARTUP FUND MANAGEMENT, LLC, a
Delaware limited liability company,

Defendants.

CASE NO. 3:23-cv-03223-AMO

**DEFENDANTS' NOTICE OF MOTION,
MOTION TO DISMISS, AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS**

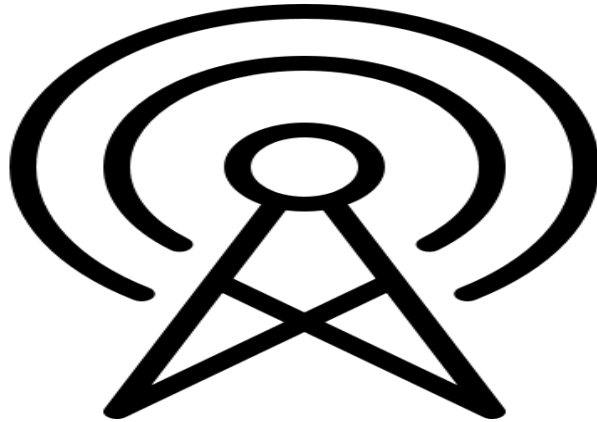
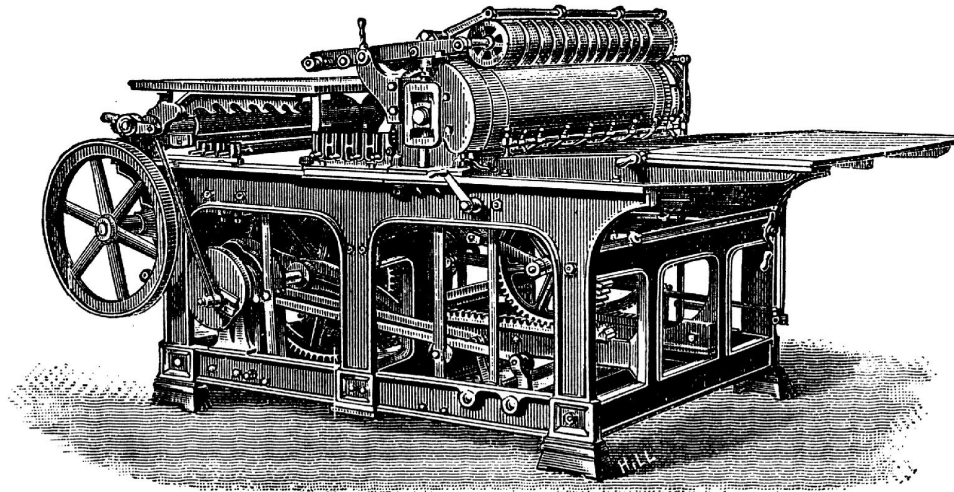
Date: December 7, 2023
Time: 2:00 pm
Place: Courtroom 10 - 19th Floor
Before: Hon. Araceli Martinez-Olguín

“At the heart of Plaintiffs’ Complaints are copyright claims. Those claims, however, misconceive the scope of copyright, failing to take into account the limitations and exceptions (including fair use) that properly leave room for innovations like the large language models now at the forefront of artificial intelligence. The constitutional purpose of copyright is “[t]o promote the Progress of Science and useful Arts.” U.S. CONST. Art. 1, § 8, cl. 8. As the Supreme Court has recognized, [t]he more artistic protection is favored, the more technological innovation may be discouraged; the administration of copyright law is an exercise in managing the tradeoff.”...Numerous courts have applied the fair use doctrine to strike that balance, recognizing that the use of copyrighted materials by innovators in transformative ways does not violate copyright. See... videogame development, videogame emulators, image search engines, web search engines, plagiarism detection tool, Google Books Project, interfaces for Android operating system... These are the key legal principles upon which countless artificial intelligence products have been developed by a wide array of technology companies.” (references omitted)



“The development of artificial intelligence has already impacted the diversity of Canadian cultural expressions and national cultural sovereignty. While the impacts we observe are largely negative, we are convinced that with adequate regulation, this development could instead strengthen our cultural ecosystem and amplify the diversity of our expressions. To achieve this, it is essential to include culture in any process of regulatory and legislative framework development and to ensure a plurality of voices is heard - and action needs to be taken quickly.”

- **Comments from the CDCE as part of the Consultation on the development of a Canadian code of practice for generative artificial intelligence systems**



napster

HOME SEARCH FOR MUSIC MORE ABOUT NAPSTER FAQ

UNLIMITED ACCESS TO 2.5 MILLION+ SONGS

Here's what you get with your Napster Membership:

- Listen to and download an unlimited amount of music
- Enjoy commercial-free, interactive radio stations
- Discover and share music with other Napster Members
- With Napster To Go, you can fill and refill any compatible MP3 player without paying per song or album*
- Fast, safe and legal

All the music you want. Any way you want it.

Try it now

See What You Get with Your Napster Membership

Click Here to Start 7-Day FREE Trial!

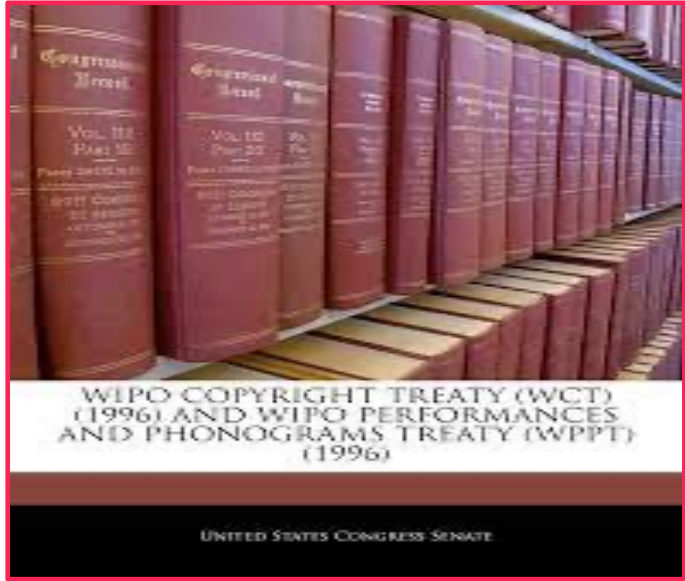
DOWNLOAD NAPSTER

Napster Cards & Promo Codes





Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations



GATT General Agreement on Tariffs and Trade
GATS General Agreement on Trade in Services
TRIPS Trade-related Aspects of Intellectual Property Rights







- [*Vigneux v. Canadian Performing Right Society Ltd.*](#), [1943] SCR 348 (gramophone)
- [*Composers, Authors and Publishers Association of Canada v. Siegel Distributing Co. Ltd. et al.*](#), [1959] SCR 488 (gramophone)
- [*Composers, Authors and Publishers Assoc. of Canada Limited v. CTV Television Network Limited et al.*](#), [1968] SCR 676 (broadcasting)
- [*Bishop v. Stevens*](#), [1990] 2 SCR 467 (broadcasting)
- [*CCH Canadian Ltd. v. Law Society of Upper Canada*](#), 2004 SCC 13 (photocopiers)
- [*Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*](#), 2004 SCC 45 (ISP liability)
- [*Alberta \(Education\) v. Canadian Copyright Licensing Agency \(Access Copyright\)*](#), 2012 SCC 37, [2012] 2 SCR 345 (photocopying)
- [*Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*](#), 2012 SCC 34 (Internet downloading)
- [*Google Inc. v. Equustek Solutions Inc.*](#), 2017 SCC 34 (Global de-indexing order)
- [*York University v. Canadian Copyright Licensing Agency \(Access Copyright\)*](#), 2021 SCC 32 (photocopying)
- [*Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association*](#), 2022 SCC 30 (Internet downloading)

BRITISH GOVERNMENT SCRAPS PLAN FOR AI TEXT AND DATA MINING COPYRIGHT EXCEPTION

53
SHARES



in



 FEBRUARY 3, 2023

BY MURRAY STASSE



Picture credit: Michael D Beckwit

Last year, the British Government **set out** proposals to amend copyright law in a manner that would permit AI developers to exploit copyrighted works without the permission of the creators and rightsholders behind those works.



4. Providers of foundation models used in AI systems specifically intended to generate, with varying levels of autonomy, content such as complex text, images, audio, or video (“generative AI”) and providers who specialise a foundation model into a generative AI system, shall in addition:

c) without prejudice to national or Union legislation on copyright, document and make publicly available a sufficiently detailed summary of the use of training data protected under copyright law.

— **[EU AI Act \(draft Compromise Amendments\) May 9, 2023](#)**



NO. 1630

NATIONAL ASSEMBLY

BILL

aimed at regulating artificial intelligence by copyright,

“There is a major economic, cultural and legal challenge related to the unbridled development of artificial intelligence (AI) that needs to be addressed urgently.”

“Faced with AI, an ecosystem that is advancing by leaps and bounds, the legislator must imperatively protect authors and artists from creation and interpretation according to a humanistic principle, in legal accordance with the Intellectual Property Code. And this even if the possibilities offered by artificial intelligences upset our traditional categories and many questions remain unanswered for the moment.”

assemblee-nationale.fr/dyn/opendata/PIONANR5L16B1630.html



NO. 1630

NATIONAL ASSEMBLY

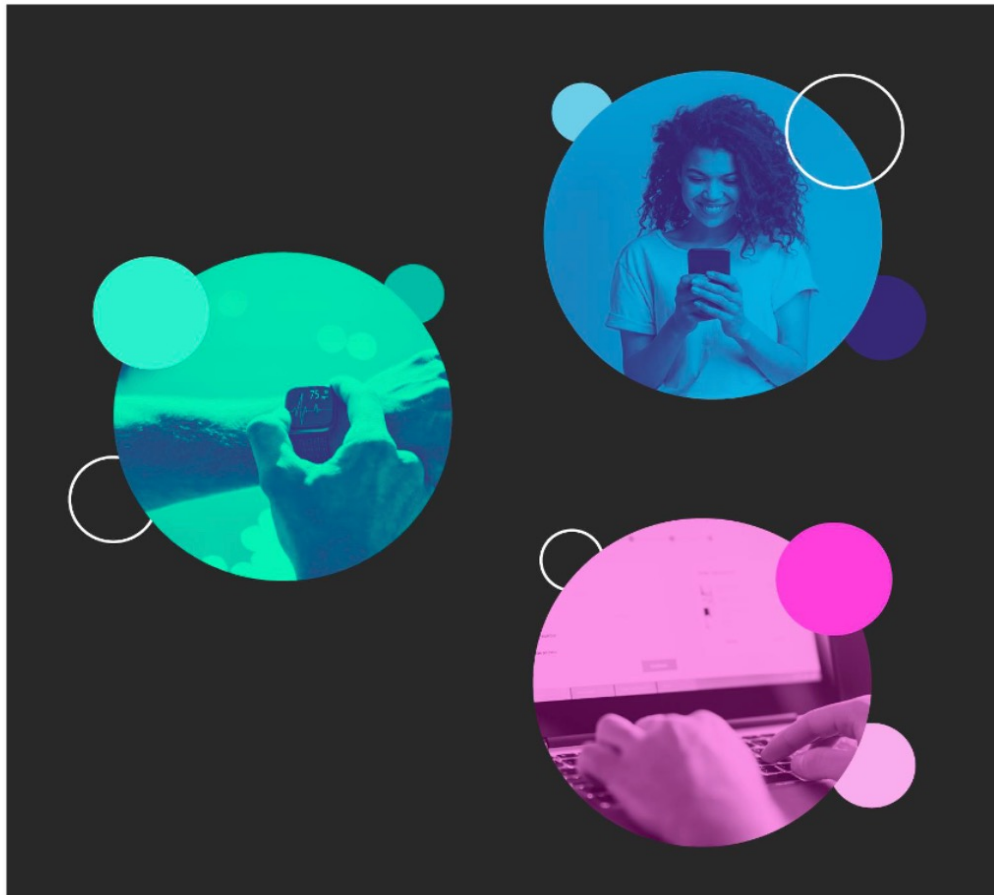
BILL

aimed at regulating artificial intelligence by copyright,

“Article L. 131-3 "The integration by artificial intelligence software of intellectual works protected by copyright into its system and a fortiori their exploitation is subject to the general provisions of this Code and therefore to the authorization of authors or rights holders".

Article L. 321-2 “Where the work is created by artificial intelligence without direct human intervention, the only rightholders are the authors or successors in title of the works which made it possible to design that artificial work.”

Article L. 121-2 "In the event that a work has been generated by an artificial intelligence system, it is imperative to affix the mention: "work generated by AI" as well as to insert the names of the authors of the works that led to such a work.”



AI ETHICS, AI REGULATION, AIDA

AIDA's regulation of AI in Canada: questions, criticisms and recommendations

JANUARY 30, 2023 · BARRY SOOKMAN

1. Background and Overview

Canada is planning to enact Bill C-27, the *Digital Charter Implementation Act* ("DIA") to enact the *Consumer Privacy Protection Act* (CPPA), *Personal Information and Data Protection Tribunal Act* (PIDTA), and *Artificial Intelligence and Data Act* (AIDA). In prior blog posts, I addressed some of the more important problems with the CPPA. This post focuses on questions, criticisms, and recommendations about AIDA, the government's draft law to regulate AI systems in Canada.

VANCOUVER

Suite 2400, 745 Thurlow Street
Vancouver BC V6E 0C5
Tel: 604-643-7100
Fax: 604-643-7900
Toll-Free: 1-877-244-7711

QUÉBEC CITY

500, Grande Allée Est, 9e étage
Québec QC G1R 2J7
Tel: 418-521-3000
Fax: 418-521-3099
Toll-Free: 1-877-244-7711

CALGARY

Suite 4000, 421 7th Avenue SW
Calgary AB T2P 4K9
Tel: 403-260-3500
Fax: 403-260-3501
Toll-Free: 1-877-244-7711

NEW YORK

55 West 46th Street, Suite 2804
New York NY 10036
UNITED STATES
Tel: 646-940-8970
Fax: 646-940-8972

TORONTO

Suite 5300, TD Bank Tower
Box 48, 66 Wellington Street West
Toronto ON M5K 1E6
Tel: 416-362-1812
Fax: 416-868-0673
Toll-Free: 1-877-244-7711

LONDON

1 Angel Court, 18th Floor
London EC2R 7HJ
UNITED KINGDOM
Tel: +44 (0)20 7786 5700
Fax: +44 (0)20 7786 5702

MONTRÉAL

Suite MZ400
1000 De La Gauchetière Street West
Montréal QC H3B 0A2
Tel: 514-397-4100
Fax: 514-875-6246
Toll-Free: 1-877-244-7711