

Uno sguardo oltreoceano: diritto d'autore e Intelligenza Artificiale negli Stati Uniti



SAPIENZA
UNIVERSITÀ DI ROMA

Francesco Grossi - Dottorando

Convegno - Il diritto alla ricerca: nuove frontiere e profili evolutivi del diritto
d'autore

Roma, 19 Dicembre 2023

- I recenti provvedimenti del U.S. Copyright Office e l'indagine conoscitiva
- Sciopero SAG- AFTRA contro l'IA
- La giurisprudenza negli U.S.A.

SISTEMI DI IA GENERATIVA

| | |
|----------------------|--|
| Text-to-Image (T2I) | <p>DALL·E 2 Stable Diffusion craiyon Jasper</p> <p>Imagen IMPROVING TEXT-TO-IMAGE NightCafe GauGAN2</p> <p>WOMBO Wonder pixray-text2image neural .love</p> |
| Text-to-Video (T2V) | <p>runway Fliki synthesia Meta AI Google AI Phenaki</p> |
| Text-to-Audio (T2A) | <p>Play.ht MURF.AI RESEMBLE.AI WELLSAID descript</p> |
| Text-to-Text (T2T) | <p>Simplified Jasper frase LeutherAI Requstory</p> <p>grammarly copy.ai MarketMuse AI21labs HubSpot</p> <p>InferKit GooseAI Research AI Writesonic co:here CHIBI</p> <p>Ideas AI copysmith Flowrite NIGHESS sudo write</p> <p>ideasbyai^{beta} text.cortex OpenAI GPT-3 Blog Idea Generator</p> |
| Text-to-Motion (T2M) | <p>TREE ind. MDM: Human Motion Diffusion Model</p> |
| Text-to-Code (T2C) | <p>replit Generate code GitHub Copilot</p> |
| Text-to-NFT (T2N) | <p>LensAI</p> |
| Text-to-3D (T2D) | <p>DreamFusion CLIP-Mesh GET3D</p> |
| Audio-to-Text (A2T) | <p>descript AssemblyAI Whisper^{OpenAI}</p> |
| Audio-to-Audio (A2A) | <p>AudioLM VOICEMOD</p> |
| Brain-to-Text (B2T) | <p>speech from brain^{Meta AI} non-invasive brain recordings</p> |
| Image-to-Text (A2T) | <p>neural .love GPT-3 x Image Captions^{OpenAI}</p> |

- ⇒ ****Input****: C'è una violazione del diritto d'autore durante l'addestramento dei sistemi generativi di AI?
Eccezioni? Text and data mining, fair use, etc.?
- ⇒ ****Output****: Le AI generated works sono tutelabili? Chi è l'autore?
Le AI generated works sono opere derivate?

CONGRESSO AMERICANO 1965: REVISIONE COPYRIGHT LAW DEL 1909



Le recenti attività dell'USCO su Copyright e Intelligenza Artificiale



US Copyright Act

17 US 102(a)

*Copyright protection subsists, in accordance with this title, **in original works of authorship fixed in any tangible medium of expression**, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories: [...]*

A RECENT ENTRANCE TO PARADISE



Copyright Office Review Board Decision (14 Febbraio 2022) a <https://copyright.gov/rulings-filings/review-board/docs/a-recent-entrance-to-paradise.pdf>

Mem. Op., Thaler v. Perlmutter, No. 22–cv– 1564, ECF No. 24 (D.D.C. 18 Agosto 2023) a <https://copyright.gov/ai/docs/district-court-decision-affirming-refusal-of-registration.pdf>

Richiedente: Dr. Stephen Thaler

Autore: The “Creativity Machine”

→ In “*Sarony*”, 111 U.S.; “*Mazer v. Stein*”, 347 U.S. 201 (1954) e “*Goldstein v. California*”, 412 U.S. 546 (1973), la paternità si focalizza su atti della creatività umana.

→ In “*Urantia Found. v. Kristen Maaherra*, 114 F.3d 955, 958–59 (9th Cir. 1997); *Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor*, 96-cv-4126 (RWS), 2000 WL 1028634, at *2, 10–11 (S.D.N.Y. July 25, 2000); *Oliver v. St. Germain Found.*, 41 F. Supp. 296, 297, 299 (S.D. Cal. 1941); *Kelley v. Chicago Park District* 635 F.3d 290, 304–06 (7th Cir. 2011); “*Naruto v. Slater*, 888, F.3d 418, 426 (9th Cir. 2018)”, le Corti hanno uniformemente rifiutato di riconoscere il copyright alle opere create senza alcun coinvolgimento umano, anche quando, ad esempio, il presunto autore fosse stato “divino”.

ZARYA OF THE DAWN

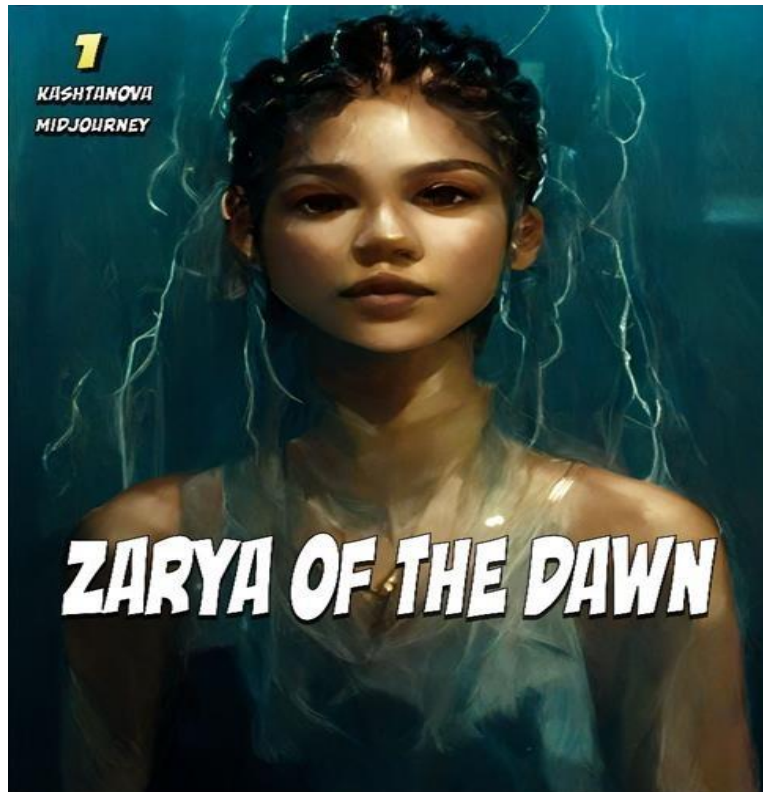


Immagine generata da Midjourney



Estratto della graphic novel

Lettera del Copyright Office e documenti di registrazione (21 Febbraio 2023) a <https://copyright.gov/docs/zarya-of-the-dawn.pdf>



UNITED STATES COPYRIGHT OFFICE

Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence

PUBLISHED ON THURSDAY, MARCH 16, 2023

16190 FEDERAL REGISTER, VOL. 88, NO. 51

RULES AND REGULATIONS

37 CFR PART 202

ACTION: Statement of policy

SUMMARY: The Copyright Office issues this statement of policy to clarify its practices for examining and registering works that contain material generated by the use of artificial intelligence technology.

DATES: This statement of policy is effective March 16, 2023.

FOR FURTHER INFORMATION CONTACT: Rhea Efthimiadis, Assistant to the General Counsel, by email at meft@copyright.gov or telephone at 202-707-8350.

SUPPLEMENTARY INFORMATION

I. Background

The Copyright Office (the "Office") is the Federal agency tasked with administering the copyright registration system, as well as advising Congress, other agencies, and the Federal judiciary on copyright and related matters.¹ Because the Office has overseen copyright registration since its origins in 1870, it has developed substantial experience and expertise regarding "the distinction between copyrightable and noncopyrightable works."² The Office is empowered by the Copyright Act to establish the application used by applicants seeking registration of their copyrighted works.³ While the Act identifies certain minimum requirements, the Register may determine that additional information is necessary for the Office to evaluate the "existence, ownership, or duration of the copyright."⁴ Because the Office receives roughly half a million applications for registration each year, it sees new trends in registration activity that may require modifying or expanding the information required to be disclosed on an application.

One such recent development is the use of sophisticated artificial intelligence ("AI") technologies capable of producing expressive material.⁵ These technologies "train" on vast quantities of preexisting human-authored works and use inferences from that training to generate new content. Some systems operate in response to a user's textual instruction,

Guida alla registrazione del copyright:
Opere contenenti materiali generati
dall'intelligenza artificiale (16 Marzo 2023)

https://copyright.gov/ai/ai_policy_guidance.pdf

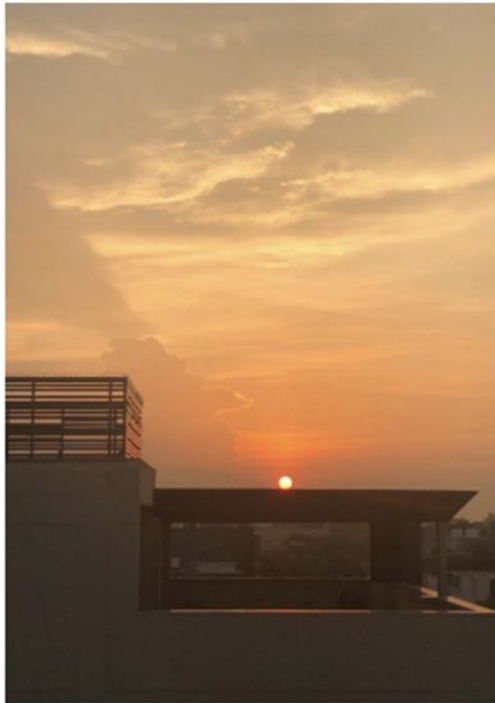


Immagine generata da Midjourney



Immagine presentata per la registrazione del Copyright

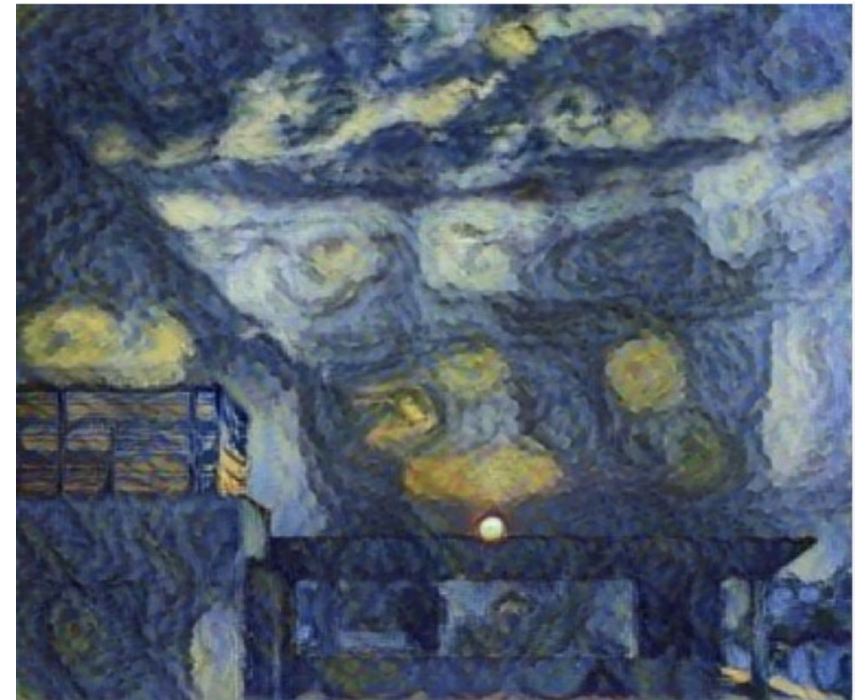
Decisione del Review Board del U.S. Copyright Office (5 Settembre 2023)
a <https://copyright.gov/rulings-filings/review-board/docs/Theatre-Opera-Spatial.pdf>



Fotografia di Ankit Sahni



Notte stellata di Vincent Van Gogh



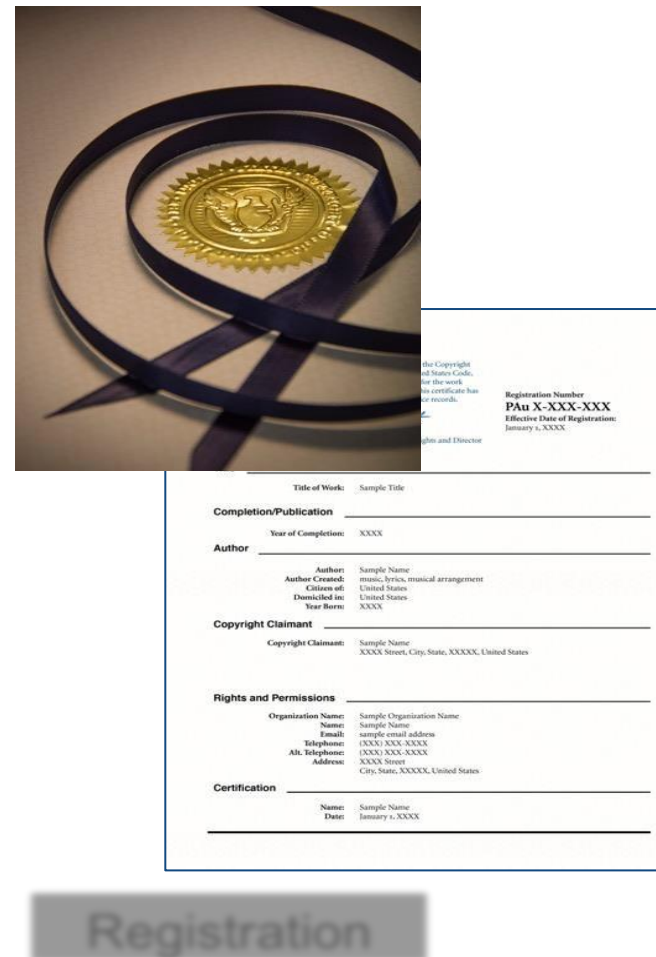
*«Suryast» creata con sistema di IA
«Raghav»*

Decisione del Review Board del U.S. Copyright Office (11 Dicembre 2023)

a: <https://copyright.gov/rulings-filings/review-board/docs/SURYAST.pdf>

CONCLUSIONI DEL U.S. COPYRIGHT OFFICE

- ➔ Le opere generate dall'IA sono inclassificabili come (c) perché mancano di autorialità umana
- ➔ Ciò presumibilmente significa che le opere sono nel dominio pubblico e possono essere liberamente copiate
- ➔ Quando le persone presentano domanda per registrare opere che incorporano testi, immagini o altri contenuti generati dall'IA, devono identificare le parti generate dall'IA e rinunciare all'autorialità di tali parti



Home / Policy / Artificial Intelligence Study

Artificial Intelligence Study

Comment Submission

The U.S. Copyright Office is conducting a study regarding the copyright issues raised by generative artificial intelligence (AI). This study will collect factual information and policy views relevant to copyright law and policy. The Office will use this information to analyze the current state of the law, identify unresolved issues, and evaluate potential areas for congressional action.

<https://copyright.gov/policy/artificial-intelligence/>

- ⇒ Non sussistono divieti di sfruttamento delle opere dell'ingegno per il training dei sistemi di IA e si può far affidamento al cd. fair use (case law: *Field v. Google, Inc.*; *Authors Guild v. Google*, etc.); in caso contrario ci sarebbero perdite negli investimenti delle società e la sicurezza nazionale americana sarebbe messa a rischio; e
- ⇒ AI-generated works non sono opere derivate.
- ⇒ Secondo META, utilizzare opere per il training dei sistemi di IA è come insegnare a un bambino a parlare “*Just as a child learns language... by hearing everyday speech, bedtime stories, songs on the radio, and so on, a model ‘learns’ language by being exposed - through training - to massive amounts of text from various sources*”.

Title 17 [Section 107](#)

107. Limitations on exclusive rights: Fair use⁴¹

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

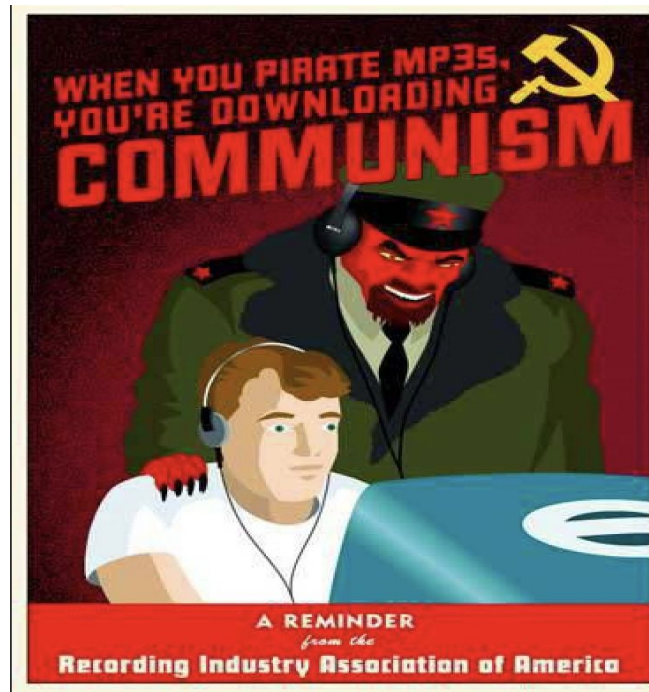
- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.



- ➡ *“During its 16 - year history, other than online piracy no copyright issue has drawn more interest from the Copyright Alliance membership than generative AI.”*
- ➡ No Fair Use per training di sistemi di IA generativa - valutazione caso per caso.
- ➡ I sistemi di AI stanno utilizzando opera dell’ingegno per creare altre opera che potrebbe sostituire le prime sul mercato, sono necessarie delle licenze con gli aventi diritto.

- *“Generative AI is a Marxist nightmare: the work of millions accruing to a few capitalist owners who pay nothing at all for that labor”*
Jenna Burrell, Director of Data & Society Research Institute



- Nei casi di Field & Authors Guild v. Google, Google stava rendendo più facile per gli utenti trovare le opere dei titolari del copyright (c), non competendo con quelle opere.
- I sistemi di IA rendono facile per gli utenti produrre immagini che competono con le immagini ingerite.
- Gli aventi diritto (c) non hanno dato il consenso al training, non possono effettuare l'opt out facilmente e pensano che sia giusto essere remunerati, data l'alta qualità delle loro opere e senza il quale i sistemi di intelligenza artificiale generativa potrebbero solo produrre spazzatura.

→ **La posizione di ASCAP** (American Society of Composers, Authors and Publishers) è chiara ed è in linea con la posizione assunta dalle Umbrella Organizations (e.g. CISAC - Confederazione Internazionale delle Società di Autori e Compositori e BIEM - International Bureau of Companies Managing Registration and Mechanical Reproduction Rights).



I principi chiave che guidano l'azione di ASCAP nei confronti dei sistemi di IA generativa:

1. Human Creators First: Priorità ai diritti e al compenso per la creatività umana.
2. Transparency: Identificazione delle opere generate da IA rispetto a quelle generate dall'essere umano e conservazione dei metadati.
3. Consent: Consenso espresso per autorizzare il training.
4. Compensation: Licenze volontarie tra CMO e AI companies.
5. Credit: Riconoscimento quando le opere tutelate vengono utilizzate per produrre nuova musica generata dai sistemi di IA.
6. Global Consistency: Un mercato equo che valorizzi la proprietà intellettuale a livello globale.




- Inclusioni previsioni ad hoc nel mandato (vd. GEMA)
 -
- Tramite dichiarazione del diritto di riserva sui propri siti web (vd. GEMA e SACEM, qualcosa di simile lo fa anche il NYT inserendolo direttamente nelle proprie T&Cs);
 -
- Inserendo una previsione nelle sue licenze (vd. KOMCA).

- 1. «No Generative AI Training Use. For avoidance of doubt, Author reserves the rights, and [Publisher/Platform] has no rights to, reproduce and/or otherwise use the Work in any manner for purposes of training artificial intelligence technologies to generate text, including without limitation, technologies that are capable of generating works in the same style or genre as the Work, unless [Publisher/Platform] obtains Author's specific and express permission to do so. Nor does [Publisher/Platform] have the right to sublicense others to reproduce and/or otherwise use the Work in any manner for purposes of training artificial intelligence technologies to generate text without Author's specific and express permission»;
- 2. «Author shall not be required to use generative AI or to work from AI-generated text. Authors shall disclose to Publisher if any AI-generated text is included in the submitted manuscript, and may not include more than [5%] AI-generated text»;
- 3. «With respect to any audiobook created or distributed under this Agreement, Publisher shall not permit or cause the Work to be narrated by artificial intelligence technologies or other non-human narrator, without Author's prior and express written consent»;

- 4. «With respect to any translations created or distributed under this Agreement, Publisher shall not translate or permit or cause the Work to be translated into another language with artificial intelligence technologies or other non-human translator, without Author's prior and express written consent. For purposes of clarification, a human translator may use artificial intelligence technologies as a tool to assist in the translation, provided that the translation substantially comprises human creation and the human translator has control over, and reviews and approves, each word in the translation»;
- 5. «Publisher agrees not to use AI-generated images, artwork, design, and other visual elements for the book cover or interior artwork without Author's prior express approval. For purposes of clarification, a human designer may use artificial intelligence technologies as a tool to assist in the creation of artwork for the Work, provided that the human artist has control over the final artwork and the artwork substantially comprises human creation.»;

TV/THEATRICAL 2023

Regulating Artificial Intelligence

| | | |
|---|---|--|
| <p style="text-align: center; background-color: #ffff00; padding: 5px;">EMPLOYMENT-BASED DIGITAL REPLICA</p> <p style="text-align: center; background-color: #0000ff; color: white; padding: 5px;">DEFINITION</p> <p>Created during a performer's employment with their physical participation, and used to portray the performer in scenes they didn't actually shoot.</p> <p style="text-align: center; background-color: #0000ff; color: white; padding: 5px;">CONSENT</p> <ul style="list-style-type: none"> Mandatory consent from performers for creating and using their digital replicas. Consent not obtained before death must be obtained from an authorized representative or the Union. Clear contracts with a reasonably specific description of the use. Additional consent requirements for use in additional projects. <p style="text-align: center; background-color: #0000ff; color: white; padding: 5px;">COMPENSATION</p> <ul style="list-style-type: none"> Performers are generally entitled to compensation (including P&H) for the creation and use of their replicas, and for use in additional projects or other mediums. Residuals paid for use that would normally generate residuals. |    | <p style="text-align: center; background-color: #ffff00; padding: 5px;">INDEPENDENTLY CREATED DIGITAL REPLICA</p> <p style="text-align: center; background-color: #0000ff; color: white; padding: 5px;">DEFINITION</p> <p>Digital replicas created often using existing materials, and used to portray the performer in scenes they didn't actually shoot.</p> <p style="text-align: center; background-color: #0000ff; color: white; padding: 5px;">CONSENT</p> <ul style="list-style-type: none"> Producers are obligated to obtain consent prior to use from the performer. Consent not obtained before death must be obtained from an authorized representative or the Union. Clear contracts with a reasonably specific description of the use. <p style="text-align: center; background-color: #0000ff; color: white; padding: 5px;">COMPENSATION</p> <ul style="list-style-type: none"> Compensation and residuals freely bargained. Any compensation paid to the performer for use of the Independently Created Digital Replica will be subject to pension or retirement and health contributions |
|---|---|--|

DIGITAL ALTERATIONS GUIDELINES

- Clear and conspicuous consent must be obtained to digitally alter the performer's performance in previously recorded material unless it remains substantially as scripted, performed and/or recorded.
- Producers will provide a reasonably specific description of the intended alteration(s).
- If lip or facial movements are altered to make it look like a background actor is speaking, and dialogue is added, they will be upgraded to a day performer.

TV/THEATRICAL 2023

Regulating Artificial Intelligence

GENERATIVE ARTIFICIAL INTELLIGENCE

DEFINITION

A subset of artificial intelligence that learns patterns from data and produces content based on those patterns, able to simulate a performer's voice, facial expressions, and movements to create entirely new content.

CONSENT

If a producer plans to make a computer-generated character that has a main facial feature—like eyes, nose, mouth, or ears—that clearly looks like a real actor, and they use that actor's name and face to prompt the AI system to do this, they must first get permission from that actor and agree on how this character will be used in the project.

GUIDELINES

- Producers must notify the Union if they create synthetic performers and bargain over whether compensation or any other consideration is appropriate.
- There will be regular meetings to discuss considerations for using any video and audio recordings made under these agreements to train AI systems.
- Regular meetings will cover current and future use of AI in projects, and to make sure that the AI does not create or reinforce any unfair biases.
- Producers acknowledge importance of human performance and the risk of job replacement when utilizing GAI.

DIGITAL REPLICATION OF BACKGROUND ACTORS

DEFINITION

- A 'Background Actor Digital Replica' is a digital version of a background actor's voice or likeness, made with the actor physically present, for scenes they didn't actually film.

CONSENT


- Notification must be sent 48 hours in advance to create a digital replica, or at booking if less than 48 hours ahead.
- Clear and separate consent is required for the use of a background actor's digital replica in a movie, and in the case of deceased performers, their estate or Union must consent.

GUIDELINES

- Replicas must not be used to meet the background counts for the day.
- Replicas will not be used to avoid the engagement of background actors.

COMPENSATION

- Time spent creating a digital replica counts as work time and is paid accordingly.
- If a background actor is called in just for replication, they get paid for a full day.
- If the digital replica is used as a principal character, the actor gets paid a principal's rate for the estimated days they would have worked.



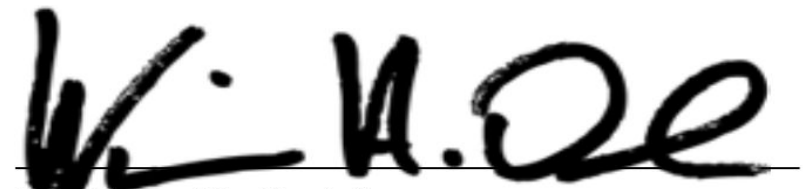
| Data di deposito | Nome del caso | Corte |
|-------------------|--|---------------------------------|
| 21 novembre 2023 | Julian Sancton v. OpenAI, Microsoft | Southern District of New York |
| 18 ottobre 2023 | Concord Music Group, Inc. et al v. Anthropic PBC | Middle District of Tennessee |
| 17 ottobre 2023 | Huckabee v. Meta Platforms Inc | Southern District of New York |
| 19 settembre 2023 | Authors Guild et al v. Open AI | Southern District of New York |
| 12 settembre 2023 | Chabon v. Meta Platforms | Northern District of California |
| 8 settembre 2023 | Chabon v. OpenAI | Northern District of California |
| 11 luglio 2023 | J.L. , C.B., K.S. e altri v. Alphabet Inc | Northern District of California |
| 7 luglio 2023 | Richard Kadrey e altri v. Meta Platforms, Inc. | Northern District of California |
| 7 luglio 2023 | Sarah Silverman e altri v. OpenAI, Inc | Northern District of California |
| 28 giugno 2023 | Paul Tremblay v. OpenAI, Inc. | Northern District of California |
| 28 giugno 2023 | P.M., K.S. e altri contro OpenAI e altri | Northern District of California |
| 3 febbraio 2023 | Getty Images (US), Inc. v. Stability AI Ltd | District of Delaware |
| 13 gennaio 2023 | Sarah Andersen v. Stability AI Ltd | Northern District of California |
| 3 novembre 2022 | Doe 1 v. Github, Inc. | Northern District of California |
| 6 maggio 2020 | Thomson Reuters Enterprise Centre GmbH et al v. ROSS Intelligence Inc. | District of Delaware |

CONCLUSION

The motions to dismiss are GRANTED in full, except for the direct copyright infringement claim asserted by plaintiff Anderson against Stability. Plaintiffs are given leave to amend and attempt to cure the deficiencies identified above. The amended complaint, if any, must be filed within thirty (30) days of the date of this Order.

IT IS SO ORDERED.

Dated: October 30, 2023



William H. Orrick
United States District Judge

L'executive order on Safe, Secure, and Trustworthy Artificial Intelligence emanato il 30 ottobre u.s. resta vago sul copyright, rinviando alle autorità preposte alcune delle questioni inerenti la protezione dei diritti di proprietà intellettuale e dei potenziali abusi. Non si fa riferimento a obblighi di trasparenza in capo alle AI-Companies.

- IN ATTESA DI RISPOSTE DALLE PRONUNCE GIUDIZIARIE....
- PRIMI ACCORDI DI LICENZA PER TRAINING (OPENAI-ASSOCIATED PRESS; OPENAI-AXEL SPRINGER, ETC.)

GRAZIE PER
L'ATTENZIONE !



Francesco Grossi

Dottorando Università Sapienza Roma

Francesco.grossi@uniroma1.it

Convegno - Il diritto alla ricerca: nuove frontiere e profili evolutivi del diritto
d'autore

Roma, 19 Dicembre 2023