**DETAILED AGENDA**

**Copyright Society CLE – Liability Considerations in Enterprise Use of Generative AI**

Webinar, June 27, 2023

**Introduction**

5 minutes

* Aleksander Goranin (moderator) introduces the speakers, provides a high-level roadmap of the program, and explains the session’s focus on generative AI (“gen AI”) like large language models (LLMs) and Midjourney-type image generators, not classifier AI models like more traditional recommendation systems and photo recognition systems.

**Module 1: Real-world copyright risks faced by gen AI system users and deployers**

35 minutes

* Regina Thomas (Yahoo) provides the **user** perspective. She comments on (a) internal processes she employs to centralize business-unit questions about gen AI tool use; (b) the current guidance she offers on acceptable and unacceptable uses; and (c) issues around detecting and labeling whether a particular image/output is human-generated or synthetic.
* Alex Rindels (Jasper) provides the **deployer** perspective, using the generation of marketing content—Jasper’s particular business vertical—as an exemplary use case. He discusses (a) the advice he provides to his business units on copyrightability of generated marketing content; (b) assessments and training he provides to minimize potential copyright violations from use of copyrighted material as model training inputs; and (c) indemnification and other risk allocation that arises in license agreement negotiations with Jasper customers.
* Peter Henderson (Stanford University) discusses the empirical work he conducted in his “Foundation Models and Fair Use” paper, examining the extent to which OpenAI’s GPT model can “memorize” copyrighted works and be prompted to reproduce their content. He also presents cutting-edge research on technological measures and best practices for model training that can be used to minimize such “memorization” and reproduction.

Supporting written material

* + Jasper “Plans & Pricing” webpage: <https://www.jasper.ai/pricing> and “Use Cases” webpage: <https://help.jasper.ai/category/420-jasper-use-cases>
  + Peter Henderson et al., “Foundation Models and Fair Use,” posted March 28, 2023, <https://arxiv.org/abs/2303.15715>
  + Matthew Sag, “Copyright Safety for Generative AI,” posted May 4, 2023, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4438593>
  + OpenAI “GPT Best Practices” webpage: <https://platform.openai.com/docs/guides/gpt-best-practices>

**Brief interlude**

5 minutes

* The panelists will share which gen AI tools they’ve incorporated into their professional workflows

**Module 2**: **Secondary copyright liability in an online platform context, content moderation, and Section 230’s applicability to gen AI systems**

35 minutes

* Most gen AI systems are offered as web services (“software as a service” or “SasS”), thereby raising many of the same copyright and copyright-adjacent legal issues as online platforms like Facebook, Instagram, YouTube, and Twitter experience. This section of the program analyzes how those issues may apply and may be decided in the gen AI context.
* Aleksander Goranin (moderator) provides a short refresher on the main doctrines of secondary copyright liability—contributory infringement and vicarious infringement—to explain the common-law setting against which statutory safe harbors like the Digital Millennium Copyright Act’s section 512 notice-and-takedown system and the Communication Decency Act’s section 230 safe harbor for third-party content were enacted.
* Jess Miers (Chamber of Progress) then explains the current debates among the gen AI tech players regarding (a) content moderation/section 512 notice and takedown and (b) the section 230 safe harbor for “information provided by another information content provider.” She describes a recent defamation lawsuit filed against OpenAI in Georgia, as well as the current legislative controversy over whether gen AI systems should be protected under Section 230.
* Regina Thomas (Yahoo) and Alex Rindels (Jasper) follow up by discussing the content moderation and Section 230 issues their respective platforms face. With respect to content moderation, they focus on the challenge of removing copyrighted content from a gen AI model in response to a DMCA notice. With respect to section 230, they address the unique wrinkle presented when relying on a generated output received from a third-party AI model through an application program interface (API).
* Peter Henderson (Stanford) concludes by recapping the Section 230 issues in his “Foundation Models and Fair Use” paper and discussing the current state of academic research on ways of removing flagged or problematic training data from an AI model.

Supporting written material

* + Digital Millennium Copyright Act, 17 U.S.C. § 512, <https://www.law.cornell.edu/uscode/text/17/512>
  + Copyright Office, “Section 512 of Title 17: A Report of the Register of Copyrights,” May 2020, <https://www.copyright.gov/policy/section512/section-512-full-report.pdf>
  + Communications Decency Act, 47 U.S.C. § 230,

<https://www.law.cornell.edu/uscode/text/47/230>

* + Matt Perault, “Section 230 Won’t Protect ChatGPT,” Lawfare blog, Feb. 23, 2023, <https://www.lawfareblog.com/section-230-wont-protect-chatgpt>
  + Jess Miers, “Yes, Section 230 Should Protect ChatGPT and Other Generative AI Tools,” TechDirt blog, Mar. 17, 2023, <https://www.techdirt.com/2023/03/17/yes-section-230-should-protect-chatgpt-and-others-generative-ai-tools/>
  + Sen. Richard Blumenthal’s (D-CT) and Sen. Josh Hawley’s (R-MO) proposed bill “No Section 230 Immunity for Claims and Charges Related to Generative Artificial Intelligence,” announced June 14, 2023, <https://www.hawley.senate.gov/sites/default/files/2023-06/Hawley-No-Section-230-Immunity-for-AI-Act.pdf>
  + Complaint in *Walters v. OpenAI, LLC*, Super. Ct. of Gwinnett County, Georgia, June 5, 2023, <https://www.courthousenews.com/wp-content/uploads/2023/06/walters-openai-complaint-gwinnett-county.pdf>

**Questions from the audience**

10 minutes