



the COPYRIGHT SOCIETY

Program Title: The Role of Attribution Rights in Open Source and Creative Commons License Content Used in ML Training

Program Date, Time, and Location: October 4, 2023 / 11:30 am Central / 401 S 1st St Suite 1300, Austin, TX 78704

Program Description: Authors that make their works available to the public under open source or Creative Commons licenses normally want to ensure their work is shared and disseminated broadly, in return for certain conditions like attribution and obligations to share alike any changes or derivatives made of the work. Although authors that offer their works under open innovation licenses often want to ensure the maximum usefulness of that work, the value proposition can change when their works are used to train machine learning models or otherwise used in AI, especially because the most fundamental aspect of open license, attribution, is difficult if not impossible to provide. Our panelists will discuss the importance of the attribution covenant in open source licenses, the relationship between attribution and copyright management information rights under the Copyright Act and the DMCA, the potential impact of the ML Genius Second Circuit decision, and the claims being made by the class action plaintiffs in the Doe v. GitHub class action complaint.

Moderator: Steve Mann

Panelists and Topics/Materials

1. Bryan Sinclair

a. Topic: J. Doe v. Github, Inc.

b. Materials:

i. Complaint: https://githubcopilotlitigation.com/pdf/06823/1-0-github_complaint.pdf

ii. Defendants' Motion to Dismiss:

1. Github:

<https://storage.courtlistener.com/recap/gov.uscourts.cand.403220/gov.uscourts.cand.403220.50.0.pdf>

2. OpenAI:

<https://storage.courtlistener.com/recap/gov.uscourts.cand.403220/gov.uscourts.cand.403220.53.0.pdf>

iii. Plaintiffs' Oppositions to Motion to Dismiss:

1. <https://githubcopilotlitigation.com/pdf/06823/06823-67.pdf>

2. <https://githubcopilotlitigation.com/pdf/06823/06823-66.pdf>

iv. Order on Motion to Dismiss:

<https://githubcopilotlitigation.com/pdf/06823/06823-95.pdf>



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2. Hanlin Li

a. Topic: When is content reuse in generative AI acceptable to content creators? Professor Li and her team are investigating the beliefs of different types of content creators, from professional writers to average social media users, to understand their concerns about the reuse of their work. We will discuss the intersection of legality, morality, and “fairness” concerns of content creators in this situation.

b. Materials: Silverman v. OpenAI, Inc. complaint

i. https://storage.courtlistener.com/recap/gov.uscourts.cand.415174/gov.uscourts.cand.415174.1.0_2.pdf

3. Ed Cavazos

a. Topic: The applicability of the fair use doctrine, whether there is a reasonable argument that ingestion of works into a LLM qualifies as a fair use under current law, and the impact of open-source licenses or attribution rights on the fair use analysis.

b. Materials:

i. Mark A. Lemley & Bryan Casey, Fair Learning, 99 Tex. L. Rev. 743 (2021).

ii. Silverman v. OpenAI, Inc. motion to dismiss

1. <https://storage.courtlistener.com/recap/gov.uscourts.cand.415174/gov.uscourts.cand.415174.32.0.pdf>

4. Heather Meeker

a. Topic: What is the end game for class action suits about generative AI? Attribution, damages, or stopping AI? How legal ambiguity will result in industry consolidation.

b. Corporate AI Policy: <https://heathermeeker.com/generative-ai-policy/>

Video:

<https://www.youtube.com/watch?v=o2EB4R51WeE&list=PLAVikl6VpxPcuJTt8-UY7c-5n7R4vYAc6&index=5&pp=gAQBiAQB>