the COPYRIGHT SOCIETY

2024 ANNUAL MEETING
JUNE 9-11

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Detailed Agenda – Session 6
FAIR USE AND AI: A DEBATE
June 11, 2024 | 11:45 AM - 12:45 PM EDT

A rousing exchange of views with both sides of the debate on whether generative AI's use of copyrighted material is fair or infringing. The conversation will include a discussion of the current fair use landscape, how generative AI models actually work, and the various cases currently being litigated across the country.

Speakers:
- Mark Schulz (University of Akron Law School) – Moderator
- Annette Hurst (Orrick)
- Matt Oppenheim (Oppenheim + Zebrak)
- Matt Sag (Emory Law School)

Outline:

I. Intros - Mark Schulz *(5 minutes)*
Including caveat about panelists speaking in their personal capacity (not as a rep for any particular party in active litigation).

II. AI & Case Landscape Overview – Matt Sag (*7 minutes*)
  a. Explanation/examples of how LLM technologies work.
  b. Quick summary of the state of the various active litigations concerning copyright and AI models across the country (particular focus on the Anthropic and NYTimes cases), setting the stage and providing context for the issues we will be focusing on, below.
Supporting Material:

Matthew Sag, Fairness and Fair Use in Generative AI, 92 Fordham Law Review 1997 (2024) – forthcoming article:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4654875

III. Discussion of specific fair-use-related issues in the ongoing litigations
– Rapid fire/debate structure – Matt O. and Annette, with Mark moderating and Matt S. commentating (40 minutes)

    a. [Issue 1] Input: Is LLM training fair use?
    b. [Issue 2] Output: Can or does the output of AI models constitute infringement?
        i. Substantial similarity analysis
    c. [Issue 3] How does the existing case law impact a court's potential analysis of the infringement/fair use question?
        i. Application of Sony/Betamax, Google Books
        ii. Non-expressive use
        iii. Warhol and the purpose of the use
        iv. Discussion of order denying SJ in the Thomson Reuters v. Ross case
        v. Oracle
        vi. Authors' Guild
    d. Going forward – licensing questions
    e. Can these cases be decided on summary judgment?
    f. Class cert issues

Supporting Materials:
    i. Complaint and Preliminary Injunction briefing in *Concord Music Group, Inc. v. Anthropic PBC*:
        1. https://admin.bakerlaw.com/wp-content/uploads/2024/01/ECF-1-Complaint-2.pdf
        2. https://admin.bakerlaw.com/wp-content/uploads/2024/01/ECF-40-41-Plaintiffs-Motion-for-Preliminary-Injunction-Memorandum-of-Law.pdf
        3. https://admin.bakerlaw.com/wp-content/uploads/2024/01/ECF-67-Anthropics-Opposition-to-Plaintiffs-Motion-for-Preliminary-Injunction.pdf

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4. https://admin.bakerlaw.com/wp-content/uploads/2024/02/ECF-92-Plaintiffs-Reply-in-Support-of-Motion-for-Preliminary-Injuction.pdf

ii. Complaint and Motion to Dismiss briefing in *New York Times v. Microsoft*:

5. https://admin.bakerlaw.com/wp-content/uploads/2024/01/ECF-1-Complaint-1-1.pdf

6. https://admin.bakerlaw.com/wp-content/uploads/2024/03/ECF-64-65-Microsoft-Motion-to-Dismiss.pdf

7. https://admin.bakerlaw.com/wp-content/uploads/2024/03/ECF-73-Plaintiff-Opposition-to-Motion-to-Dismiss.pdf

8. https://admin.bakerlaw.com/wp-content/uploads/2024/03/ECF-76-Plaintiffs-Opposition-to-Microsoft-Motion-to-Dismiss.pdf

9. https://admin.bakerlaw.com/wp-content/uploads/2024/03/ECF-75-Reply-Memo-ISO-OpenAI-Motion-to-Dismiss.pdf

10. https://admin.bakerlaw.com/wp-content/uploads/2024/03/ECF-79-Microsoft-Reply-in-Support-of-Microsofts-Motion-to-Dismiss.pdf

iii. Order on Motion for Summary Judgment in *Thomson Reuters v. Ross Intelligence*:

11. https://casetext.com/case/thomson-reuters-enter-ctr-gmbh-v-ross-intelligence-inc-2

iv. New York Times article, How Tech Giants Cut Corners to Harvest Data for A.I.:
https://www.nytimes.com/2024/04/06/technology/tech-giants-harvest-data-artificial-intelligence.html

Q&A (8 minutes)

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