COPYRIGHT OUT IN THE WORLD: LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS IN ARTIFICIAL INTELLIGENCE

UNITED STATES OF AMERICA

by BIJOU MGBOJIKWE

Legislative — Federal

U.S. CONGRESS. HOUSE.

H.R. 6943. A bill entitled the "No Artificial Intelligence Fake Replicas and Unauthorized Duplications Act or No AI FRAUD Act." Introduced on January 10, 2024; and referred to the Committee on the Judiciary. (118th Congress. 2d Sess.)

Citing several high-profile instances of unauthorized uses of voices and likenesses, images and photographs for commercial and noncommercial uses using AI software tools, the bill creates a property right in an individual's voice and likeness. The bill designates the property right as intellectual property that is transferable and descendible. Liability is created for the distribution, transmission or otherwise making available a "personalized cloning service" and for an unauthorized digital replica. The bill also provides for instances when the courts are to consider the First Amendment and engage in a balancing of equities and expressly states that there will be no preemption.

H.R. 7913. A bill entitled the "Generative AI Copyright Disclosure Act." Introduced on April 9, 2024; and referred to the Committee on the Judiciary. (118th Congress. 2d Sess.)

This bill introduced by Representative Adam Schiff (D-CA) would mandate the disclosure to the Register of Copyrights of copyrighted works used in the training of new generative AI systems. The Register would maintain this information in a publicly available database. The bill's obligations would apply both to the developers and deployers of those AI systems and would also apply retroactively to previously released generative AI systems.

H.R. 9551. A bill entitled the "Nurture Originals, Foster Art, and Keep Entertainment Safe Act of 2024" or the "NO FAKES Act of 2024." Introduced on September 12, 2024; and referred to the Committee on the Judiciary. (118th Congress. 2d Sess.)

This bill is the same as that introduced in the Senate in July 2024. As in S. 4875, the House version of the NO FAKES Act would create a new intellectual property right for a digital replica of an individual's voice and visual likeness "embodied" in an image, an audiovisual work, or a sound recording.

U.S. CONGRESS. SENATE.

S. 4674. A bill entitled the "Content Origin Protection and Integrity from Edited Deepfaked Media Act or COPIED Act." Introduced on July 11, 2024. (118th Congress. 2d Sess.)

The drafters of this legislation were concerned about the growing difficulties in determining authenticity of digital content generated or modified by artificial

intelligence and the impact on artists, publishers and journalists and the marketplace for their works. The bill directs the U.S. Department of Commerce to commence public-private partnerships for the creation of watermarking and content provenance standards as well as undertake research on standards development. The bill also mandates that any person who makes available a tool for the creation of synthetic content or synthetically-modified content has to give users the ability to mark or embed content provenance information into their content as synthetic. If a user opts to mark or input content provenance onto their content, then the tool developer must employ reasonable security measures to make sure that the marking cannot be altered, removed or separated from the underlying content. It will be a violation of the law for anyone to seek to or remove or alter the watermark or content provenance data. In addition, the bill prohibits the training of AI systems with content that has attached content provenance information without permission or content that has had its provenance information removed. The bill provides for Federal Trade Commission and state attorney-general enforcement, as well as a private right of action.

S. 4875. A bill entitled the "Nurture Originals, Foster Art, and Keep Entertainment Safe Act or NO FAKES Act." Introduced on July 31, 2024. (118th Congress. 2d Sess.)

The NO FAKES Act creates a new intellectual property right in an individual's digital replica. Introduced on July 31, 2024, the bill seeks to prevent the creation, use, display, making available or distribution of unauthorized digital replicas of an individual's voice or likeness in audiovisual works and sound recordings and creates a notice-and-takedown system for online services. Developers, importers or distributors of software technologies used to create unauthorized digital replicas may face secondary liability if the primary purpose of those technologies is to create unauthorized digital replicas or if they have limited commercially significant purposes or marketed for unauthorized uses. Owners of a deceased individual's rights are encouraged to register those rights with the Register of Copyrights and must continue to do so to enjoy the full term of post-mortem rights. Preemption is limited, applying only to state laws that cover the uses of digital replicas in expressive works and even then, only those that enter into force after January 2025.

S. 5379. A bill entitled the "Transparency and Responsibility for Artificial Intelligence Networks Act" or the "TRAIN" Act. Introduced on November 21, 2024. (118th Congress. 2d Sess.)

The TRAIN Act would amend the Copyright Act to authorize copyright owners to request courts to issue a subpoena to a developer or deployer of a generative artificial intelligence model. The subpoena would compel the model developer or deployer to disclose records sufficiently detailed enough to assist the copyright owner to ascertain whether the copyright owner's works were used to train the model if the copyright owner possessed a subjective good faith basis to believe that one or more of the copyright owner's works were used to train the model. The subpoena process was modeled after that in Section 512 of the Digital Millennium Copyright Act. The bill may be re-introduced in the 119th Congress.

Legislative – State

CALIFORNIA

SB 942. A bill entitled the "California AI Transparency Act." Introduced on February 17, 2024, and enacted into law on September 19, 2024.

The bill would require a covered AI provider to make available an AI tool that is capable of marking content altered with the covered provider's generative AI tool with a simultaneous conspicuous and latent disclosure of the fact that the content is either modified or generated by AI and content provenance information. If a covered AI provider discovers that its third-party licensees modify the AI tool so that it can no longer mark the content and produce the disclosures, then the covered AI provider must revoke the license within 72 hours. The law, as enacted, does not apply to non-user-generated video games, television, streaming services, or movies.

AB 3211. A bill entitled the "California Provenance, Authenticity and Watermarking Standards Act." Introduced on February 16, 2024. The bill did not advance and is considered inactive.

This is another content disclosure and watermarking bill. The bill would require a generative AI provider who makes that system available to the public to place an unremovable "imperceptible" mark on the content to denote the content's synthetic nature. If that cannot be done, the generative AI provider must then embed content provenance information as part of the content's metadata. The generative AI provider must also make it clear to consumers that uploading synthetic content without disclosure is against platform policy, must engage in red-teaming and make the results of red-teaming exercises available to California authorities. In addition, no person may make available to the public any software that can remove a watermark or content provenance data.

AB 2602. A bill entitled the "Contracts against public policy: personal or professional services: digital replicas Act." Introduced on February 14, 2024, and enacted into law on September 17, 2024.

This is a bill that would amend section 927 of California's Labor Code to require contracts negotiated on or after January 2025 for professional services involving the creation or use of a digital replica of an individual's voice or likeness to include a "reasonably specific description" of the intended uses of a digital replica in a contract. The commercial terms in the contract must be negotiated by legal counsel or by a collective bargaining representative. Originally including a retroactive provision, the legislation was amended to state that this bill would not impact any other terms of exclusivity that were already part of the existing contract.

AB 2013. A bill entitled the "Artificial Intelligence Training Data Transparency Act." Introduced on January 31, 2024, and enacted into law on September 28, 2024.

This bill requires any developer of an artificial intelligence system or service to make available publicly on the internet, such as its website, a "high-level summary" of the data, including copyrighted data, used to train the AI system.

The AI developer must also make available the sources or owners of the data sets and a description of how the datasets used facilitated the training of the AI system. The law will go into effect on January 1, 2026.

AB 1836. A bill entitled the "California Digital Replica Act." Introduced on January 16, 2024, and signed into law on September 17, 2024.

This bill would regulate the production or distribution of a deceased personality's digital replica in an audiovisual work or sound recording notwithstanding the exceptions granted to audiovisual works for fictional or nonfictional entertainment in California right of publicity law. Any person who uses a deceased personality's name, voice, signature or likeness in any unauthorized manner would be liable to the rights owner for damages.

AB 1791. A bill entitled the "Artificial intelligence: Technical Open Standards and Content Credentials Act." Introduced on January 4, 2024.

This bill would require generative AI developers and deployers to implement and use the Coalition for Content Provenance and Authenticity's (C2PA) open standards into their AI tools. C2PA is currently working on an end-to-end open standard, which can be adopted by any platform, and can be used for tracing the origin and development of digital content. The bill has been referred to the Assembly Appropriations Committee, which reviews all bills with a significant fiscal impact to the state of California. The bill ultimately did not pass.

ILLINOIS

HB 4875. A bill entitled the "Publicity Act - Use of AI." Introduced on February 6, 2024, and signed into law on August 9, 2024.

The bill would amend Illinois' right of publicity law to provide protection for digital replicas of an individual's voice and visual likeness. The bill does not limit liability for unauthorized uses of digital replicas to commercial uses and creates contributory liability for developers and distributors of AI or software tools used to create digital replicas without authorization. The bill was signed into law by the governor on August 11, 2024, and is expected to take effect in 2025.

NEW JERSEY

No. A4480. Introduced on June 6, 2024.

The bill would establish a statutory right of publicity in New Jersey and provides a civil right of action for the misuse of a person's name, image, likeness or voice. Any person that publishes, performs, or distributes an individual's attributes protected under this bill faces civil liability. Any person who transmits or distributes an algorithm, software, device or technology the purpose of which is to reproduce likenesses without authorization may also face civil liability.

NEW YORK

S. 7676. A bill entitled the "Digital Replica Contracts Act." Introduced on October 2, 2023.

On June 7, 2024, the New York State Assembly passed a bill that would govern contracts for the creation and use of digital replicas that would replace a

professional performer. A contract would be void and unenforceable if the performer is not represented by legal counsel or a collective bargaining organization or if the contract is not written and does not list all the intended uses of the digital replica.

TENNESSEE

HB 2091 and SB 2096. A bill entitled the "Ensuring Likeness Voice and Image Security Act or ELVIS Act." Introduced on January 29, 2024.

In March 2024, the ELVIS Act became law in Tennessee. The law amended the state's right of publicity law to add voice as a protected characteristic, penalizes the unauthorized performance, publication or transmission of an individual's voice or likeness and any person who transmits, makes available, or distributes an algorithm, software tool or technology service the primary purpose of which is to create an individual's voice, likeness or photograph without authorization.

Administrative

EXECUTIVE OFFICE OF THE PRESIDENT

3 C.F.R. Part ____. Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence. Executive Order 14110 of October 30, 2023. Federal Register, vol. 88, no. 210 (November 1, 2023), pp. 75191-75226.

On October 30, 2023, the Biden Administration published its executive order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence. The executive order is geared towards steps the federal government must take to secure the safety and security of AI systems before deployment to the public, promote responsible innovation in the economy, and support American workers. The EO builds on the Blueprint for an AI Bill of Rights, the National Institute of Standards and Technology's AI Risk Management Framework, and the voluntary commitments extracted from fifteen companies on a range of issues with respect to AI in 2023. The executive order directed federal agencies, such as the U.S. Patent and Trademark Office ("USPTO"), the National Intellectual Property Rights Center ("IPR Center"), and the Office of the Intellectual Property Enforcement Coordinator ("IPEC"), to take various steps and measures to act, study or make recommendations to the president on executive actions that may be taken on AI policy and intellectual property issues, including on copyright, with the goal of promoting innovation.

LIBRARY OF CONGRESS. U.S. COPYRIGHT OFFICE.

37 C.F.R. Part 202. Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence. Rule. *Federal Register*, vol. 88, no. 51 (March 16, 2023), pp. 16190-16194.

On March 16, 2023, the U.S. Copyright Office ("Office") published a statement of policy on copyright registration guidance with respect to works containing material generated by artificial intelligence ("AI"). In the Office's

view, it is well-established that copyright can protect only material that is the product of human creativity. The term "author," which is used in both the Constitution and the Copyright Act, excludes non-humans and therefore, the Office will not register "works produced by a machine or mere mechanical process that operates randomly or automatically without any creative input or intervention from a human author." According to the Office, these requirements are not new and may be found in the Compendium of U.S. Copyright Office Practices. In addition, applicants for registration have a duty to disclose in their applications whether their works make use of generative AI and if so, applicants must disclaim copyright protection in those AI-generated aspects and provide the Office an "explanation of the human author's contributions to the work." If an applicant does not comply, the Office may refuse to register the work.

Docket No. 2023-6. Artificial Intelligence and Copyright. Notice of Inquiry. *Federal Register*, vol. 88, no. 167 (August 30, 2023), pp. 59942-59949.

In August 2023, on the heels of its March guidance memorandum on AI, the U.S. Copyright Office ("Office") requested public comments on 34 questions on generative AI comprising the following topics: (1) the use of copyrighted works to train AI models; (2) the copyrightability of material generated using AI systems; (3) potential liability for infringing works generated using AI systems; and (4) the treatment of generative AI outputs that imitate the identity or style of human artists. The notice of inquiry sought initial comment by October 2023 and reply comments in December 2023. In total, the Office received over 10,000 comments. As a result, in early 2024, the Office announced that instead of one report on the results of its study, it would divide the report into a series starting with digital replicas. The following reports to come will address the copyrightability of works created using generative AI, the training of AI models on copyrighted works, licensing, and liability for infringement.

On July 31, 2024, the Office published its report on digital replicas, which discussed the history of and gaps in legal protection, and policy rationales for a federal law. The report recommends to Congress the urgent need for a federal law to protect digital replicas and the various components that such a law would need to have in order to be effective including post-mortem rights, secondary liability and preemption of state laws. On an artist's style, the Office acknowledges that there is no copyright protection because it would be inconsistent with 17 U.S.C. 102(b)'s idea/expression dichotomy, meaning that copyright protects expression but not ideas. However, the Office noted that copyright may be able to provide a remedy in circumstances where in generative AI output, protectible elements have been copied. Therefore, it is possible that style imitations could "support an infringement claim."

U.S. Department of Commerce. Patent and Trademark Office.

Docket No. PTO-C-2024-0024. Public Roundtable on Protections for Name, Image, Likeness, Other Indicia of Identity, and Reputation. Notice. *Federal Register*, vol. 89, no. 126 (July 1, 2024), pp. 54442-54444.

On July 1, 2024, the U.S. Patent and Trademark Office ("USPTO"), pursuant to its responsibilities outlined in the White House executive order on AI, published a request for stakeholder input on potential federal legislation on digital replicas. The roundtable was held on August 5, 2024, where at least 27 individuals and organizations spoke on various aspects of digital replica protection in federal law including whether such protection should be part of the Lanham Act. The USPTO has 180 days to produce a report on recommendations for executive action to the president.

CANADA

by MACKENZIE STEWART

Copyright

Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic v. Ankit Sahni, T-1717-24: The Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC) has commenced an application in the Federal Court of Canada seeking a declaration that there is no copyright in an image that was "coauthored" using an AI system, or in the alternative that the human is the sole author. CIPPIC also seeks an Order pursuant to s. 57(4)(b) of the *Copyright Act*, expunging the registration for the image, or alternatively, removing the AI system as a co-author from the registration under s. 57(4)(c). The respondent applied for and obtained Copyright registration from the Canadian Intellection Property Office (CIPO) for an AI generated image titled *Suryast* on December 1, 2021. CIPO does not verify authorship and will grant copyright registrations following the completion of an online form and the payment of a prescribed fee. Therefore, this application will be the first time an adjudicative body considers the merits of whether an AI system can be an author under Canadian copyright law.

Data Privacy

Canada (Privacy Commissioner) v. Facebook, Inc., 2024 FCA 140: The Federal Court of Appeal (FCA) found that Facebook Inc. (now Meta Platforms Inc.) had breached the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (PIPEDA) by sharing users' personal information with third-party applications hosted on the Facebook platform. The matter began from the Privacy Commissioner of Canada's investigation into the scraping and sale of Facebook user data by the application "thisisyourdigitallife" (TYDL) to Cambridge Analytica Ltd. between November 2013 and December 2015. The data taken during this time was used to create "psychographic" models for the purpose of targeting political messages to Facebook users before the 2016 United States presidential election. TYDL had obtained data from users, as well as their

Facebook "friends", gaining data on some 600,000 Canadians from only 272 Canadian users that had installed the application.

The FCA found that Facebook had failed to obtain meaningful consent from the both the users and the friends of those users. The Court found that the word "consent" must have purpose, and that a reasonable user would not have known that by using a personality quiz on Facebook that they were consenting to the application scraping their data. The users' friends similarly would have not consented to the data scraping, as there was no way that they would have known that their data had been accessed and used at that time. The Court criticized the length of Facebook's privacy policy, and the fact that its default privacy settings were set to disclose user data. Due to the unequal relationship between the user and the platform, the Court found that heightened scrutiny should apply to the clauses in Facebook's Data Policy that authorize the disclosure of data. The Court found that Facebook did not appropriately safeguard user data, and the "unauthorized disclosures here were a direct result of Facebook's policy and user design choices". Facebook failed to take action to notify users about the data breach once it became aware of it, and it did not ban Cambridge Analytica or TYDL from the platform until media reports broke the story over two years after Facebook became aware of the breach. The Court declared that Facebook's practices from 2013 to 2015 had breached PIPEDA and required the parties to report to the Court within 90 days to determine the appropriate remedial order.

AI in Canadian Law Generally

Floryan v. Luke et al., 2023 ONSC 5108- In a motion to dismiss a self-represented litigants medical malpractice claim, a judge from the Ontario Superior Court of Justice determined that he was entitled to take a degree of judicial notice of the "potential benefits and dangers of artificial intelligence" when considering whether he could rely on a document Mr. Floryan had produced in his record that was titled "Results of legal research carried out using artificial intelligence system ChatGPT (Chat Generative Pre-Trained Transformer)". The judge determined that legal research and submissions generated by AI had not come to the point where they would have value in the courts and placed no reliance on the document.

Zhang v Chen, 2024 BCSC 285 – The Supreme Court of British Columbia ordered special costs against counsel in a family law dispute who had included two fake cases created by the AI system ChatGPT in her notice of application for an order permitting her client's children to travel to China. While the Court found that the cases would not have ultimately made it before the Court, and that the lawyer did not have an intention to deceive, the mistake was a "serious error" that caused delay and additional expense for opposing counsel. Counsel was also ordered to review all her files before the court, and to submit a report to the court confirming her review of the files within 30 days of the judgement. In its final comments, the Court noted that "generative AI is still no substitute for the professional expertise that the justice system requires of lawyers".

Legislation, Policy and Government Initiatives

Bill C-27, *Digital Charter Implementation Act, 2022* – In November 2022, Canada tabled legislation with the goal of modernizing Canada's Personal Information Protection and Electronic Documents Act (PIPEDA) and to introduce new legislation that would regulate the use of AI in Canada. Bill C-27 is presently before the House of Commons and has passed second reading as of April 24, 2023. If enacted, Bill C-27 would create the Artificial Intelligence and Data Act (AIDA). AIDA is primarily concerned with preventing harm to individuals, damage to property, and economic loss, including by preventing biased outputs of AI systems.

Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems – In September 2023, the Federal Government established a voluntary code of conduct for developers of generative AI systems. The Code is based on six principles, accountability, safety, fairness and equity, transparency, human oversight and monitoring, and validity and robustness. While the voluntary code does not explicitly address copyright concerns, it does require developers of "advanced generative systems available for public use" to "develop and implement a reliable and freely available method to detect content generated by the system" like watermarking, and to "publish a description of the types of training data used to develop the system". There are currently 30 signatories to the Voluntary Code.

Federal Court of Canada, *Notice on the Use of Artificial Intelligence in Court Proceedings* – On December 20, 2023, the Federal Court of Canada released a notice requiring counsel, parties and interveners to make a declaration to the Court whenever documents submitted to the Court were prepared using generative AI. The Court also committed to not using generative AI in its decision-making process without first engaging in public consultation. This notice follows similar Practice Directions released by the Court of King's Bench in Manitoba, the Provincial Court of Nova Scotia, and the Supreme Court of Yukon.

Canadian Government Consultation on Copyright in the Age of Generative Artificial Intelligence – In January 2024, the Canadian government closed submissions for public consultations on the implications of AI on Canadian copyright law and policy. The consultations sought to address three main areas. First, whether amendments should be made to the Canadian *Copyright Act*, RSC 1985, c C-42 to clarify how it applies to text and data mining activities. Second, how to address the question of AI authorship or ownership of AI-generated works in Canada. Third, and finally, the government requested evidence and submissions on how liability and infringement should be dealt with in the AI context. The government received submissions from 103 different stakeholders during this process.

Federal Budget, 2024 – In April 2024, the Canadian Federal Government tabled its budget for 2024, which includes a commitment to investing $2.4 billion into AI research and development over a period of 5 years. Including $50 million,

beginning in 2025-26, dedicated to supporting workers who might be impacted by artificial intelligence "such as creative industries".

EUROPE

By WEDNESDAY EDEN

Decision of the Municipal Court in Prague (Czech Republic) of Oct. 11, 2023, No. 10 C 13/2023-16

On 11 October 2023, the Municipal Court in Prague delivered its judgment in a case where the claimant alleged that his copyright in an AI-generated image had been infringed by the defendant who had published the image on their website without his authorisation.[1] In dismissing this action, the Court's judgment is significant for being one of the first European cases to address the copyrightability of an AI-generated image. Of particular significance in this case are the Court's *obiter* remarks on the "authorship" requirement and on the issue of whether the particular instructions (or "prompts"[2]) given by a human to an AI program to generate an image are themselves protectable as "works" under the Czech Copyright Act.[3]

Background

The image in this case had been generated by the claimant's use of the AI program DALL-E, which produces images from written prompts.[4] DALL-E generated the image after the claimant had inputted the following prompt: "create a visual depiction of two people signing a commercial contract in a formal setting, such as a conference room or a law office in Prague. Show only the hands".[5] The claimant brought this action against the defendant for copyright infringement, asserting that, as the "author" of a copyright work, he was entitled to injunctive and declaratory relief under article 40(1) of the Act. On the issue of authorship, he claimed that, as the AI program had created the image on the basis of his specific prompt, he was therefore the author of the image.[6]

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[1] Rozsudek Městský soud v Praze ze dne 11.10.2023 (MS) [Decision of the Municipal Court in Prague of Oct. 11, 2023], čj. 10 C 13/2023-16 (Czech).

[2] This is translated from "*zadání*" in the judgment. *See also* Alessandro Cerri, *Czech Court Finds that AI Tool DALL-E Cannot Be the Author of a Copyright Work*, THE IPKAT (Apr. 15, 2024), https://ipkitten.blogspot.com/2024/04/czech-court-finds-that-ai-tool-dall-e.html.

[3] Autorský zákon [Copyright Act], Zákon č. 121/2000 Sb. (Czech).

[4] *DALL-E: Creating Images from Text*, OPENAI (Jan. 5, 2021), https://openai.com/index/dall-e/.

[5] Rozsudek Městský soud v Praze, čj. 10 C 13/2023-16 ¶ 1.

[6] *Id.* ¶ 11.

The Court's decision

The Court dismissed the action, albeit on evidentiary grounds. Because the claimant had provided no evidence, beyond merely his personal testimony, to show that the AI program had in fact generated the image on the basis of his prompt, the Court determined that he had failed to meet the burden of proof for establishing authorship.[7]

The Court then went on to make several *obiter* statements concerning the copyrightability of an AI-generated image. To begin with, on the issue of authorship, the Court determined that AI itself could not be an author because article 5(1) of the Act specifies that only a "natural person" can be the author of a copyright work. Because AI is not a "natural person", it therefore fails to meet the authorship requirement.[8]

Relatedly, the Court observed that an image created by AI itself would fail to meet the requirements to be a copyright work under article 2 because this article specifies, amongst other things, that the work must be the "unique outcome of the creative activity of the author" to be a copyright work. Since AI cannot be an author (because it is not a "natural person" under article 5(1)), an image that is created by AI itself would lack the authorship required to be a copyright work under article 2.

Next, the Court stated that the claimant's prompt itself, consisting of text instructions to the AI program that were the intended basis for the AI-generated image, would also be excluded from copyright protection. However, the Court's judgment indicates that, whereas a work generated by AI itself would fail to meet the authorship requirement to be a copyright work, a prompt would not even be a "work". This is because the Court likened the prompt to being the "subject" (or "theme") of a work or "possibly an idea"[9] and thus determined that it would be excluded from copyright protection under article 2(6) of the Act, which details specific elements (such as principles, methods, and news) that are excluded from being a "work". In other words, the Court indicated that the prompt would be uncopyrightable through application of the idea-expression dichotomy.

Analysis

There are several points of interest in this judgment. To begin with, as noted by some commentators,[10] while the Court determined that AI itself would not satisfy the authorship requirement, it seemingly acknowledged that a "natural person" who inputs a prompt into an AI program (here, the claimant) and thereby generates an image using AI would meet this requirement, provided that sufficient evidence is adduced of this.

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[7] *Id.*
[8] *Id.*
[9] *Id.* ¶ 12.
[10] *E.g.* Cerri, *supra* note 2.

Furthermore, the Court's statement that the claimant's prompt would be excluded from copyright protection under article 2(6) leaves open the question of whether there may be circumstances in which a prompt might be deemed a "work". For instance, does the Court mean that *any* prompt that is "the basis for" an AI-generated image would fall under this exclusion because it is effectively the "subject" of, or "idea" for, the image, or might there be circumstances in which a prompt is sufficiently detailed or original (as the "author's own intellectual creation" in EU law[11]) to escape this exclusion? Thus, in the Czech Republic at least, might the AI context be one in which, no matter how "original" a prompt might be, it will always be excluded from copyright protection as being tantamount to an "idea"?

[11] Case C-310/17, Levola Hengelo BV v. Smilde Foods BV, EU:C:2018:899 ¶ 37.