

Art&Law in a nutshell

Generative AI: first
lawsuits in Europe





Generative AI is also starting to cause litigation in Europe for copyright infringement.

GEMA - a German collecting society representing the copyrights of more than 95,000 members in Germany and over two million rights holders worldwide - recently filed a lawsuit against OpenAI, the world leading provider of generative AI, for using protected musical works of many German authors. On November 13, GEMA brought an action before Munich Regional Court representing its member's rights against OpenAI LLC, the American parent company, and OpenAI Ireland Ltd., the subsidiary operating in Europe.

GEMA accuses OpenAI of using GEMA's repertoire to train its AI system without having acquired licenses or paid authors. More specifically, the subject of this dispute concerns the unlicensed reproduction by OpenAI chatbot, ChatGPT, of song lyrics created by many GEMA's members. Indeed, when OpenAI's users enter prompts, ChatGPT reproduces the original song lyrics whose copyrights belong to GEMA's authors. According to GEMA's claims, OpenAI's chatbot is able to reproduce the song lyrics as this system was previously trained with musical works of GEMA'S members without requesting any specific authorization from them and without paying any fair remuneration to artists.

To facilitate fair remuneration, GEMA presented last September a licensing model for generative AI aimed at granting fair compensation to music authors when their works are used in training systems, in the creation of new AI-generated songs or content.

This dispute, which is the first of this kind in Europe, is just one of the latest lawsuits filed against AI companies over the alleged unlicensed reproduction of song lyrics through chatbot. For example, in 2023, Universal Music Group, together with Concord Music Group and ABKCO, filed a lawsuit in the United States, still pending, for copyright infringement against the AI company,

Anthropic, for illicit reproduction by Claude, Anthropic's chatbot, of copyrighted song lyrics.

Inter alia, the District Court of Hamburg recently [ruled](#) in the case *Kneschke v. LAION*, that LAION, a non-profit organization aimed at promoting research in the fields of AI, had not infringed Kneschke's copyright on his photograph by using it. The Court found the LAION's use could benefit from the text and data mining exception, a copyright exception introduced by art. 4 EU Copyright Directive (Directive 2019/790 on copyright and related rights in the Digital Single Market) later transposed into the German Copyright Act. This exception addresses TDM for scientific purposes.

Therefore, *GEMA v. OpenAI* case will likely have a significant impact on the European legal framework by clarifying some unresolved issues. Firstly, GEMA challenges the applicability of TDM exception to OpenAI's conduct, which was carried out for profit purposes. Secondly, TDM exception is applicable under certain conditions unless rightsholders decide to opt out. To this purpose, GEMA states that its members chose an opt-out regime of all their works in their general meeting in May 2022 and then, the TDM exception should not be applicable.

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