Ascensus AI Legal Bytes

Getty Images v Stability AI

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Agenda

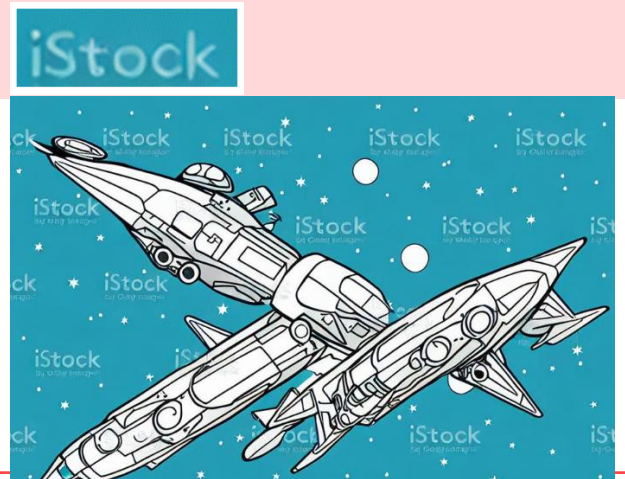
01	What are Ascensus Legal AI Bytes?
02	Getty Images v Stability AI
03	Your questions

Getty Images v Stability AI [2025] EWHC 2863 (Ch)

- Stability AI's 'Stable Diffusion' AI model alleged to infringe Getty Images' copyright and trade marks
- Why?
  - Some images generated by Stable Diffusion in response to prompts included what looked like reproductions of Getty Images' watermarks

Getty Images content

Some images complained of



Getty Images marks / use

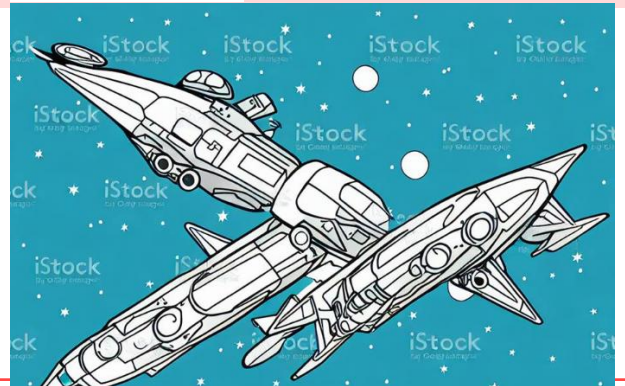
Some images complained of

GETTY IMAGES

gettyimages

ISTOCK

iStock



iStock

Getty Images v Stability AI [2025] EWHC 2863 (Ch)
The copyright dispute

- Copyright issues narrowed considerably in the run-up to trial
- Copyright legislation groups different ways of infringing copyright into ‘primary’ and ‘secondary’ types of infringement
  - Primary types of infringement broadly involve acts of copying within the jurisdiction (although issuing copies, performance, communication & other acts are also considered ‘primary’ types of infringement)
  - Secondary types of infringement encompass importation and dealings with an “infringing copy” of a work protected by copyright
- The issues for the judge did not include a primary act of infringement
  - No allegation that an image generated in the UK by Stability AI’s Stable Diffusion infringed the copyright in a Getty Images image
  - No allegation of copying in the course of training the AI within the jurisdiction
- The issue for the judge was whether importation (i.e. through download into or access from the UK) and subsequent dealings with Stable Diffusion were secondary infringement
  - **Was Stable Diffusion an “infringing copy”?**

Getty Images v Stability AI [2025] EWHC 2863 (Ch)

The copyright dispute

- Getty Images alleged infringement of sections 22 & 23 of the Copyright Designs and Patents Act 1988

22 Secondary infringement: importing infringing copy.

The copyright in a work is infringed by a person who, without the licence of the copyright owner, imports into the United Kingdom, otherwise than for his private and domestic use, an article which is, and which he knows or has reason to believe is, an infringing copy of the work.

23 Secondary infringement: possessing or dealing with infringing copy.

The copyright in a work is infringed by a person who, without the licence of the copyright owner—

(a) possesses in the course of a business,

(b) sells or lets for hire, or offers or exposes for sale or hire,

(c) in the course of a business exhibits in public or distributes, or

(d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,

an article which is, and which he knows or has reason to believe is, an infringing copy of the work.

27 Meaning of "infringing copy".

(1) In this Part "**infringing copy**", in relation to a copyright work, shall be construed in accordance with **this section**.

(2) An article is an infringing copy if its making constituted an infringement of the copyright in the work in question.

(3) **An article is** also **an infringing copy if**—

(a) it has been or is proposed to be imported into the United Kingdom, and

(b) **its making in the United Kingdom would have constituted an infringement of the copyright in the work in question**, or a breach of an exclusive licence agreement relating to that work…

Getty Images v Stability AI [2025] EWHC 2863 (Ch)
The copyright dispute

- The meaning of the statutory provisions, specifically whether they applied to AI model weights, had not needed to be considered by a court in the UK before
- "...it is not possible to determine whether Stable Diffusion is capable of being an infringing copy without a clear understanding of what Stable Diffusion actually is"
- Extensive expert evidence
  - Models trained by exposure to data
  - Model weights around five orders of magnitude smaller than dataset used in training
  - Model weights do not directly store the pixel values associated with billions of training images
  - If a network has been trained for too long on the same training data or an insufficiently diverse training data, it can be prone to 'overfitting', which is when the network uses its weights/part of its weights to memorize the individual training images rather than representing a large set of training images jointly with the weights
- **Getty Images' case was that it was enough that the making of the model weights (had it been carried out in the UK) would have constituted an infringement of copyright**
- Stability AI argued that Stable Diffusion was neither an '**article**' nor an '**infringing copy**'

Getty Images v Stability AI [2025] EWHC 2863 (Ch)

The copyright issue – statutory interpretation

- Joanna Smith J began by noting the general approach to statutory construction *inter alia* as summarised in ***Al-Thani v Al-Thani* [2025] UKPC 35**, drawing in particular on *R (Quintavalle v Secretary of State for Health* [2003] UKHL 13:
- Statutory interpretation involves an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the words being considered
- Words and passages in a statute derive their meaning from their context
- A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections; other provisions in a statute and the statute as a whole may provide the relevant context
- The statute as a whole should be read in the historical context of the situation which led to the statute's enactment
- The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose

Getty Images v Stability AI [2025] EWHC 2863 (Ch)

The copyright issue – statutory interpretation

- Getty Images drew attention to the Supreme Court's judgment in ***News Corp v Commissioners for HMRC*** **[2023] UKSC 7:**
- It is also a **well-established principle** of statutory interpretation that, in general, a provision is **always speaking**
- As a general rule, a statute should be interpreted taking into account changes that have occurred since the statute was enacted e.g. technological developments, changes in scientific understanding, changes in social attitudes and changes in the law; it does not matter that those changes could not have been reasonably contemplated or foreseen at the time that the provision was enacted
- The always speaking principle will not be applied where it is clear, from the words used in the light of their context and purpose, that the provision is tied to an historic or frozen interpretation
- The always speaking principle operates to prevent statutes becoming outdated
- **But the courts cannot fill gaps** – if the circumstances of the current case differ in kind or dimension from those which were within Parliament's contemplation, the always speaking principle will be less likely to operate; the court cannot fill a gap by asking and answering the question of what Parliament would have done

Getty Images v Stability AI [2025] EWHC 2863 (Ch)
Can an "article" be intangible?

- No relevant statutory definition
- From Stroud's Judicial Dictionary, the word "article" has no clear meaning on its own and it will take its colour from surrounding context
- Commonly used in connection with tangible objects but not incapable of applying to something intangible in context
- The context of s.22 & s.23 suggests that anything capable of being imported, possessed, sold etc which falls within the definition of an in "infringing copy" is intended for the purposes of the CDPA to be capable of being subject to the restrictions on secondary types of dealing
- Definition of s.27 tied to purposes of "this section" (secondary infringement of copyright); but cannot exclude the definition of "copying" in s.17 – construction requires coherence and consistency – "copying…includes storing the work in any medium by electronic means"
- *Sony v Ball* [2004] EWHC 1738 (Ch) – held that a RAM chip that contained an infringing copy of digital data for only a fraction of a second could be an "article"
- The "always speaking" principle of assistance: modern storage methods in intangible media amount to a fresh set of facts which fall within the same genus of facts as those to which the original expressed policy was formulated

Getty Images v Stability AI [2025] EWHC 2863 (Ch)
Can an “article” be intangible? YES

- An electronic copy stored in an intangible medium (such as the cloud) is capable of being an infringing copy and thus also capable of being “an article”
- “Article” encompasses the intangible
  - If the word “article” was limited to tangible forms, authors would be deprived of protection in circumstances where the copy itself was electronic and it was dealt with electronically – this would be inconsistent with the words of the Act and the scheme of the legislation, being to reward authors for their creative efforts

Getty Images v Stability AI [2025] EWHC 2863 (Ch)

Does “infringing copy” need a copy?

- Getty Images argued that if “its making in the UK would have constituted an infringement” (s.27) there is no requirement for the article thus made to retain a copy or copies of the work infringed in its making because that is not part of the definition
- “Infringing copy” is a composite phrase and its definition as a phrase does not negate the meaning of the constituent words
- The word “copy” is defined (in s.17) and that meaning must inform the proper interpretation of the composite phrase
- “Consistent with the decision in *Sony v Ball*, I cannot see how an article can be an infringing copy if it has never consisted of/stored/contained a copy…an article becomes an infringing copy when the act of reproduction occurs”

“17. **Infringement of copyright by copying**

(1) The copying of the work is an act restricted by the copyright in every description of copyright work; and references in this Part to copying and copies shall be construed as follows.

(2) **Copying** in relation to a literary, dramatic, musical or artistic work means **reproducing** the work **in any material form**. This includes **storing** the work in any medium by electronic means.

…

(6) Copying in relation to any description of work includes the making of copies which are transient or are incidental to some other use of the work"

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Does “infringing copy” need a copy? YES

- The model weights were altered during training by exposure to copyright works, but by the end of that the process the Model itself did not store any of the copyright works
- The fact that Stable Diffusion’s development involved the reproduction of Copyright Works (through storing of the images locally and in cloud computing resources and then exposing the model weights to those images) was of no relevance
- The model weights for each version of Stable Diffusion in their final iteration had never contained or stored an infringing copy
- The scheme of the statute is to provide protection to the owners of copyright works against acts of infringement involving copying; where an AI model itself is not an infringing copy, it cannot have been the intention of Parliament that it should fall within the meaning of infringing copy

- Intangibly stored copies of copyright works can be infringing copies
- An article *may* be an infringing copy if it has transiently stored an infringing copy
- No transient storage of any copyright work in the training of Stable Diffusion, therefore no “infringing copy” and no secondary infringement

Getty Images v Stability AI [2025] EWHC 2863 (Ch)
The trade mark infringement claims

- **'Double identity' (s.10(1) TMA) infringement** established by reference to example watermarks shown on 'Dreaming' and 'Spaceships' image
  - Identity of mark/sign not established for the distorted 'getty images' watermarks
- **'Likelihood of confusion' (s.10(2) TMA) infringement** established by reference to First Japanese Temple Garden, Spaceships and Dreaming images
- Infringement by use of a sign harming a mark with a reputation (s.10(3) TM) not established – the evidence did not established that any of the three possible types of injury required by the provision had occurred or was seriously likely (detriment to distinctive character; detriment to repute; unfair advantage)
- The question of how many of infringements occurred / likelihood of infringement not addressed due to lack of evidence
- Passing off – judge declined to make a finding

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The take homes?

- Trade mark law is not suited to plugging the gap in the copyright legislation
- The copyright legislation was not enacted with AI in contemplation
- The current legislation on its face provides copyright owners with a legal mechanism to prohibit or be compensated for use of their works in training AI where the training takes place in the UK. However, where training takes place outside the UK, Joanna Smith J's reasoning suggests that there is little that copyright owners can do in the UK to prevent the importation into or use within the jurisdiction of AI trained outside the jurisdiction on copyright protected material without the consent of the copyright owner, or to be compensated for the use of the AI within the UK.
- The Court of Appeal may or may not agree
- Other ways in which a claim for copyright infringement might be brought in respect of an AI model trained abroad
- Outcome not good for AI development in the UK and not good for owners of UK copyright
- Cooperation and compromise needed to provide constructive modern legislation – the Government's proposal December 2024 aims to improve the position for both

Join us on
24 November 2025 at 12.30 pm
for our next session!

Thank you

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