federal judge largely dismissive of ai complaint: anderson v. stability ai

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Earlier this year, three artists filed a putative class action, on behalf of themselves and other artists, alleging that Stability AI Ltd., Stability AI, Inc., Midjourney, Inc., and DeviantArt, Inc. had infringed copyrights in their artwork via Defendants' generative artificial intelligence software. Plaintiffs challenged Stability AI's creation of the Stable Diffusion software, alleging that Stable Diffusion was "trained" on their works to produce output images in Plaintiffs' "style." Plaintiffs also alleged that Midjourney, and DeviantArt were infringers because they use Stable Diffusion in their products.

In an order issued on October 30, 2023, Judge William Orrick of the U.S. District Court for the Northern District of California largely granted Defendants' motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) with leave to amend, and denied it only as to the direct copyright infringement claim that Plaintiff Anderson asserted against Stability AI.

First, the Court dismissed the claims of two Plaintiffs who had failed to show they had registered their works. Although this ruling was correct, interestingly, the order dismissed these claims "with prejudice." It is unclear from Judge Orrick's ruling whether he intended to preclude further lawsuits or rather merely held that these two Plaintiffs could not amend in the action before him.

Second, the Court denied Defendants' motion to dismiss the claims for direct copyright infringement as they pertained to Stability AI's creation and use of "training images" scraped from the Internet into the LAION datasets, which were then used to train Stable Diffusion. However, the direct infringement claims against DeviantArt and Midjourney were dismissed with leave to amend. Both DeviantArt and Midjourney developed and distributed products that rely on Stable Diffusion to produce images in response to text prompts, and allegedly "embedded and stored compressed copies of the [t]raining [i]mages" contained within Stable Diffusion. DeviantArt, Midjourney (and Stability AI) argued that those assertions are implausible "given plaintiffs' allegation that the training

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dataset was comprised of five billion images; five billion images could not possibly be compressed into an active program[,]" and Plaintiffs' admission that "the diffusion process involves not copying of images, but instead the application of mathematical equations and algorithms to capture concepts from the Training Images."

Relying on these arguments, the Court found that Plaintiffs failed to allege "specific plausible facts that DeviantArt or Midjourney played any affirmative role in the scraping and using of Anderson's and others' registered works to create the [t]raining [i]mages." However, the Court gave Plaintiffs leave to amend, directing them to clarify their theories concerning the inclusion of compressed copies of training images in Stable Diffusion, and provide more facts that plausibly show how DeviantArt and Midjourney are liable for direct copyright infringement when, according to Plaintiffs' current allegations, DeviantArt simply provides its customers access to Stable Diffusion as a library.

Third, the Court rejected Plaintiffs' arguments that Defendants' output images are all infringing derivative works under section 106 of the U.S. Copyright Act. The Court held that Plaintiffs must allege the output images are **substantially similar** to the protected works, which they cannot, "given Plaintiffs' repeated admission that "none of the Stable Diffusion output images provided in response to a particular [t]ext [p]rompt is likely to be a close match for any specific image in the training data."

Fourth, on Plaintiffs' vicarious infringement claims, the Court concluded that Plaintiffs had failed to allege direct infringement regarding DeviantArt and MidJourney. Because a party cannot be secondarily liable absent direct infringement, the Court dismissed the vicarious liability claim as to these Defendants—again with leave to amend to allege primary infringement. And while the Complaint alleged direct infringement with regard to Stability AI, the Court concluded that Plaintiffs had failed to allege the elements of vicarious infringement—the right and ability to supervise the infringing conduct and a direct financial interest—with sufficient clarity. Again, the Court dismissed with leave to amend.

Finally, the Court granted the motion to dismiss regarding Plaintiffs' non-copyright claims (right of publicity, unfair competition, breach of contract, and violation of section 1202 of the Digital Millennium Copyright Act) with leave to amend to allege the claims with more specificity.

Perhaps the most interesting part of the Order is the holding that the output images from generative AI do not automatically violate the derivative work right under section 106(2) of the Copyright Act. Plaintiffs now have 30 days to amend the complaint addressing the deficiencies identified in the Order.

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