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### Copyright Law's Complex Dance with Artificial Intelligence Innovation

Artificial Intelligence, once dismissed as a mere novelty, has surged in prominence, with generative AI at the forefront of innovation. This form of machine learning, capable of producing original text, images, and code based on simple prompts, has propelled AI into diverse applications, from search engines to educational platforms. As AI's capabilities grow, so do the legal challenges, particularly in the realm of copyright.

#### AI's Rise and Legal Quandaries

Generative AI, exemplified by models like ChatGPT, has demonstrated unprecedented capabilities, raising questions about its potential harm and infringement on human creativity.

The legal landscape surrounding generative AI remains largely uncharted, with controversies emerging on two fronts: input and output.

On the input side, concerns arise about the use of human-created data for AI training without explicit permission. Artists worry that their work might be utilized without consent. On the output side, ambiguity surrounds the copyrightability of works created by AI. In Botswana, the Copyright and Neighbouring Rights Act currently limits copyrightability to human made works only. This adds to the uncertainty surrounding this matter.

#### Copyright Challenges and Training AI

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Generative AI's training process involves copying vast amounts of copyrighted material, sparking a debate on whether this constitutes copyright infringement. Consequently, there seems to be two schools of thought that have evolved on the subject.

On one hand, legal experts like Professor Mark Lemley, Professor of Law at Stanford Law School argue that training AI is akin to human learning. Lemley compares the process to a writer creating a fantasy novel, where the writer doesn't replicate existing works like Harry Potter or Game of Thrones but gains insights by reading various books within the genre. Similarly, AI models are not designed to reproduce identical information but to comprehend user prompts and generate responses that align with the given context.

However, opponents, such as Ian B. Crosby, top rated Intellectual Property Litigation attorney in Seattle, Washington, argue that AI training constitutes copyright infringement. His view is that AI models piece together copyrighted

works and create collages of the original expression without a true understanding of underlying facts.

To this, proponents of AI training argue that avoiding copyrighted works and limiting AI training to works which are in the public domain would severely stifle innovation.

In any event, a significant challenge arises from AI's dependence on copyrighted works for training. The potential infringement on copyrighted images used for training AI models, raises questions about fair competition.

Sometime in May this year, the popular Stock photo provider, Getty Images sued leading purveyor of AI-generated images, Stability AI for what it alleged was a "brazen infringement" of its image collection "on a staggering scale". Getty Images made an application before the London High Court for an interdict to prevent Stability AI from selling its AI image-generation system in Britain. The basis for this lawsuit is that the tech giant used Getty's images to train its AI model.

## **The Stakes and Future of AI**

The outcomes of ongoing legal battles, like the Getty case, carry immense significance for the future of AI. If stringent restrictions are imposed, hindering AI's ability to train on copyrighted material, it could stifle innovation. On the other hand, if AI models infringe on human authors' rights, it might jeopardize the delicate balance between AI progress and protecting intellectual property.

## **Balancing Act: Innovation v. Regulation**

As legislative bodies all over the world explore AI regulations and lawsuits unfold, the delicate balance between fostering AI innovation and safeguarding creators' rights hangs in the balance. Striking a harmonious chord between legal frameworks, copyright considerations, and technological advancements is

essential for shaping the future landscape of AI.

In conclusion, while the legal terrain remains uncertain, it is evident that finding a nuanced approach is crucial to harness the potential of AI while respecting the rights of authors and content creators. The decisions made in courts and legislative bodies will undoubtedly shape the trajectory of AI development in the years to come.

If you have interest in an in-depth discussion on this subject matter or any technology law and intellectual property related issues, feel free to contact us at [info@gobhozalegalpractice.co.bw](mailto:info@gobhozalegalpractice.co.bw)

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