[GB] High Court judge determines against representative claims in the *Getty v. Stability AI* case

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On 14 January 2025, the High Court delivered a significant judgment in *Getty Images (US) Inc. and Others v. Stability AI Ltd.* (the Case). The Case concerns the alleged infringement of copyright materials used in the training of artificial intelligence (AI) models. The High Court determined that the sixth claimant could not bring a representative claim for a large number of copyright holders given that the parties had not been fully identified whilst each rights holder had different licensing rights with the claimants meaning that each case would have to be determined on its own merits making the claim disproportionate and costly to pursue.

The first five claimants (including Getty Images (US) Inc, Getty Images International UC, Getty Images (UK) Limited, Getty Images Devco UK Limited, iStockphoto LP (Getty) and the sixth claimant Thomas M. Barwick Inc (Barwick)) had brought a lawsuit against the defendant, Stability AI Ltd. (Stability), an open-source generative AI company based in England and Wales. The claimants alleged that Stability had infringed their rights by using their copyrighted images without authorisation, to train the AI model, Stable Diffusion.

Getty's claims encompassed copyright infringement, database right infringement, trademark infringement, and passing off. The main dispute concerns Stability's use of datasets containing images taken without consent from Getty. Stability admits that "at least some images from the Getty Images websites were used during the training of Stable Diffusion", but otherwise the images are unidentified.

Barwick sought to represent a class of copyright owners who had exclusively licensed their works to Getty and alleged that Stability had scraped their work for the training of Stable Diffusion.

The claimants' copyright infringement claims include direct infringement of their copyright pursuant to section 16 of the Copyright, Designs and Patents Act 1988 (the CDPA). Acts of primary infringement do not require knowledge or intention. Secondary infringement requires some knowledge of the copy infringing copyrighted work. Stability is alleged to have imported the pre-trained Stable Diffusion software to the UK thereby infringing section 22 of the CDPA by importing infringing copies. The third allegation is that synthetic images

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generated by Stable Diffusion reproduced substantial parts of the claimants' copyrighted works.

Barwick's claim included a representative action on behalf of over 50 000 copyright owners arguing that each of these copyright owners had a concurrent right of action through Barwick, who "represents and has the same interest in this claim as the parties who are owners of artistic works and film works that have been licensed on an exclusive basis to the First Claimant".

Stability challenged Barwick's representative claim asserting that individual copyright owners had different agreements with Getty necessitating individual assessments rather than a single, collective claim.

The High Court identified two main questions relating to the representative claim. First, are the claims within CPR (Civil Procedure Rules) 19.8, which allows representative actions when multiple parties have the "same interest" in a claim? Secondly,should the court in its discretion direct that Barwick may not act as a representative?

The court determined that it lacked jurisdiction to permit the claim to proceed as a representative action, or alternatively that it should disallow the claim using the court's discretion. There was no definitive list of copyrighted material used by Stability. Therefore, it was not possible to identify particular persons as members of the representative class. Barwick's claim was refused permission to proceed. The court was not satisfied that the representative claim would avoid an expensive and time-consuming individualised assessment of numerous issues of liability and quantum relating to the proposed represented parties,potentially giving rise to a very significant case management burden for the court.

The court acknowledged that if the parties cooperated, sample cases could be identified and help effective litigation. However, the lack of clarity on how such sampling would be implemented and whether it was feasible to do so made it an insufficient reason to permit a representative claim. The court recognised that large-scale copyright claims concerning AI-generated content present unique challenges that require structured, practical legal mechanisms rather than broad representative actions.

Additionally, Getty argued that, if the court refused a representative claim, justice would require permission under CPR 19.3(1) for the copyright owners to bring their own claims. Stability argued that such applications were raised too late.

The judge emphasised the need for a pragmatic solution that avoids joining 50 000 potential claimants. One of the issues was the lateness of the stage at which

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this issue was coming into the court claim. The judge was critical of Stability for not challenging the representative action sooner.

The judge suggested that an order under CPR 19.3 could make sense, using sample cases and focusing on the "big picture" issues without involving Barwick. Getty had to provide satisfactory evidence that future claims against Stability would be avoided and the scope of legal issues could be narrowed.

The parties must resolve the case management issues quickly and prepare for the first trial to determine liability in June 2025.

Getty Images and Others v. Stability AI

https://www.judiciary.uk/judgments/getty-images-and-others-v-stability-ai/

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