[GB] High Court decision on the *Getty Images (US) Inc. and Others v. Stability AI Ltd*. case

IRIS 2025-10:1/8

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On 4 November 2025, the UK's first court decision concerning generative AI and copyright was made in the High Court's judgment on *Getty Images (US) Inc. and others v. Stability AI Ltd* (the judgment). The judgement provides guidance on the meaning of "article" and "infringing copy" for the purposes of secondary copyright infringement, recognising that an "article" can be intangible.

The judgment concerns an AI image generation model, Stable Diffusion, developed and marketed by the AI company Stability AI (the Defendant). Several claimants were party to the judgment, with Getty Images, a company that owns a large photographic and film recording archive, as the lead claimant. All claimants are collectively referred to as the Claimants.

The Claimants contended that the training data used by the Defendant to train the Stable Diffusion system non-consensually used or "scraped" millions of copyrighted images from the Getty Images Websites, infringing section 17 of the Copyright, Designs and Patents Act 1988 (CDPA). The synthetic images created or "predicted" by Stable Diffusion in response to prompts strongly resembled the Claimants' copyrighted material, including Getty's trademarked material.

The Claimants' allegations included a court declaration that the Defendant's actions constituted a breach of copyright, trade mark infringement, passing off and breach of database rights.

Prior to the conclusion of the trial, the Claimants withdrew some of their claims including that of a primary breach of copyright pursuant to sections 16 and 17 of the CDPA. This claim was based on the allegation that Stable Diffusion reacted to similar prompts to the original captions and keywords and consequently the synthetic images it created closely resembled the copyrighted material. The Claimants had evidential problems proving that the training had occurred in the UK and whether the value or "weight" of process data used by Stable Diffusion copied the copyrighted material or at any time stored any of the Claimants' copyrighted works.

Regarding trade mark infringement, some of Stable Diffusion's generated outputs displayed Getty's registered trade marks, including the "GETTY IMAGES" and "ISTOCK" watermarks, and according to Getty, breached sections 10(1), 10(2) and

10(3) of the Trade Marks Act 1994.

Justice Smith (Smith J) held that Getty had proven trade mark infringement under sections 10(1) and 10(2) for a limited number of images that Stable Diffusion had produced. However, infringement did not apply to other Stable Diffusion generated images due to insufficient evidence that the distinctive character or the repute of Getty's relevant trade marks had suffered detriment, nor that the economic behaviour of the average consumer would have been altered by the Defendant's conduct. Smith J did not address the claim of passing off, having determined the trade mark infringement.

The Claimants' database claims were based on provisions of the EU Database Directive (Directive 96/9/EC) and the Copyright and Rights in Databases Regulations 1997 (SI 1997/3032). The Claimants alleged their database rights had been infringed by the Defendant extracting a substantial part of the contents of the database. However, as with the primary copyright claim these claims were dropped and not considered in the judgment.

The Claimants did, however, pursue their secondary copyright infringement claim at trial, alleging that the Defendant had imported an infringing article into the UK, pursuant to sections 22 (importing an infringing copy) and 23 (possessing or dealing with an infringing copy) of the CDPA. This "article" was the pre-trained Stable Diffusion model.

Smith J agreed with the Claimants that "article" was not limited to tangible things and could include software, such as the Stable Diffusion model. However, the judge held that the pre-trained Stable Diffusion model was not an "infringing copy" under section 27 of the CDPA. The judge also held that the Stable Diffusion model did not at any time store any of the Claimants' copyright works. For an AI model to be considered an "infringing copy", it must at some point have contained a permanent or temporary copy of the copyrighted works used to train it.

To succeed with its secondary copyright infringement claims, the Claimants would have had to fulfil a three stage test: Stable Diffusion had to be either imported into the UK or possessed, sold, let, hired, or offered or exposed for sale or hire; the Stable Diffusion model had to be both an "article" and an "infringing copy"; and the Defendant had to know or have reasons to believe that Stable Diffusion was an infringing copy.

Smith J stated that:

"the Model (Stable Diffusion) itself does not store any of those Copyright Works; the model weights are not themselves an infringing copy and they do not store an infringing copy. They are purely the product of the patterns and features which they have learnt over time during the training process". (paragraph 600)

Getty Images (US) Inc. and others v. Stability AI Ltd. [2025] EWHC 2863 (Ch)

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