

IP | 5 THINGS ON OUR MIND



1 Copyright and AI

- Questions remain as to how best to balance the rights of AI developers and IP rights holders when training generative AI. The UK government's latest consultation indicates a preference within government to introduce a broader exception for text and data mining (TDM), subject to rights holders having the ability to reserve their rights and opt their content out (see [here](#)). The outcome of that consultation is expected later this year.
- Several rights holders have brought, and continue to bring, IP infringement claims against generative AI developers across the world. There is currently one live case in the UK - Getty Images' claim against Stability AI - which is due to go to trial in June 2025 (see [here](#) and [here](#)).
- The EU AI Act places two copyright-focussed obligations on providers of general purpose AI (GPAI) models that are placed on the EU market: (i) to disclose details of the content used to train their models and (ii) to put in place a policy to respect EU copyright law, including any rights holders' opt outs for TDM purposes (see [here](#)). Guidance on compliance with those obligations has been provided through draft versions of the EU's GPAI Code of Conduct (see [here](#)), with the final version due to be published by 2 May 2025. The EU AI Office has also unveiled its preliminary proposals on its template for summarising the content used to train GPAI models (see [here](#)).
- Questions about whether AI-generated content can be protected by UK copyright remain. The UK government is currently consulting on whether the existing protections for computer generated works should be amended or removed (see [here](#)).

2 EU's long-arm jurisdiction in patent infringement disputes

- The CJEU has ruled on EU national courts' jurisdiction to hear cross-border patent infringement disputes where the validity of patents granted outside the country of the court seised is challenged.
- The courts of the EU member state where the defendant is domiciled will have jurisdiction to hear questions of infringement of foreign patents, even where validity is raised as a defence. The approach to questions of validity itself will vary, depending on issues such as where the patent is granted (EU member state vs third country) and the nature of any international conventions / agreements in place between the relevant countries.
- The UPC appears to be taking a similar approach.

4 Standard Essential Patents (SEPs) and "FRAND" licensing

- SEP/FRAND (fair, reasonable and non-discriminatory) licensing disputes continue to occupy the English courts.
- The English courts have become well known for their willingness to determine global FRAND terms (see [here](#), [here](#) and [here](#)).
- But it is only more recently that they have also shown a willingness to grant declarations relating to interim licences, pending the courts' determination of FRAND terms (see our [November 2024 edition](#) of The IP Brief).
- Whilst final injunctions can be obtained in certain circumstances, there is no precedent for interim injunctions being granted in FRAND proceedings before the English courts.

3 Copyright protection for works of applied art

- The law relating to copyright protection for works of applied art (WAA) continues to develop, with a number of material decisions handed down recently.
- Copyright protection for WAA is generally harder to establish in the UK (which requires artistic quality) than the EU (which does not). The UK courts have acknowledged that the two approaches are irreconcilable (see [here](#)).
- However, questions remain over how the EU approach should be applied, with apparent differences between EU Member States and two cases pending before the CJEU (*Mio* and *konektra*).
- The CJEU has also confirmed that EU Member States must provide copyright protection to all WAA that meet the harmonised criteria for copyright protection in the EU, regardless of the work's country of origin or the nationality of its author (see [here](#)).

5 The UK outside the EU – divergence expected?

- The Retained EU Law (Revocation and Reform) Act 2023 (REULA) received Royal Assent on 29 June 2023.
- Changes effected by the REULA include removing, from 1 January 2024, the principles of supremacy of EU law and indirect effect.
- The REULA was also expected to give the UK courts a new test for departing from EU case law, as well as a new reference procedure, but the implementing legislation intended to bring those provisions into force was revoked in September 2024.
- The English courts have had to consider whether to depart from EU IP law on a number of occasions, generally choosing not to.

Our IP Practice

Our multi-disciplinary IP practice advises on the full spectrum of IP issues - managing and mitigating risk, whilst maximising return from IP assets for our clients across a wide range of industries, including tech, telecoms, media, sport, life sciences, financial institutions, consumer goods and retail.

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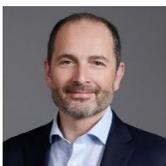
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