

ACID ROUNDTABLE: AI IN IP AND EMPLOYMENT PROCESSES

Chairman and co-founder of ACID Dids Macdonald – Introductory comments

Dids referred to the recent Design Consultation, for which ACID had [campaigned](#) for over ten years which asked, Is the UK designs framework fit for purpose? ACID's response [here](#)

- There is a feeling that in its current state, it is too cumbersome for designers to use effectively for their own protection and creates too much of a distraction from their creative work.
- We are expecting the Government's response to the Design Consultation before the summer recess.
- How will this landscape be influenced by AI?
 - Should designers have to opt out of their intellectual property being captured by "data mining"?
 - Is there an alternative where the government adopts a national licensing model?
- How does it tackle infringements which are rife on online platforms such as TEMU, and the issue of reselling?

AI & IP: Recent Developments – Robert Lands, Howard Kennedy

- Whilst the EU introduced the AI Act in 2024 (the world's first comprehensive AI legislation), the UK has not yet introduced legislation which specifically deals with AI.
- The current state of the law in the UK:
- Copyright Consultation December 2024 – February 2025:
 - This consultation posited that there could be a broader text & data mining exception to copyright infringement. Designers would have to opt-out of their designs being used by AI. The direction of that policy would be highly problematic for designers.
- Design Law Consultation (September 2025) – computer generated designs:
 - The Copyright, Patent and Design Act 1988 CPDA was drafted with enough foresight to consider the question of who the author of computer-generated works would be. The author of computer-generated works would be 'the person who made the arrangements to produce the work'. However, with the advancement of technology, the answer to this question has become much more complex. Is this provision still fit for purpose?
- Artificial Intelligence and the Law: a discussion paper (2025)
 - The law commission (the independent public body responsible for making recommendations for legal changes) has presented a discussion paper which aims to raise awareness of the legal issues with AI. The paper suggested the idea of an AI

model being capable of being legal entity. This would mean an AI model could be sued (e.g. for copyright infringement).

- Data Use & Access Act
 - This has no mention of AI. But it led to government promising to deliver a report on AI in March 26.
- Government Response to Consultation - Report and Economic Impact Assessment on Copyright and AI (18 March 2026)
 - The main outcome from this report was that the opt-out is no longer the preferred option of the government for data mining (only 3% of responses were in favour of the government proposed 'opt out'). The Government did not comment on what their preferred option now is, but this is a positive step for designers.
- Principles that should underpin future AI Legislation:
 - Transparency: this is about being transparent about what has been inputted into the AI model to create the output.
 - Labelling: Labelling is about making clear when AI has been used to create a product. This can be difficult to determine, as AI can be used to create an output to varying extents.

- Interesting Cases on AI in copyright and design:

- Disney & Universal v Midjourney (US)

Disney & Universal are suing Midjourney. This case is unusual in that it is about whether the output of the AI is infringing, rather than the fact that the model was trained using Disney & Universal's work. NB earlier US case against Claude on training said it was "fair use" under US © law.

- Getty v Stability AI (UK)

This case concerned images belonging to Getty being used as training data by Stability AI.

Many issues which were originally put forward in this case were dropped due to issues of jurisdiction- the data processing happened in the US, rather than the UK.

Was the AI model itself was an "infringing article" for the purposes of secondary copyright infringement. Could the importation of the AI model constitute secondary infringement?

Judge said that an AI model is capable of being an "article" which could infringe copyright. However, in these proceedings, it was determined this was not the case. Getty are appealing this to the Court of Appeal.

AI in Employment – Alex Mizzi, Howard Kennedy LLP

- AI has lowered the entry barrier for employees to make grievances, as many employees now turn to AI to prepare their grievances.
- Many unrepresented employees are increasingly asking AI for legal advice, which can often (as AI tools are people pleasers) present a position which is far too optimistic either in terms of merits

or a realistic settlement offer. This can impede productive settlement discussions by making parties reluctant to negotiate if they are overly confident in their position.

- The use of AI in employment tribunals: AI can create 'plausible looking nonsense' which requires more time spent by solicitors in unpacking what has been produced, checking the veracity of references etc.
- AI being used by judges is also problematic. In a recent case, a judge appeared to have used an AI model to produce a judgement, which quoted a completely fabricated quote from a judgment. This creates issues if these quotes are now included in caselaw going forward.
- Grievances invented by technology:
 - AI enables claimants to set out their complaint in a coherent form, which can be positive in terms of how it allows claimants who otherwise would struggle to make their case to bring it forward. However, AI tends to make overly inflammatory statements, which can skew the accuracy of or exaggerate what is being claimed.
- Issues of confidentiality
 - Employees and employers need to be aware of the confidentiality issues arising from the use of AI models
 - By inputting material into an AI model, you risk losing the protection of legal privilege.
 - In the case of *United States v. Heppner* in the US, the FBI raided the house of a defendant who was suspected as having used ChatGPT to prepare his legal arguments. Once it was discovered he had done so, as his prompts had been disclosed publicly, he had inadvertently waived legal privilege, so his entire case was exposed in proceedings, including his admissions of guilt made to ChatGPT.
- Employment Contracts and Policies
 - It is important that in employment contracts, disclosure of company data to AI models such as ChatGPT is expressly included as a requirement under confidentiality clauses.
 - A policy which states 'Do not use AI in a way which infringes IP rights' is not enough. It must be clear to the employee which uses of AI would infringe IP rights.
- Training
 - It is important that training is implemented on how to use AI in the workplace.

Discussion points:

IP & AI:

- Is there a time frame for the implementation of policy or legislation resulting from the Report on Copyright and AI?
 - The government has not provided a time frame at this stage.
- The importance of figures such as Lady Kidron and Tim Clement-Jones (an ACID Ambassador) in the House of Lords, who are supportive of design rights, were mentioned as critical in blocking legislation which is damaging to the rights of designers.

- The lack of attention given to design rights, vs musical copyright, which given the prevalence of the individuals usually involved, gets more media attention.
- The fact that prior to the Copyright, Patent and Design Act 1988, designs were protected by copyright law, but this is now no longer the case (except for works of artistic craftsmanship).
- The issues of AI in Intellectual Property centre around authorship, originality and jurisdiction.
- The group discussed the difficulty in tackling jurisdictional issues where AI by its nature is borderless. The EU and the UK are handling the issue differently, and it was discussed the ways in which a common position could be found. For instance, an AI legislative framework could follow the model of the Bern Convention, the Madrid Convention or the Hague Convention.
- The group discussed various charters, such as the Chartered Society of Designers Guidelines, and the ACID IP Charter, which set out best practice rules to be adhered to.
- The group discussed the difficulty of third-party re-seller sites such as Etsy, and who to hold accountable for infringements that take place on these platforms. Where platforms host a large number of sellers, they can avoid liability for infringement using the "mere host" defence, as it would be unreasonable to expect them to interrogate every product posted on their site. A proposed solution of a "digital product passport" was suggested, which a seller can apply for to demonstrate the authenticity of their product to a customer.
- The use of the ACID logo watermark can also be used as a helpful deterrent against infringement.

Employment & AI:

- Use of WhatsApp: There is an inherent risk in the use of WhatsApp for professional communications. If WhatsApp needs to be used, it is important employees are reminded that the communications still need to remain professional.
- The group discussed the difficulty of implementing AI training in a small organisation with limited resources. Alex mentioned the availability of free training programs on AI via the Open University.
- There was discussion about gendered patterns in AI use, with men reportedly more likely than women to use AI in the workplace, partly because women are more likely to fear that doing so would be seen as 'cheating'.
- In person meetings are recommended when it is suspected that AI is being used by an employee (or a potential employee during the hiring process).

ACID would like to thank Robert Lands and Alex Mizzi of Howard Kennedy LLP for hosting this event and for their valuable insight.

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