

ARTIFICIAL INTELLIGENCE AND COPYRIGHT

What should businesses be aware of?

Generative artificial intelligence (AI) is transforming the way businesses operate, communicate and create content. From producing texts, images and advertising campaigns to developing new products and services, AI tools offer significant opportunities for greater efficiency and innovation.

However, their use also raises legal issues that cannot be overlooked. Who owns the rights to content created using artificial intelligence? Can a business freely use an image or text generated by these tools? And what risks arise when AI systems are trained using copyright-protected material?

These questions are no longer the subject of an exclusively technological or academic debate. They are now relevant to any business that uses AI tools in its operations, develops content or makes information and materials available to third parties.

AI-generated content: who is the author and who owns the rights?

One of the first questions to arise concerns the legal protection of content produced using artificial intelligence.

Traditionally, copyright law presupposes a human intellectual creation. There must be a person behind the creative process, with the originality of the work being an essential requirement for copyright protection.

Generative AI has made this requirement more difficult to assess. Today, texts, images, illustrations, music and other content can be

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produced simply by providing instructions to a system, with human involvement potentially limited to formulating a prompt or selecting the output generated.

This issue is particularly relevant for businesses using these tools to produce commercial materials, social media content, marketing campaigns, presentations, publications and other communication materials.

AI-generated content does not automatically qualify for copyright protection.

For such protection to apply, it must be possible to identify a sufficiently significant and original human intellectual contribution.

In March 2026, the US Supreme Court declined to hear the case of Thaler v. Perlmutter, leaving in place the decision that a work generated exclusively by AI, without human authorship, is not eligible for copyright protection under US law. Copyright protection in the European Union and Portugal also requires a human intellectual creation.

This does not mean that all content produced using AI is excluded from copyright protection. What matters is the nature and extent of human involvement in the creative process. Using AI tools to assist with the creative process does not, in itself, prevent the final output from qualifying for protection.

For businesses, this distinction has practical implications: it is important to understand whether the content they produce and use can actually be protected, whether they can prevent third parties from using it, and which rights they may transfer or license to clients and business partners.

Training AI models: can copyright-protected content be used without permission?

Another key issue concerns how artificial intelligence models are developed and trained.

Generative AI systems are trained on vast amounts of information, including books, articles, images, music and other content that may be protected by copyright. The use of such material without the consent of the relevant rights holders has given rise to several legal disputes, particularly in the United States and Europe.

In the United States, two federal courts in California addressed this issue in 2025 in Bartz v. Anthropic and Kadrey v. Meta, finding that training AI models on books could constitute fair use. However, in the first case, the court distinguished this use from the acquisition of pirated copies, which did not benefit from the same justification. The dispute was subsequently settled for USD 1.5 billion, with final approval granted in July 2026. In the second case, the ruling was based, among other things, on the authors' failure to demonstrate harm to the relevant market.

In Europe, the legal landscape has produced differing outcomes. In November 2025, the Munich Regional Court ruled in GEMA v. OpenAI that the memorisation of song lyrics by the model and their reproduction in its responses infringed copyright, finding that such use was not covered by the text and data mining exception. The decision is currently under appeal. In July 2026, the same court adopted a similar approach in GEMA v. Suno.

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In the United Kingdom, meanwhile, the High Court dismissed Getty Images' main claim against Stability AI in November 2025, finding that the model did not store the images used for training.

The Court of Justice of the European Union is also expected to contribute to clarifying this area of law. In Case C-250/25 (Like Company v. Google Ireland), the Court has been asked to address issues including the reproduction of copyright-protected content during the training of AI models, the use of extracts from press publications in chatbot responses, and the application of the text and data mining exception provided for under EU legislation. The hearing took place in March 2026, and the judgment is expected at the end of this year or in early 2027.

These decisions are particularly relevant for businesses developing technological solutions, making digital content available or working with AI tool providers. The lawfulness of using copyright-protected material to train AI models remains an evolving issue, with no uniform answer yet applicable to all situations.

The AI Act: new obligations and greater transparency

Technological developments have been accompanied by increasing legislative intervention at EU level.

The Artificial Intelligence Act (Regulation (EU) 2024/1689) introduced specific obligations for providers of general-purpose AI models, including the adoption of a policy to ensure compliance with EU copyright law and the publication of a sufficiently detailed summary of the content used to train their models.

These obligations, set out in Article 53 of the Regulation, have applied since August 2025, while the European Commission's enforcement powers took effect in August 2026.

For businesses, it is important to distinguish between the obligations imposed on AI model providers and the responsibilities associated with using these tools.

Nevertheless, the evolving regulatory framework reinforces the importance of understanding which technological solutions are being used, reviewing their terms of use and assessing the legal risks associated with integrating them into business operations.

Portugal has also sought to play an active role in this debate.

In May 2025, it presented an initiative at the EU Council of Ministers for Culture, with the support of France, Hungary and Italy, aimed at strengthening the protection of copyright and related rights in the context of artificial intelligence, particularly in the cultural and audiovisual sectors.

These concerns are not new. In 2023, the Hollywood writers' and actors' strikes included the introduction of rules governing the use of AI in the creation and exploitation of content among their main demands. The agreements reached that year included specific provisions addressing this issue.

What should businesses consider?

The use of artificial intelligence can represent a significant competitive advantage. However, the speed and ease with which it enables content to be produced do not eliminate the need to assess the rights involved.

Regardless of their size or sector, businesses should begin incorporating these considerations into their internal practices.

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Key areas to address include:

- **Assessing AI-generated content:** understanding the extent of human involvement in the creative process and whether the resulting content may qualify for copyright protection.
- **Reviewing the terms of use of AI tools:** examining providers' terms and conditions, particularly regarding the use of input and generated content, ownership of rights and opportunities for commercial exploitation.
- **Preventing the unauthorised use of third-party content:** avoiding the reproduction or use of copyright-protected works, images, texts or other material without the necessary authorisation.
- **Establishing internal AI usage policies:** setting out guidelines on authorised tools, the types of content that may be uploaded to AI systems, and the procedures for reviewing and validating their outputs.

Adopting clear internal policies and conducting legal assessments of the solutions being used can help businesses mitigate risks, protect their intangible assets and ensure a more informed and responsible use of these technologies.

Innovation and legal protection: finding the right balance

Artificial intelligence will continue to transform the way businesses create, produce and communicate. The opportunities are clear, but the legal challenges are evolving just as rapidly.

Courts and EU lawmakers are beginning to provide answers, but important questions remain unresolved: how much human involvement is required for AI-generated content to qualify for copyright protection? Under what circumstances may copyright-protected works be used to train AI models? And how should businesses manage the rights to the content they produce and commercially exploit?

Rather than simply keeping pace with technological developments, businesses need to understand their legal implications and anticipate the risks associated with their use.

The question is no longer simply what artificial intelligence makes possible, but also under what conditions it can be used, what rights are involved and what responsibilities businesses must assume.

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