LEGAL UPDATE

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LEGAL ISSUES IN AI ERA: INSIGHTS FROM OPENAI LITIGATION

1.   Background

With the rapid evolution of AI technology, AI companies are increasingly grappling with complex legal and ethical challenges that accompany technological breakthroughs. OpenAI has established itself as a pioneer in the AI industry, particularly through its development of generative AI powered by large language models (**LLMs**), such as ChatGPT.

However, these technological advancements have not come without controversy. OpenAI has faced various legal disputes, including allegations of copyright infringement, trademark conflicts, and violations of fair competition laws. Given that legal frameworks governing AI remain underdeveloped in many jurisdictions, these cases are expected to set critical precedents that will influence the broader AI industry. The outcomes could have significant implications for AI developers, content creators (e.g., journalists, writers, and music copyright organizations), and other stakeholders.

To date, the most prominent lawsuits involving OpenAI have focused on issues such as copyright, trademarks, and anti-competitive behavior. Each case has sparked essential discussions about balancing the advancement of AI technology with legal accountability. We will examine nine key lawsuits involving OpenAI, highlighting the legal and industry-wide implications of these cases.

2.   Key Aspects of OpenAI-Related Litigation

2.1.   Copyrights

2.1.1.   Authors Guild v. OpenAI Inc. [Ongoing]

(a)   Key issues – Plaintiff's arguments

- **Copyright infringement**: The Authors Guild and 17 prominent writers, including George R. R. Martin, alleged that OpenAI infringed their copyrights by using their copyrighted work without permission to create an LLM.

- **Permanent injunction**: The plaintiffs seek a permanent injunction against OpenAI to prevent further unauthorized use of their copyrighted works.

(b)   Progress of litigation

- **September 2023**: Authors Guild and 17 writers filed a class action against OpenAI.

- **December 2023**: The plaintiffs added Microsoft as a defendant.

- **Currently**: The case is pending before the U.S. District Court for the Southern District of New York

2.1.2. New York Times Company v. Microsoft Corporation [Ongoing]

(a)   Key issues – Plaintiff's arguments

- **Copyright infringement**: The New York Times alleges that OpenAI and Microsoft used millions of its copyrighted materials, including news articles, without permission to train their AI models. It claims this resulted in ChatGPT and other AI tools providing "nearly verbatim" excerpts, constituting copyright infringement.

- **Market substitution and loss**: The plaintiff argues that the AI models trained by OpenAI and Microsoft now compete with the New York Times, damaging its relationship other newspapers and its readers, and causing the New York Times to lose revenue.

- **Beyond limit of fair use**: The New York Times claims that OpenAI's and Microsoft's conduct goes beyond the scope of "fair use", even if the AI developers argue they are permitted to use publications collected on the open Internet for AI training under the fair use clause.[1]

  [1] The four elements of "fair use" under Section 107 of the U.S. Copyright Act include: (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.

(b)   Progress of litigation

- **December 2023**: The New York Times filed a lawsuit against OpenAI and Microsoft.

- **March 2024**: The defendants sought dismissal from the court, claiming that the New York Times' lawsuit aimed to undermine the development of the new technologies.

- **November 2024**: In accordance with the court's order, OpenAI disclosed training data, but the original filenames and folder structures had been lost while the New York Times was reviewing them in a virtual machine environment. The New York Times alleged that OpenAI deleted data from the virtual machine environment that could have been used as evidence, making it difficult to provide proof. OpenAI attributed the deletion was due to a system error.

- **Currently**: Litigation is pending before the U.S. District Court for the Southern District of New York.

2.1.3. Raw Story Media Inc. v. OpenAI Inc. [Dismissal without Prejudice]

(a)   Key issues – Plaintiff's arguments

- **Violation of DMCA due to removal of CMI**: Raw Story Media and AlterNet Media alleged that OpenAI violated the Digital Millennium Copyright Act (the "**DMCA**")[2] by using their articles for ChatGPT training without permission and by removing the Copyright Management Information ("**CMI**") in the process.[3]

   [2] Section 1202(b)(i) of the DMCA prohibits intentionally removing or altering any CMI, knowing that it will facilitate copyright infringement.

   [3] The plaintiffs do not claim that the defendant's use of plaintiffs' articles for ChatGPT training constitutes "illegal copying of the plaintiffs' content" or that "ChatGPT's output infringed the plaintiffs' copyright".

(b)   Progress of litigation

- **February 2024**: Raw Story Media and AlterNet Media sued OpenAI.

- **November 2024**: The U.S. District Court for the Southern District of New York dismissed the case on the grounds that the plaintiffs failed to establish "concrete harm" caused by the defendant's removal of CMI.[4]

   [4] The plaintiffs alleged that OpenAI's removal of CMI resulted in ChatGPT summarizing or reproducing the plaintiffs' articles without showing proper sources, but failed to demonstrate that ChatGPT posed a "substantial risk" of reproducing the plaintiffs' articles verbatim without a CMI.

(c)   Implications of judgment

- **Failure to meet litigation requirements**: The court reaffirmed that the plaintiff must prove the concrete harm to claim damages, and clarified that in future lawsuits against AI companies like OpenAI for DMCA violations, the plaintiff must clearly demonstrate the "concrete harm" that the defendants' actions inflicted on the plaintiff.

- **Applicability of DMCA**: This lawsuit sparkled a debate on whether the removal of CMI during the AI model training process constitutes a violation of the DMCA.

2.1.4. The Intercept Media, Inc. v. OpenAI, Inc. [Ongoing]

(a)   Key issues – Plaintiff's arguments

- **Violation of DMCA due to removal of CMI**: The Intercept alleges that OpenAI illegally collected its copyrighted articles and used them for training AI models, and in the process, has violated the DMCA by removing the CMI.

- **Unauthorized use of articles and commercial benefits**: The Intercept alleges that OpenAI and Microsoft derived commercial profits from the unauthorized use of the Intercept's articles and failed to compensate for such profits or obtain permissions to do so.

(b) **Progress of litigation**

- **February 2024**: The Intercept sued OpenAI and Microsoft.

- **June 2024**: The Intercept submitted a revised complaint, adding specific examples of OpenAI and Microsoft removing CMI from its articles.

- **November 2024**: The U.S. District Court for the Southern District of New York dismissed all claims against Microsoft, and dismissed some claims against OpenAI alleging that OpenAI intentionally distributed content with CMI removed.

- **Currently**: The remaining claims against OpenAI alleging that OpenAI intentionally removed CMI are pending hearing.

2.1.5. Canadian News Outlets v. OpenAI [Ongoing]

(a) **Key issues – Plaintiff's arguments**

- **Copyright infringement**: Major Canadian media organizations, including CBC and Postmedia, allege that OpenAI violated copyright law by scraping their articles without authorization to train its AI models.

- **Loss due to copyright infringement**: The plaintiffs argue that OpenAI has profited from using their press articles while providing no compensation. This practice, they claim, undermines the financial sustainability of the press industry and jeopardizes its long-term viability.

(b) **Progress of litigation**

- **November 2024**: Major Canadian media companies filed a class action against OpenAI.

- **Currently**: Proceedings on the merits are pending in Canadian courts.

2.1.6. ANI v. OpenAI [Ongoing]

(a) **Key issues – Plaintiff's arguments**

- **Unauthorized use of news content**: Indian telecommunications company ANI argues that OpenAI has used its "news content" without permission to train its LLM and that OpenAI's ChatGPT is commercially benefiting from delivering content substantially similar to ANI's in responding to user queries.

- **Dissemination of false information**: ANI alleges that OpenAI generated comments or news that did not exist to users and listed ANI as the source, thereby damaging ANI's reputation.

(b) **Progress of litigation**

- **November 2024**: ANI filed a lawsuit against OpenAI.

- **Currently**: The Delhi High Court is conducting an expert review, with the next hearing scheduled for January 2025

2.1.7. GEMA v. OpenAI [Ongoing]

(a)   Key issues – Plaintiff's arguments

- **Copyright infringement**: Society for Musical Performing and Mechanical Reproduction Rights ("**GEMA**") alleges that OpenAI used the song lyrics of 95,000 GEMA members for ChatGPT training without permission and did not obtain a license or pay compensation.

- **Systematic use of materials**: GEMA argues that it has confirmed ChatGPT's ability to reproduce original song lyrics with simple command inputs, which demonstrates that OpenAI systematically used GEMA's repertoire.

- **Clarifying AI and copyright issues**: GEMA contends that the lawsuit should clarify the application of copyright law to AI-generated content and establish guidelines for how AI companies like OpenAI use copyright-protected materials.

(b)   Progress of litigation

- **November 2024**: GEMA filed a lawsuit against OpenAI and OpenAI Ireland.

- **Currently**: Litigation is pending before the Munich District Court, and GEMA has indicated that it may pursue further legal actions against other AI providers.

2.2.   Trademark Rights

2.2.1. OpenAI, Inc. v. Open Artificial Intelligence, Inc. [Ongoing]

(a)   Key issues – Plaintiff's arguments

- **Misuse of trademark**: OpenAI alleges that Open Artificial Intelligence registered the trademark "Open AI" in 2015 but ceased using it commercially after 2017. The plaintiff argues that the defendant resumed activity under the trademark in 2022, coinciding with OpenAI's launch of ChatGPT. OpenAI contends that this renewed use of the trademark has caused consumer confusion, as the defendant does not use the trademark for legitimate commercial purposes.

- **Priority claim to trademark:** OpenAI asserts that the term "Open AI" has acquired "secondary meaning,"[5] which consumers associate with specific products (e.g., ChatGPT and DALL-E) and the company OpenAI.

  [5] In particular, OpenAI emphasized that the number of DALLL-E users exceeded 1.5 million by the end of 2022 and that more than 2 million images are generated per day demonstrates the recognition and originality of the trademark.

(b)   Progress of litigation

- **2023**: OpenAI filed a lawsuit against Open Artificial Intelligence.

- **February 2024**: The U.S. District Court for the Northern District of California granted a preliminary injunction ordering Open Artificial Intelligence to close its website and stop using the trademark.

- **November 2024**: Open Artificial Intelligence appealed the injunction, but the U.S. Court of Appeals for the Ninth Circuit upheld the injunction.

- **Currently**: Proceedings on the merits are pending before the U.S. District Court for the Northern District of California.

2.3.   Anti-Competitive Conduct

2.3.1. Musk v. Altman [Ongoing]

(a)   Key issues – Plaintiff's arguments

- **Breach of founding principle of OpenAI and shift to commercialization**: Elon Musk contends that OpenAI was originally established as a non-profit organization with the mission of developing AI to benefit humanity. Musk and other supporters provided significant financial contributions based on this principle. The plaintiff argues that OpenAI violated its foundational principles and contractual obligations by transitioning into a profit-driven entity, prioritizing commercial interests over its original mission.

- **Concerns about OpenAI's market monopoly due to Microsoft's investment**: The plaintiff argues that Microsoft's large investment in OpenAI (exceeding $10 billion) has led to OpenAI's monopolistic position in the market, which allegedly undermines fair competition in the relevant markets.

- **Competitors' allegations of harm**: The plaintiff argues that OpenAI's and Microsoft's increased market power has caused harm to competitors such as Musk's xAI.

(b)   Progress of litigation

- **February 2024**: Elon Musk filed a lawsuit against OpenAI, its CEO Samuel Altman, and others.

- **June 2024**: Elon Musk withdrew the lawsuit.

- **August 2024**: Elon Musk again filed a lawsuit against OpenAI, its CEO Samuel Altman, and others.

- **November 2024**: Elon Musk added Microsoft as a defendant alleging that Microsoft's large investment had contributed to OpenAI's monopolistic position in the market.

- **Currently**: Substantive hearing has commenced in the U.S. District Court for the Northern District of California.

3. Implications

The OpenAI lawsuits illustrate broader concerns about copyright, trademark rights, and fair competition, offering insights into the legal issues AI companies may face.

As AI-related legislation is still in its early stages in most countries, companies should prepare for the types of disputes likely to arise in the future by closely monitoring ongoing cases involving OpenAI. Key legal issues, including the removal of CMI, unauthorized use of data, data reproduction, and the distribution of false information, will likely establish guiding principles for future data utilization and management standards.

Moreover, future disputes are likely to arise as competition authorities globally increase their scrutiny of large, vertically integrated AI companies. Investigations may focus on potential market abuses, particularly in cases involving significant partnerships and investments.

In addition, as legal disputes related to AI extend beyond the United States to countries such as Canada, Germany, and India, as reflected in the geographical distribution of OpenAI-related litigation, companies must adapt their strategies to each country's unique regulatory landscape.

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