

OPINION

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Generative AI is generating astronomical profits by trampling authors and publishers

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The OpenAI logo is seen on a mobile phone in front of a computer screen displaying output from ChatGPT, March 21, 2023, in Boston. A barrage of high-profile lawsuits in a New York federal court, including one by the New York Times, will test the future of ChatGPT and other artificial intelligence products. (AP Photo/Michael Dwyer, File)

World IP Day is typically a moment each April when authors and publishers around the globe celebrate the importance of copyright law to the creative economy and long-term public interest. But this year we are fighting policy battles that are unprecedented if not existential in scope, as big tech companies double down on their refusal to pay for the scores of creative works that fuel their highly profitable, consumer-facing Generative AI tools.

These big tech companies and their investors—the largest, wealthiest, and most powerful companies in the world— have blatantly copied, scraped and otherwise appropriated troves of protected literature, news media publications, and other original authorship—without transparency or apology—to accelerate their own commercial interests. As reported by CNN, some companies pillaged the Books3 database, a pirate collection, which contains some 183,000 in-copyright works. Others have been secretive about the sources they used, but researchers have deduced that they downloaded massive numbers of books from other notorious pirate sites. Indisputably, they copied proprietary content from media and news services, including scraping millions of articles from behind the New York Times paywall.

Generative AI tools are exciting, but they also pose serious risks that require entirely new levels of legal and ethical safeguards. Europe has approached this exercise with an urgency that is appropriate but still unfolding as to implementation of the 2024 EU AI Act by member states. Here in the United States, discussions are underway, but the development, use, and deployment of AI remain woefully under-regulated. Copyright is a key part of regulation, as neither the tools nor corresponding profits of big tech would be possible at all if not for the immeasurably valuable authorship that permits the technology to generate—or, more aptly, regenerate—the coherent, intelligent text of human expression, including, in some cases, outputs that may act as market substitutes.

There is nothing fair or ethical about ignoring this foundation, or the obvious rights of authors and publishers to recoup their intellectual and financial investments when their works are in demand. On the contrary, the Copyright Act has long prioritized the contributions of authors to society by granting them a bundle of exclusive rights to their works, which they may license or, in their judgement, decline to license, to others for fair payment, including the rights to reproduce their works or create derivative works from them.

Regrettably, big tech companies have proclaimed to both policy makers and the courts that they have no intention of seeking permission, much less paying for the works they have ingested thus far and continue to use, arguing that the sweeping copying at issue is fair use, and, further, that licensing would be too burdensome for them to consider.

This is not how laws are supposed to work. Indeed, if the moment were not so sobering, it would be laughable to everyone involved that the very companies behind driverless cars and private rocket ships would find the prospect of digital licensing too daunting to imagine.

As Congress well knows, copyright is a fundamentally important right authorized explicitly by the U.S. Constitution, not a minor inconvenience that can be disregarded by downstream inventors or investors. Copyright is the means by which authors and publishers are incentivized to write, publish, inspire and inform— crucial roles that are more essential than ever in the face of numerous, serious threats to democracy.

Big tech wants a pass on the indiscriminate appropriations they have already undertaken and continue to press for their own gains. There isn't a single, rational reason to accommodate them, but there are ample, critical reasons to protect the vitality of authors and publishers in the world, on this World IP Day and every other day.

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World IP Day is a program of the World Intellectual Property Organization in Geneva, which administers copyright treaties and other intergovernmental IP instruments.