The Role of Copyright in a time of Artificial Creativity: the value of Interdisciplinarity in Copyright Law

Isabella Alexander[*], Andrea Wallace[†] & Stina Teilmann-Lock[‡§]

In a time of rapid change in information technologies, it can help to step back and think carefully about the roles that laws are, and should be, playing. In particular, we can think of copyright as a legal infrastructure for distributing rights and responsibilities, directing revenue streams and shaping new social and economic equilibria in cultural and creative domains. Positioning copyright as an infrastructure attends to the ways in which the law intersects and interacts with culture and creativity in relationships and transactions involving humans, organisations and new technologies. As Uma Suthersanen has observed, a more humane, equitable and inclusive intellectual property system requires that we explore intellectual property 'beyond the legal discipline'. We echo this, underscoring the vitality of interdisciplinary approaches for copyright. Interdisciplinarity requires more than bringing together distinct disciplines, as in multidisciplinarity; it is the cornerstone for addressing phenomena and problems that cannot be adequately explored within any single discipline.

Current issues at the interface of copyright, creativity and technology demand interdisciplinarity to ensure legal scholarship and practice does not advance what we call 'legal solutionism'. Similar to technology solutionism, which advocates that every problem has a solution in technology, legal solutionism assumes every problem is solvable through legal processes but without attending to how law and its historical trajectory created or contributed to those problems. As we witness distinct industries and fields of study converge in novel and unexpected ways, socially informed legal change must enlist methods and inquiries beyond the disciplinary structures of law to understand how problems materialise and are experienced in seemingly unconnected areas. Otherwise, the solving of a copyright (or other legal) problem may come at the expense of the broader social contexts within which copyright (dys)functions. An example of legal solutionism would be to resolve the copyrightability of AI-generated creative content without considering its systemic effects on human creativity, geopolitical labour relations, (in)access to knowledge, the digital divide, wealth and knowledge extraction, and the climate. In brief, we urgently need copyright scholarship to refuse to silo itself away from pressing social – including cultural and planetary – needs.

[*] Professor of Law, University of Technology Sydney
[†] Associate Professor of Law & Technology, University of Exeter
[‡] Associate Professor of Design and Intellectual Property Management, Copenhagen Business School
[§] The authors would like to thank our collaborators and participants in the Minecraft, LARP and Hacking Visual Culture events, Joy Twemlow, Cynthia Roman, Cristina Martinez, Leo Impett, Antonio Roberts, Cybernauts, Josefine Lykkegaard, Ruth Catlow, Kate Genevieve, and Alex Munt.

To understand this convergence of art, technology and copyright, or 'ArTechLaw', the authors of this editorial collaborated in three connected international research projects (2020-2025 funded by the Australian, Danish and British Research Councils, https://artechlaw.org). ArTechLaw proceeded from the premise that law is more than the sum of statues, cases and transactions; it is reflected in everyday practices, understandings, beliefs and actions of humans. Informed by copyright doctrine, legal theory, design methodologies, art history, business studies, digital humanities and techniques from computer vision, ArTechLaw made dedicated efforts to understand law in its historical and technological situatedness while tackling legal issues from their social contexts and real world effects.

We developed three overall insights about copyright's role in a future that promises ever more disruptive technologies alongside threats and opportunities to human and more-than-human creativity. The first stems from the observation that the explosion of generative artificial intelligence (GenAI) within Western value systems has put certain questions under a glaring spotlight related to creativity, originality, the purpose and meaning of art, and its relationship with the market. Artists, filmmakers, writers, lawyers, regulators, and researchers are called upon to respond to GenAI's disruptive force, and are doing so in a multitude of ways. When we convened a conference and exhibition on this topic, we received papers from academics and practitioners working in law, design, filmmaking, cultural studies, business, computer science, art history and GLAM (Galleries, Libraries, Archives, and Museums). We also received creative works exploring these questions through fashion, film/video, tapestry, drawing, data visualisations and video games. Gathering so many different voices into one event enabled participants to appreciate more directly these many perspectives and the range and type of responses offered. Law quickly became one point in a constellation, rather than the coordinates guiding the project.

A related observation pertains to the project team. When we applied for funding in 2018, technology was to be both the subject of our investigation and a tool employed (namely, through the use of computer vision). GenAI had yet to emerge into the public's general consciousness and was not within our scope of inquiry. When OpenAI released GPT-3 in 2020, followed by ChatGPT and DALL-E, the project was compelled to engage GenAI. The team's interdisciplinary composition meant it was well-positioned to do so. GenAI simply became another facet of our exploration into the ways technological developments have always impacted reproduction, notions of authorship and creativity, and tensions among ownership, access and the circulation of visual artworks.

Our second insight flowed from the project's concerns with GLAM (Galleries, Libraries, Archives and Museums) policies on access to cultural heritage and the reuse of digital surrogates of public domain collections. This concern is frequently treated as either a legal matter or an institutional policy decision, raising a simple conflict between the claims of copyright and public domain. It is one reason why cultural institutions join the open GLAM movement to release digitized public domain collections for any reuse purpose. However, ArTechLaw sought to explore these questions in light of systemic issues with the public

domain and collecting histories. Historically, IP rights were designed for an in-group of participants by protecting creative expressions that were produced by and commercially valuable within Euro-centric patriarchal systems. In addition to devaluing certain creative expressions, thereby rendering them part of the public domain, copyright law denied non-Western and Indigenous understandings of communal ownership, knowledge, custodianship and innovation. This period of IP development overlaps with centuries of colonial and imperial conquest, during which nations designed and employed laws to justify incidences of theft, provide cover for colonial powers and enable mass appropriation. The cultural objects taken founded private and national collections that stimulated artistic and industry innovations and fueled untold economic growth for colonial powers. Colonial wealth and knowledge extraction thus underlies the current cultural, institutional and legal infrastructures of former colonial powers. For a GLAM to assert copyright in digital surrogates of collections with colonial contexts is no simple or neutral act. Yet to release those digitizations as public domain, carries its own set of neo-colonial consequences, particularly given these digital collections are increasingly consumed for GenAI, generating new IP and economic growth for former colonial powers. Recognising this, GLAMs are increasingly adopting policies that recognise Indigenous data sovereignty, cultural preferences and systems of care informed by non-IP values for cultural objects and data that, as Nathan Sentance has said, are often being held against their will.

Our third insight was gained from turning the necessity of remote work into virtue during the pandemic, given we began during the spring 2020 global lockdown. With physical contact restricted, researchers and educators shifted to online collaboration and teaching. While this led to feelings of isolation and ‘Zoom fatigue’ for many, it also provided new opportunities for accessibility and innovations making new uses of digital technologies. To render our classrooms more than disembodied versions of on-site teaching, we developed a format for digital experiential learning [See: https://ir.lawnet.fordham.edu/iplj/vol35/iss1/1/]. Our guiding idea was that lawyers need active and more immersive preparation for practice in a field characterized by continued technological and societal disruptions; tech savviness, social responsiveness and building collaborative and strategic capacity should be baked into research and professional training in law. Indeed, legal classrooms are often sites of learning for instructors, stimulating new thinking and research pathways that inform our research practice. We wanted to bring those conditions into our ArTechLaw methods to level the hierarchical experience of expert/learner to one supported by collaborative research and learning objectives. This involved integrating technology as an immersive platform for learning and research and integrating technology-related issues into our substantive interdisciplinary questions. We used the sandbox video game Minecraft to achieve these ends. In the non-combative ‘creative mode’ of Minecraft we held two ArTechLaw events. We first gathered as researchers and practitioners from a range of disciplines and fields to experience the virtual creative game world as their ‘avatars’ while working in groups to explore in-game research questions. In the second, law teachers and students met to put into practice central elements of the copyright law curriculum. In both events, participants undertook creative tasks that encouraged them to draw inspiration and build upon the digital content of other creators. They were asked to draft licensing terms for their digital creative

content made in Minecraft while considering the game's terms of service. The setup – bringing together issues of legal doctrine, digital technologies, design, art theory and business strategy – facilitated perspectival understanding: by stepping into the roles of different stakeholders (as creators of digital content, as managerial teams, as drafters of contracts, as compliant users of Minecraft, and so forth) participants engaged in more nuanced analyses of how to employ legal tools to support a variety of strategic and social goals. This illustrates how rethinking the learning formats for research and teaching can help (all) learners become more holistic problem solvers in a world with increasingly complex social dilemmas.

Synthesizing the three insights illuminates that our IP system disproportionately benefits and disadvantages certain humans, with more-than-human and planetary impacts. Granting copyright to GenAI outputs will have broader societal impacts beyond law—and even beyond ArTechLaw. Interdisciplinarity provides opportunities to think critically, expand our knowledge bases, and research and teach about topics that converge with IP law. These range from IP law, its incentive theories and colonial history, to the environmental impact of GenAI; from IP market inequities baked into wealth generation and transfer, to alternative knowledge and creativity systems that have been systematically excluded by dominant legal systems. Lawyers must confront legal solutionism in the way others are confronting technology solutionism, while also deploying law as also a crucial and necessary regulatory tool to curb tech solutionism. The two must converge, given our planet's limited resources and the racialised labour exploitation that drives both the mineral extraction and data cleaning necessary to power and train GenAI. Law is an infrastructure, a network of social interactions and organisational relationships within which copyright (and law) is simply one part. Overall, ArTechLaw makes the case that it is possible to recognise harms embedded within legal and technological infrastructures that themselves are not neutral while also working from the ground up to bring out institutional change that can shape entire industries.