INTELLECTUAL PROPERTY
Top Lawyers 2023

ANDREW GASS

LATHAM & WATKINS | SAN FRANCISCO
Litigation

Andrew Gass is an antitrust and IP lawyer who represents technology companies in high-stakes disputes. He teaches a copyright course at the UC Berkeley School of Law and is a leading attorney on issues in copyright law, antitrust law, and the intersection between the two. His clients range from early-stage startups to some of the largest technology companies in the world, including Apple, Amazon, Spotify, Shopify and Roblox.

Being a copyright attorney is "the most exciting kind of lawyer to be right now because of artificial intelligence," Gass said.

"I really think it's going to be society-changing technology, at least so long as the courts stay out of the way."

In one of the first lawsuits of its kind in the United States, Gass represents DeviantArt Inc., a co-defendant in a putative class action alleging copyright violations arising from an AI system's reliance on copyrighted images for training purposes. *Andersen, et al. v. Stability AI, LTD, et al*., 3:23-cv-00201 (N.D. Cal., filed Jan. 13, 2023).

The case involves the training and use of a generative AI model called Stable Diffusion, which can produce visual art in response to text prompts from users. DeviantArt's DreamUp web app is just one of several applications based on Stable Diffusion, which allegedly relied upon copyrighted images created by the plaintiffs to learn how to create original works.

"In copyright terms, what gets generated by the tool is vanishingly unlikely to be, as the law would say, 'substantially similar' to any particular work that the model was trained on," Gass said. "So then the question then becomes, if there is no viable contention that the outputs of these tools are infringing — and I think that's where the courts will hopefully go because the law is pretty clear on that — then what do we make of all the conduct on what I'll call the back end to train the model using these existing copyrighted images?"

The lawsuit raises a number of issues surrounding copyright and AI that currently have little or no precedent, and the case could help provide guidance going forward.

"It's a really interesting technology that courts are going to have the chance to think about pretty deeply," Gass said. "It's exciting, from a legal perspective, to be on the front lines of thinking about this stuff, helping judges to understand it, and hopefully to have the law land in a sane and sensible place to have the technology flourish."

—Jennifer Chung Klam