

Copyright Update

OLA SuperConference

David Fewer
General Counsel, CIPPIC
uottawa



Samuelson-Glushko Canadian Internet
Policy and Public Interest Clinic



uOttawa

What I do

Public interest legal
advocacy at the intersection
of technology and law

Outline

In the Courts

New Litigation

Parliament

Policy Developments

CIPPIC v Sanhi

bicentenary of Canada's first
copyright legislation
and

the centenary of the first Canadian
Copyright Act

In the Courts

Judicial Decisions

1395804 Ontario Ltd. (Blacklock's
Reporter) v. Canada (Attorney General),
2024 FC 829

Circumvention and fair dealing

GE Renewable Energy Canada Inc.
v. Canmec Industrial Inc.,
2024 FC 322

Canadian copyright applies in Canada

Alberta et al v Access Copyright,
2024 FC 292

Tariffs and licensing

French v. Royal Canadian Legion,
2024 FCA 63

Moral rights v Industrial designs

Maier Estate v. Bulger,
2024 FC 1267

Authorization, fair dealing, exhaustion

June 27, 2024

BETWEEN:

Voltage Holdings, LLC

Applicant

- and -

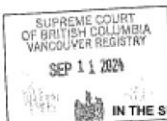
Doe #1, et al. and Samuelson-Glushko
Canadian Internet Policy & Public Interest
Clinic

Respondents

JUDGMENT

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-129-22, 2023 FCA 194, dated September 27, 2023, is dismissed.

New Litigation
Filed



S-246286

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

MICHAEL DEAN JACKSON

Plaintiff

and

OPENAI, INC., OPENAI, LP, OPENAI, LLC, OPENAI GP,
LLC, OPENAI OPKO, LLC, OPENAI GLOBAL, LLC, OAI
CORPORATION, LLC, OPENAI HOLDINGS, LLC, OPENAI
STARTUP FUND I, LP, OPENAI STARTUP FUND GP I,
LLC, OPENAI STARTUP FUND MANAGEMENT, LLC,
MICROSOFT CORPORATION AND MICROSOFT CANADA
INC.

Defendants

Brought under the *Class Proceedings Act*, RSBC 1996, c 50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intended to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

if you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

FILED IN THE SUPREME COURT OF BRITISH COLUMBIA

2024.09



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

(Court Seal)

TORONTO STAR NEWSPAPERS LIMITED, METROLAND MEDIA GROUP LTD., POSTMEDIA NETWORK INC., PNI MARITIMES LP, THE GLOBE AND MAIL INC./PUBLICATIONS GLOBE AND MAIL INC., CANADIAN PRESS ENTERPRISES INC./ENTREPRISES PRESSE CANADIENNE INC., and CANADIAN BROADCASTING CORPORATION/SOCIÉTÉ RADIO-CANADA

Plaintiffs

and

OPENAI, INC.; OPENAI GP, LLC; OPENAI, LLC; OPENAI STARTUP FUND I, LP; OPENAI STARTUP FUND GP I, LLC; OPENAI STARTUP FUND MANAGEMENT, LLC; OPENAI GLOBAL, LLC; OPENAI OPCO, LLC; OAI CORPORATION; and OPENAI HOLDINGS, LLC

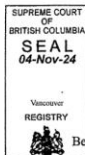
Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.



Court File No. **VLC-S-S-247574**

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

CANADIAN LEGAL INFORMATION INSTITUTE

Plaintiff

and

1345750 B.C. Ltd., CLEARWAY MANAGEMENT LTD., ALISTAIR
VIGIER doing business as CASEWAY AI, CASEWAY AI LEGAL
LIMITED and JOHN DOE CORPORATION

Defendants

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a Counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

Court File No.

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July 08, 2024 08 juillet 2024			
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FEDERAL COURT

B E T W E E N:

**SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC
INTEREST CLINIC**

APPLICANT

- and -

ANKIT SAHNI

RESPONDENT

NOTICE OF APPLICATION

(Under Section 57(4) of the Copyright Act, R.S.C. 1985, c. C-42)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY

Plaintiff,

v.

MICROSOFT CORPORATION, OPENAI INC.,
OPENAI LP, OPENAI GP LLC, OPENAI LLC,
OPENAI OPKO LLC, OPENAI GLOBAL LLC,
OAI CORPORATION, LLC, and OPENAI
HOLDINGS, LLC,

Defendants.

Civil Action No. _____

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff The New York Times Company ("The Times"), by its attorneys Susman Godfrey LLP and Rothwell, Figg, Ernst & Manbeck, P.C., for its complaint against Defendants Microsoft Corporation ("Microsoft") and OpenAI, Inc., OpenAI LP, OpenAI GP LLC, OpenAI LLC, OpenAI OpCo LLC, OpenAI Global LLC, OAI Corporation, LLC, OpenAI Holdings, LLC, (collectively "OpenAI" and, with Microsoft, "Defendants"), alleges as follows:

I. NATURE OF THE ACTION

1. Independent journalism is vital to our democracy. It is also increasingly rare and valuable. For more than 170 years, The Times has given the world deeply reported, expert, independent journalism. Times journalists go where the story is, often at great risk and cost, to inform the public about important and pressing issues. They bear witness to conflict and disasters, provide accountability for the use of power, and illuminate truths that would otherwise go unseen. Their essential work is made possible through the efforts of a large and expensive organization that provides legal, security, and operational support, as well as editors who ensure their journalism meets the highest standards of accuracy and fairness. This work has always been important. But

Parliament

C-244 **44th Parliament, 1st session**
Monday, November 22, 2021, to Monday, January 6, 2025

An Act to amend the Copyright Act (diagnosis, maintenance and repair)



This bill received royal assent on Thursday, November 7, 2024

Statutes of Canada 2024, c. 26

Debates of the Senate

C-294 44th Parliament, 1st session
Monday, November 22, 2021, to Monday, January 6, 2025

An Act to amend the Copyright Act (interoperability)



This bill received royal assent on Thursday, November 7, 2024

Statutes of Canada 2024, c. 27

Debates of the Senate

First Reading

First Session, Forty-fourth Parliament,
70-71 Elizabeth II – 1-2 Charles III, 2021-2022-2023-2024

HOUSE OF COMMONS OF CANADA

BILL C-374

An Act to amend the Copyright Act (Crown copyright)

FIRST READING, FEBRUARY 8, 2024

March 17, 2023

VIA EMAIL (consumerpolicy@ontario.ca)

Consumer Protection Act Review
Manager, Consumer Policy Unit
Ministry of Public and Business Service Delivery
56 Wellesley Street West – 6th Floor
Toronto, ON, M7A 1C1

To Whom It May Concern:

Re: Consultation Paper on Modernizing the Consumer Protection Act, 2002

This consultation paper is jointly submitted by the Canadian Association of Research Libraries (CARL), the Canadian Federation of Library Associations (CFLA), the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC), and the Canadian Urban Libraries Council (CULC). The submitters of this letter are publicly-supported libraries and their advocates who welcome the opportunity to participate in consultations regarding the modernization of the *Consumer Protection Act*. In response to summary question 7.2, our contribution focuses on the difficult contractual relationships regarding digital content between primarily multinational publishers and publicly-supported libraries. The submission addresses:

1. by way of background, the nature of the relationship between primarily multinational publishers and publicly-supported libraries;
2. the inclusion of publicly-supported libraries as a consumer under the CPA; and
3. additional sector specific legislative proposals.

1. Background: Nature of the Relationship between Primarily Multinational Publishers and Publicly-Supported Libraries

While digital content has become mainstream, Canada's publicly-supported libraries are finding the evolving marketplace a difficult one in which to build digital collections.¹ The current contractual landscape for digital content between primarily multinational publishers and libraries prohibits libraries from purchasing digital

CANADIAN E-BOOK DRAFT LEGISLATION

Abigail Kearney, Chris Irwin

November 2024

Explanatory Note for Library Eyes Only

What does a Canadian provincial statute that guarantees fair contracting terms for libraries look like?

With the growth of electronic books and audiobooks, publishers have gained greater power to demand high prices and onerous conditions in their dealings with libraries. Whereas print books are sold to libraries, electronic materials are licensed instead, which lets publishers impose conditions on how they are used and creates a lack of parity with print. Libraries have accordingly sought ways to ensure they can continue to fulfill their role as disseminators of knowledge and art.

The Library Futures (LF) draft legislation on Access to E-Books aims to contribute to these efforts by regulating the current practice of unconscionable licensing contracts between publishers and libraries. This legislation, drafted for implementation at the state level in the US, draws inspiration from laws proposed in Maryland and New York to avoid raising constitutional issues regarding federal jurisdiction. The LF draft legislation accounts for these constitutional issues, called federal pre-emption in the United States, by regulating contract terms directly and through reference to state consumer protection law, rather than obligating publishers to offer licenses to libraries. Bills taking this approach have been introduced in various states, including Illinois, Hawaii, Iowa, New Hampshire, and Rhode Island.

The following draft legislation adapts the LF model to Canada and draws on the British Columbia *Business Practices and Consumer Protection Act* for enforcement. To avoid federalism issues, the draft legislation focuses on contract terms rather than mandating licenses and takes into account key Canadian *Copyright Act* principles such as balance and technological neutrality.

Policy Developments

**A Consultation on a
Modern Copyright Framework
for Artificial Intelligence
and the Internet of Things**



Canada

**CONSULTATION ON
COPYRIGHT IN THE
AGE OF GENERATIVE
ARTIFICIAL INTELLIGENCE**



Canada

Innovation and Balance

Submission to the Government of
Canada's Consultation on
Copyright, AI, and IoT

Liwah Keller and
Yuan Stevens

September 2021



Simulation-Globuko Canadian Internet Policy and Public Interest Clinic
Clinique d'intérêt publique et de politique d'internet du Canada Simulation-Globuko



Simulation-Globuko Canadian Internet Policy and Public Interest Clinic
Clinique d'intérêt publique et de politique d'internet du Canada Simulation-Globuko



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CREATIVITY & COPYRIGHT IN THE WORLD OF GEN-AI

*A Submission to the Government of Canada
Consultation on Copyright in the Age of
Generative Artificial Intelligence*

Abigail Kearney & Gareth Spanglett
January 2024



uOttawa



Protecting Artists' and Creators' Copyrights

Artists, particularly visual artists, are among the lowest income earners in Canada despite their significant cultural contributions. An Artist's Resale Right provides the creators of original visual artwork with a royalty whenever their work is resold through an eligible sale, offering an additional income stream.

- In the *2024 Fall Economic Statement*, the government announces its intent to amend the *Copyright Act* to create an Artist's Resale Right in Canada, ensuring Canadian visual artists benefit from future sales of their work.

CIPPIC v Sanhi

Court File No.

FEDERAL COURT

B E T W E E N:

**SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC
INTEREST CLINIC**

APPLICANT

- and -

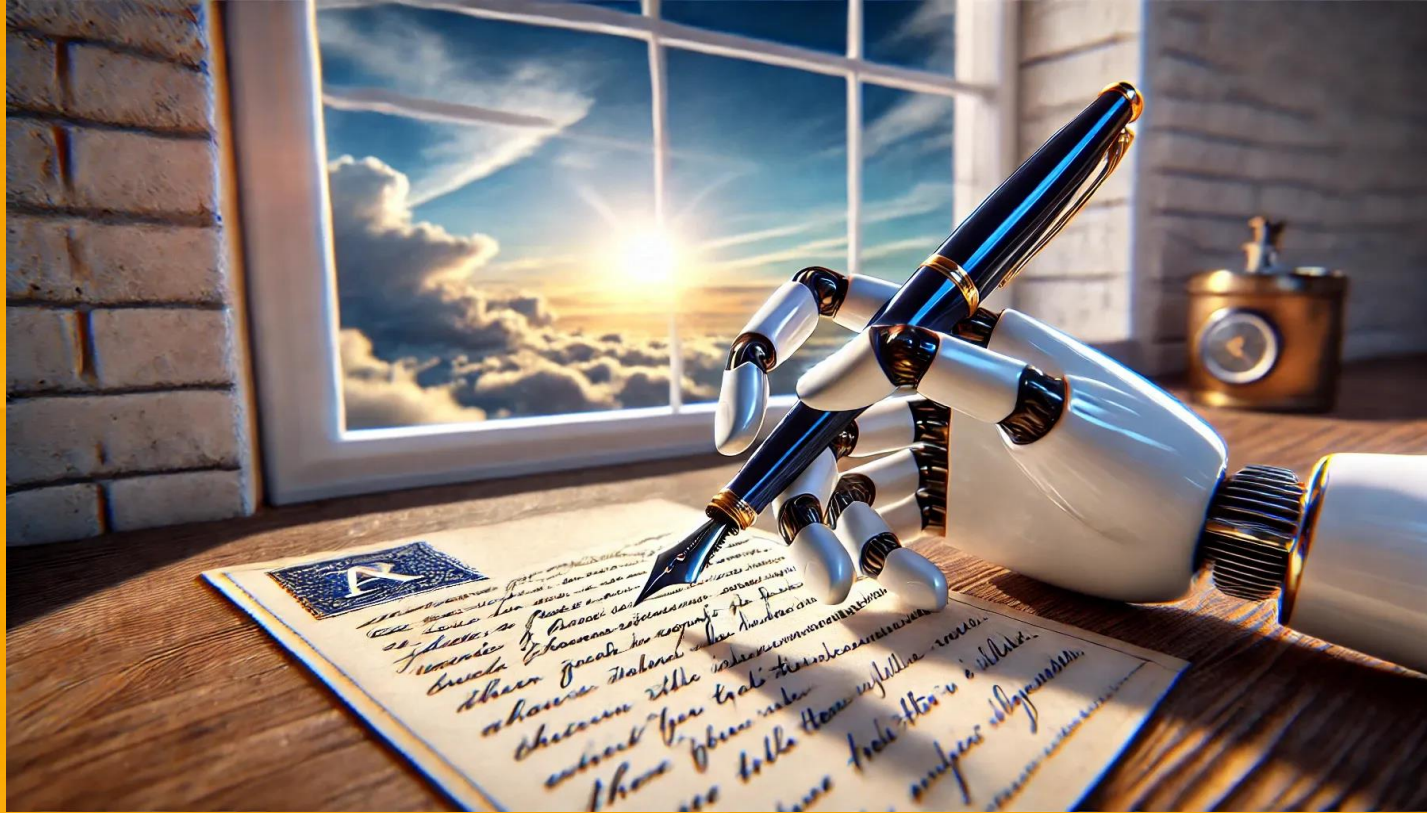
ANKIT SAHNI

RESPONDENT

NOTICE OF APPLICATION

(Under Section 57(4) of the Copyright Act, R.S.C. 1985, c. C-42)

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Canadian Copyright Database

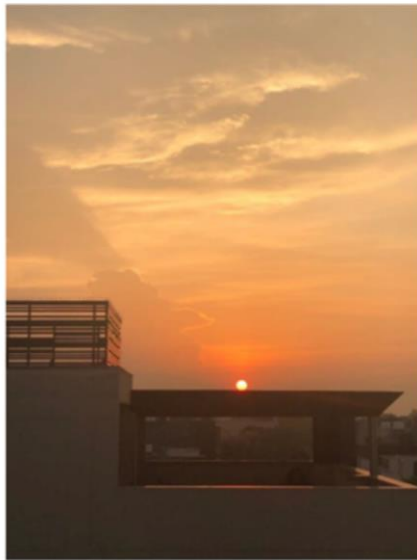
► [Third-party information liability disclaimer](#)

The links on the text provide access to the help file.

<u>Title:</u>	SURYAST
<u>Type:</u>	Copyright
<u>Registration</u>	1188619
<u>Number:</u>	
<u>Status:</u>	Registered
<u>Registered:</u>	2021-12-01
<u>Category of Work:</u>	Artistic
<u>Country</u>	India
<u>Published:</u>	



RAGHAV Artificial Intelligence Painting App



**Mr. Sahni's Original
Photograph
(base image)**



**Vincent Van Gogh's *The Starry Night*
(style image)**

Author:

Person Name RAGHAV Artificial Intelligence Painting App

Original Address: 31/42 Punjabi Bagh West New Delhi
110026
India

Current Address: Same as original address.

Person Name Ankit Sahni

Original Address: 31/42 Punjabi Bagh West New Delhi
110026
India

Current Address: Same as original address.



Copyright Review Board
United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000

December 11, 2023

Alex P. Garens, Esq.
Day Pitney, LLP
One Federal Street, 29th Floor
Boston, MA 02110

**Re: Second Request for Reconsideration for Refusal to Register SURYAST
(SR # 1-11016599571; Correspondence ID: 1-5PR2XKJ)**

Dear Mr. Garens:

The Review Board of the United States Copyright Office ("Board") has considered Ankit Sahni's ("Mr. Sahni") second request for reconsideration of the Office's refusal to register a two-dimensional artwork claim in the work titled "SURYAST" ("Work"). After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board affirms the Registration Program's denial of registration.

I. DESCRIPTION OF THE WORK

The Work is a two-dimensional artwork and is reproduced below:



Exclusive: India recognises AI as co-author of copyrighted artwork

Sukanya Sarkar August 05, 2021

Exclusive: Indian Copyright Office issues withdrawal notice to AI co-author

Sukanya Sarkar December 13, 2021

Why?

"Our goal remains to keep the AI-authorship debate alive until the decision-makers reach a tangible policy or legislative change."

NOT a training data case

Not infringement or fair dealing

The copyright status of AI outputs

A bright yellow rectangular piece of paper is shown, folded horizontally and vertically into four equal quadrants. The word "Authorship" is written in a white, cursive script across the center, spanning the middle two quadrants. The paper is set against a plain, light gray background.

Authorship

Copyright requires a
human author

e.g., term is determined by
the death of an author

But this
misses
the point

AI cannot be an author
not because it cannot die,
but because it is not alive

The Death of the AI Author

Carys Craig & Ian Kerr

flow from a loaded but mistaken notion of *AI-as-author*. We will surely misallocate legal rights and privileges—and the economic wealth and power they entail—if we begin our policy-making efforts by misattributing authorship to AI. Of course, if, as we contend, AI-generated outputs are not works of authorship, then they belong for now in the public domain by default. But as we see it, the ontological inquiry into the plausibility

Originality

Expression v output

Expression

*CCH Canadian Ltd. v. Law Society of Upper
Canada, 2004 SCC 13 at para. 16.*

Non-mechanical exercise of skill and judgement

intentionality
conscious decision-making
Reflection; reasoning

AI Outputs

probabilistic algorithmic process that operates at the intersection of statistical inference, pattern recognition, and computational linguistics

The question, then, is always going to be:

"Does the output represent human expression; an exercise of human skill and judgement?"

AI outputs may have value and merit
protection against misappropriation...

.... just not copyright protection.

Copyright regulates human activity.

AI activity is different, and so raises different regulatory considerations.

Thank you!