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1 Copyright Subsistence

1.1 What are the requirements for copyright to subsist in a work?

The requirements for copyright to subsist in a literary, artistic, musical and dramatic work are: (a) originality (interpreted by the courts to also involve a degree of creativity); (b) fixation in any form; and (c) connection to Israel (in general, that the work was first published in Israel or that when the work was created, its author was an Israeli citizen or his/her habitual residence was in Israel) or copyright under an applicable international treaty (among others, Berne and TRIPS).

1.2 Does your jurisdiction operate an open or closed list of works that can qualify for copyright protection?

The Israeli Copyright Act specifies a closed list of work categories that can qualify for copyright protection. Any work that does not fall under this statutory list is excluded from copyright protection.

1.3 In what works can copyright subsist?

Under Israeli Copyright Act, copyright can subsist in literary works (including, among others, lectures, tables, compilations (including databases) and computer programs (in any form or expression), artistic works (including, among others, photographic works, maps, charts, architectural works and works of applied art (including typefaces), dramatic works (including, among other things, choreography), musical works and sound recordings.

1.4 Are there any works which are excluded from copyright protection?

Any work that does not fall under any of the above-mentioned categories (see question 1.3) is excluded from copyright protection.

In addition, designs (unless the design is neither used nor intended for use in industrial manufacture (in general, manufacture of more than 50 articles incorporating the design) and official publications are excluded from copyright protection.

Ideas, procedures and methods of operation, mathematical concepts, facts or data and news of the day are also excluded from copyright protection, but copyright can subsist in their expression.

1.5 Is there a system for registration of copyright and, if so, what is the effect of registration?

There is no system for registration of a copyright in Israel.

1.6 What is the duration of copyright protection? Does this vary depending on the type of work?

The duration of copyright protection is in general: the life of the author plus 70 years (in a joint work – the life of the longest surviving joint author plus 70 years; if the author is unknown – 70 years from the date of publication (and if the work was not published until the end of 70 years from the date of its creation – 70 years from the date of creation); in sound recordings (in general) and typeface works – 70 years from the date of publication; and in State works – 50 years from the date of creation.

The duration of copyright protection will end at the end of the calendar year in which such protection is set to expire.

1.7 Is there any overlap between copyright and other intellectual property rights such as design rights and database rights?

As detailed in question 1.4, in general, a design is excluded from copyright protection; in the rare instance in which a design is neither used nor intended for use in industrial manufacture, it may enjoy both design rights and copyright.

A logo and slogan may enjoy both copyright and trademark rights.

There is no *sui generis* database right in Israel (a database may enjoy copyright protection if there is originality in the selection or arrangement of the data).

1.8 Are there any restrictions on the protection for copyright works which are made by an industrial process?

As detailed above, designs which are used or intended for use in industrial manufacture (in general, manufacture of more than 50 articles incorporating the design) are excluded from copyright protection.

1.9 Would Copyright subsist in a work which is created by a Generative AI tool?

The question of whether AI-generated works can be protected by copyright is not regulated under the Israeli Copyright Act

and has not yet been addressed by the judicial instances. However, in a decision of the former Israeli Commissioner of Patents rendered in March 2023,¹ which is subject to a pending appeal, it was held that an AI-generated invention is not protectable under the Patent Act as the inventor must be a human being. The judicial instances in Israel are likely to apply the same approach with respect to the copyrightability of works generated entirely by an AI tool absent any human involvement as the Israeli Copyright Act only extends to works created by human beings.

2 Ownership

2.1 Who is the first owner of copyright in each of the works protected (other than where questions 2.2 or 2.3 apply)?

The first owner of copyright in a literary, artistic, musical and dramatic work is the author; in a sound recording – the producer.

2.2 Where a work is commissioned, how is ownership of the copyright determined between the author and the commissioner?

In general, the first owner of copyright in a commissioned work is the author, unless otherwise agreed between the author and the commissioning party, expressly or impliedly. In a commissioned work, i.e., a portrait or a photograph of a family event or other private event, the first owner of copyright is the commissioning party. In a commissioned work, in which the commissioning party is the State, the first owner of copyright is the State, unless otherwise agreed.

2.3 Where a work is computer-generated (whether or not using AI), who is the first owner of copyright?

The first owner of copyright in a computer-generated work (assuming that the work is not generated autonomously by a computer system without human involvement) is presumably the person who undertook the necessary measures for the creation of the work, but the issue is not specifically regulated in the Israeli Copyright Act and relevant local case law is very scarce.

2.4 Is there a concept of joint ownership and, if so, what rules apply to dealings with a jointly owned work?

A copyright-protected work can have joint ownership: among others, a work created jointly by several authors, wherein it is not possible to discern each author's contribution to the work, will be regarded as a joint work, and each author will be regarded as a joint first owner of copyright in the work. The Copyright Act does not set rules addressing a jointly owned copyright work. In accordance with general principles of law, presumably, a joint owner may: (a) unless otherwise agreed, assign his share in the copyright or reasonably exploit the copyright work (i.e., in a manner that would not prevent the other joint owners from reasonably exploiting the work – it is not clear whether 'reasonable exploitation' may involve also the grant of a non-exclusive licence to a third party) without the consent of the other joint owners; or (b) demand the dissolution of the joint ownership (even if otherwise agreed, the

court has discretion to order the dissolution of joint ownership at the request of a joint owner). In any event, joint ownership of copyright (let alone deferring to the default rules of joint ownership under the general principles of law) is generally not recommended and is prone to create conflicts.

3 Exploitation

3.1 Are there any formalities which apply to the transfer/assignment of ownership?

The Copyright Act provides that a contract for the assignment of copyright or the granting of an exclusive licence therein requires a written document. However, Israeli case law has held that the requirement to put the contract in writing is merely probative and not constitutive.

3.2 Are there any formalities required for a copyright licence?

With respect to an exclusive licence – see question 3.1. There are no formalities required for a non-exclusive copyright licence.

3.3 Are there any laws which limit the licence terms parties may agree to (other than as addressed in questions 3.4 to 3.6)?

No, there are no restrictions on licence terms.

3.4 Which types of copyright work have collective licensing bodies (please name the relevant bodies)?

TALI (The Collecting Society of Film and Television Creators in Israel Ltd.) is the collective licensing body for Israeli screenwriters and directors.

ACUM is the collective licensing body for Israeli authors, composers, lyricists, poets, arrangers and music publishers.

The Israeli Chapter of the International Federation of Phonographic Industry (IFPI) and PIL (The Israeli Federation of Independent Record Producers) are both collective licensing bodies for producers of sound recordings.

In addition, there are collective licensing bodies for Israeli performers (who enjoy quasi-copyright protection in their performances): EILAM (for musicians); and Eshkolot (for artists, actors, singers, entertainers and dancers).

3.5 Where there are collective licensing bodies, how are they regulated?

Israeli collective licensing bodies are subject to the general corporate legislation in Israel and to the article of association of each body. These bodies operate under terms set by the Israel Competition Authority.

3.6 On what grounds can licence terms offered by a collective licensing body be challenged?

Licence terms offered by a collective licensing body may be challenged on the grounds that they violate the terms set by the Israel Competition Authority or constitute 'depriving conditions' in a uniform contract.

4 Owners' Rights

4.1 What acts involving a copyright work are capable of being restricted by the rights holder?

The rights holder in a copyright work has the exclusive right to exploit the work, or a substantial part thereof, in the following manner(s), depending on the category of the work:

- (1) Publication – in respect of a work not yet published.
- (2) Reproduction (i.e., making a copy of the work in any material form, including: (a) storage of the work through any technological means; (b) making a three-dimensional copy of the work if it is a two-dimensional work and *vice versa*; and (c) making a temporary copy of the work) – in respect of all categories of works.
- (3) Public performance (i.e., aural playing or staging of the work publicly, either directly or through use of a device) – in respect of all categories of works excluding artistic works.
- (4) Broadcasting (i.e., transmitting, by wire or wireless means, the sounds or images that are contained in the work, to the public) – in respect of all categories of works.
- (5) Making a work available to the public (i.e., doing an act in relation to the work that will enable members of the public to access the work from a place and at a time chosen by them) – in respect of all categories of works.
- (6) Making a derivative work (i.e., making an original work which is substantially based upon the copyright work, such as a translation or adaptation) and exploiting the derivative work in any manner set forth in sections (1) to (5) above – in respect of all categories of works excluding a sound recording.
- (7) Rental (i.e., rental of physical copies of the work to the public for a commercial purpose but excluding rental of a computer program or sound recording which constitutes an integral part of another object where such other object is the primary object of the rental) – in respect of a sound recording, cinematographic work and computer program. A person who exploits a copyright work in any of the manners specified above, or who authorises another person to exploit a copyright work in any such manner, without the consent of the copyright owner, infringes the copyright, subject to the exceptions detailed in question 5.4.

4.2 Are there any ancillary rights related to copyright, such as moral rights, and, if so, what do they protect, and can they be waived or assigned?

The author of a copyright work (excluding a computer program and a sound recording, and with respect to the 'right of association', excluding also a typeface) has moral rights in relation to the work during the entire period of the copyright. Moral rights protect the author's 'right of association' (i.e., the right of the author to have his name identified with his work to the extent and in the manner suitable in the circumstances) and 'right of integrity' (i.e., the right of the author that no distortion shall be made of the work, nor mutilation or other modification, or any other derogatory act in relation to the work, where any such act would be prejudicial to the author's reputation and unreasonable under the circumstances).

Moral rights are personal (i.e., they are available to the author even if he/she does not have copyright in the work or if he/she has assigned the copyright in the work) and not assignable but can be waived by the author.

4.3 Are there circumstances in which a copyright owner is unable to restrain subsequent dealings in works which have been put on the market with his consent?

The Israeli Copyright Act opts for 'international exhaustion' of rights (i.e., a copy imported into Israel, which has been made outside of Israel with the consent of the copyright owner in the country in which it was made, shall not be deemed an infringing copy).

5 Copyright Enforcement

5.1 Are there any statutory enforcement agencies and, if so, are they used by rights holders as an alternative to civil actions?

The Israeli Copyright Act incorporates the border measure provisions provided in Part III, Section 4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). These measures allow the Israeli Customs to require the copyright owner to submit a bank guarantee as security for the damages that may be caused to the importer and to file legal action against the importer within a prescribed period of time. In practice, most of the TRIPS seizures are concluded promptly after the seizure and only rarely require full-scale litigation.

In addition, the following measures are available:

- **Expedited Procedure:** under Israeli Customs working guidelines, Israeli Customs set up a simplified procedure whereby the Customs' staff can confiscate and destroy shipments of infringing goods without requiring the copyright owner to take legal action or to file a bank guarantee. Israeli courts have denied attempts to question those Customs' broad powers and have held that the TRIPS border measures provisions do not derogate from Customs' general powers to seize goods whose importation is in violation of IP or other laws. Customs' expedited procedure allows for a cost-effective means of combating piracy and creates a substantial barrier against the importation of infringing goods into Israel.
- **IP Unit of the Israeli Police:** as the marketing of infringing goods amounts to a criminal offence, the Israeli police set up an IP Unit that monitors the markets, obtains intelligence (from copyright owners, among others) and raids the premises of businesses manufacturing and marketing infringing products. While police raids and confiscation of infringing goods are in themselves valuable, criminal prosecution is slow and inefficient with unsatisfactory criminal sanctions.
- **Goods in Transit:** in accordance with the bilateral economic agreement between Israel and the Palestinian Authority and the 1994 Act implementing it, Israel and the Palestinian Authority constitute a single Customs Union that permits free movement of goods. The Supreme Court held that importation of goods into Israel for the purpose of sale or marketing in the areas of the Palestinian Authority is equivalent to the importation of goods into Israel for the same purpose (LCA 2736/98 *Habboub Bros Co v Nike International Ltd*, 54(1) PD 614). Although the subject matter of this ruling was trademark-infringing goods, the Tel Aviv District Court clarified that this ruling also applies to copyright-infringing goods (C.F. (Tel Aviv) 1007/06 *Disney Enterprises Inc. v International Line for Trading Company*). The District Court accordingly held that the importation into

Israel of goods-in-transit destined into the areas of the Palestinian Authority may amount to an infringement of copyright in Israel. Israeli Customs are therefore authorised to seize copyright-infringing goods destined for the Palestinian Authority. In practice, a significant part of customs' seizures is of shipments of infringing products imported by residents of the Palestinian Authority and destined for these areas.

5.2 Other than the copyright owner, can anyone else bring a claim for infringement of the copyright in a work?

Other than the copyright owner, an exclusive licensee can also bring a claim for infringement of the copyright in a work. A claim for infringement of moral rights may be brought by the author, and if the infringement occurred after his death, by his relatives (a spouse, descendant, parent or sibling).

5.3 Can an action be brought against 'secondary' infringers as well as primary infringers and, if so, on what basis can someone be liable for secondary infringement?

Yes, as noted in question 4.1, a person who authorises another person to infringe a copyright work, infringes the copyright. In addition, a person who does one of the following acts with respect to a copyright-infringing copy infringes the copyright, if he has actual or constructive knowledge that said copy is an infringing copy:

- Sale or rental, including offer or display for sale or rental. Possession or import for a commercial purpose.
- Distribution on a commercial scale.
- Exhibition to the public in a commercial manner.

Secondary infringement of moral rights: a person who does one of the above listed acts (excluding import) with respect to a copy of a work (excluding a building or other structure), and such act constitutes an infringement of moral rights, infringes the moral rights if he has actual or constructive knowledge that such copy infringes the moral rights.

Secondary infringement of the right of public performance: a person who permits another person, for financial gain, to publicly perform a copyright work in a place of public entertainment, without the consent of the copyright owner, infringes the copyright, if he has actual or constructive knowledge that said performance would constitute an infringement.

Secondary infringement of the right of making a work available to the public: the Copyright Act provides that a person who facilitates or expands public access to a copyright work which was made available to the public in an infringing manner, infringes the copyright, provided that his actions are made 'in the course of business' and for financial gain, and he has actual or constructive knowledge that the work was made available to the public in an infringing manner.

Contributory infringement under general principles of law: in addition to the above which is provided under the Copyright Act, the Israeli Supreme Court has incorporated the general doctrine of contributory infringement into Israeli jurisprudence (C.A. 5977/07 *The Hebrew University of Jerusalem v. Schocken Publishing House*) and this doctrine is also applicable to copyright infringements. Under the Supreme Court ruling, three cumulative conditions must be satisfied for imposing contributory liability on intermediate parties:

- (I) The plaintiff must prove that at least one actual direct infringement has occurred.

- (II) The defendant must possess actual knowledge of the infringing activity (i.e., constructive knowledge will not suffice).
- (III) The contribution must be significant and substantial.

5.4 Are there any general or specific exceptions which can be relied upon as a defence to a claim of infringement?

Under the Copyright Act, the following uses of a copyright work are permitted:

- (1) **Fair use:** fair use of a copyright work for purposes such as: private study; research; criticism; review; journalistic reporting; quotation; or instruction and examination by an educational institution.
- (2) **Use of works in juridical or administrative procedures:** making use of a copyright work in juridical or administrative procedures according to law, including reporting on such proceedings, to the extent that is justified taking into consideration the purpose of the use.
- (3) **Reproduction of a work deposited for public inspection:** copying of a copyright work that is accessible to the public by law, if consistent with the purpose for which the work was made accessible to the public, and to the extent that is justified taking into consideration the said purpose.
- (4) **Incidental use:** incidental use of a copyright work by way of including it in a photographic work, in a cinematographic work or in a sound recording, as well as the use of such work which thus includes a copyright work (the deliberate inclusion of a musical work, including its accompanying lyrics, or of a sound recording embodying such musical work, in another work will not be deemed an incidental use).
- (5) **Broadcast or copying of work in public place:** broadcasting or copying by way of photography, drawing or similar visual description, of a copyright architectural work, sculpture work or work of applied art, where such work is permanently situated in a public place.
- (6) **Computer programs:**
 - (a) **Back-up:** making a back-up copy of a copyright computer program, by a person who possesses an authorised copy (provided that such copy is destroyed when no longer needed for back-up).
 - (b) **Maintenance and service:** copying a copyright computer program for purposes of maintenance of an authorised copy of the program or of a computer system, or for purposes of providing a service to a person in possession of an authorised copy of the computer program, provided that it is necessary for using the program.
 - (c) **Repair, interoperability and security:** copying a copyright computer program, or making a derivative work therefrom, by a person who possesses an authorised copy of the computer program, for the following purposes and to the extent necessary to achieve these purposes:
 - (I) Use of the computer program for purposes for which it was intended, including correction of errors in the computer program or making it interoperable with a computer system or with another computer program.
 - (II) Examination of the data security in the program, correction of security breaches and protection from such breaches.

- (III) Obtaining information that is needed to adapt a different and independently developed computer system or program, in such a way that it will be interoperable with the computer program.
- (7) **Recording for purposes of broadcast:** recording of a work by a person permitted to broadcast it, if the copy is made solely for use in his broadcasts (provided that the recording is destroyed within six months from the first broadcast, or within a later period if so prescribed by law (however, the recording need not be destroyed if it is preserved for archival purposes or as long as the broadcaster is permitted to broadcast the recorded work).
- (8) **Temporary copies:** transient copying, including incidental copying, of a copyright work, if such is an integral part of a technological process the only purpose of which is to enable transmission of the work as between two parties, through a communications network, by an intermediary entity, or to enable any other lawful use of the work, provided that said copy does not have significant economic value in itself.
- (9) **Additional artistic work made by the author:** making a new artistic work which comprises a partial copying of an earlier work, or a derivative work from an earlier work, as well as any use of the said new work, by the author of the said earlier artistic work (even where said author is not the owner of the copyright in the earlier artistic work), provided that the new work does not repeat the essence of the earlier work or constitute an imitation thereof.
- (10) **Renovation and reconstruction of buildings:** making use of the following works for the purpose of renovation or reconstruction of a building or other structure:
- (I) The architectural work is the aforesaid building or structure or a model thereof.
 - (II) The drawings and plans that were used with the consent of the owner of the copyright therein, at the time the said building or structure was originally constructed.
- (11) **Typefaces:** making use of a typeface in typing, word processing, print and printing, as well as possessing a product for such use, even if made by using a computer program or another product which infringes the right in the typeface (however, a copy embodying a copyright typeface, made without the consent of the copyright owner, remains a copyright-infringing copy). In addition, in evaluating a claim for copyright infringement in a typeface, the existing variety of options for designing letters, digits and other language symbols should be taken into consideration.

In addition to the above, the Copyright Act permits, under certain conditions, the public performance of copyright works in educational institutions, making copies of copyright works in libraries and archives, making copyright works accessible for persons with disabilities and the manufacture of copyright sound recordings subject to royalty payment and private copying of copyright works. Furthermore, in accordance with Amendment No. 5 to the Copyright Act, use of orphan works is also permitted under certain conditions (subject to royalty payment for commercial use, in the event that the copyright owner steps forward).

5.5 Are interim or permanent injunctions available?

In general, both interim and permanent injunctions are available. An exception exists regarding infringing structures

under construction: where the construction of a building or other structure has begun, and there is (or there will be upon the completion of construction) copyright or moral rights infringement in that building or other structure, an order to enjoin the construction (or to tear down the construction) will not be available.

5.6 On what basis are damages or an account of profits calculated?

Damages are calculated based on the actual damages suffered by the plaintiff due to the infringement. An account of profits is calculated based on the profits of the infringer that are attributable to the infringement. In general, the plaintiff must elect between recovering his damages and recovering the infringer's profits.

A third alternative is an award of statutory damages without proof of injury, in an amount not exceeding NIS 100,000 in respect of each copyright or moral rights infringement (however, infringements carried out as part of a single set of activities shall be deemed a single infringement). In accordance with Amendment No. 5 to the Copyright Act, statutory damages are no longer available, under certain conditions, with respect (among others) to making artistic works available to the public over the internet by an individual person or a small non-profit entity.

An innocent infringer (an infringer who did not know and could not have known that copyright subsists in the infringed work) will not be liable for any damages. The threshold to prove that the infringer was 'innocent' is very high and the defence is rarely invoked.

5.7 What are the typical costs of infringement proceedings and how long do they take?

Costs of copyright litigation in Israel vary depending on the complexity of the matter, the type of copyright work and the scope of the evidence. There is no 'general' ballpark cost estimate for different cases involving different types of works and different levels of complexity. The duration of infringement proceedings (in the first instance) is anything between 24 and 36 months and sometimes significantly longer. Preliminary injunctions and search and seizure (Anton Piller) orders can, however, be obtained within days to weeks depending on the urgency of the matter.

5.8 Is there a right of appeal from a first instance judgment and, if so, what are the grounds on which an appeal may be brought?

Yes, there is a right of appeal from a first instance judgment. The appellate court has very wide discretion to remedy any error made by the first instance court.

5.9 What is the period in which an action must be commenced?

The period of limitations for commencing an action is seven years from the date on which the cause of action arose. If the plaintiff was not aware of the infringement, for reasons beyond his control, the seven-year limitation period will only begin on the day on which the infringement has become known to the plaintiff. Furthermore, in case of a continuing infringement,

only the 'part' of the infringement that took place prior to the seven-year period will be subject to limitations but the cause of action itself will not be lost. Thus, the plaintiff will be entitled to an injunction restraining prospective infringements and to damages for the 'part' of the infringement that is not subject to limitations.

6 Criminal Offences

6.1 Are there any criminal offences relating to copyright infringement?

Yes, any of the following acts constitutes a criminal offence:

- (1) Making, possessing or importing into Israel an infringing copy for the purpose of trade therein.
- (2) Selling, renting or distributing an infringing copy of a work or doing any of these acts on a commercial scale.
- (3) Making or possessing an object designed for the production of infringing copies of a work for trading therein.
- (4) In accordance with Amendment No. 5 to the Copyright Act, broadcasting or making a copyright work available to the public in an infringing manner, if made on a commercial scale, 'in the course of business' and for financial gain.

6.2 What is the threshold for criminal liability and what are the potential sanctions?

In general, the threshold for imposing criminal liability is general intent. The potential sanctions vary according to the type of offence:

- (1) Making or importing into Israel an infringing copy for the purpose of trade therein is subject to a penalty of up to five years' imprisonment or a fine in the amount of up to NIS 2,260,000.
- (2) Making or possessing an object designed for making of infringing copies for the purpose of trading therein is subject to a penalty of up to one year imprisonment or a fine in the amount of up to NIS 452,000.
- (3) Any other offence is subject to a penalty of up to three years' imprisonment or a fine in the amount of up to NIS 1,582,000. In case the offence was committed by a corporation, the fine prescribed for that offence will be doubled. In addition, in case the offence was committed by a corporation or its employee, an office holder in the corporation who is responsible for the field in which the offence was committed or is an active manager or a partner, other than a limited partner, will be liable to a fine in the amount of up to NIS 226,000, unless he proves that he had supervised and done all that is possible to prevent the occurrence of the offence. In practice, courts are forgiving and criminal sanctions are not imposed to their fullest extent or even close to that.

7 Current Developments

7.1 Have there been, or are there anticipated, any significant legislative changes or case law developments?

Several bills in copyright matters have been introduced into the Knesset (Israeli parliament) in recent years. These bills propose, among others, to exempt, under certain conditions, public performance of copyright-protected works in the

premises of small businesses and to regulate the payment of royalties to collective licensing organisations.

7.2 Are there any particularly noteworthy issues around the application and enforcement of copyright in relation to digital content (for example, when a work is deemed to be made available to the public online, hyperlinking, in NFTs or the metaverse, etc.)?

See question 5.3 (obviously, the imposing of liability for secondary infringement of the right of making a work available to the public, which was introduced in Amendment No. 5 to the Copyright Act, is of particular relevance to the issue of hyperlinking).

In addition, the courts are authorised to issue blocking orders to internet service providers (ISPs) with regard to copyright-infringing sites and to order ISPs to disclose the identity of alleged infringing subscribers to prospective plaintiffs.

In addition, the Israeli Supreme Court has already ruled, in 2012, that the streaming of copyright works via the internet amounts to their 'broadcasting', and thus may constitute copyright infringement (CA 9183/09 *The Football Association Premier League Limited v John Doe*). Furthermore, the Supreme Court noted that hosting or hyperlinking to infringing content in one's internet site may amount to contributory copyright infringement.

7.3 Have there been any decisions or changes of law regarding the interaction between copyright law and the creation and deployment of artificial intelligence systems? In particular, please reference any pending (or decided) disputes where copyright owners have challenged AI developers in relation to the use of works in the development of AI tools.

The role of copyright in relation to artificial intelligence (AI) systems is not regulated in the Copyright Act and has not yet been addressed in the local case law. However, In December 2022, the Israel Ministry of Justice published an opinion on the question of whether machine learning (ML) enterprises can make unauthorised use of copyright-protected materials to train AI systems.² The Opinion concludes that apart from certain circumstances, the use of copyright-protected materials for ML is permitted under existing copyright doctrines. According to the Opinion, the use of copyright-protected materials for training AI systems will typically be covered by the fair use doctrine, but may also fall, in some cases, under the doctrine of incidental use and the doctrine of transient use (in cases where the copyright-protected materials are erased at the end of the ML process).

The Opinion, however, does not apply to the output of the ML process and indicates that there may be cases where the ML process would be protected under the Opinion, yet the output of the resulting AI system would be infringing.

Although the courts are not bound by said opinion, they are likely to give it substantial weight in relevant cases.

Endnotes

- 1 Patent Applications 268604 and 268604 in the name of Dr. Stephen L. Thaler (published on March 15, 2023).
- 2 <https://www.gov.il/BlobFolder/legalinfo/machine-learning/he/18-12-2022.pdf>



Liad Whatstein is one of Israel's best-known and most respected IP lawyers and has been involved in some of Israel's most complex and widely publicised patent, trademark and copyright disputes. Liad is broadly recognised by clients, peers and international directories as one of Israel's most successful litigators. Liad has successfully litigated some of Israel's landmark IP cases including highly precedential decisions in the copyright and trademark fields for major international clients and obtained judgments which changed significant aspects of the copyright practice in Israel. Liad has been consistently described by *Chambers*, *The Legal 500*, *IAM*, *Who's Who Legal*, *WTR* and other leading directories as a "truly great litigator" and a "celebrated name" who knows how to deliver results to clients. Liad is also a prolific writer and was the Chairman of the IP Chapter of the Israel Bar Association.

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Oren Weiner has been practising IP law for over two decades and specialises in trademark, patent and copyright laws as well as in pharmaceutical regulatory matters. Oren has been representing international clients in litigation in all judicial instances.

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