

AI and Intellectual Property

Module 11 of a course on *Ethical Issues in AI*

Prepared by

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Plagiarism?

- Generative AI can produce images or text very similar to copyrighted material.
 - *Even if the prompt does not specifically request the material or its source.*

GPT-4 response to prompt
“black armor with light sword.”

Source: G. Marcus and R. Southern,
“Generative AI has a visual plagiarism
problem,” *IEEE Spectrum*, 6 Jan 2024.



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- Generative AI can produce images or text very similar to copyrighted material.
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GPT-4 response to prompt
“animated toys.”

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Plagiarism?

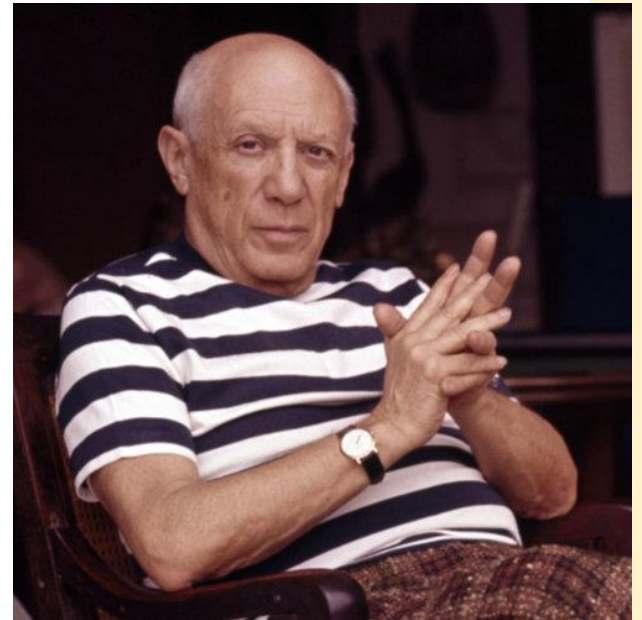
- Generative AI can produce images or text very similar to copyrighted material.
 - *Even if the prompt does not specifically request the material or its source.*
 - Because GPT etc. are trained by scraping online material.
 - *Some authors/artists claim this is **plagiarism** that threatens their **livelihood**.*
 - It allows content producers to “steal” ideas from truly creative people.
 - There have been a number of **lawsuits** (e.g. *NY Times*)
 - OpenAI has made agreements to **pay** some parties for use of copyrighted material in training set.

Plagiarism?

- The **legal** issues are unsettled.
 - *IP law is complicated and confusing*
 - ...with little coherence since genetic engineering.
- We focus on the **ethical** angle.
 - *Does generative AI unethically use others' **intellectual property**?*

“Good artists borrow, great artists steal.”

--Attributed to Pablo Picasso

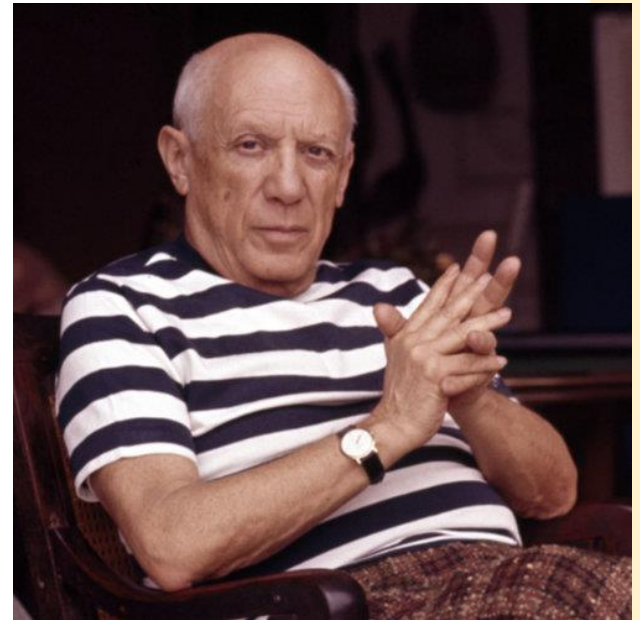


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 - *Does generative AI unethically use others' **intellectual property**?*
 - *We begin with an ethical analysis of **property**, then **IP**.*

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Property

- Violating property rights is inconsistent with **generalization principle**.
 - *The thief takes someone's property because he wants it to be **his property**.*
 - *But if no one respects property rights, there will be **no property at all** – not even for the thief.*



Intellectual property?

- But does the concept of **intellectual property** make sense?
 - *Is there an ethical basis for it?*
- The concept of **intellectual property** is relatively **recent**.
 - *Talk of “IP” can leave the impression that IP is **like other property**.*



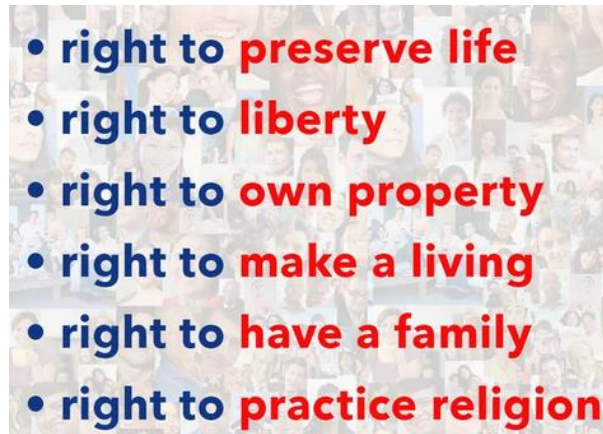
Intellectual property?

- **Patents** were introduced in 18th century to encourage **disclosure of ideas**, not to establish **property rights**.
 - For example, in the U.S. Constitution
- One cannot patent or copyright **ideas**.
- The more recent concept of “intellectual property” tends to **legitimize strong IP rights**.



Intellectual property?

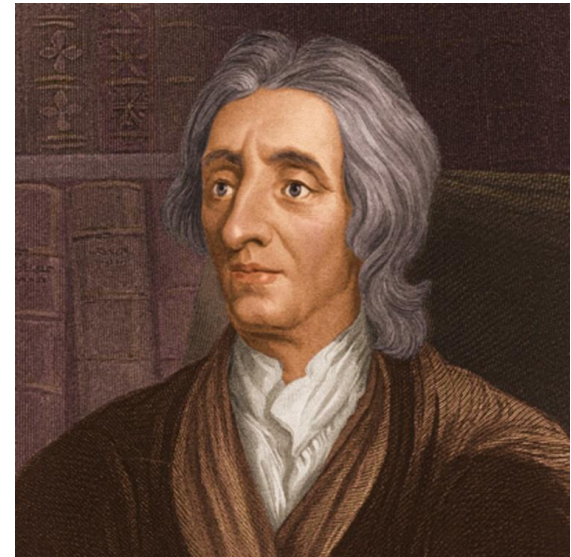
- IP is **not** like other property.
 - *One can use IP **without denying others the use of it.***
 - *Unclear that IP rights are “**natural**” rights*
 - A concept from the Enlightenment era (Hobbes, Locke, Jefferson, Rousseau, Kant)



“Natural” rights

“Natural” property rights

- John Locke defended “**natural**” property rights.
 - *Similar to autonomy argument.*
 - A home or land in which one has invested labor is **part of oneself**.
 - Yet what if one sells the home or land? No more property rights?



John Locke, 1632-1704

Agency defense of property

- One can act only if one has to freedom to choose one's actions.
 - *This presupposes some degree of **control** over one's body & immediate surroundings.*
 - *Including **exclusive possession** of **some** property.*
 - *To deny this kind of freedom is to deny **autonomy** and therefore immoral.*
 - *This argument doesn't apply to **all** property.*



Agency defense of IP?

- But again, one doesn't need **exclusive** use of IP.
 - *Others can use it simultaneously.*
 - *So agency argument does not apply to IP.*



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- There is a **utilitarian** argument for a **public policy** of respecting IP rights.

Utilitarian defense for IP

- Utilitarian argument for IP protection
 - *IP rights provide incentive to develop new ideas.*
 - This increases overall utility.
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 - IP rights cannot **override** utilitarian considerations.

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 - Unlike “natural rights,” IP rights must be justified by **consequences** to society.
 - IP rights cannot **override** utilitarian considerations.
- Public policy is not our focus. How about an **individual’s** or **company’s** obligations?

Generalization argument for IP

- Use of another's material **may not be generalizable**.
 - *Depending on the purpose (reason)*.
 - **Would the purpose be achieved** if everyone with the same purpose were to use the material in the same way?
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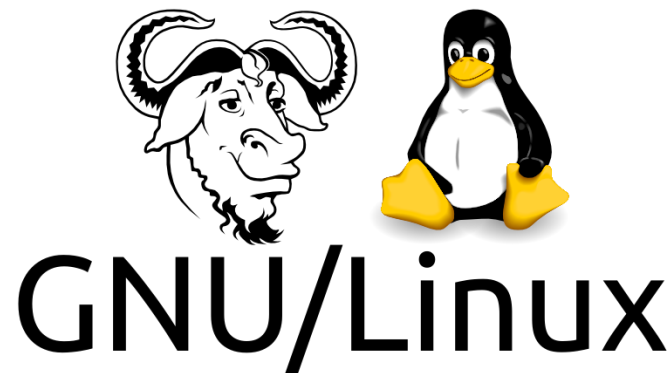
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 - *If **limited** material is quoted or reproduced for education, criticism, news, etc.? ("Fair use.") **Maybe.***

Compare with U.S. copyright law

Movement away from IP

- **Software** has been a pioneer in movement away from IP.
 - *Beginning with GNU project.* Richard Stallman, *GNU Manifesto*, 1985.
 - Examples: Linux (and Ubuntu) computer operating system.
 - “Free software” in GNU license means freedom to run, copy, distribute, change, improve – not necessarily free of cost.



Movement away from IP

- **Creative commons** has a broader purpose.
 - *Organization that promotes open source and public domain licensing.*
 - Particularly health-related
 - Provides licenses that waive various rights.
 - BY (attribution)
 - SA (share-alike)
 - NC (non-commercial)
 - ND (no derivative).



Conclusion

- Intellectual property is ethically **different** than other kinds of property.
 - *IP rights as **social policy** must be justified on **utilitarian** grounds.*
 - They are not “natural” property rights that can override utilitarian considerations.
 - *Some Internet scraping **may not be generalizable.***
 - Depending on the manner and purpose of use.
 - Requires determination of fact.
 - Generalizability may be easier to show...
 - as we move toward Creative Commons practices.