



FÉDÉRATION DES BARREAUX D'EUROPE
EUROPEAN BARS FEDERATION
VERBAND EUROPÄISCHER RECHTSANWALTSKAMMERN
FEDERACIÓN DE LOS COLEGIOS DE ABOGADOS DE EUROPA
FEDERAZIONE DEGLI ORDINI FORENSI D'EUROPA

NEW TECHNOLOGIES COMMISSION

Minutes of the Meeting

5th April 2023

Online, via Zoom

Attendance list

(In alphabetical order)

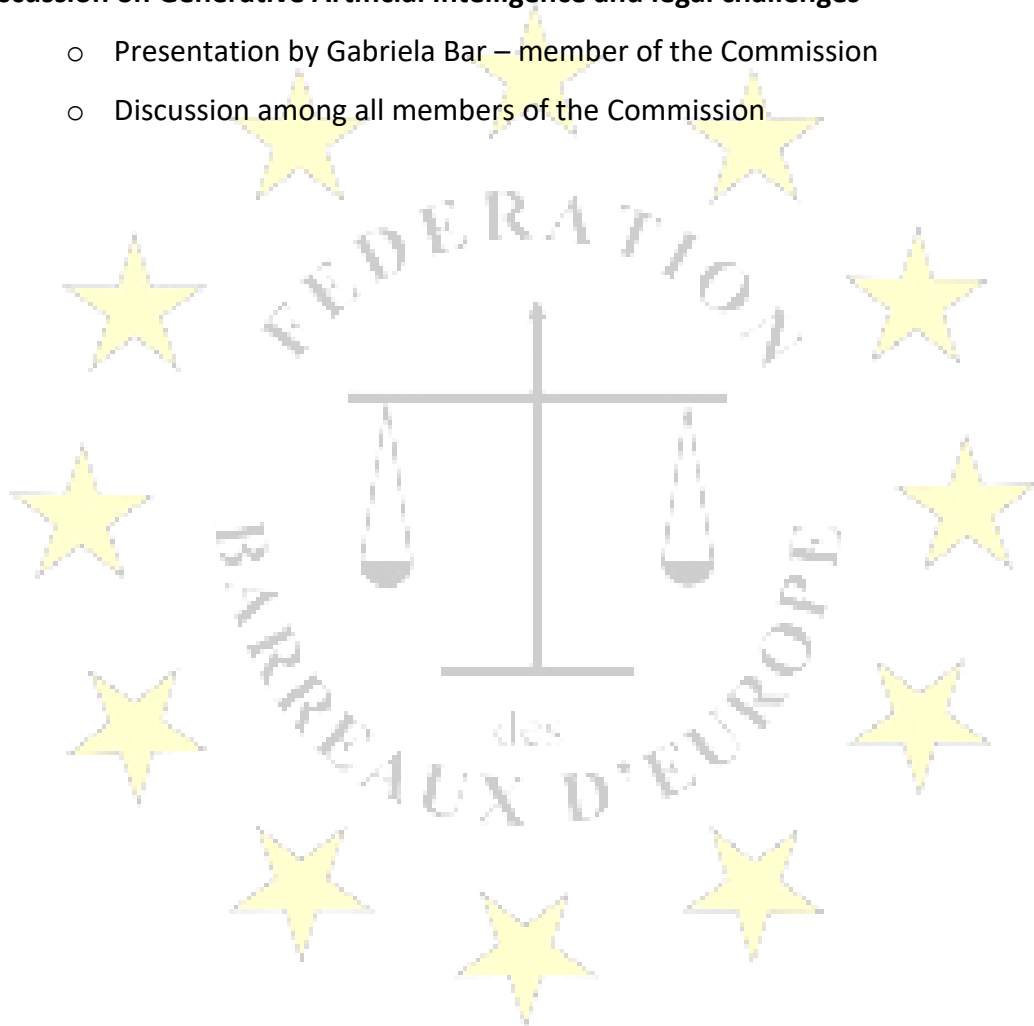
Member	Bar Association	Function	Attendance
Mario Arabistanov	Sofia (Bulgaria)	Member	<i>excused</i>
Gabriela Bar	Wrocław (Poland)	Member	✓
Maria Dymitruk	Wrocław (Poland)	President	✓
Ludmila Glembotzky	Bilbao (Spain)	Secretary	✓
Christian Klostermann	Sachsen (Germany)	Candidate	<i>excused</i>
Paulina Kolowca	Warszawa (Poland)	Member	<i>excused</i>
Izabela Konopacka	Wrocław (Poland)	Former President	<i>excused</i>
Christoph Munz	Dresden (Germany)	Member	✓
Grzegorz Policht	Wrocław (Poland)	Member	<i>excused</i>
Agnieszka Poteralska	Wrocław (Poland)	Member	<i>excused</i>
Michał Skrzywanek	Wrocław (Poland)	Member	<i>excused</i>
Francesco Spina	Lucca (Italy)	Member	✓
Sławomir Szczerba	Wrocław (Poland)	Member	✓
Francesco Tregnagli	Verona (Italy)	Vice-President	✓
Małgorzata Joanna Węgrzak	Gdansk (Poland)	Candidate	<i>excused</i>

Agenda:

- **Preliminary**

- **Opening of the meeting** (*Maria Dymitruk, President of the Commission*)

- **Discussion on Generative Artificial Intelligence and legal challenges**
 - Presentation by Gabriela Bar – member of the Commission
 - Discussion among all members of the Commission



- **Preliminary**

The topic of this meeting was brought up by the President of the Commission at the end of February, in response to the significant media coverage of the ChatGPT, which several members have tested over the past few months.

The purpose of the meeting was to discuss the potential impact of generative AI on the work of European lawyers.

- **Opening of the meeting** (*Maria Dymitruk, President of the Commission*)

The President opened the meeting, welcomed everyone and introduced Gabriela Bar, a member of the Commission who had prepared a presentation on generative artificial intelligence and the legal challenges it presents.

- **Discussion on Generative Artificial Intelligence and legal challenges**

- Presentation by Gabriela Bar

Our colleague Gabriela Bar, an experienced expert and enthusiast in new technologies and AI law, delivered an outstanding presentation on generative artificial intelligence and the legal challenges it poses.

Gabriela began by introducing the various models of generative AI and providing several examples, including images that had been generated using artificial intelligence and a legal-looking conversation fragment with the ChatGPT tool.

She also highlighted the importance of being aware of the laws surrounding generative AI, such as copyright laws, data protection laws, and intellectual and industrial property laws. Gabriela stressed the top significance of intellectual property rights and referenced lawsuits alleging infringement of these rights.

Additionally, Gabriela identified the legal challenges presented by generative AI, such as breaches of personal data protection and privacy, as well as bias and discrimination.

Towards the end of her presentation, Gabriela offered some tips on using ChatGPT. She emphasized the importance of being familiar with the laws regarding artificial intelligence and to use AI tools in compliance with them. Gabriela also advised seeking the services of a lawyer specializing in technology and data protection if in doubt.

- Discussion

Gabriela's presentation was followed by an interesting discussion.

The first to speak was Francesco Spina. As a criminal lawyer, Francesco approached the issue from a criminal law perspective and posed several thought-provoking questions. For instance, he questioned the impact of using AI tools when we don't fully understand how they work, and even raised the possibility of AI committing a crime. Additionally, he wondered how a judge could determine the authenticity of a generated product (e.g., a photograph) and whether it was created by an AI.

Next, our colleague Sławomir Szczerba followed up on Spina's point and proposed the idea that the AI itself could potentially determine whether a generated piece is genuine or not.

Gabriela then intervened and alluded to the case of a person who, after having long conversations with an AI chat room, ended up in such a state of depression that he ended up taking his own life.

At that point the President asked if any of us had used AI to perform any tasks within our work as lawyers.

The general answer was no.

Here Spina wanted to put the spotlight on the issue of privacy in the use of these tools.

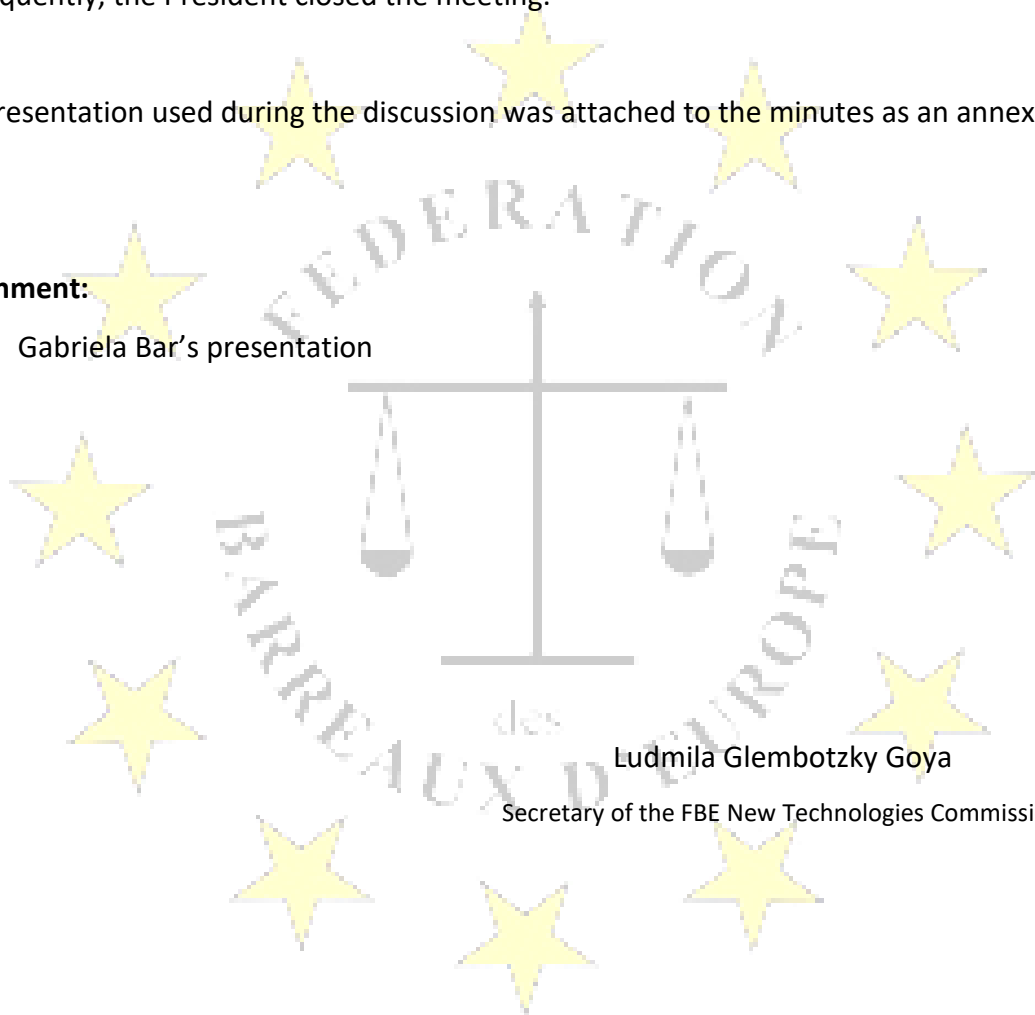
After this insightful discussion, the President proposed that we draft a "Recommendation" on Chat GPT to raise awareness about the tool and its potential legal implications. All attendees agreed with the idea, and the President announced that she would upload a document to Google Drive for members to collaborate on.

Subsequently, the President closed the meeting.

The presentation used during the discussion was attached to the minutes as an annex.

Attachment:

1. Gabriela Bar's presentation



Ludmila Glembotzky Goya

Secretary of the FBE New Technologies Commission



GENERATIVE AI – LEGAL CHALLENGES

DR GABRIELA BAR

 szostek_bar i partnerzy

MODELS OF GEN AI - ANN

- GAN (*Generative Adversarial Network*)
- *Diffusion models*
- *Seq2Seq*
- *Long short-term memory* – LSTM
- *Variational autoencoder* (VAE)

The diffusion model is already being used to reconstruct **high-resolution images of human brain activity**.

This allows visual images to be created **directly** from the human imagination without the need for external visual input..

- <https://news.berkeley.edu/2011/09/22/brain-movies/>



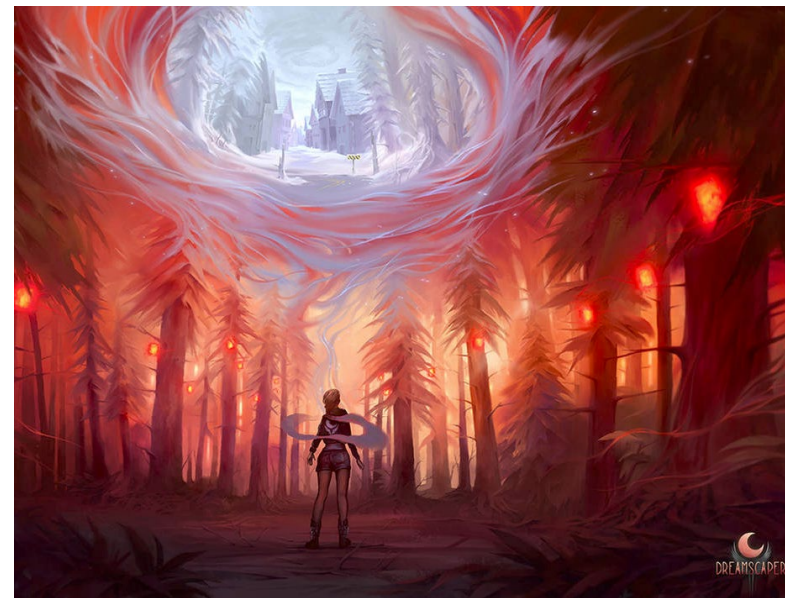
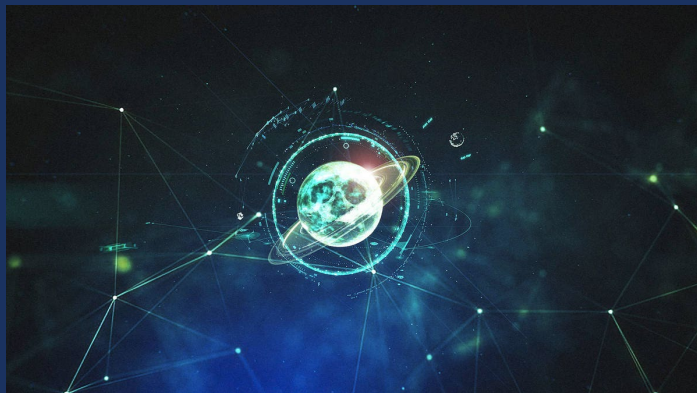
EXAMPLES OF AVAILABLE APPLICATIONS

- Chat GPT
- DALL-E2
- MuseNet
- Stable Diffusion
- DeviantArt
- Midjourney

STABLE DIFFUSION



DEVIANT ART



CHAT GPT



Hi :) What kind of legal problems ChatGPT or other Generative AI may cause?

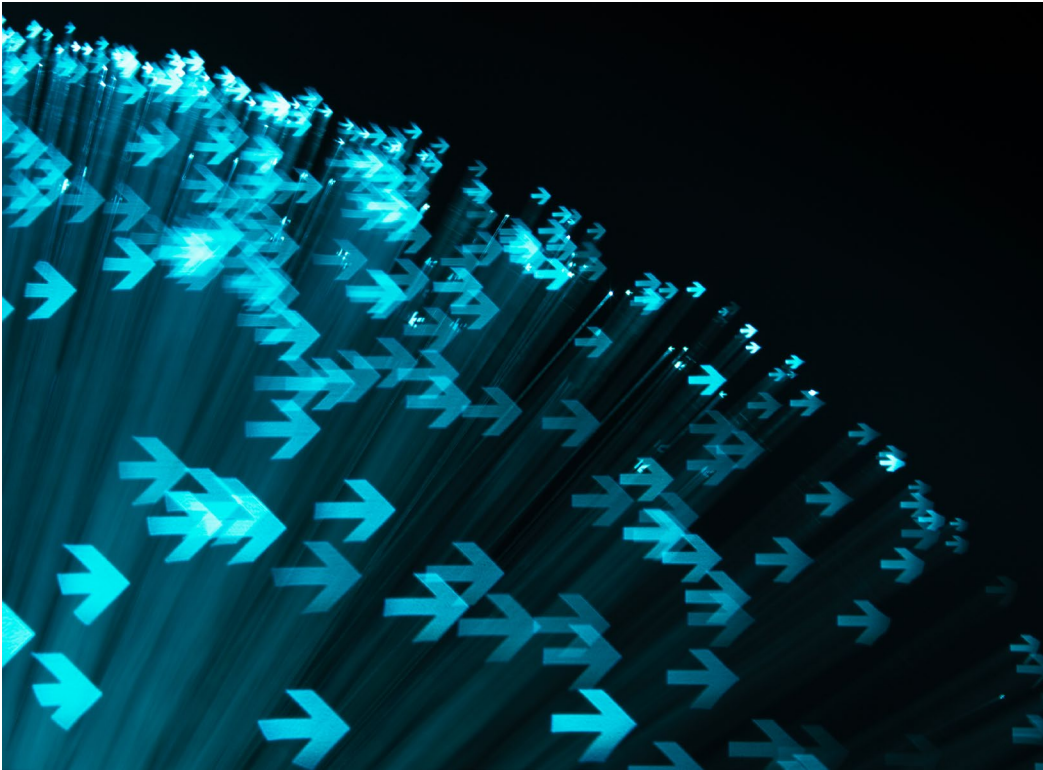


As an AI language model, ChatGPT itself is not capable of causing legal problems. However, there are potential legal issues that could arise in connection with the use of AI language models like ChatGPT, and these issues may depend on the specific use case and context. Here are a few examples of potential legal problems that could arise:

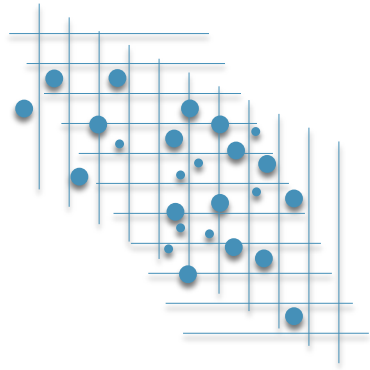


1. Intellectual Property Infringement: AI language models like ChatGPT can generate text that may be similar or identical to existing copyrighted works, which could potentially lead to claims of infringement.
2. Privacy and Data Protection: AI language models require large amounts of data to train and generate language, and this data may contain sensitive information. There could be privacy concerns related to the collection and use of this data.
3. Bias and Discrimination: AI language models may inadvertently perpetuate or amplify biases and discrimination present in the data used to train them. This could lead to legal challenges related to discrimination and unfair treatment.
4. Misinformation and Liability: AI language models can generate text that is factually incorrect or misleading. In some cases, this could lead to legal liability if the generated text is used to make decisions or provide advice that causes harm.

GEN AI FOR LAWYERS



- Generative AI can be understood as the ability of computer software to create content that **would meet the requirements of copyright protection** or that would be subject to copyright **if created by humans**.
- *[M. Miernicki, I. Ng (Huang), Artificial intelligence and moral rights, Springer 2021, s. 319].*



Copyright?
Industrial property Law?



Personal rights, personal
data?



Combating unfair competition,
obligation (contract) laws?

LAWS THAT MAY APPLY

GEN AI & IPR

- In most jurisdictions, creative works qualify for copyright protection if they are original, with most definitions of originality requiring **human authorship**. This is the case, e.g. in Spain, Germany and Poland.
- In the EU, the Court of Justice of the European Union (CJEU) has also ruled on various occasions, in particular in its landmark judgment in the *Infopaq* case (Infopaq International A/S vs Danske Dagbaldes Forening, C-5/08), that copyright only applies to original works and originality must reflect "the author's own intellectual creation". **The original work must therefore reflect the personality of the author, which means that the author must be human.**
- Also in the United States, the US Copyright Office (USCO) has declared that it will register original works of authorship as long as such works are **man-made**.
- However, there are also other concepts in the world that allow **attributing the authorship of such works to the creator of the computer program** (Hong Kong, India, Ireland, New Zealand and Great Britain).

HUMAN CREATIVE CONTRIBUTION



- It is possible to attribute the creation created by AI with the features of a work within the meaning of IPR - but **it depends on the specific case and the creative contribution of a human being.**
- How much human work and how much artificial intelligence?
- For example, in **generative art**, it is said that about 70 percent. is the artist's contribution and 30 percent. computer program.
- There is an environment called **AI artists**: in the UK - Memo Akten; in Germany - Mario Klingemann, in the United States - Mike Tyka, in Canada - Sougwen Chung, in Poland - Ivona Tau.

LAWSUITS

Lawsuits against GitHub Copilot, Stability AI, DeviantArt and Midjourney - based on allegations of copyrights infringement by:

- Multiplication of works - primarily at the stage of downloading them in order to train the AI,
- Creating and distributing "derivatives"(?),
- Indirect copyright infringement - providing a tool through which others can create forgeries/plagiarisms of other people's works,
- Removal or "circumvention" of rights management information (copyright notices, titles, names of authors and copyright holders (called CMI)).

LEGAL CHALLENGES



Violation of the right to the image/reputation/name - by using the names of the creators of the original images for advertising purposes, sales by the possibility of generating works "in the style of a given creator" (e.g. phrases entered into prompts such as "by Greg Rutkowski", "by Thomas Kinkade" or "Beksiński style" - as in the picture).

Unfair market practices - leading to the creation of works competing with the works of the original creators (unauthorized imitation, resulting in the risk of misleading as to the identity of the product).

LEGAL CHALLENGES

- **Copyright infringement:** Generative AI models may generate texts or images that may be similar to existing copyrighted works;
- **Trademark infringement:** Generate Images Using Registered Trademarks (as shown).
- **Breach of personal data protection and privacy:** the data used by GenAI may contain sensitive information, including personal data; data breaches risk (ChatGPT).



LEGAL CHALLENGES

- **Responsibility for the results generated:** if the output of a generative AI model is used in a way that causes harm, questions may arise about who is responsible for that harm (e.g. an article generated by the AI contains false information that affects the reputation or reputation of a given person/company)
- **Bias and Discrimination:** GenAI can perpetuate the biases and discrimination present in the data used to train them.
- **Non-compliance with sectoral regulations:** Depending on the industry or sector, there may be specific regulations on how information or data can be used (banking secrecy, professional secrecy).

LEGAL CHALLENGES – TERMS & CONDITIONS OF AI SUPPLIERS

- If text or images (and other content) generated by AI are not subject to copyright, and therefore cannot be considered derivative works. Therefore, there are no legal restrictions on the modification of AI products and their dissemination.
- However, there are limitations resulting from the general conditions or regulations of generative AI providers and they apply as relative (obligatory) rights.
- For example, the *Midjourney Terms and Conditions* stipulate that Paid Members are classified as "owners" of the resources they create and can use them for any commercial purpose. It includes marketing materials, posters, book covers, album covers, prints on clothing, labels on goods.
- **But regardless, all graphics generated for the Company by Midjourney will continue to be used for subsequent AI-created images.**

A PIECE OF ADVICE FROM CHAT GPT :)

1. Familiarize yourself with the laws regarding artificial intelligence. Understand what laws govern the use of AI and what requirements for protecting intellectual property rights and protecting privacy must be followed.
2. Check that you have rights to use the data you use to train AI models. If you use data that you don't own, make sure you have the rights to use it, and if you don't, get the appropriate permissions or licenses.
3. Only use AI tools that are legal and fully compliant with the law. Make sure you use tools that do not infringe on the copyright or trademark rights of others.
4. Ensure adequate data security. When using AI, personal data is stored and processed in different ways. Therefore, you must comply with privacy and data security requirements such as the GDPR.
5. Conduct an internal risk analysis and draw up an action plan. Put in place a systematic AI risk assessment process. Create an action plan to ensure your business meets AI regulatory requirements.
6. **Use the services of specialists. Consult a lawyer specializing in technology law or a data protection expert to help you understand and comply with legal requirements regarding the use of AI.**



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THANK YOU

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