Proskauer

Anthropic Joins the Party, Offers Copyright Shield to Enterprise AI Customers

New Media and Technology Law Blog on **December 19, 2023**

On December 19, 2023, AI research company Anthropic announced that it had updated and made publicly available its Commercial Terms of Service (effective Jan 1, 2024) to, among other things, indemnify its enterprise Claude API customers from copyright infringement claims made against them for "their authorized use of our services or their outputs." Specifically, Anthropic agrees to defend commercial customers from a "Customer Claim," which means "a third-party claim, suit, or proceeding alleging that Customer's paid use of the Services (which includes data Anthropic has used to train a model that is part of the Services) in accordance with these Terms or Outputs generated through such authorized use violates third-party patent, trade secret, trademark, or copyright rights."

With this announcement near the close of 2023, Anthropic has joined other major generative AI ("GenAI") providers – including Microsoft, Adobe, Shutterstock, OpenAI, IBM, Google – in rolling out intellectual property protection for GenAI outputs. As we discussed in a prior post in our ongoing series on GenAI contractual terms, such copyright protections are subject to applicable limitations set forth as carve-outs from indemnification protection in each provider's terms and conditions and generally are not applicable to customers of free versions of GenAI tools. For instance, in Anthropic's updated Commercial Terms, the indemnification would not apply to certain types of claims related to customers' Prompts or uses of the service that violate use restrictions in the Terms, or arise from "willful misconduct or violations of law." In addition, Anthropic's Commercial Terms exclude "modifications made by Customer to the Services or Outputs," "the combination of the Services or Outputs with technology or content not provided by Anthropic," and certain patent or trademark-related violations, among other things.

As we've discussed in an earlier post, determining whether a given GAI tool is right for a particular business requires an analysis of the tool's terms and conditions in their entirety, as well as nonlegal considerations like pricing and technical capabilities. With copyright protection for certain GenAI customers having become standard over the past year, an examination of a provider's terms should also include the IP protection provisions offered for paid or enterprise customers (along with any relevant exclusions). While some courts have recently trimmed claims in various copyright and privacy lawsuits against GenAI providers over the scraping of copyrighted and other works to train GenAI models, the suits, in large part, remain ongoing and present various unsettled IP issues for the courts to sort through before customers might gain some clarity of the GenAI liability landscape, thus making copyright protections welcome additions for customers. Before relying on such protections, however, customers should of course examine each provider's terms and indemnification provisions in their entirety, with the customer's specific (or potential) uses in mind.

View Original

Related Professionals

- **Peter J. Cramer**
  Associate