CLIENT ALERTS & INSIGHTS

AI and IP: Leveraging Opportunities for Your Business

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Artificial intelligence (AI) is rapidly transforming the world around us, and intellectual property (IP) is no exception. AI is being used to create new and innovative products and services, and it is also being used to enhance the efficiency and effectiveness of IP management. While this new technology may pose some risks, Benesch Intellectual Property Partner Eric Krischke says business owners can benefit from utilizing AI to build, manage, and protect their IP assets.

How does generative AI impact intellectual property?

Generative AI is having a significant impact on intellectual property. We are seeing it being used to create entirely new IP, including AI-generated art, music, and literature, and even to create new inventions and technologies. It is also being used to improve the efficiency and effectiveness of intellectual property management. AI can help automate tasks like patent searching, trademark monitoring, and copyright infringement detection, which in turn can free up time to focus on more strategic tasks.

AI can also be utilized to improve the accuracy and efficiency of IP due diligence. For example, AI can be used to search through large volumes of data to identify potential IP risks, such as conflicting trademarks or patents. This can help businesses make informed decisions regarding when to invest in new IP vs. when to avoid doing so. Additionally, AI can be used to identify and combat IP Infringement. AI-powered watermarking and fingerprinting technologies, for instance, may be utilized to protect IP and help businesses identify and prosecute counterfeiters and other infringers.

What legal and ethical challenges need to be addressed in the age of AI-powered IP?

Inventorship, Authorship and Ownership. Who owns AI-generated IP? Is it the creator of the AI algorithm? The person who provided the training data? Or is it the individual who commissioned the AI to create the work? These are complex questions that have not yet been definitively answered by the law.

Copyright protection for AI-generated material is another challenge. Can AI be considered an author? Are these “original works” copyright protectable? If so, what are the criteria for copyright protection? These questions are also being hotly debated without clear answers at this point. Additionally, who is liable for AI-generated IP infringement?

Finally, there are a number of ethical implications that come with AI-powered IP. There is very real concern regarding AI being used to create deepfakes and other forms of disinformation, or even to develop autonomous weapons systems. It is important to have open and honest conversations

about these ethical challenges to develop responsible and ethical guidelines when it comes to Artificial Intelligence.

What advice would you give to business leaders to prepare for the future of intellectual property in the age of AI?

First, review your IP portfolio to determine IP assets that have value from a growth or monetization perspective while also identifying any potential risks posed by AI. For example, is there competitive space in which to build or strengthen your IP assets? Do you have any IP assets that are easily counterfeited or copied using AI-powered tools?

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Second, develop an IP protection plan with an experienced IP attorney that includes specific policies and procedures for protecting your IP assets and addressing AI-related risks. Your plan should set forth how to identify AI-powered growth opportunities and prevent AI-powered IP infringement, as well as how to protect your IP assets from being used to create harmful or unethical products or services, for example. It is also important to educate your employees on the opportunities AI provides and the risks posed by AI, as well as their obligations under your IP protection plan.

Finally, given how rapidly this space is evolving, you want to stay informed and up-to-date on the latest trends and developments with AI to help identify potential opportunities while also being proactive when it comes to potential threats to your IP assets.

Any other tips to keep in mind?

The key is to find ways to leverage this technology to your advantage to avoid running the risk of being left behind. Utilize AI to get a head start on your competition by learning which IP assets provide growth and/or monetization opportunities.

Additionally, whether in the context of business or other purposes, know your source or origin before distributing or otherwise using intellectual property. This is important to avoid infringing on the IP rights of others, especially because AI can be used to create deepfakes and other forms of counterfeit IP.

To further protect your own intellectual property, affirmatively file for copyright protection for your outwardly facing works. This will give you the right to sue in federal court if your copyright is infringed, and it will also make it easier to recover attorneys' fees and statutory damages if you are successful in your lawsuit.

For more information, please reach out to a member of Benesch's Artificial Intelligence (AI) Industry Group.

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