Artificial Intelligence and Intellectual Property Rights

Foundational Principles

SPONSORING GROUP: Artificial Intelligence Advisory Group (AIAG)

RESOLUTION: Presented on May 17, 2025

WHEREAS, the International Trademark Association (INTA) is a global association of brand owners and professionals dedicated to supporting trademarks and complementary IP to foster consumer trust, economic growth, and innovation;

WHEREAS, INTA has adopted positions encouraging the adoption and evolution of new technologies while balancing the ability of intellectual property owners to protect and enforce their rights;

WHEREAS, recent technological developments have increased the availability of AI tools and generative AI applications by reducing financial and technological barriers;

WHEREAS, governments, regulatory bodies, and other agencies have either adopted or are considering local, national, and international AI regulations and the use of AI tools and such regulations will cover a broad range of fields including IPRs, trade secrets, data protection and cybersecurity, among others. (See Appendix B)

WHEREAS, INTA believes it is important that AI regulations and statutes, as well as corporate policies addressing AI, take into consideration the protection of user and third-party IPRs;

WHEREAS, the AIAG comprised of members of various committees, has collaborated on research topics on the intersection of AI and IP and formed consensus on a number of proposed policies (see Appendix A);

WHEREAS, INTA is continuously in need of the articulation of policies in order to provide thoughtful, timely input into the developing regulatory framework around AI; and

WHEREAS, solely for the purpose of this resolution and future amendments to this resolution, we adopt the following definitions adapted from industry and International Organizations sources[1]:

Artificial Intelligence (AI) means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.[2]

Artificial Intelligence (AI) Tools are practical applications or software that leverage AI to perform specific tasks.

AI User refers to any individual, organization, or entity that interacts with or operates AI Tools, or applications. This includes, but is not limited to, individuals using AI for personal, professional, or research purposes, as well as businesses, institutions, and governmental

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[1] https://www.ibm.com/think/topics/artificial-intelligence

https://www.mckinsey.com/featured-insights/mckinsey-explainers/what-is-ai

https://azure.microsoft.com/en-us/resources/cloud-computing-dictionary/what-is-artificial-intelligence#self-driving-cars

https://www.coursera.org/articles/what-is-artificial-intelligence

https://cloud.google.com/learn/what-is-artificial-intelligence

https://www.techtarget.com/searchenterpriseai/definition/AI-Artificial-Intelligence

https://www.digital.nsw.gov.au/policy/artificial-intelligence/a-common-understanding-simplified-ai-definitions-from-leading

https://builtin.com/artificial-intelligence/ai-tools#:~:text=An%20AI%20tool%20is%20a,tasks%20%E2%80%94%20across%20almost%20every%20industry.

The following AI tools were used for validation, comparison, and summarization: ChatGPT, Copilot, and Claude.

Other sources to consulted:

https://post.parliament.uk/artificial-intelligence-ai-glossary/
https://artificialintelligenceact.eu/article/3/
https://www.dataprivacybr.org/en/the-artificial-intelligence-legislation-in-brazil-technical-analysis-of-the-text-to-be-voted-on-in-the-federal-senate-plenary/#:~:text=There%20are%20also%20seventeen%20basic,and%20inclusion%2C%20transparency%20and%20explainability
https://www.nist.gov/
https://www.wipo.int/wipolex/en/text/288514#P147_20484 (article 6ter)

[2] https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/03/explanatory-memorandum-on-the-updated-oecd-definition-of-an-ai-system_3c815e51/623da898-en.pdf

bodies that deploy AI technologies for automation, data analysis, decision-making, or other operational functions.

Human Oversight refers to the monitoring, evaluation, and intervention, including decision making by humans in the use and training of AI tools for the granting, enforcement, limiting, and revocation of intellectual property rights. This oversight ensures that AI-driven processes align with legal, ethical, and policy standards by assessing AI-generated outcomes, addressing potential biases or errors, and making legally binding decisions where human judgment is required.

Human Input refers to all other human contributions to the creation of applications, content, products, and services that employ AI Technology and AI Tools for such creation. This includes, but is not limited to, establishing parameters for training, prompting, identifying questions to be answered, choosing labels for data, and standards for output.

Applicable Legislation and Regulation refers to national and international legal frameworks, policies, and regulatory measures governing the development, deployment, and use of Artificial Intelligence, directly or indirectly related to or affecting intellectual property rights. [3]

NOW, THEREFORE:

I. BE IT RESOLVED; **Applicable Legislation and Regulation** should recognize the source of inputs and outputs to acknowledge human-versus-machine contributions while avoiding unintentional consequences that impede innovation. Such regulations should avoid unnecessarily burdensome disclosure requirements and account for fair reward for human creativity and ingenuity.

II. BE IT RESOLVED; A) In judicial or administrative proceedings, final decisions regarding the registrability, protectability, validity, or revocation of intellectual property rights should have Human Oversight. AI should be tested to see if it can be safely used to reduce errors or irregularities in judicial or administrative systems addressing intellectual property rights; and (B) Customs agencies should be encouraged to use AI to help in the identification of suspected counterfeits, but not to make final determinations of what is a counterfeit.

III. BE IT RESOLVED; Applicable AI Legislation and Regulation should aim to provide mechanisms for rights holders to obtain lawful access to data for the purpose of enforcing intellectual property rights. This concept is iterated in current INTA policy[4] and reaffirmed here within the context of AI generated content.

IV. BE IT RESOLVED; Transparency regarding the use of AI in the creation of goods, services, contents, or in communications with consumers (such as through chatbots) is

[3] We note that there is an emerging body of case law that will enshrine certain standards and norms regarding AI usage. However, the law is nascent, and INTA members will be monitoring developments for the foreseeable future. It is too soon conclude any over-arching trends except that many of the pending and reported cases concern whether the use of copyrighted works for machine learning must be compensated.
[4] See INTA Board Resolution, "Reasonable Access to Data for Enforcement" https://www.inta.org/wp-content/uploads/public-files/advocacy/board-resolutions/20211119-Data-Access-Resolution-Nov-2021.pdf

important for building trust. (A) Consumers are entitled to readily accessible information that provides timely, convenient disclosure of when a good or service or content incorporates or is a product of AI Tools, and (B) Consumers should be informed as to the identity of the party responsible for the goods, services or content generated by AI and how to contact them, when such good, service, or content could have a significant legal impact or cause harm. What constitutes "significant legal impact" or "harm" should be left to legislative, executive, and judicial bodies to determine.

V. BE IT RESOLVED; Transparency should be balanced with the need to protect proprietary information as appropriate. Therefore, data disclosure requirements should provide for the protection of trade secrets and proprietary information in conformance with legal standards of the jurisdiction involved.

BACKGROUND:

I. AI State of Play

Artificial Intelligence tools have grown exponentially. This has resulted in technology being available for use by nearly anyone who wishes to do so. Use of AI, however, raises complex issues for the protection of intellectual property rights, as well as giving rights owners and other interested parties new potential tools to enforce and monitor rights. INTA has been monitoring the growth in AI applications and corresponding regulations. Given the complexity of the issues, it is important to have a common basis of understanding and principles upon which we can build our advocacy positions moving forward. While the world is arguably still in the early stages of AI use and development, there is pressure from governments and within industry itself to create regulatory frameworks and policies to guide future development and set reasonable expectations for risk management.

Most notably, the European Union has adopted the AI Act[5] and other jurisdictions around the world are following suit. In the US, the federal government has not adopted AI standards or practices. However, the US Copyright Office recently issued a report that outlines its approach to protecting copyrights through existing laws and does not recommend any new laws at this time. The US Executive Order on creating AI standards has been rescinded, and it is possible that a new order may replace it. Meanwhile, India is considering its own act as well the UK, Japan has a well-developed AI strategy[6] and has enacted new laws and business guidelines, and the Brazilian Senate has adopted an AI Regulatory Framework[7]. We expect these trends in regulation, as well as the development of case law (much of which remains pending as noted earlier), to significantly increase over the coming years.

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[5] See https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence

[6] See https://www.meti.go.jp/english/press/2024/0419_002.html CSIS report: See also https://www.csis.org/analysis/japans-approach-ai-regulation-and-its-impact-2023-g7-presidency.

[7] See Brazil-American Chamber of Commerce report published January 2, 2025. https://brazilcham.com/regulatory-framework-for-artificial-intelligence-passes-in-brazils-senate/

In terms of the EU AI Act, INTA is engaged in working groups who are commenting on the proposed AI Code of Conduct (AICOC). These groups focus on copyright protection, institutional risk identification and management, risk disclosure and taxonomy. As INTA is relying on current policies to inform its contributions, it is also important that we have a basis for more sophisticated interventions and solid direction from the INTA Board.

Further, we are finding that, although the EU AI Act is current law, there may be technological barriers to enforcement. One example is for content owners to have a mechanism to "opt out" of copyright protected material in machine learning applications. To date, there is no technically feasible way to enforce this requirement. Other parts of the act are so broad or vague as to question whether they are enforceable. We expect that there will be many more requests for guidance on enforcement of AI laws and IPRs. INTA must be ready to meet those requests.

II. INTA's Approach to Developing Principles for AI Advocacy

The AI Advisory Group ("AIAG")[8] met in multiple plenary sessions between May and November of 2024. These sessions were focused on establishing common understandings, goals, and milestones for the ongoing tasks of responding to requests for comments from regulators, establishing a foundation for formulating INTA's strategy for advocacy and assuring that all interested INTA committees have a say in AI policy development and advocacy. These policies could be directed at government or private entities. For example, responding to proposed legislation, advising law firms on best practices for incorporating AI into their business models or advising clients on how to incorporate AI into their business models.

The group produced a tiered list of "green," "blue" and "red" position statements that, as agreed upon, will form the basis of what we expect to be a series of several Requests for Board Action. The green items signify positions on which there is full agreement. Blue items signify that there is general agreement but not full agreement. Red items are unresolved positions that require further analysis to reach an agreed consensus. Further, the AIAG categorized the principles into "Training," "Consumer Protection," "PTO Practice," "Counterfeits" and "Publicity Rights," for ease of reference. The principles were also reviewed with reference to the current and pending laws, recommendations, and guidance set forth on Appendix B to this Request.

"Red" items continue to be developed with the intention of presenting them for Board approval in the future, along with additional new positions that may arise as the intersection of AI and IP continues to develop. Unresolved items will be fully reported to the Board as well, which may include a request for guidance.

III. Human Contribution

As noted in the definitions, we distinguish Human Oversight and Human Input and note here the relevance of each. For further clarity, we provide the following rationale for the distinction as this runs to the heart of rights and responsibilities for determinations involving granting, managing, and enforcing IPRs.

[8] The list of current members of the AIAG are attached at as Appendix A for your information.

1. Human Input by the Creator/Author/Inventor ("the Creator")

The issue of Human Input by the Creator is critical to the analysis of the role of AI on the creation and protection of IPRs. The traditional approach to protecting such rights has been grounded in the axiom, "The drop of sweat for the copyrights' sake, and the possession of the invention for the patent's sake." As noted above, the US Copyright Office issued a report[9] in January 2025. The report reaffirmed the principle that Human Input is required for copyright protection even if accompanied by AI input. Other intellectual property offices have issued guidance reflecting similar positions regarding other forms of intellectual property rights. While INTA has this far generally supported, or at least not opposed, this principle, additional consideration is required before presenting a fully considered position for Board approval. Some AIAG members have expressed the view that requiring Human Input for intellectual property rights to attach to a creation may not anticipate the future evolution of AI Tools. In other words, the requirement of Human Input for creative or useful works is not necessarily future proof. The group has also considered the extent to which the level of Human Input is relevant, for example whether "any contribution" may suffice. The challenge is finding an approach that does not depend upon an analysis of the ratio of Human vs. AI input. Work continues to develop a fully considered position on the Human Input requirement.

2. Human Oversight from Administrative and/or Judicial Bodies

There is consensus among AIAG members that Human Oversight is essential to the granting or cancellation of IPRs. Intellectual property ownership determinations are based on interpretation of laws and regulations, including by governmental bodies that may grant or withdraw rights in administrative or judicial proceedings. The issuance and cancellation of rights are determined on a case-by-case basis and require a thorough knowledge of law and facts. The AIAG believes these determinations require experience and intuition that AI is not fully capable of calculating, at least yet, such that these determinations should ultimately be subject to Human Oversight and not solely by AI.

[9] See https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf. Executive Summary pp. iii.

Appendix A

AIAG Roster 2024/25

Kristina	Schrader	Adams & Reese	Anti-Counterfeiting
Orietta	Blanco	Minino	Brands & Innovation
Julian	Waiblinger	Nordemann	Copyright
Fiilipe	Cabral	Dannemann	Data Protection
Yoon	Cho	Y.P. Lee, Mock & Partners	Design
Nidia	Osorio	Nidia Osorio & Co.	Emerging Issues
Chun	Wright	Law Office of Chun Wright	Enforcement
Diana	Arredondo	Amazon	Internet
Kevin	Constanza	Seed IP	Law Firm
Howard	Hogan	Gibson Dunn	Legis & Reg
Samta	Mehra	Remfry & Sagar	Non-Traditional Marks
Andrew	Avsec	Crowell Moring	Right of Publicity
Elisabeth	Escobar	Marriott	TOPC
Scott	Mayhew	Zoetis	Trade Secrets
Benjamin	Koch	Lubberger Lehment Rechtsanwaelte Partnerschaft mbB	Unfair Competition

Appendix B

Country[1]	Name	Creation	Type of standard	General comments	Enforced
International	UNESCO Recommendation on the Ethics of Artificial Intelligence	23/11/2021	Ethical framework or public policies	• Intro: non-binding text, only high-level intentions for countries • IA Certification: Recommends the establishment of government "impact assessments". • IP Restrictions: Does not establish • Others: Recommendations that IA does not affect people's security or safety, promote discrimination or be used for social rating or mass surveillance.	Yes
International	OECD Principles on Artificial Intelligence	21/5/2019	Ethical framework or public policies	• Intro: non-binding text, only high-level intentions for countries • AI Certification: Does not state • IP Restrictions: Does not state • Other: Call to Government for public policies and conversations with stakeholders for reliable AI development. Call to AI Actors for AI to be safe, transparent and respect human rights.	Yes
Argentina	Resolution 710/2024 Ministry of Safety	26/07/2024	Other	• AI to prevent, investigate and prosecute crimes to make more efficient the work done by police forces. • It creates the Unit of AI applied to security under the	Yes

				Cybercrime Directorate of the Ministry of Safety – Unidad de Inteligencia Artificial Aplicada a la Seguridad (UIAAS). • Main functions: (a) To monitor open social networks, applications, and Internet sites. (b) Analyze images from security cameras in real time to detect suspicious activity or identify wanted persons by simple recognition. (c) Use machine learning algorithms to analyze historical crime data to predict and prevent future crimes. (d) Identify unusual patterns in computer networks and detect cyber threats before attacks occur. This includes identifying malware, phishing, and other forms of cyber-attacks.	
Argentina	Draft Law Deputies File: 1472-D-2023 (Deputies: Latorre - Manes)	17/4/2023	Service regulation	• Intro: very brief and high-level standard. • AI Certification: Obligation to pre-register AI system (not defined) with Gabinete Científico-Tecnológico (GACTEC). • IP Restrictions: Does not establish • Others: 1) AI must respect diversity, inclusion, security, and fundamental rights. 2) a complaint channel is created so that any person who feels harmed by AI can report it to the authority.	No
Argentina	Draft Law File Deputies 3161-D-	8/8/2023	Ethical framework	• Intro: very brief and high-level regulation. Creates the	No

	2023 (Pamela Caletti)		or public policies	Federal Council on Artificial Intelligence for the elaboration of public policies and ethical schemes. • AI Certification: Does not establish • IP Restrictions: Does not establish	
Argentina	PL 1013-D-2024 (Ley Turing)	TBD	Service regulation	• Reform of IP and Data Privacy Regulations to incorporate delimitations to artificial intelligence. • It requires prior consent for the use of images; and incorporates the definitions of "synthetic productions" and "assisted productions" to the Intellectual Property Law. It also contains amendments to the Criminal Code and the Personal Data Law, incorporating -among other aspects- the concept of computerized system based on artificial intelligence and computerized services of personal data supported by artificial intelligence.	No
Argentina	PL Yeza Project	TBD	Service regulation	• Standard to establish an optional sandbox. Confidentiality and security obligations in charge of authority.	No
Brazil	PL 2338/23	17/08/2023	Service regulation	• AI certification: AI must be evaluated before placing on the market; algorithm impact assessment and high-risk notification. • IP Restrictions: Establishes obligation to signal Deepfakes.	No

Brazil	Resolution CNCP /SENACON/MJSP No. 3, OF MARCH 04, 2024	04/03/2024	Service regulation	• The scope is not clear. It could be aimed at deep fakes, but it is not clear. • Apparently, it would prohibit the use of AI for audiovisual content generation for possible IP violations as well as its consumption and the use of the technology to index it (but from the wording we are not sure). • The use of AI is not currently prohibited, nor is it prohibited for this type of use. Nor is the combination high risk. By prohibiting this type of audiovisual content generation, the resolution would operate as a sort of prior censorship. We do not know if the CNCP would have the power to prohibit both (we believe it would not), so this rule could eventually be attacked as unconstitutional. • The use of AI should not generate absolute liability.	No
Chile	Decreto 20/2021	3/12/2021	Ethical framework or public policies	• Intro: Outlines public policy objectives to foster AI in Chile, including early education, infrastructure investment and AI-based economic productivity. It also includes as an objective to modernize regulation to ensure minimum service standards. • AI Certification: Does not establish • IP Restrictions: Does not establish	Yes

Chile	PL 15869-19	23/10/2023	Service regulation	• Intro: based on AI Act of USA, in shorter version • AI Certification: Obligation to obtain AUTHORIZATION for the AI developer, provider, and "user" from the National AI Commission. Applicable to all AIs • IP Restrictions: Establishes obligation to signal Deepfakes. • Others: 1) Establishes prohibited uses of AI, like EU (discrimination abuses and public space monitoring), (2) High risk AI must have risk plans and obligation to report incidents; 3) Penalties 2OO UTM (USD 13K).	No
Colombia	PL 91/2023 Senator Pedro Hernando Florez Porras	09/08/2023	Ethical framework or public policies	• Intro: Public Policy Standard for Ethical Framework and IA Program Design • IA Certification: Does not state • IP Restrictions: Does not establish • Others: (1) If it is a Generative AI, the user must indicate which AI was used.	No
Colombia	PL 10/2023 David Luna	24/07/2023	Service regulation	• Intro: Public Policy Standard for Cybersecurity Agency Design • IA Certification: Does not state • IP Restrictions: Does not establish • Other: (1) Creates the National Digital Security Agency, with a focus on cybersecurity, which will develop an Intersectoral Commission on Artificial	No

				Intelligence to monitor the development and use of AI; (2) Private parties must implement protocols designed by the agency within 6 months of the law's issuance. (2) establishes 24-hour reporting of cyber-attacks; (3) imposes fines of 200 minimum wages.	
Ecuador	PL NRSP-2024-0101-M	20/06/2024	Service regulation	• Intro: based on IA Act of USA, in shorter version • Intellectual Property prohibitions (both in operation and training), including criminal risks • Personal Data Protection requirements: with individual explainability, supervision and human review • Prohibition of social scoring • Strict liability for civil damages, and criminal liability to individuals in several different cases. • Prior registration of AI, and leaves open to interoperability obligation	No
Peru	Ley 31814	05/07/2023	Ethical framework or public policies	• Intro: Public policy standard for the use and development of AI (National Digital Transformation Policy and the National Artificial Intelligence Strategy). • AI Certification: Does not establish • IP Restrictions: Does not establish • Other: Policies are not yet established. Design basic aspirational principles that AI	Yes

				respects privacy, ethics, and has risk-based standards.	
Peru	PL 7033/2023	13/02/2024	Service regulation	• Intro: standard that generally penalizes AI errors and damage • AI Certification: Obligation to register AI with the Secretary of Government and Digital Transformation • IP Restrictions: Establishes obligation to signal Deepfakes	No
Peru	PL 6524	2023	Service regulation	• Intro: standard that establishes the duty to report AR information • AI Certification: It does not establish. Only that there must be a "virtual label" that allows users to know how it works and risks. • IP Restrictions: Establishes obligation to signal Deepfakes by users. • Others: N/A	No
Peru	PL for regulation law 31814	13/07/2024	Service regulation	• Intro: based on the US IA Act, in a shorter version. • IA Certification: Establishes private or international certifications, and external audits. • IP Restrictions: Does not establish • Others: Establishes 1) human supervision requirements, 2) prohibits social scoring; 3) criminal sanctions attainable to natural persons of the operator.	No
Peru	PL 8223 (Flavio Cruz (Perú Free/ left)		Service regulation	• Intro: rule establishing general AI duties". • AI Certification: Does not establish.	No

				• IP Restrictions: Does not establish. • Others: N/A. General conditions for studies/risk management, explainability, human supervision.	
Mexico	PL for Ethical Regulation of Artificial Intelligence and Robotics	27/05/2023	Ethical framework or public policies	• Intro: Standard for structuring political bodies. It has no specific obligations IA. • IA Certification: Does not establish • IP Restrictions: Does not establish • Others: General duty to design AI with respect to fundamental rights and non-discrimination. Provides for the creation of NOMs	No
Uruguay	Accountability and Budget Execution Balance Sheet 2022	17/10/2023	Ethical framework or public policies	• Intro: Rule providing AGESIC (Data Privacy MLU authority) with the competence to design national AI strategy. • AI Certification: Does not establish • IP Restrictions: Does not establish • Other: National strategy to be designed by AGESIC should include accountability, non-discrimination, transparency, auditing, etc.	No
Uruguay	PL Regulation of Artificial Intelligence Systems (Juan Sartori)	17/08/2023	Service regulation	• Intro: Basic AI Regulatory Standards • AI Certification: Not established • IP Restrictions: Deepfakes must have indication of artificial or manipulated content.	No