

# Oxford International Intellectual Property Moot 2027

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## Instructions

The 2027 moot concerns *Bont v Globex Corporation* [2026] HCE 157. A copy of this case is included in the pages that follow, along with relevant statutory provisions and a list of the authorities referred to by Justice Armour. At first instance in the High Court of Erewhon, Justice Armour held that:

1. Globex did not infringe copyright in the Frida Work or the Spanish Text by reproducing part of the Frida Work in a brochure for its Initial Public Offering.
2. Globex received a valid licence to use artworks created by Mr Bont for the purpose of training artificial intelligence.

Mr Bont applied for leave to appeal from this judgment. Leave was granted, and the parties instructed to prepare submissions on identified Appeal Issues. The Court of Appeal subsequently upheld (without releasing a substantive opinion) the decision of Justice Armour and therefore dismissed the appeal. Mr Bont has been granted leave to bring a further appeal to the Supreme Court of Erewhon.

**It is your task to prepare written and (for teams that are invited to the Oral Proceedings in March 2027) oral submissions for this appeal.**

Some points to consider:

- a. Appeals to the Supreme Court are on points of law only, although it is permissible to challenge the legal conclusions that arise from findings of fact.
- b. Each submission must cover all Appeal Issues:
  - i. whether the Frida Work and Spanish Text are protected as artistic and literary works, whether as computer-generated works or otherwise; and if so, who is the author (and hence copyright owner) of those works;
  - ii. whether Globex copied the whole or a substantial part of the Frida Work and/or Spanish Text; and
  - iii. whether the terms of Mr Bont's agreement with Agency 3F23 permitted the Agency to grant a licence to Globex to use Mr Bont's artworks for the purpose of training Hank and/or Scorpio.
- c. You may not seek to introduce entirely new causes of action, press arguments that were conceded in the original proceedings, or raise matters outside the scope of the appeal. To illustrate, you may not seek to argue that Globex might have a defence under fair dealing or hypothesise that Globex could point to an exception for text and data mining. In contrast, you may present legal arguments that were

not mentioned or considered in detail by Justice Armour. To illustrate, you are expected to prepare submissions on how the test for substantial part operates for computer-generated works.

- d. Erewhon is a common law jurisdiction, and the opinion of Justice Armour includes reference to a number of cases. For the purposes of the written submissions, it is expected that you will deal with these cases as appropriate, and you risk missing out on credit if you omit any mention of them. However, these references are **not** intended to constitute your sole authorities for the moot, and indeed you are **expected** to rely on other primary materials. The emphasis you give to any particular authority (including those cited by Justice Armour) is up to you, although the Panel will not look favourably upon strong reliance on an unduly narrow spectrum of authorities.
- e. Although the moot is held in the UK, this is an international competition and you are not limited in the jurisdictions from which you use authority. You may therefore use cases from around the world. You should make it clear why any given case is relevant to the legal issues in dispute.
- f. It is permissible to cite academic commentary in support of your legal arguments. Where you use academic commentary, this should be of direct relevance to the interpretation and application of Erewhonian law.
- g. Erewhon is not, and has never been, a member of the European Union. It is a signatory to the TRIPS Agreement and is a member of the Berne Convention and the WIPO Performances and Phonograms Treaty. Treaties are not self-executing in Erewhon.
- h. Requirements for your written submissions are contained in §14 of the Moot Rules. The following is some additional guidance:
  - i. You do not need to include such things as a table of contents, statement of jurisdiction, statement of facts, index of authorities, etc. Submissions should focus on the substantive matters raised in the appeal.
  - ii. When marking your submissions, the Panel will not give extra credit for court headings and other flourishes that merely give the submissions the superficial 'look' of an official court document. Credit may be awarded for a presentation style that facilitates the arguments being made (for instance, in the content and number of headings, the use of a logical paragraph numbering system, and so forth). You should not, therefore, be worried about purely stylistic matters when writing your submissions.
  - iii. The word count includes all the text in the footnotes. It is recommended that footnotes are used for citation purposes only and that you minimise the amount of substantive text that appears in the footnotes.

- iv. There is no prescribed style guide for the submissions. Teams should, however: (i) maintain consistency of style throughout each submission; (ii) include full citations for sources on which they rely (at least the first time any given source is cited); and (iii) ensure that whenever they *quote* from a source, a pinpoint reference is included to the relevant page number and/or paragraph.
- v. You may refer to Justice Armour as 'Armour J' and/or 'His Honour' in your written submissions.

**The timetable for the Written Phase is as follows:**

If you are planning to enter submissions, please review your team's eligibility under §1-4 of the Moot Rules. If you have any questions about eligibility or would like to request a dispensation from the Rules for an individual mooter, please email the Moot Secretary at [moot@oiprc.ox.ac.uk](mailto:moot@oiprc.ox.ac.uk) as soon as possible so that the Moot Organising Committee ('OC') can consider your question or request.

You should apply at your earliest convenience for an **anonymous identifier**. You must use this identifier – and only this identifier – on your Written Submissions to ensure that the marking process is anonymous. The earlier you apply the better, as it will assist the OC in its arrangements for the marking of submissions. To apply, please send an email to the Moot Secretary at the email above. Please include the name of your university or higher education institution when applying for your identifier.

Any requests for clarifications of or corrections to the Moot Problem must be directed to the Moot Secretary by **10.00am on Friday 6 November 2026** (Oxford time). Requests should note the paragraph number to which they relate and explain why the requested information is expected to have legal significance for the problem. If any clarifications or corrections are deemed necessary by the OC, these will be released on the moot website by Friday 20 November 2026. The OC will not respond individually to any requests for clarifications or corrections, nor will it respond to requests that are seeking assistance with substantive aspects of the moot.

Your submissions must be received by the Moot Secretary by **10.00am on Tuesday 15 December 2026** (Oxford time); see §15-§16 of the Rules. As noted there, within their written submissions, teams must identify themselves **only** by use of the anonymous identifier given to them in advance by the Moot Secretary.

The registration process will not open until *after* invitations have been issued to compete at the oral rounds. These invitations will be issued in mid-January 2026. **Only those teams who are invited to the oral rounds will need to register and pay the registration fee.**

Before:

THE HONOURABLE JUSTICE ARMOUR

Between:

Bont

- and -

Globex Corporation

**Justice Armour:**

[1] The claimant in this case is Erewhonian artist, Bont. James Bont.

[2] Mr Bont has been active as an artist for over 40 years and has enjoyed a good deal of professional success. During the 1990s, he derived much of his income from commissions, freelance design work and art teaching. However, the trajectory of his career began to change in 2006, when, aged 38, he won the prestigious Dallas Prize, which is awarded annually to an Erewhonian visual artist in recognition of their outstanding contribution to the development of Erewhonian art. Seven of his works (being three paintings and four drawings) are now in the collection of the National Gallery of Erewhon. In 2022, the Wiggum Gallery, a prominent gallery in Erewhon's capital city, ran a retrospective celebrating his career. Mr Bont's works are also selling well on the secondary market, with one of his paintings recently achieving a record price of ERD\$60,000 (£48,000). The licensing of Mr Bont's works is handled by Agency 3F23 (the '**Agency**'), who have represented Mr Bont since 2003. Most of this licensing activity pertains to permissions for the reproduction of Mr Bont's works in scholarly publications and trade books,<sup>1</sup> and for media use. However, Mr Bont's works have also been used for some commercial products. For instance, the museum shop at the National Gallery sells postcards, mugs and placemats featuring one of Mr Bont's paintings.

[3] In recent times, Mr Bont has been experimenting with using artificial intelligence (AI) in the creation of his works. Mr Bont has created work with the assistance of text and image generator, Snowball II, developed by tech spin-out, StudyNet Limited. The founders of StudyNet are members of the Computer Science, Literature and Art History departments at the University of Erewhon. They describe their company as

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<sup>1</sup> The term 'trade books' is used in the publishing industry to refer to books that are marketed to the general public.

dedicated to 'ethical' AI. The first iteration of their text and image generator, Snowball I, was released in March 2024. It was trained only on works in the public domain. The next iteration, Snowball II (released in July 2025), trained not only on public domain works but in-copyright works for which licences had been obtained. Mr Bont has given evidence, which I accept, that it is very important to him that the rights of artists are respected when AI is being developed.

[4] Mr Bont has used Snowball II in various ways. Relevantly for these proceedings, on 17 August 2025, Mr Bont inputted the following prompt into Snowball II:

*Can you please create an image of a spy who loved me. The image should be produced using vibrant colours. It should use some motifs inspired by the style of Frida Kahlo, including a black cat, a monkey and hibiscus flowers. It should also contain at least one aquatic vessel. Please do not include Frida Kahlo herself in the image.*

In his evidence, Mr Bont said that an earlier prompt for an image 'in the style of Frida Kahlo' resulted in an image in which a Frida-like character appeared, hence the negative stipulation at the end. Mr Bont reviewed the image generated by Snowball II, and was not happy with the orange palette of the flowers, or the presentation of the caption (which overprinted on a red ribbon). He therefore wrote a further prompt: 'The flowers should be white, pink and red. Change the red ribbon around the caption to a medieval scroll.' This resulted in this work (which I shall refer to as the '**Frida Work**')



[5] On 17 August 2025, Mr Bont also prompted Snowball II to: 'Please create a cartoon image of a man with a golden gun. The man should be at a 1970s disco. He should be wearing a white suit. The gun should be shooting rainbows. There should be a disco ball and people dancing in the background.' Mr Bont refined the resulting image using

eight subsequent prompts in which he: moved the position of the disco ball to the centre of the image; changed the colour of the shirt worn by the man to black; adjusted the colours of the floor tiles, 'Disco Fever' sign and overhead spotlights; and changed the matter emerging from the golden gun to a rainbow-coloured light beam. The result was this (the '**Disco Work**')



[6] These images came to be included in a series of thirty-two works, collectively titled, 'From Erewhon with Love'. Mr Bont said in evidence that the inspiration for the name of the series was the James Bond film, 'From Russia with Love', starring Sean Connery. Mr Bont said that he is asked frequently whether he was named after fictional MI6 agent, James Bond. The answer is no, and that the similarity in their names is purely coincidental, Mr Bont being named after James, the tuxedo cat of his great aunt, Ada Bont. The thirty other works in 'From Erewhon with Love' are paintings, drawings, screenprints and mixed media works made by Mr Bont without the use of AI. They depict urban and regional landscapes in Erewhon.

[7] Originally, the Frida Work and the Disco Work were not part of 'From Erewhon with Love'. Mr Bont had created them when he was, in his words, 'mucking around' one afternoon using AI to generate images in relation to James Bond. They were added to the series at the instigation of a curator at the Wiggum Gallery in the course of discussing with Mr Bont the arrangements for the Wiggum's forthcoming exhibition of 'From Erewhon with Love'. The curator suggested displaying some of Mr Bont's AI-assisted images, given the story behind the naming of the series. Mr Bont selected the Frida Work and the Disco Work. The exhibition took place at the Wiggum from October 2025 to March 2026.

[8] The dispute arose due to the alleged reproduction of elements of the Frida Work in an illustration contained in a brochure distributed by Globex Corporation, a tech spin-out from the Erewhonian Technical University. The brochure contained information in relation to Globex's Initial Public Offering ('IPO'). Globex also specialises in AI products. It has created an image generator called Hank. However, investor interest in Globex relates largely to an AI product called Scorpio, whose applications include military strategy and defence. It is anticipated that Globex could be able to secure highly valuable contracts for the use of Scorpio.

[9] Globex did not request a licence from the Agency for its use of the Frida Work in the IPO brochure. When Mr Bont became aware that part of his image had been used without permission, he contacted his lawyers to discuss his next steps. Mr Bont gave evidence that while in many cases he would be happy for the Agency to secure a retrospective licensing fee, he never would have agreed to his image being used in promotional material for a company involved in military applications of AI. Mr Bont instructed his lawyers to write to Globex. The reply from Globex's in-house counsel was to deny that Globex had infringed copyright, but to offer payment of ERD\$500 (£400) in full and final settlement of any claims in relation to the Frida Work.

[10] The events then took an unexpected course. Mr Bont's lawyers made a further discovery during discussions with the Agency about Mr Bont's dispute with Globex, namely that the Agency had, without notifying Mr Bont, entered into a non-exclusive licence with Globex in November 2024 which permitted the latter to use the works of all artists represented by the Agency for AI training ('**Agency Licence**'). The Agency had not yet remitted any royalties to Mr Bont in relation to the Agency Licence, as payment from Globex had not yet fallen due.

[11] Mr Bont's lawyers wrote to Globex in relation to the Agency Licence. In its reply, Globex provided a list of 80 works by Mr Bont which had been used for training Hank. It also said that images of five works by Mr Bont had been used for training Scorpio, although it did not particularise which works on the basis that the training data for Scorpio is a trade secret. It said that the Agency provided it with digital images of the works the subject of the Agency Licence. It said that it has stored and used these images strictly in accordance with the term of the Agency Licence.

[12] Mr Bont instructed his lawyers to reject Globex's offer of ERD\$500 and to institute proceedings alleging copyright infringement in relation to (1) the inclusion of elements of the Frida Work in the IPO brochure; and (2) using his works for AI training. I have found in favour of Globex in relation to both of these claims.

### ***Infringement of the Frida Work***

[13] The facts of this claim are not in dispute. In January 2026, Globex released a brochure in relation to its forthcoming IPO. The front cover featured an illustration which contained the following elements of the Frida Work: the scroll with the Spanish text; the red hibiscus and white lily to the immediate left and right of the scroll; and the submarine. The evidence from Globex was that the in-house designer who created the illustrations for the brochure (interestingly without the assistance of Hank) had visited Mr Bont's exhibition at the Wiggum and, on seeing the Frida Work, thought that the submarine would be perfect for her cover illustration. She therefore took a photograph of the work with her smartphone. (The terms and conditions of entry permitted this, as they only prohibited flash photography and the use of tripods.) The designer subsequently decided that she would also use the scroll and flowers in her illustration because she liked the aesthetic effect. The designer did not make changes to any of the elements of the Frida Work when adding them to her illustration. Sadly,

neither the designer nor anyone else at Globex bothered to look up the meaning of the Spanish text. Had they done so, they would have found that it means:

*You loved me more than your own life. Therefore, you will be loved for all eternity.*

The relevance of this to Globex's IPO is, at best, tenuous.

[14] In his statement of claim, Mr Bont said that this act infringed copyright in the Frida Work as an artistic work and the words of the Spanish text (the 'Spanish Text') as a literary work. Globex denies that it has infringed copyright because:

- neither the Frida Work nor the Spanish Text are protected by copyright;
- even if the Frida Work and/or the Spanish Text are protected by copyright, Mr Bont is not the author (and hence owner) of copyright in those works;
- in any event, it has not reproduced a 'substantial part' of the Frida Work.

[15] Bont introduced into evidence a short expert report from Dr Jackie Bisset of the National Gallery of Erewhon. Dr Bisset has written a biography of Frida Kahlo and is fluent in Spanish. In addition to providing the translation that I have set out above, Dr Bisset stated that there is no evidence of the Spanish Text being a quote from any text or work of Frida Kahlo and nor was she able to find evidence that it came from anywhere else. I accept this evidence.

[16] I start by identifying some of the relevant provisions from the Copyright Act 1997. Under section 2(1), copyright subsists in:

*(a) original literary, dramatic, musical and artistic works;*

*(b) sound recordings, films and broadcasts; and*

*(c) the typographical arrangement of published editions.*

Literary work is defined inclusively in section 1, and includes tables, compilations and computer programs. Artistic work is also defined in section 1, and relevantly includes paintings and drawings, 'whether the work is of artistic quality or not'.

[17] According to section 8(1), the 'author' of a work is 'the person who creates it'. However, the Erewhonian statute also states in section 8(3) that:

*In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.*

This provision follows word-for-word the text of section 9(3) of the UK's Copyright, Designs and Patents Act 1988.

[18] Copyright in literary and artistic works includes the right to reproduce the work in a material form: s 11(1)(a), (2)(a). Under section 12(1):

*... copyright in a work is infringed by a person who, without the licence of the owner of the copyright, does in Erewhon, or authorises the doing in Erewhon of, any act comprised in the copyright.*

[19] The Copyright Act also sets out permitted acts in Chapter II of Part I. These include fair dealing provisions and a defence covering non-commercial text and data mining. Globex has not sought to argue that it has a defence under any of these provisions (either to this allegation or the one in relation to AI training), and I will not consider them further.

[20] I start with the question of whether there are any protected works. The parties proceeded on the basis that if the Frida Work is protected, it is as an artistic work (being a drawing or painting), and that if the Spanish Text is protected, it is as a literary work. Mr Bont's primary submission is that they are both original works of which he is the author.

[21] Originality is not defined in the Copyright Act and nor is there any binding authority in Erewhon that I must follow in relation to the meaning of the term. A basic principle is that the work must originate from a human author and not be copied. But must the author undertake a particular type of labour in originating the work? Mr Bont submitted that originality can come from judgment, labour and/or investment during and in the lead up to the creation of a work. He pointed me to statements in *Walter v Lane* [1900] AC 539 (HL) to support this, for instance, that the efforts of a newspaper reporter to attend a secret meeting may mean that the resulting reports of what was said at that meeting are more than mere transcription (Lord James at p 555). However, I am not inclined to agree that originality can be satisfied by mere investment or, to use a term in the US case law, 'sweat of the brow': *Feist Publications, Inc v Rural Telephone Service Company, Inc*, 499 US 340 (1991).

[22] To me, more is required. In *Feist*, this additional component was referred to as 'some minimal degree of creativity' or 'some creative spark' (p 345). Under European copyright law, the work must be the 'author's own intellectual creation' ('AOIC'), that is, be the result of free and creative choices: eg, C-145/10 *Painer v Standard VerlagsGmbH* EU:C:2011:798 (CJEU). Other countries have adopted other standards. What they have in common, I believe, is the need for some sort of creative or intellectual effort. For the purposes of this judgment, I shall use the language of AOIC. However, I don't think much turns on the precise form of words.

[23] This brings me to the intellectual effort of Mr Bont and whether the Frida Work satisfies the AOIC standard. It seems to me that any originality can come only from the words of Mr Bont's two prompts. I should note, upfront, that I am open to the proposition that copyright can subsist in a work made with the assistance of AI, where the human author's input comes solely through prompts and not through any direct

contribution to the image: *Li v Liu* (2023) Jing 0491 Min Chu No. 11279 (2023) (Beijing Internet Court). Mr Bont's prompts related to the overall subject matter to be depicted ('a spy who loved me' – a riff on the James Bond film, *The Spy Who Loved Me*, starring Roger Moore), some of the elements to appear in the image (a black cat, monkey, hibiscus flowers and an aquatic vessel), the presentation of the subject matter ('vibrant colours') and a negative specification (Frida Kahlo to not appear). Mr Bont adjusted the image generated by Snowball II by prompting that the flowers 'should be white, pink and red', and by changing the background to the caption so that it was a 'medieval scroll'. In my view, the AOIC requirement is not satisfied. Mr Bont pointed me to the decision of the Court of Appeal of England and Wales in *Lidl Great Britain v Tesco Stores* [2024] EWCA Civ 262. He argued that even if I hold that an intellectual creation is required, the standard is low, as illustrated by the acceptance, in that case, that an original graphic work was created by the addition of a blue square behind an existing supermarket logo. With all due respect to my colleagues in the British judiciary, this decision strikes me as wrong on its own facts. In any event, I conclude that the highest one could describe Mr Bont's 'contribution' is that he provided mere ideas, with the details of the expression worked out by Snowball II.

[24] Mr Bont's secondary submission was that the Frida Work is a computer-generated work ('CGW') for the purposes of section 8(3) of the Copyright Act, and that he is the author of that CGW as he made the arrangements necessary for its creation. Computer-generated is defined in section 1 as a work 'generated by computer in circumstances such that there is no human author of the work'. Given my conclusion that Mr Bont made no authorial contribution to the Frida Work, this definition is satisfied. I also agree with Mr Bont that if the Frida work is a protected CGW, Mr Bont, alone, made the arrangements for its creation. I would reject any suggestion that the computer programmers at StudyNet, or StudyNet itself, can be taken to have made the necessary arrangements simply because they developed Snowball II.

[25] The problem I have is how to approach the requirement for originality in section 2(1)(a) of the Copyright Act. The Erewhonian legislature did not, in introducing section 8(3), remove this requirement for CGWs or include any legislative indication on how it shall be applied for such works. Globex argues that the language of the Erewhonian Copyright Act is plain: all literary, dramatic, musical and artistic works must be original. I agree. I also accept Globex's submission that originality can only be conferred by a human hand, and that it is not permissible for me to pretend that the work was made by a human and to ask whether that human would have made free and creative choices. Globex pointed me to an article by Professor Goold, arguing that the equivalent provision from the CDPA is at best ambiguous and at worst incomprehensible: 'The Curious Case of Computer-Generated Works under the Copyright, Designs and Patents Act 1988' [2021] IPQ 120. Sadly, I think the same conclusion is inevitable for the Erewhonian provision, given its drafting origins.

[26] As such, I conclude that the Frida Work is neither an 'ordinary' original work nor protected as a CGW. I have reached the same conclusion for the Spanish Text. The

suggestion that Mr Bont authored the Spanish Text is even more far-fetched than the suggestion that he authored the Frida Work, given that he asked Snowball II to create an image and did not say anything about text or poetry. I also have doubts as to whether the Spanish Text would be original if it had been authored by a human, given that it expresses, succinctly, a banal idea.

[27] For completeness, I shall set out what I would have found had I concluded that Mr Bont's contributions to the Frida Work and Spanish Text satisfied the AOIC standard. If I had reached such a conclusion, I would have held that Globex did not copy a substantial part of the Frida Work. This is because the elements copied – the scroll with the Spanish text, the two flowers and the submarine – were not original elements contributed by Mr Bont, and hence not a 'substantial part' for the purposes of section 12(2)(a) of the Erewhonian Copyright Act. In this regard, I agree that it is essential that an element of a work must itself be original in order for it to constitute a substantial part: C-5/08 *Infopaq International A/S v Danske Dagblades Forening* ECLI:EU:C:2009:465. In contrast, given the totality of the Spanish Text was copied by Globex, it would have been impossible for me to avoid the conclusion that, given the entire work had been copied, copyright was infringed.

[28] I did not form a concluded view about what I would have held had I decided that the Frida Work and the Spanish Text were protected as CGWs. The parties made lengthy submissions on this point. The difficulty is that the problems with the assessment of originality at the subsistence stage carry over to the assessment of substantial part, given originality is the touchstone on which substantiality is judged for literary, dramatic, musical and artistic works. Given there is no human-conferred originality for CGWs, it seems to me impossible that there is a substantial part available to be taken. I also have grave concerns about undertaking an exercise that rests on a series of fictions about the creation of the work. Happily, I do not need to reach any decision on this point.

### ***Infringement by AI training***

[29] As noted above, Globex admits that it copied digital images of eighty specified works by Mr Bont in the course of training its image generator, Hank. These works were produced by Mr Bont between 1993 and 2017, and include paintings and drawings of a range of subject matter. It also admits to using five unidentified works in training Scorpio. All digital images were supplied by the Agency; and all training took place in Erewhon. Globex argues that it was permitted to copy these works under the Agency Licence.<sup>2</sup> Mr Bont argues that the Agency had no authority to grant such a licence, meaning that Globex is liable for copyright infringement.

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<sup>2</sup> For clarification, Globex did not seek to argue that the Agency Licence extended to the use of Mr Bont's works in its IPO brochure. The Agency Licence related only to AI training.

[30] There were a number of potential legal questions in relation to this claim, including whether the Agency had ostensible authority to bind Mr Bont, whether an estoppel arose and (if Mr Bont were to prevail) the nature of the remedy to be awarded. At an early case management hearing, the parties decided to limit submissions to the legal effect of the Agency Licence: did the Agency have actual authority to grant a non-exclusive licence to Globex for the training of Hank and/or Scorpio? If the Agency had such authority for both AIs, that would be a complete answer to Mr Bont's claims of copyright infringement. If it did not, the parties would return for a further trial on whatever issues remained live.

[31] In June 2003, Mr Bont engaged the Agency to manage the exploitation and licensing of his copyright. The Agency was founded in 1991. In addition to managing copyright, it operates an image bank containing works by artists it represents, so that third parties have a one-stop-shop for clearing rights and obtaining images. It also provides other professional support to its artists, for instance, by providing advice on contracts and taxation, and running a mentoring scheme for emerging artists.<sup>3</sup> The agreement with Mr Bont (**'Agreement'**) was made using the Agency's standard-form terms and conditions. Under the Agreement, Mr Bont granted to the Agency,

*... an exclusive licence to exercise all of [his] copyright rights in his Artistic Works, in the territory of Erewhon, for the Duration of the Agreement.*

Artistic Works is defined in Appendix 1 to mean artistic works that are protected by copyright, including future works made while the Agreement is on foot. The Duration is Mr Bont's life, although there are also provisions enabling the earlier termination of the Agreement by either party. The Agreement states that, for the avoidance of doubt, Mr Bont remains the owner of copyright in the works the subject of the Agreement. The Agency also granted a non-exclusive licence to Mr Bont, thus enabling him to use and exploit his copyright, including by licensing his works – although there is a requirement that Mr Bont inform the Agency of any such deals he enters into. The Agreement preserves the right of Mr Bont to bring legal proceedings in relation to the infringement of his copyright by a third party.

[32] Clause 4 is titled 'Special Uses'. It states:

*Where a third party requests a licence for a Special Use, the Agency shall notify the Artist [ie, Mr Bont] of the request within fourteen days. The Agency shall not provide a licence for a Special Use without the written permission of the Artist.*

The term 'Special Use' is defined in the dictionary in clause 1:

*'Special Use' means the use the Works in any of the following:*

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<sup>3</sup> The Agency is not a collective management organisation (CMO) for visual artists. Examples of visual arts CMOs include DACS (Design and Artists Copyright Society) in the UK, COVA-DAAV (Copyright Visual Arts / Droits d'Auteur Arts Visuels) in Canada and VG Bild-Kunst in Germany.

*(i) television programmes comprising a documentary focusing solely on the Artist or the works of the Artist;*

*(ii) branding and advertising;*

*(iii) political campaigning and all uses by political parties;*

*(iv) front covers of book and periodical publications;*

*(v) the home page of any website on the Internet;*

*(vi) commercial merchandise to be sold with a recommended retail price of ERD\$100 or greater; and*

*(vi) any other uses set out by the Artist in Item 7 of Appendix A.*

Appendix A contains fields that are personalised for each artist, such as their name, contact details, and the duration of the contract. In Item 7 of Mr Bont's Agreement, there is written:

*Television programmes and films that include violence and/or drugs*

*Computer and video games*

[33] Mr Bont's central argument is that when he signed the Agreement in 2003, neither he nor the Agency had in mind that the exclusive licence would permit the Agency to license the use of his works in AI training. He argues that in 2003, there were no commercial generative AI tools similar to Globex's Hank, OpenAI's ChatGPT, Anthropic's Claude, Google's Gemini and Stability AI's Stable Diffusion – and nor was there any discussion, in the visual arts world, about the emergence of such technologies. He says that he has no record or recollection of himself or the Agency mentioning AI when they were discussing the terms of the Agreement. In contrast, he located an email from the Agency, dated 20 May 2003, which included information about new uses of digital and online technologies in art museums (for instance, in interactive terminals and online collection databases).

[34] Mr Bont argues that when interpreting the scope of the exclusive licence granted to the Agency, any uses that were neither current nor reasonably foreseeable must be excluded. He says that there is no term in the Agreement stating that the exclusive licence applies to formats, technologies and business models developed after the date of the Agreement. He points to a number of cases to support his argument, including *Hospital for Sick Children (Board of Governors) v Walt Disney Productions* [1966] 1 WLR 1055 (Ch) and *Random House, Inc v Rosetta Books LLC*, 150 F Supp 2d 613 (SDNY 2001). The facts of the former are complex. The central question, however, was whether the grant in 1919 of 'the sole and exclusive licence to produce all [the author's] literary and dramatic works existing and future', for the term of copyright, 'in cinematograph or moving picture films' included the right to make films with sound. This was a question of contractual construction. It was held that the agreement

did not include this right, as it was not within the contemplation of the parties. The *Random House* case related to digital format books (ebooks). Random House applied for a preliminary injunction restraining Rosetta Books from selling certain ebooks, on the basis that the authors of those works had already granted Random House the right to 'print, publish and sell the work[s] in book form'. Random House failed on the basis that its rights extended only to physical books.

[35] The CEO of the Agency, Ms Cypress Creek, gave evidence about the circumstances surrounding the execution of the Agreement. Ms Creek agreed with Mr Bont's assessment that, in 2003, there was no licensing market for AI training on visual works. She also accepted that it was almost certain that, when speaking with Mr Bont about his possible engagement of their services, AI never came up. Ms Creek said that the person who worked with Mr Bont had left the employment of the Agency many years ago, but there was no evidence from Mr Bont's file that AI had been mentioned, and nor did she expect it would have been discussed in 2003. Ms Creek also accepted that the Agency had not, at any point, been in contact with Mr Bont to ask about his views on AI or to ask whether he wished to update Item 7 of Appendix A. Ms Creek was a thoughtful witness who has worked in copyright licensing for nearly thirty years. I therefore accept all her evidence.

[36] I am alert to Mr Bont's concerns about copyright agreements being interpreted in such a way that licences executed decades previously are held to extend to new technologies that nobody knew of – or could even imagine – at the time of contracting. However, I have concluded that it would be wrong for me to accept Mr Bont's preferred interpretation of the Agreement. My duty is to interpret the contract in front of me. This means asking myself what the parties to the contract intended the contract to mean, as judged objectively. There was very little in the way of limits or scaffolding around the exclusive licence granted to the Agency, and I do not consider that it would be proper for me to accept the argument that its words – broad as they are – should be narrowed by reference to foreseeability. As such, it does not matter that neither Mr Bont nor the Agency had in their contemplation generative AI when the contract was made. The exclusive licence gives the Agency all the rights it needs to grant licences for AI training in Erewhon. Further, I can find nothing in the Agreement to suggest that the Agency was precluded from granting a licence in relation to an image generator (such as Hank) or AI used for defence and military purposes (such as Scorpio).

[37] The result is that Globex had a valid licence to use Mr Bont's works to train Hank and Scorpio. It may be that Mr Bont, now alert to issues around AI training, may ask the Agency to include AI training on the list of Special Uses requiring his express written consent. He might also ensure that no further licences are given to Globex. However, I can offer no remedy in relation to the training that has already taken place, as this was conducted by Globex by reference to a validly-granted licence, and thus was authorised and non-infringing.

*Justice Armour made orders that Mr Bont's claim be dismissed. Mr Bont subsequently obtained leave to appeal to the Court of Appeal of Erewhon. The parties were instructed to make submissions on the following Appeal Issues:*

- i. whether the Frida Work and Spanish Text are protected as artistic and literary works, whether as computer-generated works or otherwise; and if so, who is the author (and hence copyright owner) of those works;*
- ii. whether Globex copied the whole or a substantial part of the Frida Work and/or Spanish Text; and*
- iii. whether the terms of Mr Bont's agreement with Agency 3F23 permitted the Agency to grant a licence to Globex to use Mr Bont's artworks for the purpose of training Hank and/or Scorpio.*

## **Appendix 1: Statutory extracts**

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### **Copyright Act 1997 – extracts**

#### **Part I COPYRIGHT**

##### **Section 1 Interpretations**

In this Act, unless the contrary intention appears:

...

‘adaptation’ means

...

(c) in relation to a literary work, a translation of the work;

...

...

‘artistic work’ means

(a) a painting, a sculpture, a drawing, an engraving or a photograph (whether the work is of artistic quality or not);

(b) a building or a model of a building (whether the building or model is of artistic quality or not);

(c) a work of artistic craftsmanship to which neither sub-paragraph (a) nor (b);

...

‘computer-generated’, in relation to a work, means that the work is generated by computer in circumstances such that there is no human author of the work;

...

‘literary work’ includes:

(a) a table, or compilation, expressed in words, figures or symbols; and

(b) a computer program or compilation of computer programs;

...

‘producer’, in relation to a sound recording or a film, means the person by whom the arrangements necessary for the making of the sound recording or film are undertaken;

...

## **Section 2 Subject matter of copyright**

(1) Subject to this Part, copyright subsists in the following types of work:

- (a) original literary, dramatic, musical and artistic works;
- (b) sound recordings, films and broadcasts; and
- (c) the typographical arrangement of published editions.

(2) Copyright does not subsist in a literary, dramatic, musical or artistic work unless and until it is recorded in writing or some other material form ...

...

## **Section 8 Authorship**

(1) In this Part, ‘author’, in relation to a work, means the person who creates it.

(2) That person shall be taken to be—

- (a) in the case of a sound recording, the producer;
- (b) in the case of a film, the producer and the principal director;

(3) In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.

...

(6) In this Part, a ‘work of joint authorship’ means a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors.

## **Section 9 Ownership**

(1) The author of a work is the first owner of any copyright in it, subject to the following provisions.

(2) Where a literary, dramatic, musical or artistic work, or film, is made by an employee in the course of their employment, their employer is the first owner of any copyright in the work subject to any agreement to the contrary.

...

## **Section 11 Exclusive rights**

- (1) Copyright, in relation to a literary, dramatic or musical work, is the exclusive right:
  - (a) to reproduce the work in a material form;
  - (b) to publish the work;
  - (c) to perform the work in public;
  - (d) to communicate the work to the public;
  - (e) to make an adaptation of the work;
  - (f) to do, in relation to a work that is an adaptation of the first-mentioned work, any of the acts specified in relation to the first-mentioned work in subparagraphs (a) to (e), inclusive.
- (2) Copyright, in relation to an artistic work, is the exclusive right:
  - (a) to reproduce the work in a material form;
  - (b) to publish the work;
  - (c) to communicate the work to the public;

...

## **Section 12 Infringement of copyright**

- (1) Subject to this Act, copyright in a work is infringed by a person who, without the licence of the owner of the copyright, does in Erewhon, or authorises the doing in Erewhon of, any act comprised in the copyright.
- (2) References in this Part to the doing of an act comprised in the copyright in a work are to the doing of it:
  - (a) in relation to the work as a whole or any substantial part of it; and
  - (b) either directly or indirectly.

...

## Appendix 2: Authorities cited by Justice Armour

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### Cases

*Walter v Lane* [1900] AC 539 (HL)

*Feist Publications, Inc v Rural Telephone Service Company, Inc*, 499 US 340 (1991) ([link](#))

C-145/10 *Painer v Standard VerlagsGmbH* ECLI:EU:C:2011:798 (CJEU) ([link](#))

*Li v Liu* (2023) Jing 0491 Min Chu No. 11279 (2023) ([link](#)) (note: this is the official English translation released by the Beijing Internet Court; teams may treat it as authoritative for the purposes of the moot)

*Lidl Great Britain Ltd v Tesco Stores Ltd* [2024] EWCA Civ 262 ([link](#))

C-5/08 *Infopaq International A/S v Danske Dagblades Forening* ECLI:EU:C:2009:465 ([link](#))

*Hospital for Sick Children (Board of Governors) v Walt Disney Productions* [1966] 1 WLR 1055 (Ch)

*Random House, Inc v Rosetta Books LLC*, 150 F Supp 2d 613 (SDNY 2001) ([link](#))

### Articles

Patrick Goold, 'The Curious Case of Computer-Generated Works under the Copyright, Designs and Patents Act 1988' [2021] IPQ 120 [manuscript version available on [SSRN](#)]