Oxford International Intellectual Property Moot 2027

Corrections & clarifications

1. Please note the following corrections to the moot problem:

    a. In paragraph 32, please amend the definition of 'Special Use' to read 'means the use of the Works in any of the following'.

    b. In paragraph 32, please change the second indented paragraph numbered as (vi) to (vii).

    c. In the definition of 'artistic work' in Section 1 of the Copyright Act 1997, add the word 'applies' to the end of the text in paragraph (c).

    A revised copy of the problem, with the above corrections made using text mark-ups, has been released on the moot website.

2. The terms of use of Snowball II do not contain any provisions that purport to designate authorship in outputs or to transfer (any) copyright in those outputs.

3. When a user prompts Snowball II to create an image, Snowball II creates a single image, not several alternative options for users to choose between. Snowball II's model is <u>not</u> deterministic. Reentering the same prompt can result in very different images.

4. On 17 August 2025, Mr Bont decided to use Snowball II to create images inspired by the titles of James Bond films. He did not have any particular end use of those images in mind. His first prompt was:

    Please create an image of diamonds are forever in the style of Claude Monet

    The image produced by Snowball II featured a pond, water lilies and a small bridge, all in pastel tones. The words 'Diamonds are Forever' was written in cursive font in the sky. Mr Bont repeated the same prompt in a new chat, resulting in a new image. This second image featured diamonds and a vase of flowers in the foreground, and a large waterlily-covered lake and a cathedral in the background, again all in pastel tones. Mr Bont recognised both images as drawing from famous subject matter from the works of Claude Monet, rendered using impressionist techniques.

    Mr Bont then typed the following prompt into another new chat:

    Can you please create an image of a casino royale in the style of Claude Monet

    This resulted in an image of people assembling outside an ornate building with the words CASINO ROYALE printed over the entrance. The people were all dressed

in formal attire such as tuxedos and ball gowns. Mr Bont then created a new chat, and typed the following:

Can you please create an image of a casino royale in the style of Frida Kahlo

Snowball II produced the following image. It included a character that resembled Frida Kahlo, as well as a man that reminded Mr Bont of actor, Daniel Craig, who played James Bond in the 2006 film, *Casino Royale*.



Mr Bont then experimented with prompts based on other James Bond films, including writing prompts with more guidance regarding the desired image, and asking Snowball II to make changes to images it had produced. None of these prompts referred to Frida Kahlo until the prompt discussed in paragraph 4 of Armour J's judgment. Some prompts did, however, refer to other artists and artistic genres or techniques.

5. Please note the following matters in relation to the Frida Work:

   a. The two prompts set out in paragraph 4 are the only prompts that Mr Bont gave Snowball II in relation to the Frida Work. For the avoidance of doubt, Mr Bont did not prompt Snowball II to include any text.

   b. Snowball II produced one image in response to each prompt. Mr Bont did not engage in any post-generation editing of the Frida Work.

   c. The only changes between the original image produced by Snowball II and the revised version were those requested by Mr Bont in the second prompt. For the avoidance of doubt, the Spanish Text appeared in the original version, and remained, unchanged, in the revised version. Only the backdrop to the text changed.

   d. Mr Bont does not speak Spanish. When he saw the original version of the Frida Work, Mr Bont used a translation app to translate the text to English. He decided to keep the text.

   e. Neither side argued before Armour J that the Frida Work was not original on the basis that it copied public-domain artworks by Frida Kahlo. Teams are not permitted to introduce such arguments. Similarly, teams are

reminded that in paragraph 15, Armour J accepts the evidence of Dr Bisset 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.' Teams must therefore proceed on the basis that the Spanish Text is not a copy of, and does not infringe copyright in, any existing work.

6. Please note the following matters in relation to the illustration in the Globex brochure:

    a. Teams are reminded of the agreed facts in paragraph 13 of Armour J's judgment, namely that, '[t]he designer did not make changes to any of the elements of the Frida Work when adding them to her illustration.' That means that the colours, shapes and details of the elements copied remained the same.

    b. For further clarification, the copied elements were:

        i. The submarine at the bottom of the image, but not the surrounding buildings or sea, or the sea bed and plants nearby.

        ii. The scroll, including the heart but not the fish above.

        iii. The red hibiscus and white lily to the immediate left and right of the scroll, but not any leaves or nearby plant matter.

    c. The designer retained the exact arrangement of the hibiscus, scroll and lily relative to one another. She placed these elements at the bottom of her illustration, in the middle. She also placed the submarine in the lower part of her illustration, but towards the left-hand side. She changed the relative size of the submarine vis-à-vis the flowers and scroll by enlarging it slightly.

7. Globex's IPO brochure was distributed in print and digital form in Erewhon.

8. Further to paragraphs 10 and 29 of Armour J's judgment, the non-exclusive licence granted to Globex permitted the use of the licensed works for AI training, with no words limiting that licence to named AI tools (eg, Hank and/or Scorpio) or AI tools developed for particular purposes. Globex referred to the existence of both Hank and Scorpio in negotiations.

9. Further to paragraphs 11 and 29, all acts by Globex in relation to the storage of images, and training using them, occurred in Erewhon.

10. Further to paragraph 32, Mr Bont added the uses in Item 7 of Appendix A of the Agency Agreement when the Agreement was made in June 2003. The Agreement has not been amended since then.

11. Teams are reminded that, as stated in paragraph (c) of the Instructions, they should not seek to introduce entirely new causes of action, press arguments that have been conceded or that were never ventilated in the original proceedings, or raise matters outside the appeal. For instance, as indicated in paragraph 30, the parties agreed to limit arguments on the Agency Licence to whether the Agency had actual authority, under the Agency Agreement, to grant a non-exclusive licence to Globex for the training of Hank and/or Scorpio. Teams should not prepare submissions on the other matters mentioned in that paragraph, or to the law of agency more generally. On the other hand, the judgment does not include all the details of submissions made at first instance. To illustrate, teams should consider Globex's submissions on authorship in the event that the Frida Work and/or Spanish Text are protected as CGWs.

12. Teams are also reminded of paragraph (a) of the Instructions, and §21 of the Moot Rules, the effect of which are that their arguments may relate only to points of law. Teams may not make up facts or seek to introduce new evidence. For the avoidance of doubt, teams may refer to actual artworks of Frida Kahlo and/or to James Bond films, so long as they do not seek to contradict or qualify the findings of fact in the moot problem.

13. Pictures and illustrations may only be included in written submissions if they were included in a judgment or piece of scholarly literature being discussed.