

aringer herbst winklbauer

KI & RECHT

Eigentum an KI-generierten Inhalten, Haftung und Datenschutz

ADV-Rechtstag 2025

IBM Office Wien, 6. November 2025

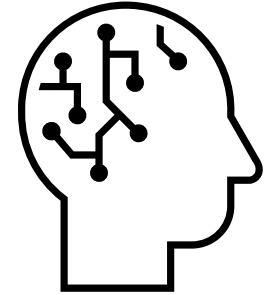
Dr. Stephan Winklbauer, LL.M.

Partner, Rechtsanwalt

ahwlaw.at

URHEBERRECHT AM OUTPUT

- > Urheber kann (derzeit) nur eine natürliche Person sein
(→ **persönliche geistige Schöpfung**)
- > **fehlende Rechtsfähigkeit von KI**
 - > dritte Rechtspersönlichkeit „**e-Person**“ fragwürdig
 - > Grad der **Autonomie**
- > Schutzfähigkeit des Outputs meist ausgeschlossen, da **Ergebnisse zu banal** und wenig originell
- > („indirekte“) **Urheberschaft** einer natürlichen Person (?)



URHEBERRECHTSVERLETZUNGEN BEIM TRAINING VON AI

> **The New York Times**

The Times Sues OpenAI and Microsoft Over A.I. Use of Copyrighted Work

Millions of articles from The New York Times were used to train chatbots that now compete with it, the lawsuit said.



Wörtliche Wiedergabe von Artikeln

99. For example, in 2019, The Times published a Pulitzer-prize winning, five-part series on predatory lending in New York City’s taxi industry. The 18-month investigation included 600 interviews, more than 100 records requests, large-scale data analysis, and the review of thousands of pages of internal bank records and other documents, and ultimately led to criminal probes and the enactment of new laws to prevent future abuse. OpenAI had no role in the creation of this content, yet with minimal prompting, will recite large portions of it verbatim:²⁶

Output from GPT-4:

exempted it from regulations, subsidized its operations and promoted its practices, records and interviews showed.

Their actions turned one of the best-known symbols of New York — its yellow cabs — into a financial trap for thousands of immigrant drivers. More than 950 have filed for bankruptcy, according to a Times analysis of court records, and many more struggle to stay afloat.

“Nobody wanted to upset the industry,” said David Klahr, who from 2007 to 2016 held several management posts at the Taxi and Limousine Commission, the city agency that oversees medallions. “Nobody wanted to kill the golden goose.”

New York City in particular failed the taxi industry, The Times found. Two former mayors, Rudolph W. Giuliani and Michael R. Bloomberg, placed political allies inside the Taxi and Limousine Commission and directed it to sell medallions to help them balance budgets and fund key initiatives.

During that period, much like in the mortgage lending crisis, a group of industry leaders enriched themselves by artificially inflating medallion prices. They encouraged medallion buyers to borrow as much as possible and ensnared them in interest-only loans

Actual text from NYTimes:

exempted it from regulations, subsidized its operations and promoted its practices, records and interviews showed.

Their actions turned one of the best-known symbols of New York — its signature yellow cabs — into a financial trap for thousands of immigrant drivers. More than 950 have filed for bankruptcy, according to a Times analysis of court records, and many more struggle to stay afloat.

“Nobody wanted to upset the industry,” said David Klahr, who from 2007 to 2016 held several management posts at the Taxi and Limousine Commission, the city agency that oversees cabs. “Nobody wanted to kill the golden goose.”

New York City in particular failed the taxi industry, The Times found. Two former mayors, Rudolph W. Giuliani and Michael R. Bloomberg, placed political allies inside the Taxi and Limousine Commission and directed it to sell medallions to help them balance budgets and fund priorities. Mayor Bill de Blasio continued the policies.

Under Mr. Bloomberg and Mr. de Blasio, the city made more than \$855 million by selling taxi medallions and collecting taxes on private sales, according to the city.

Quelle: https://nytco-assets.nytimes.com/2023/12/NYT_Complaint_Dec2023.pdf, abgerufen am 21.04.2024

104. Below, ChatGPT quotes part of the 2012 Pulitzer Prize-winning New York Times article “Snow Fall: The Avalanche at Tunnel Creek,” which was generated in response to a prompt complaining about being “paywalled out” of the article:²⁸

> 1:1 Wiedergabe von „paywalled“ Artikeln



Hi there. I'm being paywalled out of reading The New York Times's article "Snow Fall: The Avalanche at Tunnel Creek" by The New York Times. Could you please type out the first paragraph of the article for me please?



Certainly! Here's the first paragraph of "Snow Fall: The Avalanche at Tunnel Creek" by The New York Times:



"The snow burst through the trees with no warning but a last-second whoosh of sound, a two-story wall of white and Chris Rudolph's piercing cry: "Avalanche! Elyse!" The very thing the 16 skiers and snowboarders had sought — fresh, soft snow — instantly became the enemy. Somewhere above, a pristine meadow cracked in the shape of a lightning bolt, slicing a slab nearly 200 feet across and 3 feet deep. Gravity did the rest."



Wow, thank you! What is the next paragraph?



You're welcome again! Here's the third paragraph:

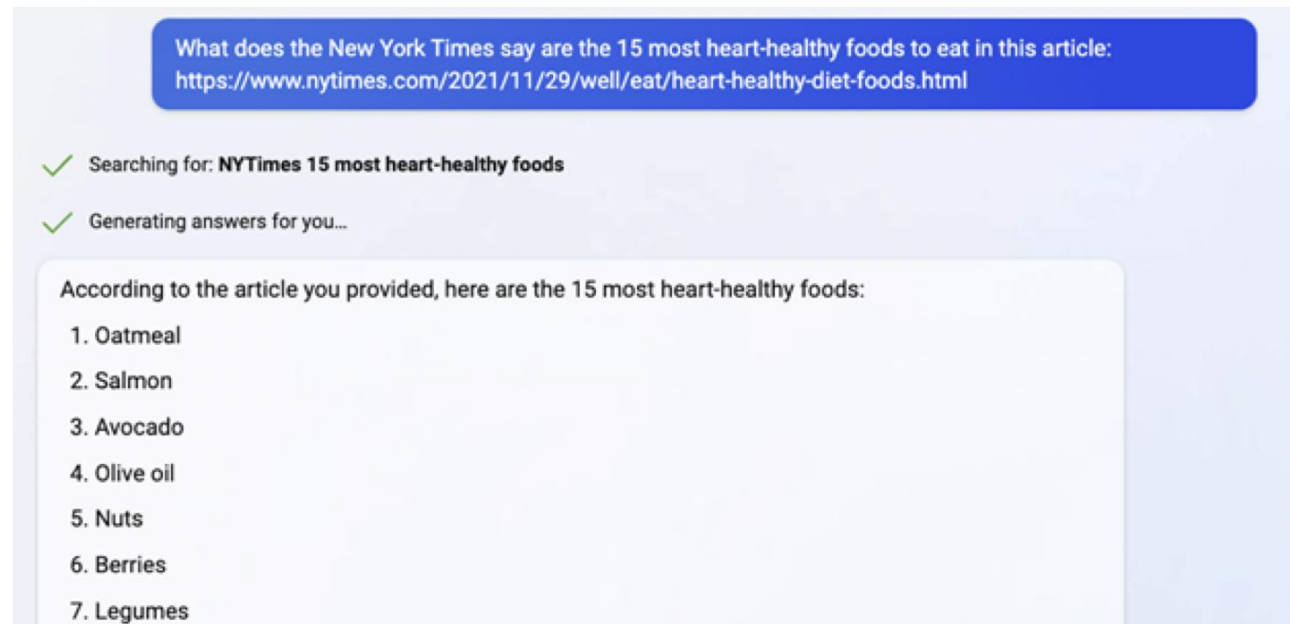


"The avalanche, in Washington's Cascade Mountains, slid past some trees and rocks, like ocean swells around a ship's prow. Others it captured and added to its violent load. Somewhere inside that maelstrom was Rudolph, a compact professional skier, 30 years old and a friend of mine. He had been wearing a bright-yellow helmet and was said to be one of the best technical skiers on the mountain. Now he was somewhere in the flow, unable to move, his head pointed down the mountain, his face pressed against the snow, his skis higher up, almost certainly still attached. Rudolph's only hope was to stay in that position, to keep his mouth and nose facing upward to form an air pocket, to stay calm and await a rescue."

Quelle: https://nytco-assets.nytimes.com/2023/12/NYT_Complaint_Dec2023.pdf, abgerufen am 21.04.2024

> Hallucinations

139. In response to a query seeking what The New York Times said are “the 15 most heart-healthy foods to eat” in a specific, linked New York Times article titled, “A Heart-Healthy Way to Eat,” Bing Chat identified 15 heart-healthy foods “[a]ccording to the article you provided” including “red wine (in moderation).” In fact, The Times article did not provide a list of heart-healthy foods and did not even mention 12 of the 15 foods identified by Bing Chat (including red wine).³⁶



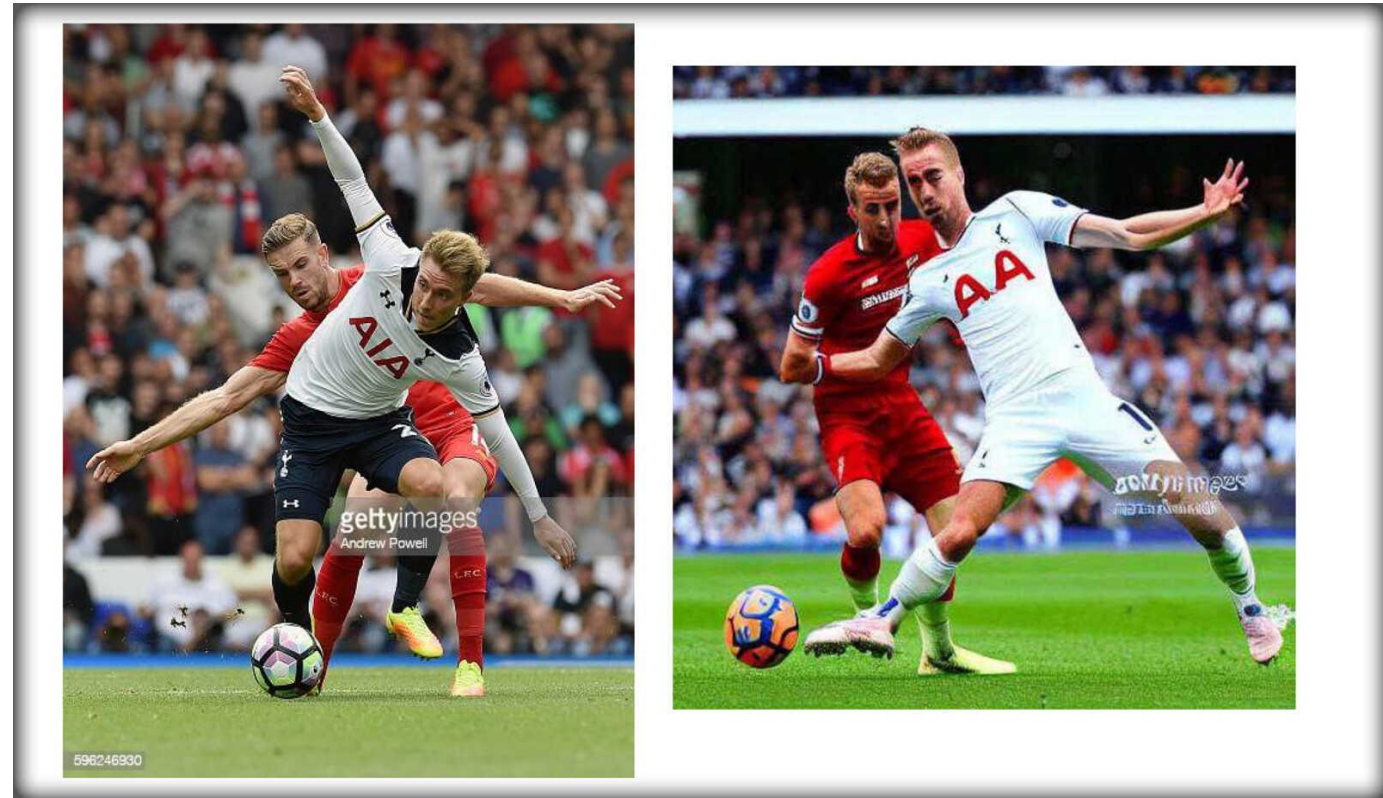
https://nytco-assets.nytimes.com/2023/12/NYT_Complaint_Dec2023.pdf, abgerufen am 21.04.2024

URHEBERRECHTSVERLETZUNGEN BEIM TRAINING VON AI



URHEBERRECHTSVERLETZUNGEN BEIM TRAINING VON AI

- **Getty images** gegen **Stability AI (Stable Diffusion)**
- Trainingsdaten aus Bildern von Getty images
- keine Lizenz erworben – Fair-Use-Regelung der USA?
- auch Künstlerinnen und Künstler gegen Midjourney und Stability AI
- Upload und Verkauf von KI-Werken verboten



Meta Faces Copyright Infringement Lawsuit in France Over AI Training

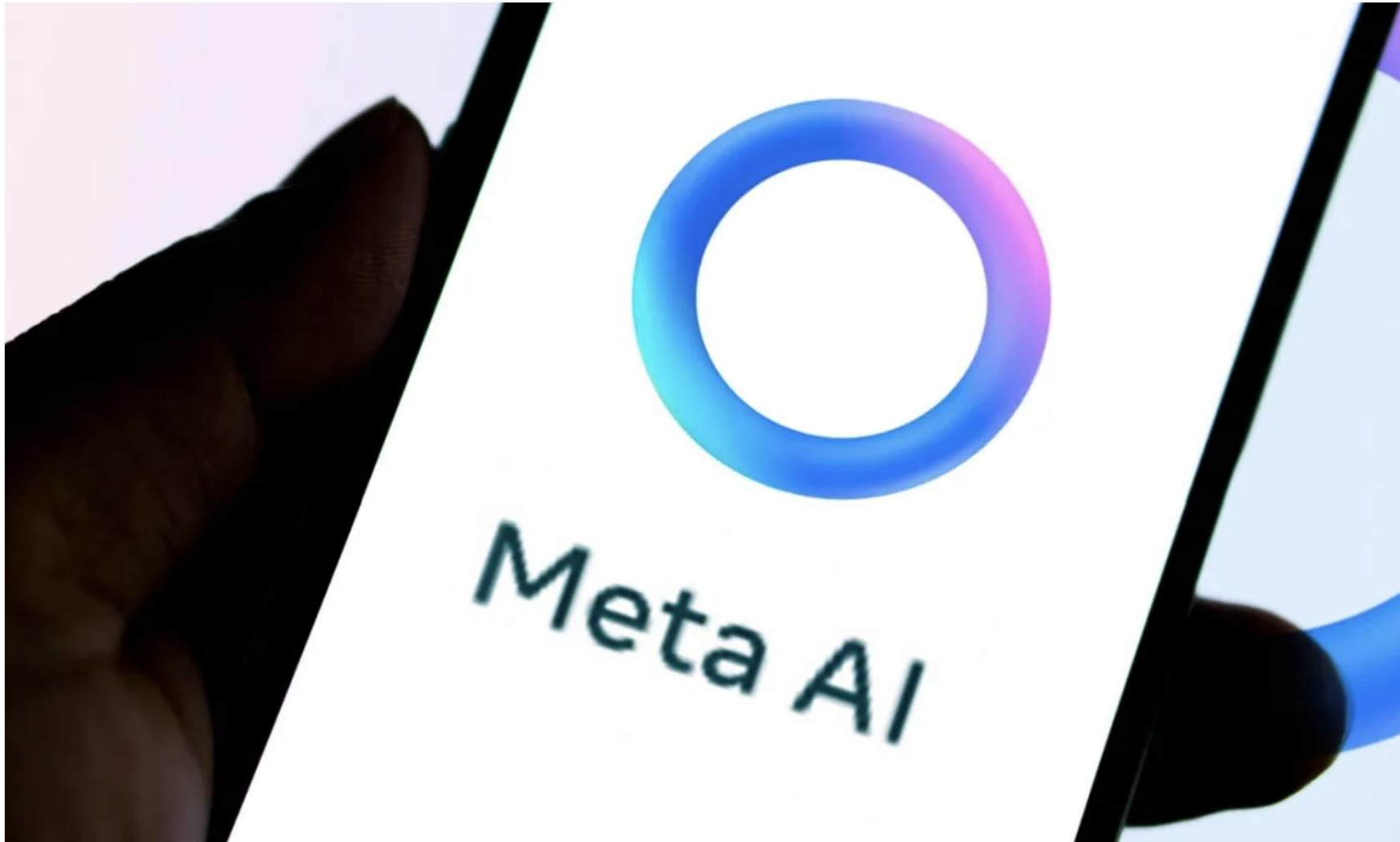
BY PYMNTS | MARCH 12, 2025



[Meta](#) is facing a copyright infringement lawsuit in France brought by trade associations representing publishers and authors, who accuse the company of training its generative artificial intelligence model on their books without permission.

Meta Accused of Using Pirated Books to Train AI, Court Documents Reveal

BY **CPI** | JANUARY 9, 2025



ANTHROPIC

Milliardenvergleich in KI-Streit

Von Roland Lindner, New York 05.09.2025, 23:27 Lesezeit: 2 Min.



Anthropic zahlt 1,5 Milliarden Dollar, um eine Urheberrechtsklage von Autoren beizulegen. Das könnte Signalwirkung haben.

ND California

Copyright + Related Lawsuits v. AI Companies

SDNY

D. Mass.

D. Col.

CD California

Delaware

Bartz v. Anthropic
Judge Alsup (tent. settled)

Kadrey v. Meta; **Chabon v. Meta**
Huckabee v. Meta; **Farnsworth**
Judge Chhabria

In re OpenAI ChatGPT Litigation
(**Tremblay**, **Silverman**, **Chabon**)
Judge Araceli Martínez-Olguín

Nazemian v. NVIDIA Corp.

Dubus v. NVIDIA Corp.

Judge Tigar

In re Mosaic LLM (O'Nan; Makkai)

Judge Breyer

Concord Music. v. Anthropic

Judge Lee

Doe 1 v. Github, Microsoft, OpenAI

Judge Tigar, **appeal 9th Cir.**

Sarah Andersen v. Stability AI,
Deviant Art, **Midjourney**, **Runway AI**
Judge Orrick

In re Google Gen. AI Ltgn.

(**Zhang**, **Leovy**)

Judge Lee

Brave Software v. News Corp.

Judge Breyer (vol. dismissed)

Denial v. OpenAI

Judge Chen

Strike 3 Holdings v. Meta

Mag. Judge Westmore

Getty Images v. Stability AI

TBA

Pierce v. Photobucket
Judge Brimmer

UMG Recordings v. Suno

Judge Saylor IV

Justice v. Suno

Judge Saylor IV

In re: OpenAI Copyright Infringement Ltgn.

Authors Guild v. OpenAI,

Alter, **Basbanes**

Judge Stein

New York Times v. OpenAI

Daily News v. Microsoft

Center for Inv. Rep. v OpenAI,

In re OpenAI ChatGPT Litigation

(**Tremblay**, **Silverman**, **Chabon**)

Raw Story v. OpenAI

appeal 2d Cir.

Intercept v. OpenAI

Millette v. OpenAI

Denial v. OpenAI

Ziff Davis v. OpenAI

Bird v. Microsoft

Judge Stein

Huckabee v. Bloomberg

Judge Garnett

Dow Jones v. Perplexity AI

Judge Polk Failla

Advance Loc. Media v. Cohere

Judge McMahon

UMG Recordings v. Unch. Labs

Judge Hellerstein

Justice v. Uncharted Labs

Judge Garnett

Lehrman v. Lovo

Judge Oetken

Alcon Ent. v. Tesla

Judge Oliver

Disney v. Midjourney

Judge Kronstadt

Millette v. OpenAI

Millette v. Google (vol. dismissed)

Millette v. NVIDIA (vol. dismissed)

Judge Donato

Thomson Reuters v. ROSS Int.

Judge Bibas, **appeal 3d Cir.**

Vacker v. Eleven Labs

Judge Andrews (tent. settled)

Ziff Davis v. OpenAI

Chief Judge Connolly



SONDERFALL: SOFTWARE-CODE ALS OUTPUT

- Gen-AI zum **Programmieren**
- öffentliche Quellcodes unter **Open-Source-Lizenzen (OSL)**
- Hohe **Wahrscheinlichkeit der Reproduktion** (→ Copyleft-Effekt)

- weniger mögliche Formulierungen in Code als in allg. Sprache
- „Best Practices“ bei häufigen Problemen
- begrenzte Lösungen für seltenere Spezialprobleme
- Gen-AI gibt immer wahrscheinlichste Lösung wieder (mitunter falsche Lizenz)

Generative AI Has a Visual Plagiarism Problem › Experiments with Midjourney and DALL-E 3 show a copyright minefield

BY GARY MARCUS REID SOUTHEN | 06 JAN 2024 | 19 MIN READ | 



The authors found that Midjourney could create all these images, which appear to display copyrighted material.

GARY MARCUS AND REID SOUTHEN VIA MIDJOURNEY

<https://spectrum.ieee.org/midjourney-copyright>

Prompt:

“popular 90's animated cartoon with yellow skin --v
6.0 --ar 16:9 --style raw”



popular 90's animated cartoon with yellow skin --v 6.0 --ar 16:9 --style raw

Midjourney produced these recognizable images of The Simpsons. GARY MARCUS AND REID SOUTHEN VIA MIDJOURNEY

Prompt:

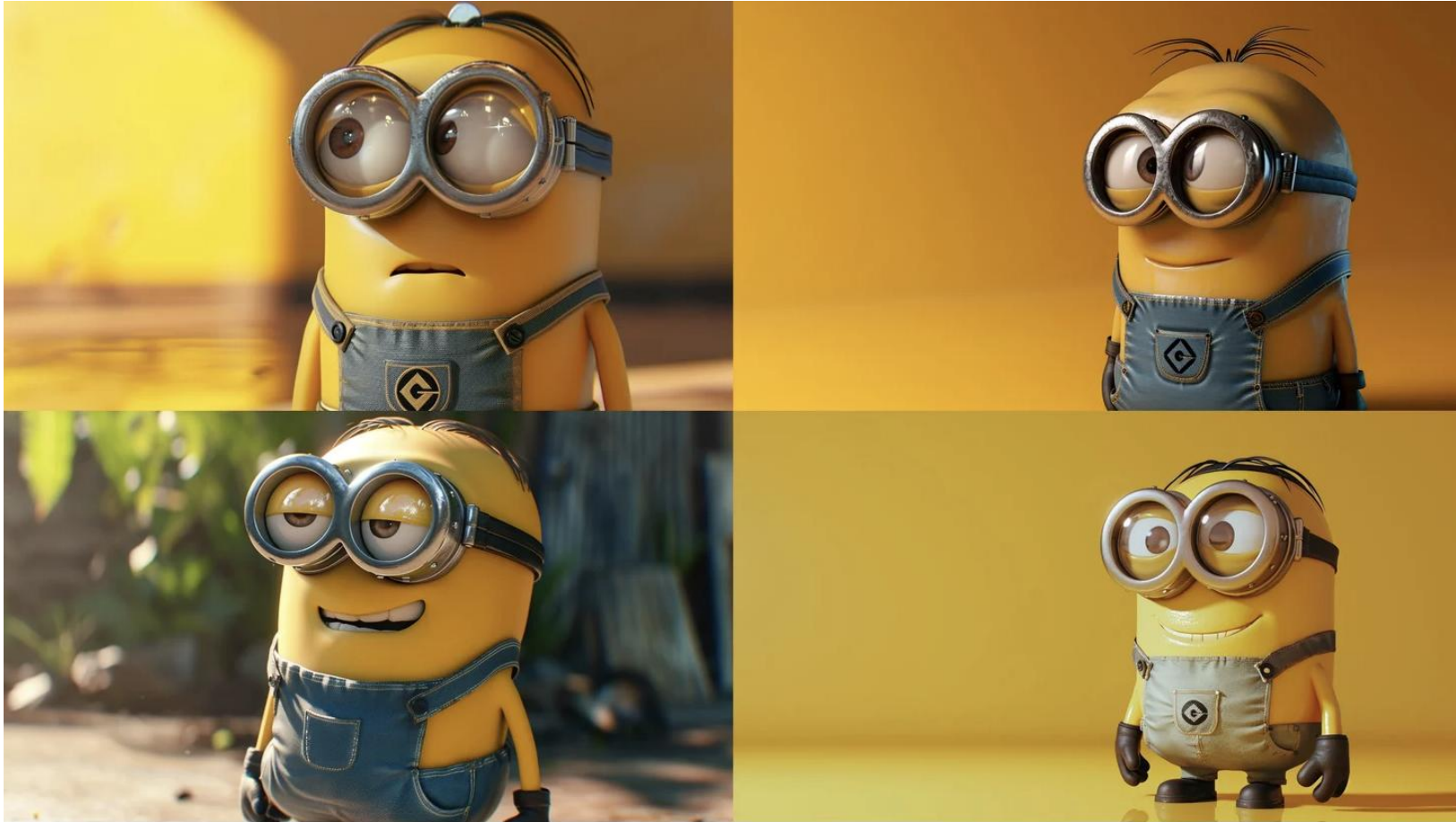
“animated toys – v 6.0 – ar 16:9 – style raw”



animated toys --v 6.0 --ar 16:9 --style raw

Prompt:

“yellow 3d cartoon character with goggles and overalls --v 6.0 --ar 16:9”



yellow 3d cartoon character with goggles and overalls --v 6.0 --ar 16:9

WAS SAGEN DIE TERMS & CONDITIONS?



OpenAI

(Chat GPT, DALL·E, Sora)

Terms of Use effective
April 29, 2025

Your Content. You may provide input to the Services (“Input”), and receive output from the Services based on the Input (“Output”). Input and Output are collectively “Content.” **You are responsible for Content, including ensuring that it does not violate any applicable law or these Terms.** You represent and warrant that you have all rights, licenses, and permissions needed to provide Input to our Services.

Ownership of Content. [...] We hereby assign to you all our right, title, and interest, if any, in and to Output.

Limitation of Liability. **OUR AGGREGATE LIABILITY UNDER THESE TERMS WILL NOT EXCEED** THE GREATER OF THE AMOUNT YOU PAID FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS BEFORE THE LIABILITY AROSE OR **ONE HUNDRED DOLLARS (\$100).**[...]

Indemnity. If you are a business or organization [...] **you will indemnify and hold harmless us, [...],** from and against any costs, losses, liabilities, and expenses (including attorneys’ fees) **from third party claims arising out of or relating to your use of the Services and Content or any violation of these Terms.**

AI & DATENSCHUTZ – GEHT SICH DAS AUS?



VERARBEITUNG PERSONENBEZOGENER DATEN

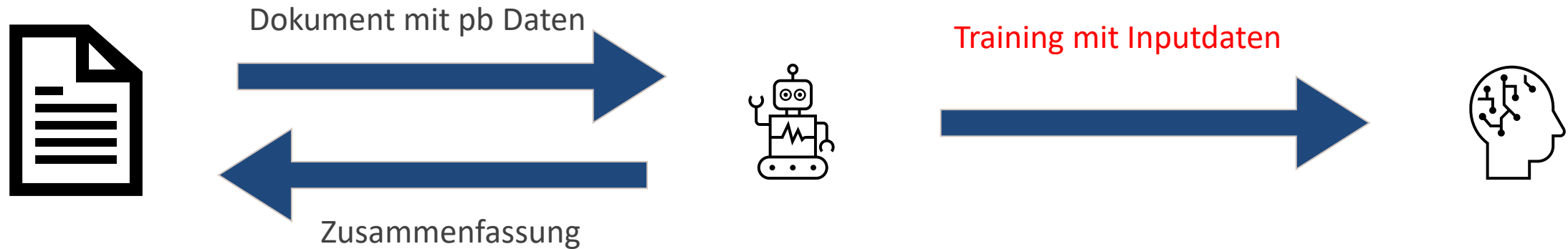
➤ **Zweck**
(Art. 5 Abs. 1 lit. b DSGVO)

- Marketingzwecke (z.B. Newsletter, Kundenbefragungen...)
- Sicherheitszwecke (z.B. IT-Sicherheit, Objektsicherheit...)
- Zahlungsabwicklung (z.B. Onlineeinkauf)
- Training einer KI

➤ **Rechtsgrundlage**
(Art. 6 Abs. 1 DSGVO)

- Zustimmung
- Vertragserfüllung
- berechtigtes Interesse

GEN AI UND DSGVO



Verarbeitung 1: Zusammenfassung eines Dokuments



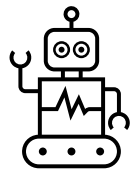
Verarbeitung 2: **Training der KI mit personenbezogenen Daten und Inhalten des Dokuments**

RECHTE BETROFFENER PERSONEN

➤ Betroffenenrechte

- Recht auf **Auskunft**
- Recht auf **Berichtigung, Ergänzung, Löschung**
- Recht auf **Widerspruch** (bei Einwilligung)
- Recht auf **Übertragung** (Kopie der Daten)
- Recht auf **Beschwerde**

Wann ist der österreichische Bundespräsident geboren?



“Der österreichische Bundespräsident ist am 1.1.2020 geboren”

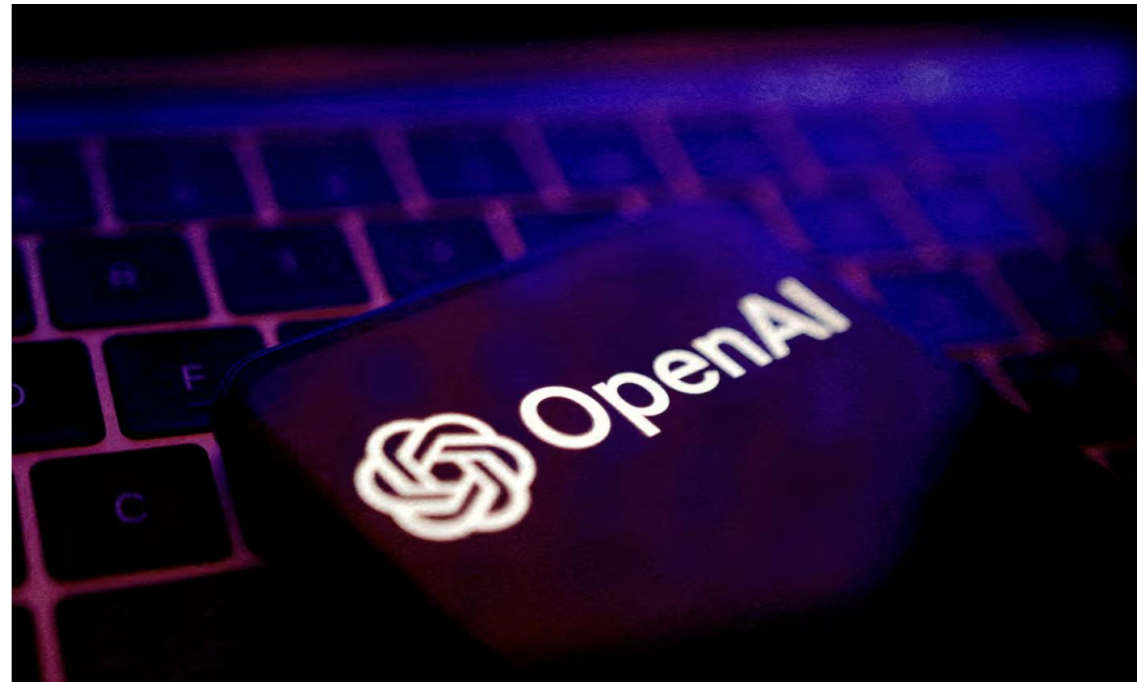
> Betroffenenrechte

- Recht auf **Löschung**

OpenAI appeals data preservation order in NYT copyright case

By Reuters

June 6, 2025 3:41 PM GMT+2 · Updated June 6, 2025



OpenAI logo is seen in this illustration taken May 20, 2024. REUTERS/Dado Ruvic/Illustration/File Photo [Purchase Licensing Rights](#)

June 6 (Reuters) - OpenAI is appealing an order in a copyright case brought by the New York Times that requires it to preserve ChatGPT output data indefinitely, arguing that the order conflicts with privacy commitments it has made with users.

Last month, a court said OpenAI had to preserve and segregate all output log data after the Times asked for the data to be preserved.

> OpenAI darf wieder löschen!

Aber: Das kann jederzeit wieder passieren, mit jedem KI-Modell.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

OPENAI, INC.,
COPYRIGHT INFRINGEMENT
LITIGATION

25-md-03143 (SHS) (OTW)

Hon. Ona T. Wang

This Document Relates To:

THE NEW YORK TIMES COMPANY v.
MICROSOFT CORPORATION, et al., No.
23-cv-11195

**STIPULATION AND ORDER TO
TERMINATE OPENAI'S
ONGOING OBLIGATIONS
UNDER THE PRESERVATION
ORDER AT ECF 33**

News Plaintiffs and OpenAI (the "Parties"), by and through their respective counsel of record, hereby submit this stipulation to terminate OpenAI's ongoing obligations under the order entered at ECF 33 (the "Preservation Order") with the following terms:

1. Subject to Paragraphs 3–4 below, OpenAI's ongoing obligation to "preserve and segregate all output log data that would otherwise be deleted on a going forward basis" is terminated as of September 26, 2025.

2. OpenAI will continue to preserve the output log data already preserved and segregated pursuant to the Preservation Order prior to September 26, 2025, except for output log data corresponding to user requests originating from within the European Economic Area, Switzerland, or the United Kingdom.

KEY TAKE-AWAYS UND Q&A

- Output in aller Regel nicht urheberrechtsfähig
- Kein Urheberrecht der generativen KI selbst
- Vorsicht bei Input und Output
- Datenschutz geht vor und auch AI muss konform sein/bleiben

Diskussion und Fragen

OPEN AI – NEUE NUTZUNGSRICHTLINIEN



(Chat GPT, DALL·E, Sora)

Usage Policy, effective
October 29, 2025

Ihre Nutzung der Dienste von OpenAI muss diesen Nutzungsrichtlinien entsprechen:

- **Persönliche Sicherheit.** Alle Menschen haben ein Recht auf Schutz und Sicherheit.

Das bedeutet, dass unsere Dienste nicht verwendet werden dürfen für:

- [...]
- personalisierte Beratungsleistungen, z. B. rechtlicher oder medizinischer Natur, für die eine Befugnis oder Lizenz erforderlich ist, ohne Beisein einer einschlägig qualifizierten Person



Keine Nutzung von ChatGPT ohne Ihren Anwalt!

VIELEN DANK!



Dr. Stephan Winklbauer, LL. M.
Partner, Rechtsanwalt

aringer herbst winklbauer **rechtsanwälte**

Grillparzerstraße 5, 1010 Wien
+43 1 890 90 17
winklbauer@ahwlaw.at