

# Pay attention to IP risks amid the AI gold rush

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Artificial intelligence (AI) has become the most disruptive force in business since the internet.

But executives risk walking blindfolded into one of the most complex intellectual property (IP) minefields of our time, says Darren Olivier, a partner at Adams & Adams, a legal firm which recently added an advisory service for businesses struggling to come to terms with the AI revolution from an IP and governance perspective.

"AI systems don't just create, they consume," says Olivier. "They're trained on vast data sets that may include copyrighted works, trademarks and confidential information. When your business uses AI outputs, do you truly know whether you own them? Or worse, whether they infringe someone else's rights?"

In SA, businesses adopting generative AI tools risk untested questions such as whether AI outputs qualify for copyright protection if no human author is identifiable; who owns inventions "conceived" by AI; and what if AI inadvertently generates a brand confusingly similar to a competitor's trademark?



Darren Olivier

for infringing others' rights," says Olivier.

The good news, says Lita Miti-Qamata, a partner at Adams & Adams, is that there are solutions and they require businesses to treat AI not as a gadget, but as a governance issue.

"Just as King IV requires corporate governance structures for ethics and sustainability, boards now need AI governance frameworks that

"The legal uncertainty creates a perfect storm: businesses may find themselves unable to claim IP protection for their own AI-assisted creations, while simultaneously facing liability

integrate IP oversight. This means tracking how AI is procured, how data is used, who owns the outputs and how risks are escalated," she says, adding that businesses should not assume that licences for AI tools are straightforward.

Many terms of service shift liability to the user, says Miti-Qamata. "Companies must negotiate agreements that allocate IP ownership and indemnities clearly and, if necessary, seek exchange control approval for return licences of valuable IP assets to AI systems. At the same time, employees need guidance around whether to feed client data into public AI tools and whether AI should be used for creative work, coding or only for research support. Without policies, businesses risk reputational and legal exposure."

Senior associate at Adams & Adams, Maureen Makoko-Kiugu, says traditional IP protection remains vital. "Trademarks, patents and copyright provide the bedrock. But companies also need to consider new layers: trade secret protection for AI training data, licensing models for algorithms and careful monitoring of competitors' filings in

emerging tech spaces."

The AI Act of the EU imposes obligations on "high-risk" AI systems, with compliance costs likely to spill over to global businesses.

In the US, copyright litigation against AI platforms continues to expand. Locally, the South African Companies and Intellectual Property Commission (CIPC) has begun exploratory work on AI's intersection with IP filings.

## No theoretical exercise

"For businesses in SA, this is not a theoretical exercise: an AI-driven competitor in Kenya or Nigeria may already be training systems on data sets that cross our borders," says Makoko-Kiugu.

Businesses often only seek legal advice when a dispute erupts. That strategy is not going to work with AI, says Olivier. "The winners of this revolution will be those who invest early in IP and AI governance, who stress-test their contracts and policies and who adapt their IP strategies for a future where algorithms are co-creators."