# Using Generative AI for Design: Legal Considerations and Best Practices

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## About Aquent Studios

Part of Aquent LLC, Aquent Studios is a global co/creation agency built on a new model of engagement that takes partnerships further. Driving deeper collaborations with end-to-end capabilities across strategy, enablement, and activation, Aquent Studios enables and empowers the world's leading brands to craft breakthrough experiences and solve big challenges by reimagining the future together.

## About Nixon Peabody

Nixon Peabody LLP is a global law firm with more than 600 attorneys collaborating across major practice areas in cities across the U.S., Europe, and Asia. We deliver sophisticated legal services to our clients and our communities by combining high performance, entrepreneurial spirit, deep engagement, and an unwavering commitment to a culture of collaboration, diversity, and humanity. We have the right team for any organizational issue and cover every angle of a transaction or dispute— from issues involving IP, securities, antitrust, employee benefits, tax, real estate, labor, and corporate governance to environmental, export compliance, and other regulatory areas.

# Introduction

At Aquent Studios, we believe in the future of generative AI. AI is already helping designers in so many ways, from taking on tedious creative production tasks to optimizing website layouts for conversion performance to inspiring designers to expand their creative lens. With generative AI still in its formative stage and continuing to evolve, the design profession and the practice of design will undoubtedly be transformed in the years to come.

As with any breakthrough innovation, the legal impacts of AI in the design fields are somewhat uncertain. However, we think it's critical to acknowledge the legal considerations we are aware of that come with the use of AI in design. With this knowledge, companies can feel comfortable and confident using AI technology by taking proactive steps to mitigate risk.

In order to help our clients navigate these complex challenges, we've partnered with Nixon Peabody LLP, an Am Law 100 firm and global leader in intellectual property procurement, counseling, and litigation, to produce this paper. The following principles-based guidance outlines how companies can use AI design tools ethically and responsibly by understanding the legal considerations and applying best practices to mitigate potential risks.

# Background on Generative AI

In the creative industry, generative AI (GAI) has been one of the biggest innovations in many years. This technology works using machine learning and a training dataset to generate new creative content. A related innovation, generative adversarial networks (GANs), takes it one step further. GANs learn from existing data and user feedback to produce outputs that are increasingly realistic without requiring additional training data. GANs are widely used in AI design tools, making them particularly relevant to creating designs, artwork, and illustrations.

As GAI and GAN models become more accessible and prevalent, it is crucial to assess the associated legal considerations and follow best practices to mitigate risk before incorporating AI-generated outputs into creative deliverables.

## Specific Use Cases for AI in Design, Artwork, and Illustration

To determine the risks and considerations of using AI technology to develop designs, artwork, and illustrations, it's important to first understand how these tools can be used. Below are several examples that outline how AI can be leveraged for creative tasks:

1.  Editing and processing images: To complete repetitive design tasks and deliver consistent results across a series of images, allowing designers to focus on more strategic aspects of their work.

2.  Automating the design of specific elements: To expedite the creation of sets of design elements for large-scale deliverables like presentations or a collateral series.

3.  Suggesting brand-aligned design variations: To ideate on a design task within the parameters of brand standards and visual guidelines, producing a set of concepts or elements that are flexible and considerate of these requirements.

4.  Optimizing designs: To create an optimal user experience that delivers a clear visual hierarchy and intuitive presentation of elements driven by a dataset of user insights and feedback.

5.  Re-creating specific looks or aesthetics: To generate images or photography across a range of styles, scenes, and lighting, enabling stakeholders to choose from a set of generated visuals and define what they prefer.

6.  Generating artwork with natural language descriptions: To generate artwork across a range of subjects and styles through the imaginative use of descriptive prompts that guide the visualization and refinement process.

7.  Inspiring design ideas: To kick-start creative ideas, given a clear task and a set of guidelines to follow, allowing designers to deliver stronger concepts using AI to offer a wider creative lens.

## Terms of Use Review

To conduct a risk analysis, it is essential to carefully review the terms of use of the AI tool. Different AI tools possess varying capabilities and limitations that must be thoroughly considered. Appendix A provides an overview of the terms of use for some popular AI tools. Please note that these terms can be updated at any time, so it is advisable to regularly check and review the terms of use.

The provided sample terms of use emphasize the limitations associated with utilizing AI tools. It is crucial for users to thoroughly assess the rights granted by the AI application or platform and select a model with terms of use that align with their project requirements.

Take, for example, a designer creating brand-aligned variations of a set of illustrations (Use Case No. 3). The starting point for the designer should be to identify suitable AI tools that can generate such deliverables efficiently. For example, NightCafe utilizes a blender system that can replicate image inputs in hundreds or thousands of iterations, while Canva offers an image-to-output feature for presentations. The next step is to review the terms and conditions of these AI tools to understand the rights associated with the generated content. The uses and purposes for the generated works should be considered in order to select the AI tools that grant the necessary rights that align with such use and purpose. Opting for a paid user account can be a prudent choice if commercial rights will be required for the distribution of the logos, illustrations, or other deliverables.

Disclosing information to stakeholders and end users should also be factored into the analysis. Certain terms of use encourage disclosure that the illustrations or creations were made with AI. Even where terms of use do not suggest such disclosures, designers should consider disclosing to stakeholders that the use of AI tools may render the deliverables uncopyrightable. By setting proper expectations and informing stakeholders and end users about the technology and limitations, any potential legal or intellectual property issues can be addressed upfront.

Once the permitted use and limitations have been identified, it is important to consider other rights that may come into play and evaluate the associated risks of using the AI tool.

## Intellectual Property (IP) – Legal Considerations and Best Practices

The use of AI tools in design carries inherent risks, including the potential for intellectual property (IP) infringement. It is important to acknowledge these risks and adopt effective measures to mitigate them. This section examines various scenarios to explore the considerations and risks associated with the use of AI-generated content in design, artwork, and illustrations.

When employing AI tools, it is important to recognize that these tools can serve as both protective measures for IP rights and as facilitators of IP infringement. Consequently, the purpose of using these tools must be carefully assessed.

## Overview of Intellectual Property (IP) Considerations

The use of AI technology can introduce IP concerns, including those related to trademarks, copyrights, and patents.[1] For example, a company can utilize an AI tool to design creative assets for an advertising campaign. The use of AI in this scenario may give rise to complex issues, such as when the tool's output generates protected material that was made part of the AI tool's training dataset. This scenario has been evidenced in the recent lawsuit against Stability AI by Getty Images, where Getty claimed Stability copied millions of images from its database without permission. Additionally, if the AI tool uses sensitive material as inputs, legal issues may arise from the unauthorized use of someone's name, image, or likeness that results in outputs containing the same unauthorized uses.

For example, take a designer using AI tools to re-create specific looks or aesthetics for stakeholders to choose from (Use Case No. 5). In order to achieve this, the designer can use any of the popular AI models, provided that the tool allows for the commercial use of the output. Subsequently, it will be important to note that obtaining copyright registrations for these generated images or photographs may be challenging. Additionally, the designer must ensure that no trademarks or individuals are depicted or described in inputs and that trademarks, individuals' names, images, or other identifying features are also not in the outputs. Conducting a trademark clearance search for any logo or mark created with the assistance of AI tools and intended for use in commerce is advisable. The same clearance should be conducted for the use of names and images of individuals as part of outputs. A trademark clearance search would mitigate any potential trademark infringement, and an individual's clearance search would mitigate any potential right of publicity claim.

[1] A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something or offers a new technical solution to a problem. There is also protection for design patents that are not utilitarian. The current guidance from the United States Patent and Trademark Office requires human authorship to protect patent rights.

Once the images or resulting work products have been generated, it is crucial to document the proper assignment of rights from the designer to stakeholders and end users to avoid any ambiguity as to ownership over any resulting intellectual property. By ensuring that all stakeholders are informed about the potential copyright challenges and legal considerations, the designer can mitigate any potential risks and deliver a set of generated visuals that meet the stakeholders' requirements.

Similarly, if a designer intends to generate artwork using imaginative descriptive prompts to guide the visualization and refinement process, the designer can use AI tools and mitigate any risk while adhering to the above suggestions (Use Case No. 6). While there is no clarity as to the legal ramifications of using an individual's style as part of a descriptive input prompt in the use of AI tools, the primary risk is the potential similarity of content and outputs that could result from the use of the AI tools. The similarity of outputs in an individual's style or existing work could amount to copyright infringement.

## Copyright – Ownership

One of the significant risks associated with the use of AI tools for design and illustration is the uncertainty surrounding the ability to protect the generated work and obtain copyright registration. This uncertainty arises because many of these creations fall into a gray area regarding their eligibility for copyright protection. Copyright is the legal right to control copies and distributions of original works. A valid copyright holder can prevent others from copying, changing, or distributing the protected works. For copyright to subsist, there must be a requirement of (1) human authorship, (2) originality, and (3) fixation in a tangible medium of expression. To qualify for copyright protection under the U.S. Copyright Act (17 U.S.C. § 102), a work must be an original work of authorship and fixed in a tangible medium of expression. The Copyright statute does not explicitly cover AI-generated works, presenting a risk for users of AI tools in design and illustration. On March 16, 2023, the Copyright Office issued guidelines emphasizing human authorship as a fundamental requirement for copyright protection.

The guidance raises the key question of whether the work primarily reflects human authorship, with AI functioning as a mere tool, or if the traditional elements of authorship, including expression, selection, arrangement, and creativity, were generated by a machine. While the guidance does not provide a specific threshold for the amount of human contribution needed for protection, it underscores the significance of predictability and control over the output by the user of the AI tool.

Copyright protection is critical for users of AI tools as it grants them exclusive rights over their creations, including the ability to reproduce, distribute, prepare derivative works, publicly perform, and display their work. However, the protection of AI-assisted or AI-generated works remains uncertain due to this guidance. Although original works in tangible mediums of expression are typically protected by copyright at the time of creation, registration with the Copyright Office provides additional benefits, such as the ability to file federal lawsuits and seek damages for infringement, as well as reciprocal protection in other jurisdictions.

Therefore, it is crucial to evaluate whether creations produced using AI tools are eligible for copyright protection and to understand the significance of obtaining such protection for AI-generated images. Stakeholders and users must consider scenarios in which AI-generated outputs may not qualify for copyright protection due to their limited authorship or failure to meet the required level of creativity for protection. In many cases, AI-generated outputs used in design or illustration undergo modifications by the users of the AI tools. In such instances, the key question is whether there was sufficient human input to render the AI-generated work minimal or if the contributions were substantial but not minimal, leading to the AI portions falling under the public domain as they are not deemed copyrightable.

By extension, inputs may result in copyrightable material. The question of the copyrightability of inputs depends on the nature of the inputs and the level of creativity involved. Inputs such as raw data or factual information typically do not qualify for copyright protection, as they lack the requisite originality. However, if the inputs involve creative elements or are original expressions, they may be eligible for copyright protection.

Finally, it is crucial to extend the analysis of authorship and ownership of AI-generated output to contractual agreements involving third parties and employees. Work-for-hire contracts and employment contracts may want to incorporate provisions that mandate the disclosure of AI tools and the inputs used. In the case of marketing, advertising, and creative agencies, service contracts may also want to incorporate clauses that disclose the use of AI tools to stakeholders. Additionally, it would be advisable to request an assignment of the inputs used in cases where AI tools were employed, including the prompts or inputs utilized, as exemplified in text-to-image models like Midjourney and DALL·E.

For instance, a designer may use AI tools to edit images and deliver consistent results across them (Use Case No. 1) or to automate the design of specific elements to expedite the creation of large-scale deliverables like presentations or a collateral series (Use Case No. 2). It will be essential to assess if the images are intended for distribution through various channels or for internal use and whether the resulting work requires protection as a business decision. In some instances, it may not be an effective business choice.  For example, a set of icons used in a business-to-business presentation or for internal communications may not require copyright protection. The need for designers to focus on strategic aspects of their work often outweighs the need for protection of all output.

## Copyright – Infringement

The unauthorized use of works protected by copyright to train AI models could result in legal liability in the form of copyright infringement for the developers of the tools. Copyright infringement may extend to the end users of the AI tools if the resulting outputs are infringing on existing works. AI models heavily rely on extensive datasets for generating realistic outputs, but disputes arise when unauthorized input data is used to train popular AI models. If the developer of the AI uses unauthorized data, the IP owner may pursue infringement claims and seek that the infringing party gives up profits made from the infringement. Copyright holders can take legal action if their works are registered beforehand, but outcomes are uncertain. Using tools trained with potentially unauthorized copyrighted works carries inherent risk. Designers should assess their outputs for resemblance to protected works, such as with the use of reverse image search engines and copyright clearance vendors. Stakeholders should also be informed about the AI tools and datasets used.

In addition, if internal models will be developed for the generation of illustrations or designs and the models will be using internal datasets, the datasets should be evaluated to prevent the use of copyrighted material, unauthorized material, or private information. On the other hand, if third-party datasets are used, the dataset should also be vetted for the same misuse. Lastly, when contracting with a third party that will be using AI tools, it would be important to request the disclosure of the datasets used.

An example of this would be a designer using AI to create brand-aligned design variations (Use Case No. 3) using an internal dataset. To accomplish this, the designer can employ an internal algorithm like Stable Diffusion, which allows for the

selection of internal or private data to train the model. By using an AI algorithm with internal data, the designer can input various brand patterns and colors, creating numerous unique versions (potentially in the millions) that align with the established brand identity and fall within the defined parameters. A notable example of this approach is Nutella, which has employed AI algorithms to design limited-edition, one-of-a-kind packaging for the Italian market. In this case, the algorithm was guided by specific parameters and trained on data relevant to Nutella's brand identity.

The use of an internal dataset to train an AI model composed of copyrighted material may present the risk that outputs generated are highly similar to the copyrighted material used to train the AI model. Designers may want to instead use datasets from licensed works or works in the public domain. In the example above, the resulting designed patterns could infringe on copyright-protected works. Copyright Compendium 906.1 offers protection over the selection and arrangement of unusual patterns such as the one below. As such, any of the patterns generated could have resulted in potentially infringing works. Thus, designers should be advised to run reverse image searches and image searches from stock photo databases to mitigate the risk of copyright infringement.

## Trademark

Trademark protection in the context of AI tool use involves safeguarding the unique identity and branding of products or services to prevent consumer confusion. Trademarks, unlike copyrights, don't require originality and gain protection, instead, through use in commerce.

Using AI tools for trademark creation poses similar risks as those associated with copyright considerations, both in terms of input and output. There is a risk of generating outputs that highly resemble existing trademarks, therefore, requiring clearances to avoid infringement. When third-party agencies employ AI tools for client naming or branding strategies, it is crucial to ensure the client is receiving adequate rights to the AI-generated assets. It is advisable to request or provide an assignment or contractual transfer of the AI-generated assets, such as the trademarks, as well as the inputs used to generate them. As such, third-party contracts or independent contractor agreements to generate logos, branding, or trademarks for others should consider modifying their existing template contracts to include clauses that also transfer the rights to the inputs or prompts used. In addition to the transfer of rights, contracts with parties using AI tools may consider including clauses requiring the

disclosure of inputs or prompts used, even in the case of non-transferring rights to AI-generated assets. There could be special consideration given to the inclusion of limitations to the use of AI models in third-party or employment contracts. Specifically, clauses that limit the use of AI tools to specific tools or prevent the use of specific AI models.

## Right of Publicity

The use of AI tools enables the creation of synthetic media like "deepfakes" or "digital clones," which modify or manipulate existing photos and videos. Legal implications arise when using AI-generated content that includes real people's images.

The right of publicity, protecting an individual's name, image, and likeness, varies across 36 states with no federal law governing it. Similar to trademark clearances, entities should conduct a clearance process to secure rights and permissions for using individuals' names, images, or likenesses in graphics and illustrations. Clearance should cover both living and deceased recognizable individuals, as 25 states recognize the post-mortem right of publicity. Note that the right of publicity applies to all individuals, not just public figures. Clearances can help prevent violations of individuals' rights and false endorsements under the Lanham Act.

Furthermore, disclosures to stakeholders should include information about prompts used in generating designs or illustrations with human subjects. Users should avoid, when possible, identifying specific individuals as part of the inputs or prompts when utilizing AI tools to mitigate legal risks.

## Trade Secret

The accidental sharing of business information through data input into an AI model is the main concern regarding AI and trade secrets. Proper internal guidance and contractual agreements can mitigate this risk. Companies should establish internal protocols to protect trade secrets and use non-disclosure agreements (NDAs). Additionally, contractual agreements should specify the confidential nature of the data provided and the limitations on its use, storage, and sharing. Third-party contracts should consider using NDAs to protect inputs used in the generation of content. Specifically, the inputs used could be protected as trade secrets to prevent others from using identical inputs or identical prompts to generate the same outputs.

When a designer uses AI tools to inspire new ideas and ignite their creativity (Use Case No. 7), a major consideration in this process is the use of protected content to generate those ideas, as well as the handling of inputs that may contain private or trade secret information. Designers should be cautious when incorporating protected content into their creative process, such as inputs with protected data. The inputs used may include private or trade secret information and should be treated with utmost care and confidentiality. Designers should have clear guidelines on handling and safeguarding sensitive data, ensuring that appropriate measures are in place to protect privacy and maintain confidentiality regarding inputs and prompts used.

## Privacy – Legal Considerations and Best Practices

Privacy issues and the use of AI tools to create designs, artwork, and illustrations are concerned mostly with the data used to train the AI models used. The data collected is substantial and necessary for the most realistic outputs. It is crucial to handle this data in a privacy-conscious manner and ensure that it aligns with privacy regulations and principles. Data scraping from the internet carries the risk of using unauthorized data, and user inputs can also be used to train AI models. Transparency and informed consent from users are essential. Three widely used AI tools explicitly outline in their terms of use how user inputs may be used to train their respective datasets. See Appendix B for limitations in the use of inputs.

As an example, a designer could use AI to create an optimal user experience that delivers a clear visual hierarchy and intuitive presentation of elements driven by a dataset of user insights and feedback (Use Case No. 4). Companies like Netflix utilize data collected from user searches and viewing habits to personalize homepage content using AI algorithms.[2] This enables users to

[2] https://www.simplilearn.com/how-netflix-uses-ai-data-science-and-ml-article#:~:text=Netflix%20AI%20generates%20thumbnails%20by,prompt%20a%20click%20from%20users.

discover new selections and improves their overall experience by providing relevant content that aligns with their preferences. Neural networks are also employed by Netflix to select visuals that are most likely to attract users.

By leveraging UX algorithms and data-driven insights, designers can tailor user experiences to meet the needs and preferences of individual users. However, it is important to ensure that proper disclosures are provided to users regarding the use of their data. By doing so, designers can create user experiences that are engaging, personalized, and intuitive while respecting user privacy.

## Explanation of Relevant Laws and Regulations Pertaining to Privacy

Privacy in AI models is a global concern due to undisclosed data origin and unknown data used to train AI models. The lack of transparency about the ingested data used to train models raises issues related to the regulation of data collection and data scraping. The regulation of data collection varies across multiple jurisdictions, which could result in inconsistent regulatory enforcement. As a result, the collection of data used to train AI models poses a significant risk for developers, but it also impacts consumer trust regarding the protection of private data and sensitive information. In the U.S., there is no federal privacy law, defaulting to the reliance on sector-specific regulations and common law. In contrast, international jurisdictions treat private data and data scraping differently. For example, Europe's GDPR[3], which is similar to California's CPRA[4], provides transparency and requires permission for data collection. Further, the Federal Trade Commission (FTC) has also issued guidance regarding the use of AI to deceive consumers and has enforced protection of private collection of data. In a recent settlement, the FTC established by enforcement that companies could be found liable for misuse of consumer data to train algorithms used in machine learning or other AI tools and that companies may be required to destroy the data used or the models themselves.[5] As such, the repercussions for data misuse for the training of AI models could be severe, and designers using privately trained AI models are advised to scrutinize data collection methods, adhere to regulations that limit the sharing of data, and prioritize the examination of outputs generated from AI models for dissemination purposes.

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[3] Europe has established the General Data Protection Regulation (GDPR), which requires significant transparency and permissions for data collection.

[4] California has enacted the California Privacy Rights Act (CPRA), thereby establishing a state agency responsible for enforcing California's consumer data privacy laws. Through the CPRA, California offers a GDPR level of protection by ensuring that data collected is "[r]easonably necessary and proportionate to achieve the purposes for which the personal information was collected or processed, or for another disclosed purpose that is compatible with the context of the collection."

[5] Stipulated Order for Permanent Injunction, Civil Penalty Judgment, and Other Relief, *United States of America v. Kurbo Inc. et al.*, Case No. 3:22-cv-00946-TSH (N.D. Cal. Mar. 3, 2022), ECF No. 15. (available at https://www.ftc.gov/system/files/ftc_gov/pdf/wwkurbostipulatedorder.pdf).

## Best Practices to Mitigate Risk

To effectively mitigate risks associated with the use of AI tools for design, artwork, and illustrations, it is important to follow best practices and prioritize the protection of outputs and inputs, provided that the inputs rise to the level of copyright protection. Here is a checklist to address the legal considerations specific to the creative industry:

1.  Terms of use: Determine the rights granted in the terms of use of the AI models used and the limitations of use for the AI tool's outputs. This ensures proper use and avoids any unintended infringement or misuse.

2.  User and purpose: Determine who will be using the AI tools and how the outputs will be used. Understanding the intended users and purposes helps tailor the protection measures accordingly.

3.  Copyrightability: Evaluate the level of human input involved in the AI-generated outputs to determine their copyrightability and ensure appropriate protection is in place for these creative works or for the inputs used, if applicable.

4.  Model training data: Scrutinize the AI model used and gather information about the database used to train it. This step helps assess the quality and integrity of the training data and identify potential risks associated with it.

5.  Trademark considerations: Validate and check the outputs for their eligibility for trademark registration and potential conflicts with existing trademarks. This step ensures that the generated designs or branding elements can be legally protected and used in commerce.

6.  Right of publicity: Check the outputs for any unauthorized use of an individual's name, image, and likeness to prevent misuse of someone's right of publicity.

7.  Trade secrets: Review contracts with relevant parties to identify clauses that explicitly prohibit the use of confidential information as inputs in any AI models. This helps safeguard trade secrets and confidential data from accidental exposure.

8.  Contracts with service providers: Examine contracts with all parties involved in providing services that may use AI tools. Request disclosure of their use of AI, and if your company offers services involving AI, provide clear disclosure to clients about its use.

9.  Data privacy: Implement internal guidance and external contractual clauses that address data limitation and responsible use. Educate users on safeguarding sensitive data and complying with regulations. Have anti-scraping policies in place to protect user privacy. These measures establish a proactive approach to privacy protection, ensuring responsible data handling and compliance.

Addressing these considerations and incorporating them into your business practices can enhance risk mitigation efforts when using AI design tools. To learn more about the legal considerations and best practices for specific use cases outlined in this paper, please see Appendix C.

# Conclusion

While generative AI represents a massive opportunity for the design industry, there are important legal considerations with respect to intellectual property and privacy concerns that must be addressed. The principles-based guidance we have outlined empowers companies and designers alike to use AI design tools in an ethical, responsible, and legally compliant manner.

As AI technologies continue to improve and become more accessible, the design industry will continue to evolve alongside it. The possibilities for AI in design are virtually limitless, with the potential to create new styles and approaches to design that we have yet to imagine. Aquent Studios is excited to be at the forefront of this new era of design, and we look forward to seeing what innovative solutions and designs will emerge as we continue to push the boundaries of what is possible.

## Appendix A

| AI Terms of Use | |
|---|---|
| **Midjourney** | • You own all output generated if you are a paid member. |
| | • Unpaid members receive a noncommercial 4.0 Attribution International License.[6] |
| | • You grant Midjourney a non-exclusive license to the output. |
| **Stability.AI** | • You own the content generated. |
| | • You grant Stability.AI a non-exclusive license to use any image uploaded. |
| | • Stability may use the generated output to improve the services. |
| **DALL•E (by OpenAI)** | • Encourages users to proactively disclose AI involvement in work. |
| | • You may remove the DALL·E signature if you wish, but you may not mislead others about the nature of the work. |
| | • You own all right to input, and OpenAI assigns you all rights to the output. |
| **Adobe Firefly** | • You own all content created but cannot use output for commercial purposes during Beta launch. |
| | • You grant a non-exclusive license to Adobe. |
| | • Mentions Adobe assets provided as part of services and grants users a non-exclusive personal license to use the assets—it is unclear whether data used to train the model is considered an asset. |
| **Bing Image Creator** | • You own all input and output creations but only for personal, non-commercial use. |
| | • You grant Bing a non-exclusive license to your input and output creations. |
| **NightCafe** | • You own all content generated. |
| | • You grant NightCafe a non-exclusive license. |

Note: The terms of use above are for illustrative purposes only. They can be updated at any time, so it is advisable to regularly check and review the terms of use.

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[6] Creative Commons License, which allows others to copy and redistribute the material in any medium or format and remix, transform, and build upon the material for non-commercial purposes.

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## Appendix B

| Terms of Use—Inputs | |
| --- | --- |
| **Stability.AI** | • Content is used to develop and improve services. |
| **DALL•E (by OpenAI)** | • Data provided may be used to improve the model.<br>• You can opt out by filling out a form. |
| **Adobe Firefly** | • No option to opt out of dataset training. |

Note: The terms of use above are for illustrative purposes only. They can be updated at any time, so it is advisable to regularly check and review the terms of use.

## Appendix C

| Use Cases | Legal Considerations and Best Practices to Mitigate Risk |
|---|---|
| **Example No. 1 – Editing and processing images** | Copyright – Infringement |
| | *Page 5* |
| **Example No. 2 – Automating the design of specific elements** | Copyright – Ownership |
| | *Page 4–5* |
| **Example No. 3 – Suggesting brand-aligned design variations** | Terms of Use |
| | *Page 2* |
| **Example No. 4 – Optimizing designs** | Copyright – Infringement and Privacy |
| | *Pages 4, 7* |
| **Example No. 5 – Re-creating specific looks or aesthetics** | Overview of Intellectual Property Considerations |
| | *Page 3* |
| **Example No. 6 – Generating artwork with natural language descriptions** | Overview of Intellectual Property Considerations |
| | *Page 3* |
| **Example No. 7 – Inspiring design ideas** | Trade Secret |
| | *Page 7* |

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