



# Managing IP Risk when using Generative AI in Marketing

## Executive Summary

January 2025



# Managing IP Risk when using Generative AI in Marketing: Executive Summary

In September 2024, **WFA member research of 48 multinational brands revealed that 63% are already using generative AI (“Gen AI”) for marketing purposes.** From content creation, ideation and production to task automation, strategic planning and media optimisation, Gen AI is already transforming the marketing industry, holding promises of more effective, efficient and personalised marketing communications.

However, despite these opportunities, **66% of brands state that legal challenges continue to be the main barrier to Gen AI adoption, with 77% claiming they are most concerned about intellectual property (IP) and copyright risks.** This is corroborated by the cautious approach brands are taking when it comes to using AI-generated content in marketing assets. **In fact, only 40% of those adopting Gen AI today are using AI-generated content in user-facing marketing communications.**

To support members as they navigate Gen AI’s challenges and leverage the opportunities of this technology with confidence, this document aims to clarify some of the key IP concerns brands may face in the context of its use for marketing purposes. It also puts forward some proposed voluntary guidance on the steps they could take to mitigate identified IP risk.

This document does not address other risks, such as data privacy and regulatory risks, risks of bias and discrimination, or contractual risks, the latter of which is covered in this [WFA Generative AI Contact Best Practice](#).

Please note that nothing in this document serves as legal (or other) advice, but rather as support for brands’ own identification and mitigation of risk. The voluntary guidance, drafted with the support and expertise of WFA members, may not be appropriate for all companies, so we recommend that you seek advice from your lawyers and other advisers before relying on the voluntary guidance in this paper.

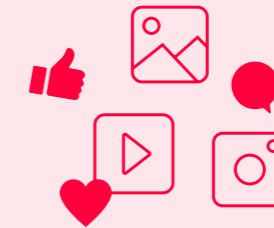
“Addressing Gen AI’s legal risks is a top priority for brands. This report comes at a crucial time, providing brands with a clearer understanding of the IP challenges they face when using Gen AI in marketing and actionable insights on how they could tackle them. Our goal is to empower marketers to unlock the technology’s potential as part of our steadfast commitment to providing members with the knowledge and voluntary best practice they need to protect their brands and drive more effective and efficient marketing.”



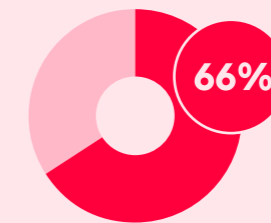
**Stephan Loerke, CEO, WFA**



**63%** of WFA members are already using generative AI



Of that 63%, only 40% are using AI-generated content in user-facing marketing communications



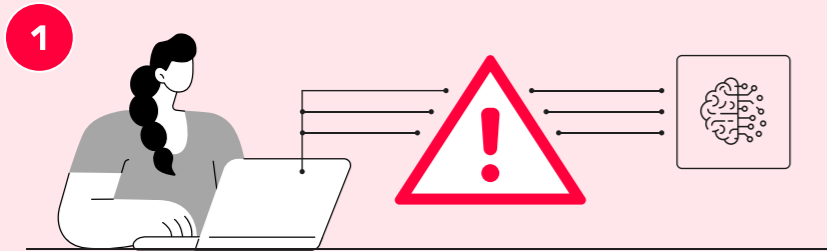
66% State that legal challenges are the main barrier to adoption...



77% are concerned about IP and copyright risks

# Key IP Risks relevant to the use of Gen AI in marketing

WFA has identified six IP risks most relevant to the use of Gen AI in marketing



**Loss of control over your brands' IP and data input into Gen AI tools by your staff, agency staff and/or other suppliers**

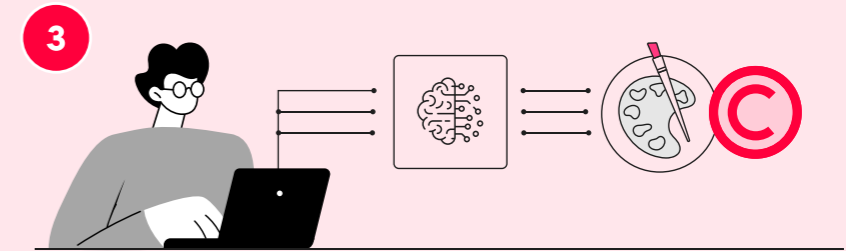
**Example:** [Samsung ChatGPT case](#), where Samsung staff put the company's source code into ChatGPT in an attempt to fix some broken code. They used a version of ChatGPT that ingested the data into the learning algorithm, meaning the source code could, in theory, be accessed by anyone using the tool.



**Breach of third-party IP rights or confidentiality by inputting third-party IP or data into a Gen AI tool without necessary permissions**

**Example 1:** Marketer looking for deeper consumer insights feeds a Gen AI tool with data licensed from a data insights provider to generate a report on current consumer trends. The license with the insight provider does not extend to sharing the data with a Gen AI tool and the brand is now in breach of the license.

**Example 2:** Agency uploads a photograph of a model taken for a particular campaign into a Gen AI tool and alters the original photo for a new campaign. The model's original consent did not extend to the use of their image in a Gen AI tool or a new campaign and the brand now faces an infringement/breach of contract claim.

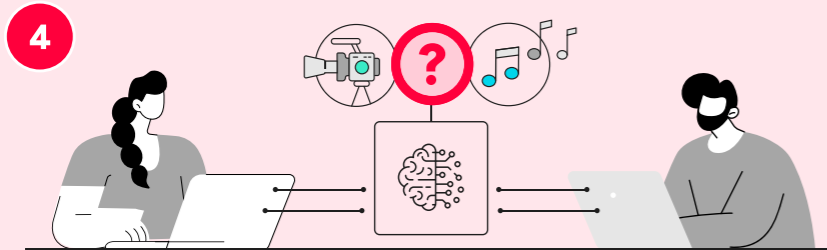


**Generating brand outputs that inadvertently infringe third-party IP rights**

**Example:** A marketer uses an image generator to create a visual for a new campaign. The generated image closely resembles a well-known logo or design owned by another brand. Despite no intention to copy, this output could still violate copyright or trademark laws. For instance, a stylised animal in the generated image might look very similar to an existing mascot of a popular brand. If this image is used in promotional materials, the brand could face legal action for infringement, even though the resemblance was unintentional.

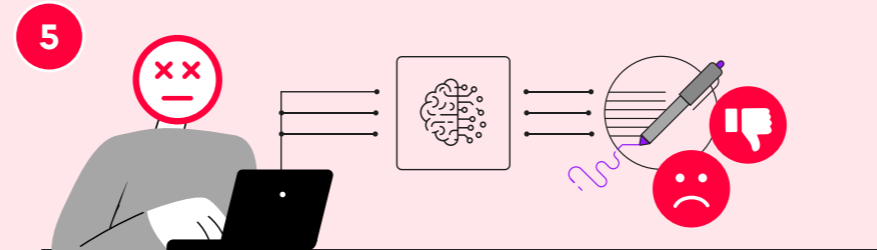
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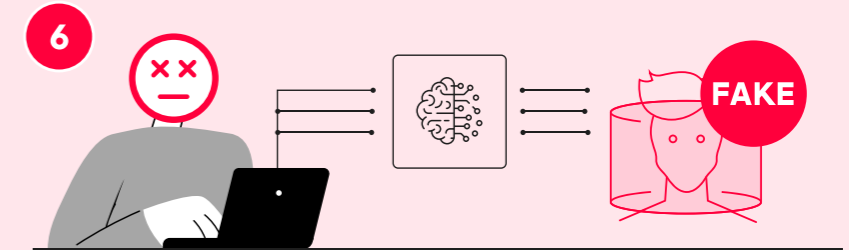
## Lack of ownership or exclusive rights over IP in outputs created by Gen AI tools

**Example:** A marketing team uses a sound/music generator to create music as the central audio identity of their campaign. However, due to the terms of the AI tool, the rights to the audio are not exclusively owned by the brand. After campaign launch, another company uses the same tool to produce a video ad with an identical background voiceover and score. Because the brand doesn't have exclusive rights to the audio, they are unable to prevent the other company from using it.



## Third-party AI-generated fraudulent ads impersonating your brand (paid media)

**Example:** An individual uses Gen AI to create a fraudulent ad that mimics a brand's logo and style. The ad, which is bought and placed on several social media platforms, promotes a fake sale and directs consumers to a counterfeit website. Consumers who engage with the ad provide payment information, damaging trust in the legitimate brand. This type of impersonation deceives customers but also infringes the brand's IP rights, leading to reputational harm.



## Third-party organic content impersonating your brand (brandjacking/brand disinformation)

**Example:** An individual creates an AI-generated video that features a popular celebrity endorsing a brand product. In the video, the celebrity falsely claims that the brand supports a controversial political stance, despite the brand never making such a statement. The video spreads rapidly on social media, causing public backlash. Neither the celebrity nor the brand had any involvement with the making of the video. This misrepresentation damages the brand, alienating part of its customer base and forcing the brand to conduct damage control and clarify the false claims.

# Key mitigation tactics

## Policies and processes

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- ❑ **Establish clear data governance and usage policies** which stipulate permitted and prohibited Gen AI use cases and tools, and clarity on what data can and cannot be fed into the tools by teams and agencies.
- ❑ **Provide guidance and training to staff on risks of Gen AI** and processes to follow if they are unsure of how to address these. Ensure that they are also aware of any regulatory requirements, particularly around transparency and disclosure.
- ❑ **Keep your communications and crisis management protocols up to date** to quickly address incidents of AI-generated brand disinformation or brandjacking.
- ❑ **Ensure human review and approval processes for data inputs** and brand outputs, particularly if these are being shared externally.
- ❑ **Introduce an AI assessment and triage process** to funnel demand, avoid duplication and identify areas for new capabilities.
- ❑ **Build warnings/guidance into tech interfaces** to remind teams of existing guidelines and prompt teams about how they can and can't prompt AI tools.
- ❑ **Label AI-generated assets** to make it easier to identify unauthorised use of brand IP & drive consumer awareness on the potential for AI-generated brand disinformation.

## Contract and supplier management

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- ❑ **Prioritise the rollout of enterprise 'safe' tools** and introduce processes to assess and conduct due diligence on new AI tools.
- ❑ **Review licensing agreements with third-party data providers** (e.g. insights providers, retailers) to ensure you have the appropriate rights to use their data for AI purposes. Renegotiate with licensors where there is a business case for using their materials in Gen AI tools.
- ❑ **Review contracts with agencies** to seek appropriate IP warranties and indemnities, and ensure terms and conditions clearly stipulate how agency partners can or cannot use Gen AI.
- ❑ **Collaborate with ad platforms** to strengthen advertiser verification processes and prevent fraudulent advertising.
- ❑ **Collaborate with media platforms** to allow for rapid reporting and removal of content that misuses brand IP and encourage ad platforms to support and contribute to voluntary initiatives on content provenance and authenticity.

# Key mitigation tactics

## Oversight and monitoring

- ✔ **Implement a cross-functional AI governance board** bringing together core stakeholders to exchange and identify new ways of managing IP risk and overseeing the use of AI tools to ensure compliance with companies policies and contracts.
- ✔ **Maintain detailed logs of data fed into AI tools** including what data was uploaded, who uploaded the data, when it was uploaded, which tools it was invested into and for what purposes. Be sure to document human involvement in the creation of any outputs.
- ✔ **Strengthen IP checks** to pick up any potentially infringing AI-generated content and consider the uptake of tools which enable you to practice takedown processes where IP has been misused.
- ✔ **Implement regular audits and inventory checks** to ensure compliance with existing policies and identify new areas of risk.

For a more in-depth look at our key mitigation tactics download the full report

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DOWNLOAD THE FULL GUIDE HERE





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### **Competition compliance policy**

The purpose of the WFA is to represent the interests of advertisers and to act as a forum for legitimate contacts between members of the advertising industry. It is obviously the policy of the WFA that it will not be used by any company to further any anti-competitive or collusive conduct, or to engage in other activities that could violate any antitrust or competition law, regulation, rule or directives of any country or otherwise impair full and fair competition. The WFA carries out regular checks to make sure that this policy is being strictly adhered to.

As a condition of membership, members of the WFA acknowledge that their membership of the WFA is subject to the competition law rules and they agree to comply fully with those laws. Members agree that they will not use the WFA, directly or indirectly, (a) to reach or attempt to reach agreements or understandings with one or more of their competitors, (b) to obtain or attempt to obtain, or exchange or attempt to exchange, confidential or proprietary information regarding any other company other than in the context of a bona fide business or (c) to further any anti-competitive or collusive conduct, or to engage in other activities that could violate any antitrust or competition law, regulation, rule or directives of any country or otherwise.

Please note that the recommendations included in this document are merely meant as suggestions or proposals. They are not binding in any way whatsoever and members are free to depart from them.