

AUTHOR AND ARTIST CONTRACTS, AI AND LICENSING TERMS

October 18, 2024



BEFORE WE GET STARTED...

- **Need tech support?** Please send us a note in the chat.
- **Sound and video are off for participants.** This helps facilitate access, especially for those who may have limited bandwidth where they are joining us from.
- **We're not recording, and ask you not too as well.** This allows our presenters and participants to speak more freely.
- **Slides will be made available after!** Look for a copy to be emailed to you.
- **Please post questions in the chat.** Presenters may answer them there. Otherwise the moderators will save them for the Q&A period at the end of the presentation.
- **Please take a moment to review our Code of Conduct:** <https://www.oceancopyright.org/oceans-code-of-conduct>. Participants can be asked to leave or removed for violations.

WHO OWNS AI FOR CREATIVE WORK?

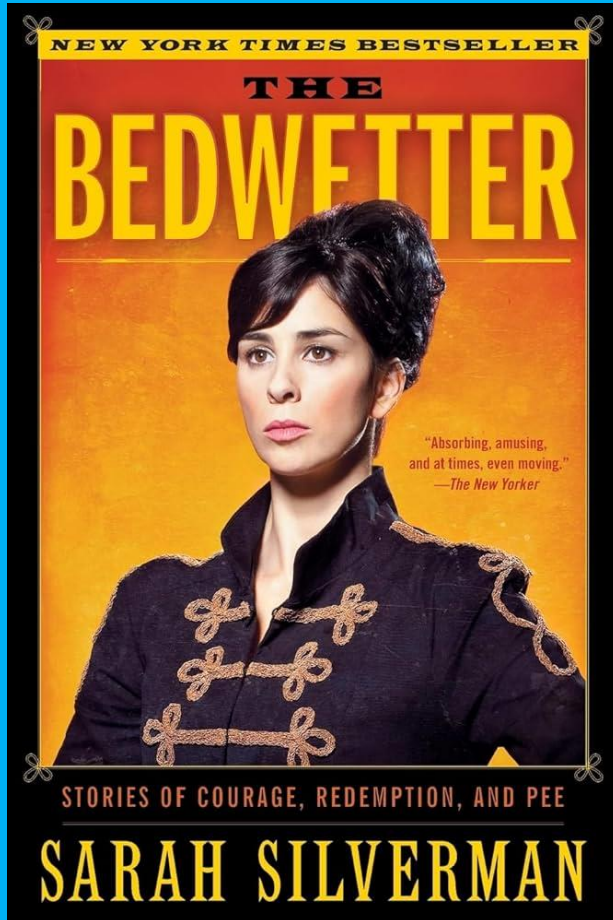
Amy Whitaker

she/they

Associate Professor, Visual Arts Administration

Department of Art and Art Professions, New York University

SARAH SILVERMAN SUES OPENAI



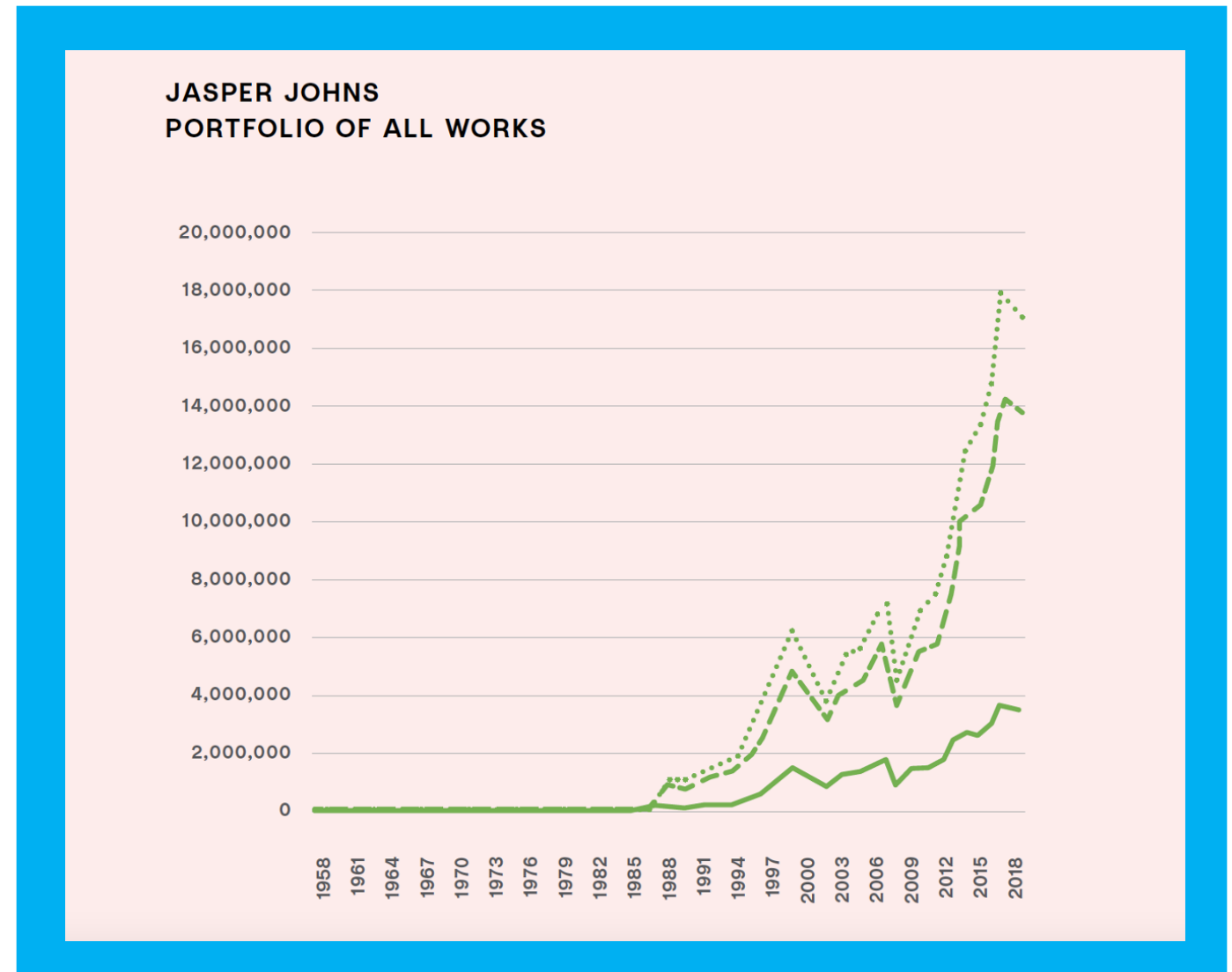
- **Who owns the inputs to LLMS?** Even if one author is a small part of a larger model, what if the model can recreate their work?
- **How does this affect how we think about copyright?** If we imagined the fourth factor of the fair use test as a market *and value* test, would we be better able to respond to AI?
- **Does it matter that OpenAI is a nonprofit?** They have a capped-profit arm with profits above a level being distributed by a private nonprofit board. What if we had forms of collective ownership and decision-making?

WHAT CAN WE LEARN FROM COLLECTIVE MODELS IN THE ARTS?

If artists like Jasper Johns and Robert Rauschenberg had retained 10% equity when their work first sold, they would have outperformed the US stock market by up to 1000 times.

What if artists—and creators generally—developed shared ownership and governance models?

Experiments in NFTs and blockchain have given us test use cases, as have coops as a general structure outside the arts. (See: Nathan Schneider, *Governable Spaces* and Kelani Nichole *Transfer Data Trust*)

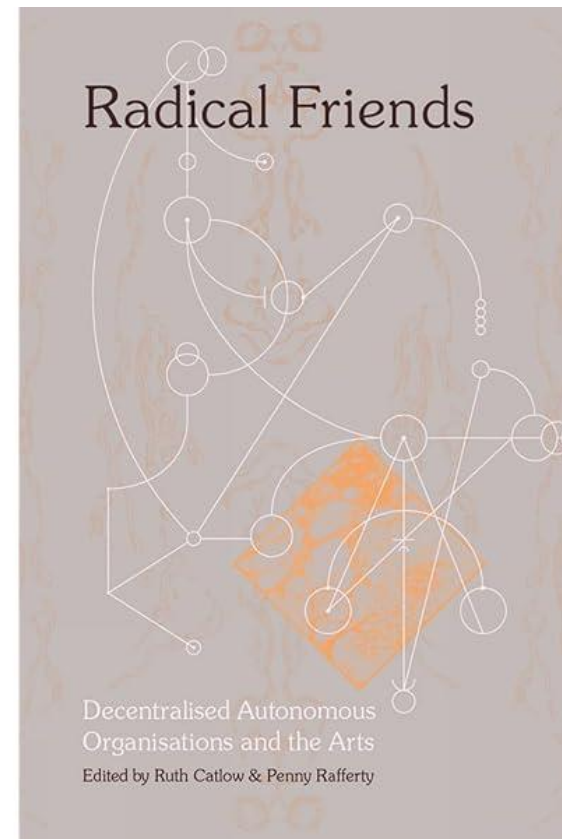




TRANSFERArchive/ **DATA.TRUST**

Proof-of-concept prototype for the TRANSFER Data Trust

👤 1 Contributor 🔄 0 Issues ⭐ 1 Star 🍴 0 Forks



AI, AUTHORSHIP AND LICENSING

Dave Hansen

he/him

Executive Director

Authors Alliance

Wiley expects to make US\$44 million from AI partnership, authors unable to opt out

Wednesday, 4 September 2024 **Books+Publishing**



● August 05, 2024

Oxford University Press 'Actively Working' With AI Companies

By [Kathryn Palmer](#)

● July 29, 2024

Taylor & Francis AI Deal Sets 'Worrying Precedent' for Academic Publishing

The publisher didn't give authors any notice before selling access to its data to Microsoft for \$10 million. The agreement could improve academic research, but it further entrenches the predatory nature of academic publishing, experts say.

By [Kathryn Palmer](#)

Sage confirms it is in talks to license content to AI firms

NEWS SEP 19, 2024 BY MATILDA BATTERSBY



CAMBRIDGE
UNIVERSITY PRESS

AI Subsidiary Aggregation - Author FAQs

What are Large Language Models (LLMs)?

LLMs are a category of generative artificial intelligence (AI) foundation models, trained on immense amounts of data making them capable of generating natural language and other types of content. They can be used to perform a wide range of tasks, such as generating contextually relevant content, inferring information from content, translation, summarising text, or answering questions.

Why are we considering licensing content to AI providers?

Following developments in artificial intelligence during 2022 and 2023, we have begun to receive content licensing requests from providers of generative AI.

Generative AI technologies offer opportunities but also comes with risks. The use of high-quality scholarly content in training generative AI models may improve the quality and accuracy of tools that are increasingly going to be used in everyday life. There may also be opportunities for existing scholarly content to have greater visibility and impact if it is properly cited and attributed by AI tools, and to drive the creation of new and innovative products for a range of audiences.

By engaging constructively with generative AI tools and content providers, we hope that we can amplify these benefits and mitigate the risks.

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 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

MICHAEL CHABON, DAVID HENRY
 HWANG, MATTHEW KLAM, RACHEL
 LOUISE SNTOR, AND AVILET
 WALDMAN,
 individually and on behalf of all others
 similarly situated,
 Plaintiffs,
 v.
 META PLATFORMS, INC., a Delaware
 Corporation,
 Defendant.

CLASS ACTION COMPLAINT
 CLASS ACTION
 JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

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 SOUTHERN DISTRICT OF NEW YORK

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 CHRISTINA BAKER KLINE, MAYA
 SHANBHAG LANG, VICTOR L. VALLI,
 GEORGE R. R. MARTIN, JODI PFCOLIT,
 DOUGLAS PRESTON, RONANA ROBINSON,
 GEORGE SAUNDERS, SCOTT TUROW, and
 RACHEL VAIL, individually and on behalf of
 others similarly situated,
 Plaintiffs,
 v.
 OPENAI INC., OPENAI LP, OPENAI LLC,
 OPENAI GP, L.L.C., OPENAI ORCO, L.L.C.,
 OPENAI GLOBAL LLC, OAI CORPORATION
 LLC, OPENAI HOLDINGS LLC, OPENAI
 STARTUP FUND I LP, OPENAI STARTUP
 FUND GP LLC, and OPENAI STARTUP
 FUND MANAGEMENT, L.L.C.,
 Defendants.

No. 1:23-cv-8292

CLASS ACTION COMPLAINT
 JURY TRIAL DEMANDED

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

MICHAEL CHABON, DAVID HENRY
 HWANG, MATTHEW KLAM, RACHEL
 LOUISE SNTOR, AND AVILET
 WALDMAN,
 individually and on behalf of all others
 similarly situated,
 Plaintiffs,
 v.
 OPENAI INC., OPENAI LP, OPENAI
 ORCO, L.L.C., OPENAI GP, L.L.C., OPENAI
 STARTUP FUND I LP, L.L.C., OPENAI
 STARTUP FUND I, L.P., and OPENAI
 STARTUP FUND MANAGEMENT, L.L.C.,
 Defendants.

Case No.
 CLASS ACTION COMPLAINT
 CLASS ACTION
 JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

SARAH SILVERMAN, an individual;
 CHRISTOPHER GOLDEN, an individual;
 RICHARD KADREY, an individual;
 Individual and Representative Plaintiffs,
 v.
 OPENAI, INC., a Delaware nonprofit corporation; OPENAI, L.P., a
 Delaware limited partnership; OPENAI GP, L.L.C., a Delaware
 limited liability partnership; OPENAI STARTUP FUND GP I, L.L.C., a
 Delaware limited liability company; OPENAI STARTUP FUND I,
 L.P., a Delaware limited partnership; and OPENAI STARTUP FUND
 MANAGEMENT, L.L.C., a Delaware limited liability company,
 Defendants.

Case No.
 COMPLAINT
 CLASS ACTION
 DEMAND FOR JURY TRIAL

COMPLAINT

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF DELAWARE

GETTY IMAGES (US), INC.)
 Plaintiff,)
 v.) C.A. No.)
 STABILITY AI, INC.) DEMAND FOR JURY TRIAL)
 Defendant.)

COMPLAINT

Plaintiff Getty Images (US), Inc. (“Getty Images” or “Plaintiff”), by and through its undersigned attorneys, for its Complaint against Defendant Stability AI, Inc. (“Stability AI” or “Defendant”), hereby alleges as follows:

NATURE OF ACTION

1. This case arises from Stability AI’s brazen infringement of Getty Images’ intellectual property on a staggering scale. Upon information and belief, Stability AI has copied more than 12 million photographs from Getty Images’ collection, along with the associated captions and metadata, without permission from or compensation to Getty Images, as part of its efforts to build a competing business. As part of its unlawful scheme, Stability AI has removed or altered Getty Images’ copyright management information, provided false copyright management information, and infringed Getty Images’ famous trademarks.

2. Getty Images brings this action to recover damages that it has suffered and is continuing to suffer, and to prevent the irreparable harm caused by Stability AI’s intentional and willful acts.

3. Getty Images is one of the world’s leading creators and distributors of digital content. At great expense, over the course of nearly three decades, Getty Images has curated a

1

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

PAUL TREMBLAY, an individual and
 MONA AWAD, an individual,
 Individual and Representative Plaintiffs,
 v.
 OPENAI, INC., a Delaware nonprofit corporation; OPENAI,
 L.P., a Delaware limited partnership; OPENAI ORCO, L.L.C., a
 Delaware limited liability corporation; OPENAI GP, L.L.C., a

Case No.
 COMPLAINT
 CLASS ACTION
 DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

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[Additional Counsel Listed on Signature Page]

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

SARAH ANDERSEN, an individual;
 KELLY MCKERNAN, an individual;
 KARLA ORTIZ, an individual,
 Individual and Representative Plaintiffs,
 v.
 STABILITY AI LTD., a UK corporation;
 STABILITY AI, INC., a Delaware
 corporation; MIDJOURNEY, INC., a
 Delaware corporation; DEVIANART, INC.,
 a Delaware corporation,
 Defendants.

Case No.
 COMPLAINT
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 DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

I, DOE 1 and J. DOE 2, individually and on
 behalf of all others similarly situated,
 Individual and Representative Plaintiffs,
 v.
 GITHub, INC., a Delaware corporation;
 MICROSOFT CORPORATION, a Washington
 corporation; OPENAI, INC., a Delaware
 nonprofit corporation; OPENAI, L.P., a
 Delaware limited partnership; OPENAI GP,
 L.L.C., a Delaware limited liability company;
 OPENAI STARTUP FUND GP I, L.L.C., a
 Delaware limited liability company; OPENAI
 STARTUP FUND I, L.P., a Delaware limited
 partnership; OPENAI STARTUP FUND
 MANAGEMENT, L.L.C., a Delaware limited
 liability company,
 Defendants.

Case No.
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CLASS ACTION COMPLAINT

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

RICHARD KADREY, an individual;
 SARAH SILVERMAN, an individual;
 CHRISTOPHER GOLDEN, an individual;
 Individual and Representative Plaintiffs,
 v.
 META PLATFORMS, INC., a Delaware
 corporation;
 Defendant.

Case No.
 COMPLAINT
 CLASS ACTION
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COMPLAINT



SOME FOUNDATIONAL QUESTIONS

- Does AI model building require a license to begin with?
 - What does a license-only model mean for uses that authors may favor, such as research applications?
- Who speaks for you?
 - AI lawsuits are class actions
 - Publishers

COPYRIGHT 101 AND FAIR USE



HATHI
TRUST



FOUR REASONS WHY WE WILL STILL HAVE LICENSES

- 1) International use may require it
- 2) It reduces risk for AI developers
- 3) It gives other benefits like access to proprietary structured data
- 4) It allows for uses that go beyond what fair use would allow (e.g., RAG systems)

WHO SPEAKS FOR AUTHORS?

“The undersigned authors transfer all copyright ownership in and relating to the Work, in all forms and media, to the Proprietor in the event that the Work is published.”

-example Elsevier publication agreement

“All persons or entities domiciled in the United States that own a United States copyright in any work that was used as training data for the OpenAI Language Models during the Class Period [defined as June 28, 2020 to the present].”

- In re OpenAI Class Action Litigation

ARTISTS, MUSEUMS, AND AI

Anne M. Young

she/her

**Director of Legal Affairs & Intellectual Property
Indianapolis Museum of Art at Newfields**

MUSEUM NON-EXCLUSIVE LICENSES AND ARTIST RIGHTS WITH AI

All reasonable measures will be taken by Newfields to avoid the Works being used as input for Artificial Intelligence or by any other technology which does not respect author and creator rights. See Section 10. Artificial Intelligence Protection Measures in the Terms of Reproduction below.

10. **ARTIFICIAL INTELLIGENCE PROTECTION MEASURES.** This Agreement makes the following reasonable protections available against the Works be used as input for Artificial Intelligence or by any other technology which does not respect the Author rights:
- a. Request that third-party distributors that partner with Newfields remove any images of the Works;
 - b. Disable the download function on Newfields' online collection portal of any images of the Works, with the acknowledgement that a technologically-savvy user may still gain access to the represented JPEG image files despite the download function not being enabled; and,
 - c. If individuals or organizations reach out directly to about licensing enquiries, Newfields will represent and warrant that Newfields does not hold the copyright or other Intellectual Property right to license on behalf of the rights holder(s) and will direct the requesting entity to contact the rights holder(s) for applicable licensing request(s).

ARTISTS USING AI

- AI-generated work that won the Colorado State Fair, Art Competition, 2022
- Denied copyright registration, 2022 & 2023
 - Not copyrightable because “only human authorship should be deposited and claimed”
 - US Copyright Office offered to allow registration of prompts for AI and the Photoshop elements, but would need Allen to disclaim and exclude AI portion in order to receive copyright protection
 - Allen declined to disclaim AI-generated elements / material in the work
- [Allen v. US Copyright Office](#), 2024
 - Seeking to order the US Copyright Office to register this as a copyright-protected work



Jason M. Allen, [Théâtre d'Opéra Spatial](#), 2022. Courtesy of Wikimedia Commons.



This file is in the **public domain** because it is the work of a **computer algorithm** or **artificial intelligence** and does not contain sufficient human authorship to support a copyright claim.



The United Kingdom and Hong Kong provide a limited term of copyright protection for computer-generated works of 50 years from creation. [1] [2]

MUSEUMS USING AI

Dream It, Draw It, AI It

Choose one color, subject, and description. We'll use artificial intelligence to create a surreal image based on your choices. The more outrageous the more surreal.

Dream It!

Choose one word from each list.

Colors

Blue
Pink
Red
Green
Purple
Gold
Rainbow

Subjects

Horse
Cat
Butterfly
Car
Guitar
Shoe
Sandwich

Descriptions

Surrounded by a lot of insects
Explodes into a flower
Grows out of a cracked egg
Floats above a checkerboard floor
Between two large lobsters
On rollerskates
Looking towards spinning planets

Draw It!

Make a sketch to help the AI make your picture.



Draw
Erase
Undo
Redo
Clear

AI It! → CREATE THE IMAGE

Museums must balance not only copyright, but privacy, bias, environmental, and ethical considerations with using AI.

Variety of AI tools for potential use in interpretive activities, visitor engagement, education, and data analytics, including:

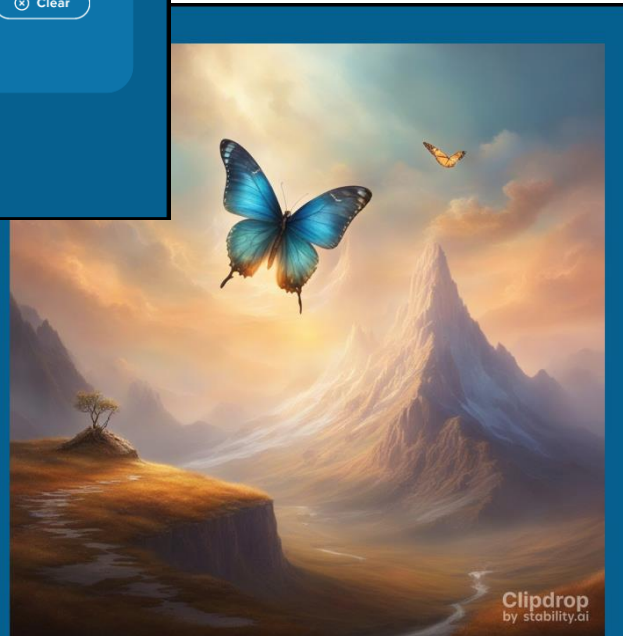
- Ask Mona
- Dexibit
- OpenAI
 - ChatGPT
 - DALL-E 3
- Imagen
- Clipdrop by Jasper
 - Stable Diffusion 3

Design renderings for a generative AI activity in an exhibition. Courtesy of the Indianapolis Museum of Art at Newfields.

Here's your image

Would you like to add your image to the gallery display?

Yes No thanks

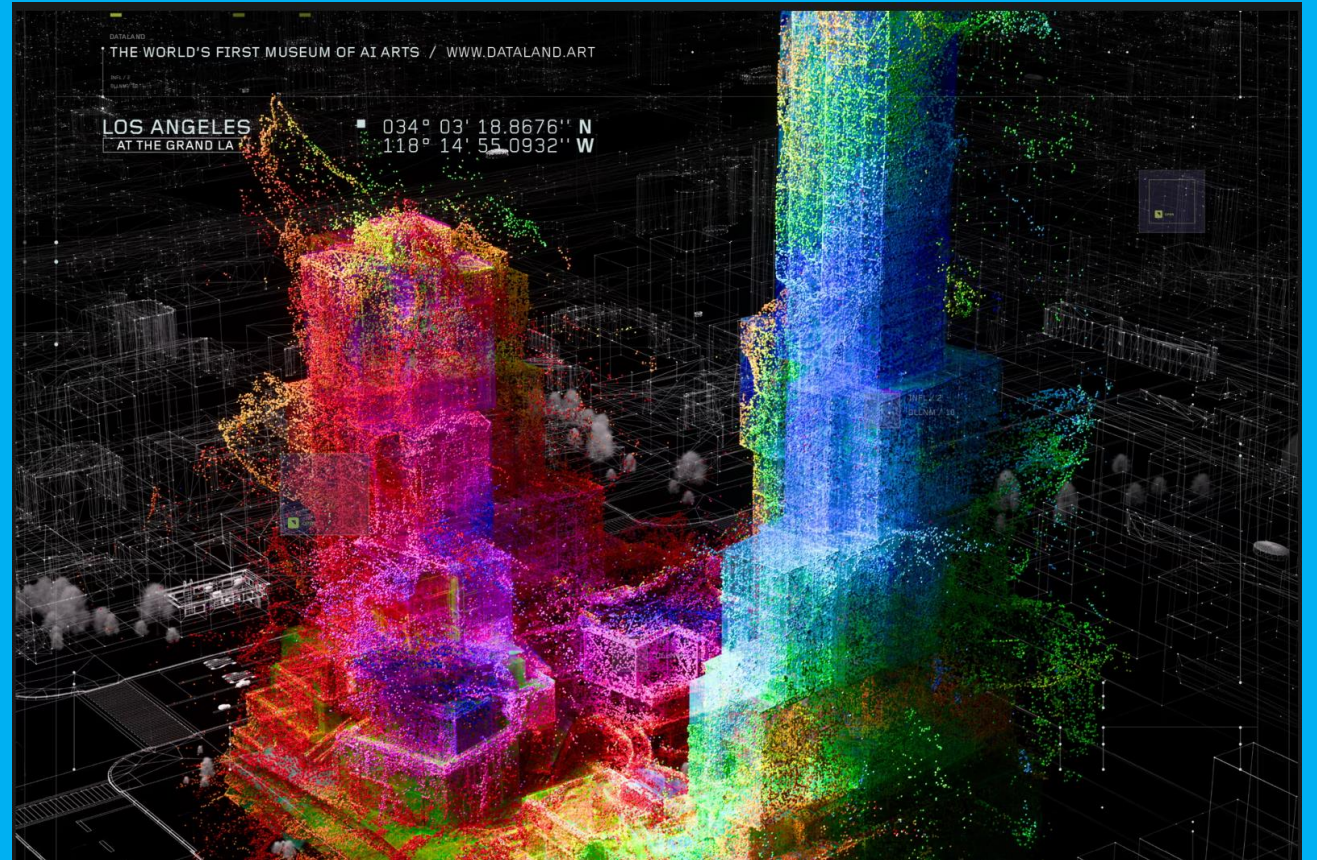


IN THE FUTURE... AI ART MUSEUM...

Refik Anadol Studio announced it will open DATALAND, the world's first museum of AI arts and digital ecosystem dedicated to data visualization and AI-based creativity in Los Angeles in late 2025.

<https://www.theartnewspaper.com/2024/09/24/refik-anadol-studio-reveals-plans-for-worlds-first-museum-of-ai-arts>

<https://www.youtube.com/watch?v=RkQ0vDZTa1g>



Frank Gehry's The Grand LA development reimagined in Refik Anadol Studio's data style for the launch of DATALAND. Courtesy of Refik Anadol Studio and DATALAND.

THANK YOU!

- OCEAN wishes to thank our wonderful presenters and our engaged audience!
- OCEAN is run by a volunteer board and our work is funded through individual and institutional support. To learn more about OCEAN and ways to help support the work we do, please visit:
www.oceancopyright.org/donate.