

Apocryphal Assumptions About Artistry and Artificial Intelligence: A Case Analysis of *Andersen v. Stability AI Ltd.*

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Abstract

This study explores the nature and function of human artistry versus artificial intelligence via an analysis of court documents in *Andersen v. Stability AI Ltd.*, 3:23-cv-00201. Filed in the Northern District of California on January 13, 2023, this class-action lawsuit was brought by visual artists including Sarah Andersen, Kelly McKernan, and Karla Ortiz against Stability AI Ltd., Runway AI, Midjourney, and DeviantArt. Plaintiffs allege their copyrighted artworks were scraped from the internet without permission and used to train AI models to create arts. Our goal is to decipher the hidden, tacit, apocryphal assumptions about art and artificial intelligence through the framework of the Johari Window of four quadrants (Open, Blind, Hidden, Unknown). By comparing and contrasting the quadrants revealed within Plaintiff versus Respondent discourse, we will answer two research questions (RQs), *RQ1*: What are the apocryphal arguments that shape our understanding of human-derived artistry versus artificially-derived artistry? *RQ2*: How does identification of these apocryphal elements illuminate the nature, function and potential of human-derived and artificially-derived creativity? Our contribution will assist advocates on both sides of the issue to understand, and hence better respond to, counterclaims.

Keywords: artificial intelligence, artistry, apocryphal claims, diffusion, Johari Window, web scraping

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Introduction

Is “Open”AI¹ really open? Or does this nomenclature disguise hidden elements and apocryphal assumptions nesting within the region of artificially-derived intelligence? If so, what are the philosophic and pragmatic implications of such assumptions?

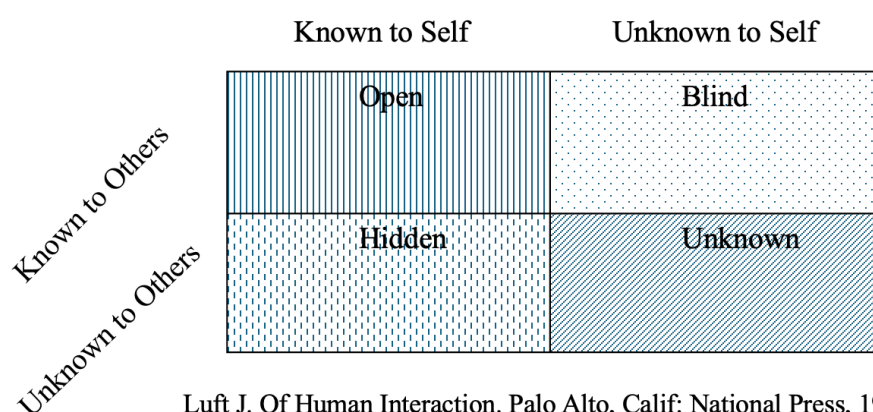
Methodology

To analyze the court document in *Anderson v. Stability AI Ltd.*, 3:23-ev-0021, we formulate our review according to the Johari Window model developed by Joseph Luft and Harrington Ingham (1955) as an information processing tool for self-awareness (Lowes, 2020) and to conceptualize an individual’s position and relationship with others in a group (Spennemann, 2023).

The model comprises a two-by-two square table of four panes. Each pane contains informational position relating to feelings, experience, views, attitudes, skills, intentions, motivation, etc. The length of the table denotes an individual’s known and unknown informational position within a group. Thus, the table can be represented in Figure 1.

Figure 1

Johari Window



Luft J. Of Human Interaction. Palo Alto, Calif: National Press, 1969.

Analysis

The analysis and page numbers cited in this manuscript are based on:

- *United States District Court, Northern District of California.*
Sarah Andersen, et al. v. Stability AI Ltd., et al., Case No. 23-cv-00201-WHO, *Order Granting in Part and Denying in Part Motions to Dismiss First Amended Complaint.*

Open Windowpane

The Open Windowpane denotes knowledge known to all parties. In *Anderson v. Stability AI Ltd.* this pane contains the Plaintiffs’ six claims filed in the case. These include: “Injunctive Relief Class,” “Damages Class,” “LAION-5B Damages Subclass,” “LAION-400 Damages Subclass,” “DeviantArt Damages Subclass,” and “Midjourney Named Artist Class.” The

¹ “Open”AI, in this instance, refers to a generic way to denote artificially-derived intelligence.

common core of these claims deals with bringing into the open the ways in which AI has operated in an apocryphal manner, using subterfuge as a way to harvest data from artists without their knowledge much less their permission. By scraping images and then using recombinant patterns to reassemble the images, Plaintiffs charge that Defendants have disregarded and diminished artists' rights. As standard legal practice, however, Defendants will file for judicial dismissal of certain of those Open elements.

Blind Windowpane

The Blind Windowpane denotes information known to others but unknown to self. This pane contains claims based on Stability AI Motions and other Defendants' Motions to Dismiss. The Judge has the prerogative to grant or dismiss claims against Stability. Any claims dismissed uphold elements argued by the Defense that will not be considered in the adjudication of the case.

Judge William H. Orrick rules these claims accordingly: 1. Claim Under 1202(a): "Stability argues that this claim fails because Stability's generic license does not suggest any association at all with plaintiffs' works and therefore was not made 'in connection with'" (p. 10). The claim is dismissed "with prejudice" due to plaintiffs' lack of the claim's basis. 2. Claim Under 1202(b)(1). This claim deals with intentional removal and alteration of images during the training process. It also deals with non-identity. The Judge dismissed this claim against Stability with prejudice (p. 13). Going on to the Unjust Enrichment claim against Stability the Judge denies Stability's motion to dismiss the claim dealing with challenged copyright claims and grants the claim with leave to amend.

With respect to Runway AI Motion to Dismiss the request by Runway for judicial notice is denied (p. 16). With respect to Runway's motion to dismiss on infringement claim the motion is denied and granted with leave to amend on the unjust/enrichment claim (p. 19).

Ruling on Midjourney's motion to dismiss the Copyright the Judge denies this Defendant's motion to dismiss (p. 21). Midjourney also does not fare well in its motion to dismiss based on the Lanham Act, which is denied (p. 26). In a similar vein, Judge Orrick denies Midjourney's request for judicial notice (p. 27).

In his ruling regarding DeviantArt's motion to dismiss the Copyright Acts claim Judge Orrick denies the motion (p. 30). The breach of contract claim is dismissed with prejudice as is the unjust enrichment claim based on preemption under the Copyright Act (p. 32).

Hidden Windowpane

The Hidden Windowpane denotes known to self but an unknown to others façade. In the case of *Anderson v. Stability, AI Ltd.*, Plaintiffs contend that Defendants keep knowledge they have about the origin, structure, and function of AI-generated text and images as inaccessible to the artists credited with the genesis of such creations.

Unknown Windowpane

The unknown Windowpane is a three-pronged or tri-dimensional pane containing the blank knowledge areas unknown and inaccessible to Plaintiff, Defendants, and the Judiciary. In the case of artificially-derived and empowered intelligence the very nature of the craft secludes or

occludes areas yet to be understood or unveiled. Claude's Mythos is a prime example of such a pane: "I'm not a Chicken Little kind of person when it comes to this stuff"² claims Katie Moussouris, CEO and co-founder of Luta Security, expressing an unusually cautionary philosophy and praxis. As a result of this unknown power, Project Glasswing was developed to probe the unknown abilities of Anthropic's Claude Mythos, giving selected tech companies access to discover potential cybersecurity problems. In the case of *Anderson v. Stability AI*, this knowledge is kept from all parties to the dispute.

Like the Altar to the Unknown God (*Agnostos Theos*) constructed in ancient Athens, the Unknown Windowpane represents what no one yet knows about artificially-derived intelligence, either in its current manifestation or in future engineering advances. How can questions be asked when no one knows what lines of inquiry might be relevant?

Results and Discussion

Drawing upon the imagery of the Athenian Altar to the Unknown God (*Agnostos Theos*) the results of our analysis are trifold:

First, regardless of the claims about artificial intelligence brought by Plaintiffs in any current and future case contesting the scraping of AI images, the Judiciary has the power to *move* those claims from the Open Pane to the Blind Windowpane, rendering them ineligible for court consideration. The basis of Judicial granting of claims dismissal by Judge Orrick in *Anderson v. Stability AI LTD, et al*, includes insufficient, indirect, and/or irrelevant evidence. Hence, future filers of claims by parties such as *Andersen, Stability AI, Midjourney*, and *DeviantArt*, should make certain that the legal standard of proof is met in their contentions.

Second, those advocating for or against the use of artificial intelligence in a legal context might do well to consider the black box versus white box metaphor in terms of philosophy and pragmatism. Whereas the white box represents programming and distribution of AI in a manner residing in the Open Windowpane, the black box represents the current state of knowledge regarding AI: the Unknown Windowpane. As differentiated by Oliver Whang in *The New York Times* article "We don't really know how A.I. works. That's a problem," published online April 15, 2026, white box systems were open knowledge, operating on simulation and the assigning of values to certain moves. These were transparent functions, lacking mystery. In contrast, black box systems are characterized by mysterious formulae that evolve autonomously. Bots' internal structures or neural networks function in a way that is hidden even from the encoders.

Third, placing legal claims about artificial intelligence in the Johari Window indicates a need for reframing the claims. In his April 15, 2026, *The New York Times* article journalist Cade Metz, who has covered artificial intelligence for 15 years, cites the notion of "Jagged Intelligence": "How 'Jagged Intelligence' can reframe the A.I. Debate": Essentially, "jagged intelligence" captures both how sophisticated and sophomoric AI is, depending on the nature of the task before it. According to University of Toronto's Rotman School of Management Professor Dr. Joshua Gans, "The jaggedness of A.I. means that the problems can come from anywhere. . . There are gaps, and we don't always know what the gaps are." These gaps reside in Johari's Unknown Windowpane, thereby providing an area of inquiry for scholars of AI to

² Perlo, J. & Collier, K. (8 April 2026). "Why Anthropic won't release its new Claude Mythos AI model to the public." <https://www.nbcnews.com/tech/security/anthropic-project-glasswing-mythos-preview-claude-gets-limited-release-rcna267234>

map out the nature of the gaps and their significance in the legal realm as well as potential solvability.

Conclusion

In sum, imagine AI as a rhetor (creator and/or disseminator of messages). The messages reside in the apocryphal windowpanes signifying blind, hidden, and unknown claims about who is authorized to stipulate the operations and opportunities offered by AI (RQ1). Identifying how this rhetor is endowed by its engineers with capacities even beyond the known (open) knowledge of its progenitors might spur researchers to probe the Unknown Windowpane, thereby demystifying roles, rules, and regulatory powers in order to gain litigious control over its rapidly evolving role (RQ2).

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