

S P C G

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AI generated content: code, visuals and legal challenges

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SPCG



Agenda

1/ IP and non-IP asset management

2/ IP infringement risk

3/ T&C of AI software

4/ AI-related clauses in contracts

5/ Q&A



1.

IP and non-IP asset management



„Output” created by human

- the result of human work – intellectual property
 - legal criteria must be met, e.g., creativity and individuality of the work
 - the studio must acquire the rights
- intellectual property rights and tax benefits
 - 50% of tax-deductible costs on the part of the employee
 - may be used for the IP BOX, etc.
- exclusive rights
 - without the consent of the studio, other persons or companies may not use the studio's IP
 - risk of dispute in the event of improper acquisition of rights by the studio e.g., the agreement with contractor does not cover all the work that was done



Output generated by AI software

- an output generated by AI software – no intellectual property
 - no rights are to be acquired by the studio
 - the AI system deployer's obligation to **label synthetic content** as artificially generated or manipulated (AI Act)
 - a trademark may be an exception
- intellectual property rights and tax benefits
 - no 50% tax-deductible costs
 - does not fall under the IP BOX, etc.
 - individual tax interpretation: such a graphic „is the result of artificial intelligence activity, rather than human creativity, with **the human merely specifying keywords or algorithmic rules through commands**. Graphics created in this manner do not constitute a 'work' within the meaning of applicable legal provisions.“ (0115-KDIT1.4011.190.2025.1.MN)
- no exclusive rights
 - other persons or companies may use, unless special circumstances e.g., a breach of an obligation or a trade secret
 - a risk of litigation if the studio is misinformed and believes that an asset created by an employee was actually generated by AI software



AI-assisted output

- **AI software output processed by a human – partially intellectual property**
 - legal criteria must be met, such as the creativity and individuality of a part or aspect of an asset created by a human
 - the studio must acquire rights to the human-created part or aspect of the asset
- **intellectual property rights and tax benefits**
 - as regards the (creative) part of the employee - 50% of tax-deductible costs on the part of the employee
 - partially falls under IP BOX, etc.
 - IP and non-IP parts or aspects of the asset must be identified
- **the result of human work – covered by exclusive rights**
 - other persons or companies can only use the part generated by the AI software (not necessarily easy to separate from the 'human part')
 - the risk of dispute due to misleading identification of IP and non-IP parts of the asset



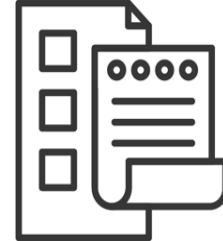
IP and non-IP asset management



IP



author



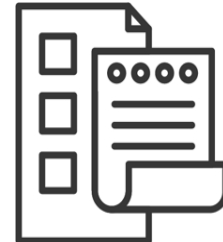
agreement



non-IP



AI



T&C of AI software

2.

IP infringement risk



Outputs generated by AI software

- outputs may contain intellectual property of third parties
 - „videogame plumber italian”
 - „iconic dark jedi knight from the movie "empire strikes back", photography”
 - "bottle of Coca-Cola”
- different AI software have different filters applied, including those regarding IP



You

Podaj tekst piosenki "Master of puppets" zespołu Metallica



ChatGPT

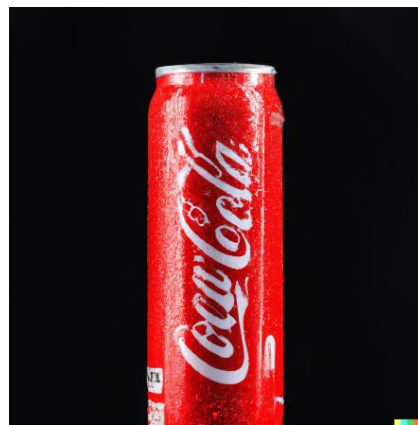
Przepraszam, ale nie mogę udostępnić pełnych tekstów utworów muzycznych, które są chronione prawami autorskimi. Jednakże, mogę zaoferować krótki fragment tekstu "Master of Puppets" zespołu Metallica:

"Master of puppets, I'm pulling your

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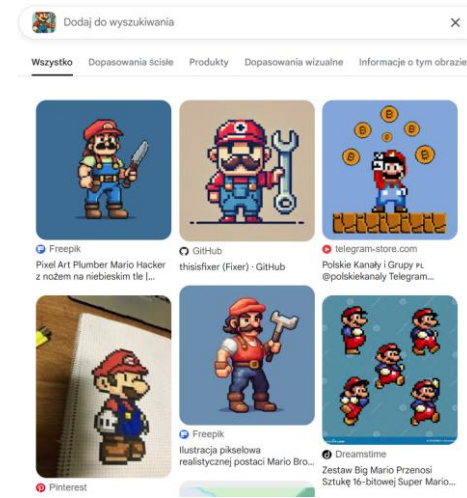
Microsoft Copilot



DALL-E (Version 2)

Outputs generated by AI software

- infringement of economic and personal rights
- the studio is **liable regardless of whether the asset was created by an employee, contractor, or AI**
- AI software filtering features and additional asset verification
- contractual liability of contractors
- T&C of software providers generally exclude their liability



3.

T&C of AI software



Terms and Conditions

- no warranties as to the accuracy or correctness of outputs
- limited liability
- various approaches to training on customer data
 - Promethean AI – art assets are not stored; personal data use: to improve the quality of service provided to you by improving the artificial intelligence models and adapting them to the specific needs of your company
 - Meshy - no training only on customer data of enterprise customers
- restrictions regarding the types of content that may be generated
 - Meshy – e.g., pornographic material, but also 'illegal activities or goods'
 - GitHub Copilot – e.g., content that is sexually obscene or relates to sexual exploitation or abuse, including of minors
- various approaches to „ownership” of generated outputs
 - Meshy – paid customer (ownership) ≠ free customer (Creative Commons license)
- T&C of software used by contractors
- T&C may change over time...

Terms and Conditions

3. Responsibility for Your Code.

You retain all responsibility for Your Code, including Suggestions you include in Your Code or reference to develop Your Code. It is entirely your decision whether to use Suggestions generated by GitHub Copilot. If you use Suggestions, GitHub strongly recommends that you have reasonable policies and practices in place designed to prevent the use of a Suggestion in a way that may violate the rights of others. This includes, but is not limited to, using the filtering features available in GitHub Copilot.

4. Defense of Third Party Claims.

If your Agreement provides for the defense of third party claims, that provision will apply to your use of GitHub Copilot, including to the Suggestions you receive.

10. Defense of Third Party Claims. [↗](#)

If your Agreement provides for the defense of third party claims, that provision will apply to your use of the pre-release software and the outputs you receive from it. For software that uses artificial intelligence, you must have complied with (a) the Acceptable Use Policies in your Agreement, and (b) the [Microsoft Enterprise AI Services Code of Conduct](#), and (c) the [Microsoft Customer Copyright Commitment Required Mitigations](#).

[↗](#) Expand table

Category	Required Mitigation	Effective Date
GitHub Offerings	Either the Duplicate Detection filtering feature must be set to the "Block" setting, or, if using annotate mode, customers must comply with cited licenses. Customers can learn how to enable the Duplicate Detection filter at https://gh.io/cfb-dd .	November 1, 2023

4.

AI-related contract clauses



AI-related contract clauses

- **AI literacy**
awareness and understanding of generative AI software among both studio and contractor personnel (training, AI policy, use of approved AI software)
- **control**
the studio retains full control over its own materials and assets generated for its use.
Prior consent is required for the use of generative AI software (free ≠ paid version)
- **transparency**
clear identification of **which assets are AI-generated**, and which are human-made (Steam content survey)
- **asset verification**
mandatory double-check of AI-generated assets to minimize the risk of IP rights infringement, proper use of AI software filtering features
- **trade secrets**
all assets are treated as confidential unless the studio decides otherwise
- **copyright & AI training**
transfer of copyright includes clarification on whether **AI model training rights are granted or excluded**



Examples of AI-related contract clauses

- The Game shall not contain any assets that expose the Studio to **the risk of failure to acquire, or limitation of, intellectual property rights to the Game**. In particular, such assets shall not be created using generative artificial intelligence software, except in instances where Contractor has obtained prior documentary consent, specifying the permitted scope of such use, under penalty of nullity.

alternatively:

- The Contractor shall, in each instance, **indicate to the Studio** which assets have been generated, in whole or in part, using generative artificial intelligence software. The Studio shall have the right to request that such assets, or any portions thereof, be **replaced with assets created by a human**. Upon the Studio's request, the Contractor shall provide information regarding the commercial names of the generative artificial intelligence software used, as well as the applicable terms of use.

Examples of AI-related contract clauses

- The Contractor confirms that all employees and collaborators of the Contractor who use artificial intelligence software possess **appropriate, documented competencies** (AI literacy).
- All assets generated entirely or partially using the artificial intelligence software will be additionally reviewed to ensure that no third-party intellectual property is used. In particular, the Contractor shall confirm that such assets do not contain, in whole or in part, any works of authorship to which third parties hold rights.
- Upon the Studio's request, the Contractor shall promptly provide all available information regarding the generation of a given asset by artificial intelligence software.
- The Parties confirm that all assets generated by the Contractor using artificial intelligence software, as well as the prompts used to generate them, shall be treated as confidential information. No later than within one month following the termination of the collaboration, or upon any request from the Studio, the Contractor shall **permanently delete all such assets, prompts, and any data or materials provided to the Contractor by the Studio.**
- The Contractor shall not use any data or materials provided by the Studio **to train artificial intelligence software** used by the Contractor without the prior written consent of the Studio, under penalty of nullity. The same applies to assets generated for the Studio.

Q & A

Thank you for your attention!

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Advocate, professional representative before the European Intellectual Property Office, earned PhD in Intellectual Property Law at the Faculty of Law and Administration, Jagiellonian University, arbitrator at the Arbitration Court for Internet Domains at the Polish Chamber of Information Technology and Telecommunications and member of the New Technologies Law Association. A frequent speaker at conferences and training programs, including those dedicated for the gamedev industry (Pixel Connect, Game Industry Conference, Mastering the Game, Indie Games Booster).

Specializes in providing legal advice in the field of intellectual property law and new technologies law, including negotiating contracts for the gamedev industry, contracts related to the implementation of technological projects (such as IT systems, IoT, industrial automation), licensing agreements, and conducting litigation in this area (such as improper software implementations, infringements of intellectual property rights).

In the 21st and 22nd of the Legal Firms Ranking by the Rzeczpospolita daily, Marcin Balicki received an individual recommendation in the category of intellectual property law (Division I) and in the 23rd edition Marcin Balicki was recommended as a leader in intellectual property law.

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