Italian Brainrot and copyright protection: lack of human creative input in AI-generated content, according to the ruling of the Court of Genoa

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*By Order No. 3178 of 6 November 2026, the Court of Genoa ruled, in interim injunction proceedings, on copyright protection for characters created using artificial intelligence ('**AI**') systems, in the context of the viral phenomenon 'Italian Brainrot'. Applying Article 1 of Law No. 633 of 22 April 1941 (**"Copyright Law"**), as amended by Law No. 132 of 23 September 2025 (**"AI Law"**), the Court ruled out the existence fumus boni iuris, due to the lack of evidence regarding authorship and actual creative contribution.*

THE ORIGIN OF THE DISPUTE OVER ITALIAN BRAINROT

In 2025, characters such as *'Trallallero Trallalà'*, *'Ballerina Cappuccina'* and *'Tung tung Sahur'* unexpectedly achieved worldwide fame as part of a viral *social media* phenomenon known as *'Italian Brainrot*'. The phenomenon, appreciated by many yet misunderstood by most, involved the creation and publication via *social media* of short, surreal videos featuring anthropomorphic objects with names mostly inspired by the Italian language. The name of the trend had, in fact, nothing to do with the geographical origin of the creators, but rather with the language used to name the characters and give them a voice in the skits. The precautionary measures were taken by a French company representing digital creators and two authors – an Indonesian creator and a Brazilian creator (hereinafter, the **'Claimants'**), against a company and its European licensee (hereinafter, the **'Defendant'**) which had produced and marketed cards, stickers, albums and figurines depicting the Italian Brainrot characters under the 'Skifidol Italian Brainrot' brand, even including the '©' and 'ALL RIGHTS RESERVED' markings in the Defendant's name. The Claimants, asserting that they are the owners of the intellectual property rights to *the Italian Brainrot* characters, brought urgent proceedings to obtain an injunction against the further commercial exploitation of the allegedly protected works. This dispute gave rise to the first ruling by an Italian court regarding the use of AI in creative works.

THE REGULATORY FRAMEWORK: AI AS A TOOL

The Court bases its reasoning on Article 1 of the Copyright Law, which, in the version resulting from the amendment introduced by the AI Act, protects works of human creativity, even if created with the ***aid*** of artificial intelligence tools.

Referring to the case law of the Supreme Court established under the previous wording of the Act (including, amongst others, Supreme Court judgments Nos. 13524/2014, 5089/2004, 25173/2011, 10300/2020 and 3393/2025), the Court reiterates that creativity does not lie in the idea underlying the creation, but rather in the form of its expression – that is, in its subjectivity – so that, in order to be protected, the work must **reflect the personality of its author**, manifesting their free and creative choices, in line also with the case law established on this matter by the Court of Justice of the European Union. This principle, which legal scholarship attributes to an anthropocentric view of copyright protection, has, in the Court's view, remained unchanged in the amended provision, which, whilst expressly providing for the possibility that the work may be created with the aid of artificial intelligence tools, stipulates that it must be the result of the author's intellectual labour.

The Court draws confirmation of this interpretation from Supreme Court Order No. 1107/2023, which, although predating the amendment and concerning an image created using software, stated in an *obiter dictum*, affirmed the principle that an image, even if created with the aid of software, remains eligible for copyright protection provided '*it possesses a degree of creativity that should simply be scrutinised more rigorously*'. The Court also refers to, whilst noting that the relevant principles cannot be invoked in the present proceedings but may nevertheless offer food for thought, the judgment of the Prague Regional Court No. 10 C 13/2023, which ruled out the status of a protected work for an image created by artificial intelligence, as it was not the sole result of the creative activity of a natural person.

PROOF OF AUTHORSHIP

That being said, the Court first of all held that the Claimants had not discharged the burden of proof resting upon them, noting, *inter alia*, that one of the attached documents – consisting of a list of the characters allegedly created by the authors, containing the characters' names and links to the *social media* profiles where they could be found – had no probative value, as it lacked a signature, certification or other elements that would allow those characters to be effectively linked to the individuals claiming authorship.

In other words, the shortcoming identified relates not so much to the content of the documents produced as to their traceability to the alleged authors.

THE GENERIC NATURE OF THE PROMPTS AND THE ABSENCE OF HUMAN CREATIVE INPUT

Furthermore, the document attached by the Claimants concerning the creation of the character *'Tung tung Sahur'* – described as the most important character under consideration – took on particular significance in the judge's decision. The document reconstructs the process of creating *'Tung tung Sahur'*, indicating its sources and the sequence of the seven steps through which the image chosen by one of the *creators*—and subsequently published—was arrived at, as well as the elements that would make it possible to verify the extraction of the files from the ChatGPT platform without any modifications; the Court, whilst acknowledging that this evidence may have circumstantial value regarding the reconstruction of the process followed and its correspondence to the JSON files, rules out that it constitutes evidence of an authorial work within the meaning required by the established legal and interpretative framework.

According to the Court, this is supported by an analysis of the sequence of so-called *prompts* that led to the character: the first, *'draw a pentungan for sahur with a face and legs'*; the second and third, *'guard post'*; the fourth, *'human face'*; the fifth, *'without hands, with legs similar to those of a human being and a human face'*; the sixth, *'Pentungan on guard duty, 1 human leg'*; and, finally, the seventh, *'thick leg, face similar to that of a human being'*, the result of which was subsequently discarded, as the output of the sixth *prompt* was selected. The entire creation process took place, as the Court notes, **over a period of just fifteen minutes and using *prompts* of a general nature**, since they did not provide ChatGPT with specific data on the basis of which to outline the character's concrete appearance, referring, in an extremely general manner, to a 'pentungan' (translated from Indonesian as 'stick') with human features, without this element being further specified; consequently, in the Court's view, **it cannot be asserted that the result stems from the author's *inputs* and therefore constitutes an expression of his subjectivity**, as required by case law.

Significant, in the judge's view, is the discrepancy discernible between the sixth *prompt*, *'Pentungan on guard duty, 1 human leg'*, and the resulting image, in which two legs are visible and which was subsequently selected for publication: this would suggest that the final form of the work does not represent the author's creative idea, as there is a lack of correspondence between the input, corresponding to the idea, and its realisation, which should give concrete form to the work.

For these reasons, the Court ultimately dismissed the applications for interim relief, finding no prima facie case (*fumus boni iuris*), without ruling on the claims relating to unfair competition, which will be assessed in the forthcoming proceedings on the merits.

Given the difficulty in demonstrating the expression of human creativity in the characters *per se*, it might perhaps have been appropriate to emphasise the specific subjective characterisation conferred by the creators on the individual characters in the various published skits, which told fictional stories about an imaginary past or events involving the *Italian Brainrot* characters, including from the perspective of unfair competition.

PRACTICAL IMPLICATIONS OF THE DECISION

Although the ruling was handed down as an interim measure and is not binding on the trial judges, it offers some guidance on procedure for those who create, purchase or licence content produced with the aid of AI. From a substantive perspective, it would appear that creative input must be recognisable in instructions that are sufficiently specific to concretely define the characteristics of the work, as well as in a correspondence between the input and the output, such that any deviation between what was requested and what was generated – unless rectified through regeneration or subsequent intervention on the result – risks constituting evidence that the system has prevailed over the author. From an evidential perspective, the rejection based on the inadequacy of documents lacking a signature, certification or subjective attribution suggests the need for documentation of the work's genesis that is contextual, can be reliably traced back to the person who produced it, and is accompanied by verifiable technical evidence.

From a contractual perspective, it is reasonable to expect that representations and warranties regarding the ownership of rights, in the context of agreements concerning content generated with the aid of AI, will take on greater significance, to the extent that licensees and investors may have an interest in requesting specific guarantees regarding human contribution, obligations to retain documentation of the creative process, and provisions governing the consequences of any finding that a work is not eligible for protection, such as the recalculation of fees, termination or compensation. From this perspective, alongside copyright, it may be advisable to make use of additional protection mechanisms, such as trade marks, designs or models.

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