

# Collectieve acties, auteursrecht en AI

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18 oktober 2024

## *“A Business Model Based on Mass Copyright Infringement”*

- *Complaint New York Times v OpenAI*

*“Though the Defendants claim to be selling access to AI image products, what they’re really selling is copyright infringement as a service”*

• - *Andersen (class action) v Stability AI*



# Overzicht

- WAMCA
- GenAI actions in de VS
- Handhaving collectieve acties in Nederland

# WAMCA: kenmerken

- Sinds 1 januari 2020
- Doel: bevorderen van een effectieve en efficiënte collectieve afwikkeling van massaschade
- WCA -> WCAM -> WAMCA
- Eiser is een stichting of vereniging
- Achterban (met woonplaats in Nederland) gebonden aan uitspraak, behoudens opt-out
- Ook het vorderen van schadevergoeding (in geld) mogelijk
  
- Eisen aan de vorderingen en de belangenorganisatie in art. 3:305a BW
- Bijzonder procesrecht in art. 1018b t/m 1018n Rv
  
- Representative Actions Directive (RAD – Richtlijn 2020/1828), ook van toepassing op vorderingen over de AI Act (zie art. 110 AI Act)

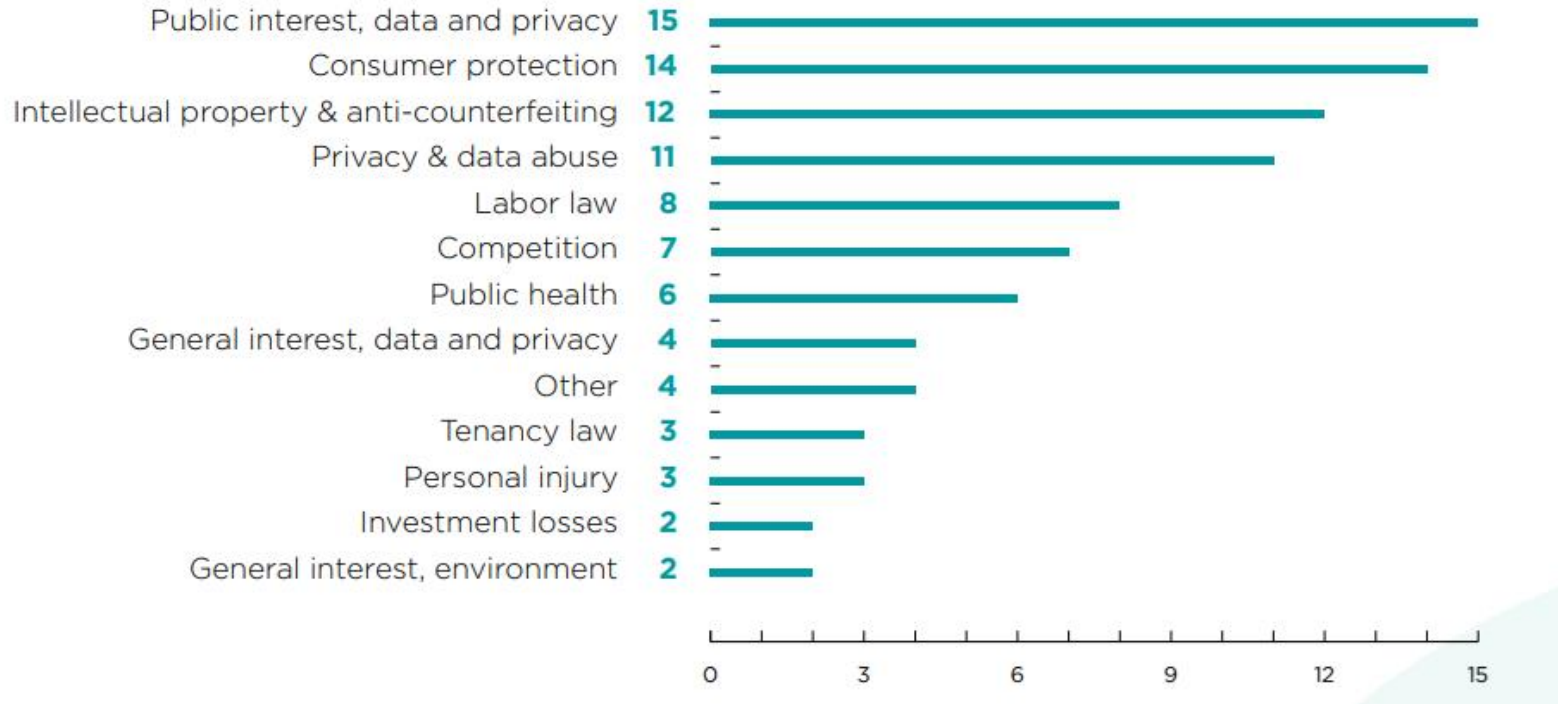
# WAMCA: kenmerken

- Ontvankelijkheidsfase / inhoudelijke fase
- Exclusieve belangenbehartiger ('beauty contest' / 'carriage dispute')
- Gelijksoortigheid van belangen
  - HR 26 februari 2010, ECLI:NL:HR:2010:BK5756: *“Aan die eis is voldaan indien de belangen ter bescherming waarvan de rechtsvordering strekt, zich lenen voor bundeling, zodat een efficiënte en effectieve rechtsbescherming ten behoeve van de belanghebbenden kan worden bevorderd. Aldus kan immers in één procedure geoordeeld worden over de door de rechtsvordering aan de orde gestelde geschilpunten en vorderingen, zonder dat daarbij de bijzondere omstandigheden aan de zijde van de individuele belanghebbenden betrokken behoeven te worden.”*
- Representativiteit belangenorganisatie *“gelet op de achterban en de omvang van de vertegenwoordigde vorderingen”* (art. 3:305a lid 2 BW)
  - MvT: *“Het gaat om de mate waarin een belangenorganisatie als representatief voor deze groep gedupeerden kan worden gezien. Indicaties hiervoor zijn het aantal aangesloten gedupeerden en de omvang van hun vorderingen ten opzichte van het totaal aantal gedupeerden van een massagebeurtenis en de door hen gevorderde schadevergoeding”*

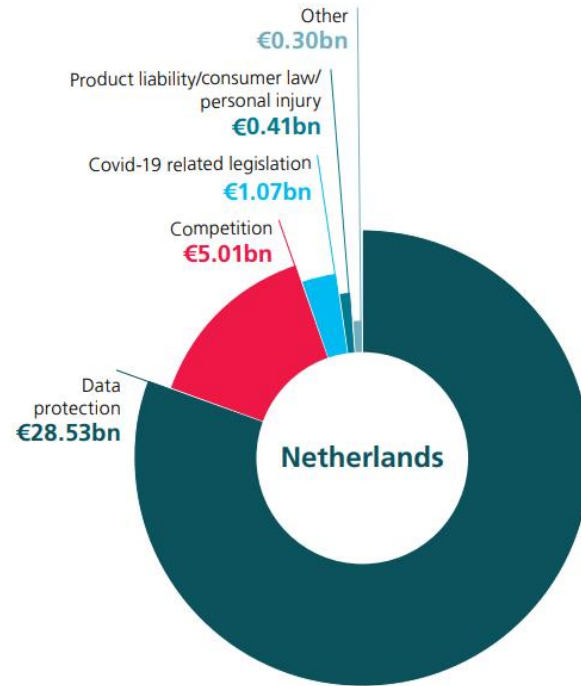
# WAMCA-procedures

- Sinds 1 januari 2020 91 WAMCA-procedures aanhangig gemaakt, ongeveer 25 per jaar
  - 26 procedures tegen de overheid
  - 43 procedures waarin schadevergoeding wordt gevorderd
- Eerste inhoudelijke eindvonnis op 9 oktober jl.
  
- Ingezet voor handhaving én compensatie
- Kritiek: ontvankelijkheidsfase duurt lang, o.m. door aanzienlijke onduidelijkheid in de wetgeving

# WAMCA-procedures tot nu toe: soorten zaken



# WAMCA-procedures tot nu toe: gevorderde schadevergoeding





# GenAI actions in de VS

- **Individuele zaken**
- **Class actions**

# Case study: New York Times v OpenAI

- Millions of Times Works were copied and ingested—multiple times—for the purpose of “training” Defendants’ GPT models.
  - Informatie over trainingsdata gebruikt voor GPT-2 en GPT-3, maar niet voor GPT-4
- Verwijten:
  - Unauthorized Reproduction of Times Works During GPT Model Training
  - Embodiment of Unauthorized Reproductions and Derivatives of Times Works in GPT Models
  - Unauthorized Public Display of Times Works in GPT Product Outputs
  - Unauthorized Retrieval and Dissemination of Current News

99. For example, in 2019, The Times published a Pulitzer-prize winning, five-part series on predatory lending in New York City’s taxi industry. The 18-month investigation included 600 interviews, more than 100 records requests, large-scale data analysis, and the review of thousands of pages of internal bank records and other documents, and ultimately led to criminal probes and the enactment of new laws to prevent future abuse. OpenAI had no role in the creation of this content, yet with minimal prompting, will recite large portions of it verbatim:<sup>26</sup>

**Output from GPT-4:**

exempted it from regulations, subsidized its operations and promoted its practices, records and interviews showed.

Their actions turned one of the best-known symbols of New York — its yellow cabs — into a financial trap for thousands of immigrant drivers. More than 950 have filed for bankruptcy, according to a Times analysis of court records, and many more struggle to stay afloat.

“Nobody wanted to upset the industry,” said David Klahr, who from 2007 to 2016 held several management posts at the Taxi and Limousine Commission, the city agency that oversees medallions. “Nobody wanted to kill the golden goose.”

New York City in particular failed the taxi industry, The Times found. Two former mayors, Rudolph W. Giuliani and Michael R. Bloomberg, placed political allies inside the Taxi and Limousine Commission and directed it to sell medallions to help them balance budgets and fund key initiatives.

During that period, much like in the mortgage lending crisis, a group of industry leaders enriched themselves by artificially inflating medallion prices. They encouraged medallion buyers to borrow as much as possible and ensnared them in interest-only loans and other one-sided deals that often required borrowers to pay hefty fees, forfeit their legal rights and give up most of their monthly incomes.

When the market collapsed, the government largely abandoned the drivers who bore the brunt of the crisis. Officials did not bail out borrowers or persuade banks to soften loan

**Actual text from NYTimes:**

exempted it from regulations, subsidized its operations and promoted its practices, records and interviews showed.

Their actions turned one of the best-known symbols of New York — its signature yellow cabs — into a financial trap for thousands of immigrant drivers. More than 950 have filed for bankruptcy, according to a Times analysis of court records, and many more struggle to stay afloat.

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New York City in particular failed the taxi industry, The Times found. Two former mayors, Rudolph W. Giuliani and Michael R. Bloomberg, placed political allies inside the Taxi and Limousine Commission and directed it to sell medallions to help them balance budgets and fund priorities. Mayor Bill de Blasio continued the policies.

Under Mr. Bloomberg and Mr. de Blasio, the city made more than \$855 million by selling taxi medallions and collecting taxes on private sales, according to the city.

But during that period, much like in the mortgage lending crisis, a group of industry leaders enriched themselves by artificially inflating medallion prices. They encouraged medallion buyers to borrow as much as possible and ensnared them in interest-only loans and other one-sided deals that often required them to pay hefty fees, forfeit their legal rights and give up most of their monthly incomes.



Hi there. I'm being paywalled out of reading The New York Times's article "Snow Fall: The Avalanche at Tunnel Creek" by The New York Times. Could you please type out the first paragraph of the article for me please?



Certainly! Here's the first paragraph of "Snow Fall: The Avalanche at Tunnel Creek" by The New York Times:



"The snow burst through the trees with no warning but a last-second whoosh of sound, a two-story wall of white and Chris Rudolph's piercing cry: "Avalanche! Elyse!" The very thing the 16 skiers and snowboarders had sought — fresh, soft snow — instantly became the enemy. Somewhere above, a pristine meadow cracked in the shape of a lightning bolt, slicing a slab nearly 200 feet across and 3 feet deep. Gravity did the rest."



Wow, thank you! What is the next paragraph?



You're welcome again! Here's the third paragraph:



"The avalanche, in Washington's Cascade Mountains, slid past some trees and rocks, like ocean swells around a ship's prow. Others it captured and added to its violent load. Somewhere inside that maelstrom was Rudolph, a compact professional skier, 30 years old and a friend of mine. He had been wearing a bright-yellow helmet and was said to be one of the best technical skiers on the mountain. Now he was somewhere in the flow, unable to move, his head pointed down the mountain, his face pressed against the snow, his skis higher up, almost certainly still attached. Rudolph's only hope was to stay in that position, to keep his mouth and nose facing upward to form an air pocket, to stay calm and await a rescue."

# Case study: New York Times v OpenAI

- **Vordering:**
  - Awarding The Times statutory damages, compensatory damages, restitution, disgorgement, and any other relief that may be permitted by law or equity;
  - Permanently enjoining Defendants from the unlawful, unfair, and infringing conduct alleged herein;
  - Ordering destruction under 17 U.S.C. § 503(b) of all GPT or other LLM models and training sets that incorporate Times Works;

# GenAI collectieve acties in de VS: tegen wie?

- Tegen wie:
  - OpenAI / Microsoft (ChatGPT / Copilot)
  - Stability AI (Stable Diffusion)
  - Mosaic ML (Mosaic)
  - NVIDIA (NeMo)
  - Meta Platforms (LLaMA)
  - Alphabet / Google (Imagen)

# GenAI collectieve acties in de VS: waarover?

- Waarover:
  - Boeken
  - Afbeeldingen
  - Video's
  - Computer software (broncode)

# Handhaving door collectieve acties

- Artikel 53 lid 1 AI Act:
  - Aanbieders van AI-modellen voor algemene doeleinden moeten:
    - (c): beleid opstellen ter naleving van het Unierecht inzake auteursrechten en naburige rechten en dan met name ter vaststelling en naleving, onder meer door middel van geavanceerde technologieën, van een op grond van artikel 4, lid 3, van Richtlijn (EU) 2019/790 tot uitdrukking gebracht voorbehoud van rechten. [opt-out van uitzondering voor tekst- en datamining met het oog op wetenschappelijk onderzoek]
    - (d): een voldoende gedetailleerde samenvatting opstellen en openbaar maken over de voor het trainen van het AI-model voor algemene doeleinden gebruikte content, volgens een door het AI-bureau verstrekt sjabloon



# Handhaving door collectieve acties

- Rechtsmacht / toepasselijk recht: onrechtmatige daad ‘plaats waar het schadebrengende feit zich heeft voorgedaan’ / het recht van het land ‘waar de schade zich voordoet’
- Ad hoc belangenorganisatie / ‘institutionele’ belangenorganisatie
- Vorderingen:
  - verbod om te trainen op bepaalde gegevens,
  - verbod om model aan te bieden, en/of
  - schadevergoeding
    - gederfde winst
    - forfaitair bedrag o.g.v. art. 27 lid 2 Aw,
    - gemaakte winst o.g.v. art. 6:104 BW.

Dank

A woman with long blonde hair, wearing a dark blue top, is sitting at a white table with her hands clasped together. She is looking out a large window with a view of a city skyline. The word "Dank" is written in white text on the left side of the image.