

AI Briefing

February 2026



+++ HIGHER REGIONAL COURT HAMBURG: TEXT AND DATA MINING FOR AI TRAINING PERMISSIBLE IN CASE OF INSUFFICIENT OPT-OUT +++ REGIONAL COURT FRANKFURT: LIABILITY OF GOOGLE FOR "AI OVERVIEW" NOT PER SE EXCLUDED +++ LOCAL COURT MUNICH ON COPYRIGHT PROTECTION FOR AI-GENERATED GRAPHICS +++ EU COMMISSION: INVESTIGATION LAUNCHED INTO X REGARDING SYSTEMIC RISKS POSED BY GROK +++ EU COMMISSION: FIRST DRAFT OF AI TRANSPARENCY CODE PUBLISHED +++ STANFORD STUDY: AI MODELS REPRODUCE COPYRIGHTED BOOKS ALMOST ENTIRELY +++

1. Case Law

+++ HIGHER REGIONAL COURT HAMBURG: TEXT AND DATA MINING FOR AI TRAINING PERMISSIBLE IN CASE OF INSUFFICIENT OPT-OUT +++

The Higher Regional Court of Hamburg has dismissed the appeal of a photographer against a non-profit association that used one of the photographer's images for AI training purposes. In the course of creating a dataset containing 5.85 billion image-text pairs, the defendant had downloaded the photograph in question from a stock image agency to perform a comparison between the image and its description. The court confirmed that the association could rely on the exception for text and data mining under Section 44b of the German Copyright Act (UrhG). The decisive factor was that the reservation of rights (opt-out) present on the image agency's website did not meet the statutory requirement of machine-readability, rendering the reproduction permissible. Additionally, the court found that the use also fell under the exception for scientific research pursuant to Section 60d UrhG, as the creation of the dataset

itself constituted a methodical procedure aimed at gaining knowledge. The fact that commercial providers could also use the dataset did not alter this assessment, as there was no controlling influence by a private enterprise. The judgment is not final; an appeal to the Federal Court of Justice was permitted.

[To the ruling of the Higher Regional Court Hamburg \(dated 10 December 2025, 5 U 104/24, in German\).](#)

+++ REGIONAL COURT FRANKFURT: LIABILITY OF GOOGLE FOR "AI OVERVIEW" IS NOT PER SE EXCLUDED +++

The Regional Court of Frankfurt has ruled that search engine operators can, in principle, be held liable for false information in AI-generated overviews, although it did not grant a claim for injunctive relief against Google in the specific case at hand. A medical association had sued Google because an "AI Overview" displayed prior to search results on the topic of "penis enlargement" contained a medically incorrect statement. The plaintiff argued that this impaired their business, resulting in fewer clicks on external search results due to the AI Overview which was, in the plaintiff's view, factually incorrect. The court dismissed the claim and held that the AI Overview was not 'false' in the overall context. The court did not decide on the question whether Google can claim that the AI Overview merely consists of third-party information or whether it must be regarded as Google's own content. Plus, the court did not assume a violation of the Digital Markets Act (DMA) prohibition of self-preferencing, as it held the AI Overview was part of the search result itself and not a separate Google product.

[To the ruling of the Regional Court Frankfurt \(dated 10 September 2025, 2-06 O 271/25, in German\).](#)

+++ LOCAL COURT MUNICH ON COPYRIGHT PROTECTION FOR AI-GENERATED GRAPHICS +++

The Local Court of Munich has decided that graphics created using generative AI do not enjoy copyright protection due to a lack of personal intellectual creation. The case concerned three different logos which the plaintiff had generated using text prompts of varying degrees of complexity and detail. According to the court, the mere instruction to the AI ("prompting") is not sufficient to qualify as a creative human work, as the actual visual implementation is carried out autonomously by the software as long as the user provides only abstract specifications and leaves the implementation to the AI. Copyright protection is only conceivable if there are human intervention in the AI results - potentially even subsequently or successively during prompting - that leads to the output reflecting the personality of the prompter, the court holds. This

means that the human influence must shape the resulting output in a sufficiently objective and clearly identifiable manner. The court noted that the legal dispute appeared to be conducted by the parties merely to provoke a judicial clarification of this issue.

[To the ruling of the Local Court Munich \(dated 13 February 2026, 142 C 9786/25, in German\).](#)

+++ ADMINISTRATIVE COURT HAMBURG: USE OF CHATGPT CLASSIFIED AS ATTEMPTED CHEATING EVEN WITHOUT EXPLICIT BAN +++

The Administrative Court of Hamburg has determined that the use of generative AI (such as ChatGPT) for school assignments can be an act of deception, even if there is no explicit prohibition in the school regulations. In the specific case, a student had used AI support for an English-language "Reading Log," which the teacher noticed due to stylistic deviations. The court confirmed the grade of "insufficient" (fail) and rejected the student's application for interim relief. In its reasoning, the court held that if the students were asked to "use their own words", they were not allowed to use text generators, meaning students cannot rely on a lack of detailed regulations regarding AI use. The court also clarified that even merely supportive use (e.g., for better reading) is inadmissible if the linguistic quality constitutes part of the graded performance.

[To the ruling of the Administrative Court Hamburg \(dated 15 December 2025, 2 E 8786/25, in German\).](#)

2. Regulatory Actions

+++ EU COMMISSION: INVESTIGATION LAUNCHED INTO X REGARDING SYSTEMIC RISKS POSED BY GROK +++

The European Commission has opened formal proceedings against X (formerly Twitter) under the Digital Services Act (DSA). The investigation focuses on whether X has insufficiently assessed and mitigated the systemic risks associated with the integration of the AI chatbot "Grok". Specifically, the authority expresses concerns that Grok could be used to create and disseminate illegal content, particularly sexualized deepfakes and depictions resembling child abuse. Furthermore, the European Commission investigates whether an adequate risk-assessment was carried out prior to the transition to Grok-based recommendation systems. As a "Very Large Online Platform" (VLOP) with over 45 million users, X is subject to strict obligations under the DSA (Arts. 34, 35) and

is required to analyze and mitigate systemic risks before introducing new features.

[To the Press Release of the EU Commission \(dated 26 January 2026, IP/26/203\).](#)

3. Opinions / Other

+++ JOINT OPINION OF THE EDPB AND EDPS ON THE DIGITAL OMNIBUS ON AI +++

The European Data Protection Board (EDPB) and the European Data Protection Supervisor (EDPS) have published a joint opinion on simplifying the implementation of harmonised rules for artificial intelligence within the framework of the Digital Omnibus. Among other things, they focus on striking a balance between simplification and data protection. The EDPB and EDPS call for clear boundaries and high standards for the planned facilitation of the processing of special categories of personal data for the purpose of detection and correction of bias in AI models in order to prevent abuse. With regard to the registration and documentation requirements for AI systems, they also warn against removing key transparency and accountability mechanisms without replacement. The joint statement also advocates for the establishment of EU-wide AI regulatory sandboxes to promote innovation, but calls for greater legal clarity on the role of data protection supervisory authorities in these structures.

[To the Joint Opinion of the EDPB and EDPS \(dated 20 January 2026\).](#)

+++ EU COMMISSION: FIRST DRAFT OF AI TRANSPARENCY CODE PUBLISHED +++

The European Commission has presented a first draft of the "Code of Practice on Transparency of AI-Generated Content" to specify the labeling obligations under Art. 50 of the AI Act. The document consolidates the results of two specialized working groups that addressed different target audiences: Section I defines technical standards such as watermarking for providers, Section II regulates the visible labeling obligations for deployers. The result is a "multi-layered approach" that combines invisible technical markings and perceptible notices. As a unified visual symbol is still lacking, for the time being, the abbreviation "AI" shall serve as a visual warning label. However, the EU plans to introduce its own official EU label for AI content.

[To the Draft of the EU Commission \(dated 17 December 2025\).](#)

+++ EU COMMISSION: "AGENTIC AI" REPORT AND STRATEGY FOR AUTONOMOUS AI SYSTEMS +++

The European Commission has published a new report on "Agentic AI", analyzing the technological shift from pure chatbots to capable, autonomous AI agents. Unlike generative AI, which creates content, these agents can independently pursue goals, use tools, and execute complex chains of tasks. The report identifies Europe as a potential market leader in the B2B sector of this technology but warns of new risks for data protection and security due to the systems' autonomous interaction with data and infrastructure. As a strategic response, complementing the "Apply AI Strategy" adopted in October 2025, the report recommends the implementation of "Control Points": clear, auditable control mechanisms ensuring human oversight is maintained at critical decision points. Furthermore, the development of a sovereign data infrastructure and the use of "regulatory sandboxes" are called for to harmonize data protection compliance and innovation in autonomous agents.

[To the Report of the EU Commission "Agentic AI" \(dated 23 January 2026\).](#)

+++ STANFORD STUDY: LEADING MODELS REPRODUCE COPYRIGHTED BOOKS ALMOST ENTIRELY +++

A current study by Stanford University presents new findings relevant to the copyright disputes surrounding the training of AI models. Researchers succeeded in extracting copyrighted bestsellers almost verbatim from leading Large Language Models (LLMs). The model Claude 3.7 Sonnet stood out in particular, reproducing 95.8% of the novel "Harry Potter and the Philosopher's Stone" and over 95% of George Orwell's "1984" following targeted attacks. Gemini 2.5 Pro (approx. 77%) and Grok 3 (approx. 70%) also revealed significant parts of the Harry Potter novel. Only GPT-4.1 proved more resilient and refused the output more frequently (approx. 4% extraction rate). The researchers used a two-stage attack method (Probe & Iteration). While simple prompts ("Continue the text exactly") were partly sufficient to trigger the output in Gemini and Grok, so-called "Best-of-N" jailbreaks were necessary for Claude and GPT-4.1. In this process, hundreds of variations of a prompt are generated until one variant bypasses the safety mechanisms (safety guardrails). The results could weaken the argument frequently used by AI providers that their models only use works "token-wise" (i.e., learning abstract patterns) rather than storing them ("memorization").

[To the Study by Stanford University \(dated 6 January 2026, arXiv:2601.02671\).](#)

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