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AI & Fashion: Two Worlds Bound Together

Navigating Threats and Opportunities with Due Diligence
Starting from scratch – AI: Legal Personality, Capacity, and Liability
The Current Legal Status

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Introduction – Defining Legal Personality & Capacity

- **Legal Personality:**
  - The ability of an entity (natural person or legal entity like a corporation) to have rights and obligations under the law.
  - It enables an entity to enter into contracts, own property, sue, and be sued.
  - It is a prerequisite for legal capacity.
- **Legal Capacity:**
  - The ability to exercise rights and perform legal acts (e.g., entering into contracts, making a will).
  - It flows directly from legal personality.

  - **Does AI possess the characteristics or attributes that would allow us to grant it legal personality and, by extension, legal capacity?**

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Slide 3: AI Lacks

Legal Personality

- **Current Consensus: No Legal Personality for AI**
  - Globally, the prevailing legal view is that AI systems are tools or instruments, not independent legal subjects.
  - They lack consciousness, intent, autonomy (in the human sense), and responsibility, which are fundamental to the concept of legal personality.
- **Why Not? Key Distinctions:**
  - **No Consciousness or Sentience:** AI operates based on algorithms and data, not subjective experience or understanding.
  - **No Intent or Will:** AI actions are deterministic outcomes of its programming and training data, not expressions of free will.
  - **Dependency:** AI systems are created, programmed, and operated by humans or human-controlled entities.
  - **Lack of Moral Agency:** AI cannot understand or adhere to ethical norms in a human sense, which is foundational for legal responsibility.
- **Analogy:** AI is akin to a complex machine or advanced software; **it's a product, not a person.**

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Consequences: No Legal Capacity, No Legal Liability

- **No Legal Capacity:**
  - Since AI lacks legal personality, it logically follows that it cannot have legal capacity.
  - An AI system cannot independently enter into contracts, own assets, or represent itself in legal proceedings.
  - Any "actions" by AI are legally attributed to the human or legal entity that developed, deployed, or controls it.

- **No Legal Liability:**
  - A direct consequence of lacking legal personality and capacity is the absence of legal liability for AI itself.
  - If an AI system causes harm (e.g., an AI-designed garment infringes IP, an AI recommendation leads to financial loss), the liability rests with:
    - **The Developer/Creator:** For design flaws, faulty algorithms, or inadequate testing.
    - **The Operator/Deployer:** For improper use, insufficient human oversight, or failure to update.
    - **The Owner:** For risks associated with their property.
    - **The Manufacturer:** Under product liability laws.

- **The "Responsibility Gap" Debate:**
  - While AI is not liable, complex AI systems, especially autonomous ones, can make attributing specific actions to human programmers or operators challenging. This has led to discussions about a potential "responsibility gap" in law, prompting calls for new liability frameworks.

Future Outlook & Conclusion – part I

- **Evolving Discussions:**
  - While the current legal consensus is clear, academic and policy discussions continue regarding potential future scenarios, such as:
    - **"Electronic Personhood":** A concept debated, particularly in the EU Parliament's resolution in 2017, suggesting limited legal status for advanced autonomous robots to address liability issues. This remains highly contentious and is not current law.
    - **Strict Liability Regimes:** Proposals to introduce strict liability for operators of high-risk AI systems, regardless of fault, to ensure victims are compensated.

- **Current Legal Reality:**
  - For now, AI remains a tool. Legal responsibility and liability always trace back to a human or a recognized legal entity.
  - Fashion companies utilizing AI must therefore ensure robust legal frameworks, clear contractual terms, and strong due diligence practices to manage risks associated with AI deployment.

- **Key Takeaway:**
  - AI is a powerful instrument, but accountability for its actions and impacts squarely lies with its human creators, controllers, and users.

What about fashion?

- **AI in Fashion: A Dual Perspective**
  - AI is revolutionizing the fashion industry, presenting both unprecedented opportunities and complex challenges.
  - It is not merely a tool but a transformative force shaping creation, production, and consumer engagement.

- **The Imperative of Due Diligence**
  - Understanding the legal and ethical implications is crucial for sustainable integration.
  - Proactive risk management and compliance are essential to harness AI's potential safely.

AI – The Opportunity

- **Design & Creation**

  - **Trend Prediction:** Algorithms analyze vast datasets (social media, sales, news) to forecast emerging styles and consumer preferences, optimizing design cycles.

  - **Generative Design:** AI tools can generate novel design patterns, color palettes, and garment structures, accelerating the creative process and fostering innovation.

  - **Virtual Prototyping:** AI-powered software enables designers to visualize and iterate on collections digitally, reducing material waste and time-to-market.

- **Supply Chain Optimization**

  - **Demand Forecasting:** Enhanced accuracy in predicting product demand minimizes overproduction and stockouts.

  - **Inventory Management:** AI optimizes inventory levels, reducing carrying costs and improving operational efficiency.

  - **Logistics & Traceability:** AI can streamline logistics, optimize shipping routes, and enhance supply chain transparency.

- **Customer Experience**

  - **Personalized Recommendations:** AI-driven platforms offer tailored product suggestions based on individual preferences and browsing history.

  - **Virtual Try-on:** Augmented Reality (AR) and AI allow customers to virtually try on clothes, improving the online shopping experience and reducing returns.

  - **Customer Service:** AI-powered chatbots provide instant support and guidance, enhancing consumer satisfaction.

AI – The Threat

- **Intellectual Property (IP) Infringement**

  - **Copyright & Design Rights:** Who owns the IP of AI-generated designs? The original dataset creator, the AI developer, or the user? Risk of AI output infringing existing designs without proper attribution or licensing.

  - **Trademark Dilution/Infringement:** AI-generated marketing content or product names could inadvertently infringe on established trademarks.

  - **Trade Secrets:** Inputting proprietary designs or confidential business data into AI models without robust safeguards risks trade secret leakage.

- **Data Privacy & Security**

  - **Sensitive Data Processing:** AI models often require vast amounts of data, including personal consumer data, raising GDPR compliance challenges (e.g., consent, data minimization, anonymization).

  - **Cybersecurity Risks:** AI systems can be targets for cyberattacks, leading to data breaches or manipulation of design/production processes.

- **Ethical Concerns & Bias**

  - **Algorithmic Bias:** AI models trained on biased data can perpetuate or amplify existing societal biases (e.g., gender, race) in design, marketing, or hiring, leading to discriminatory outcomes.

  - **Transparency & Explainability:** The "black box" nature of some AI systems makes it difficult to understand how decisions are made, posing challenges for accountability and consumer trust.

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Good Practice Tips – General

- **Robust Data Governance & Transparency**
  - **Data Minimization:** Collect only necessary data.
  - **Anonymization/Pseudonymization:** Implement techniques to protect personal data.
  - **Transparent Data Usage Policies:** Clearly communicate how data is collected, used, and processed, especially when feeding into AI models.
  - **Consent Management:** Obtain explicit consent for data processing where required.
- **Proactive IP Strategy**
  - **Clear Ownership Agreements:** Establish clear contractual terms for AI-generated IP with developers and users.
  - **IP Scrutiny of AI Outputs:** Implement processes to review AI-generated content for potential infringement of third-party IP before commercialization.
  - **Protection of AI Models & Datasets:** Secure proprietary AI models, algorithms, and training datasets as trade secrets or through patent where applicable.
- **Ethical AI Frameworks**
  - **Bias Mitigation:** Actively identify and address biases in training data and AI outputs.
  - **Human Oversight:** Ensure human review and intervention in critical AI-driven decisions.
  - **Accountability Mechanisms:** Define clear responsibilities for AI system development and deployment.
- **Compliance & Regulatory Awareness**

EU Context – General Regulatory framework

- **EU Artificial Intelligence Act (AI Act)**
  - **Risk-Based Approach:** Classifies AI systems based on risk level (unacceptable, high, limited, minimal). High-risk AI systems face strict requirements (e.g., data governance, human oversight, transparency, conformity assessment).
  - **Relevance for Fashion:** AI used for personalized recommendations, virtual try-on, supply chain optimization might fall under "high-risk" if it impacts fundamental rights or safety (e.g., credit scoring, employment decisions). Generative AI (foundational models) will have specific transparency obligations.
  - **Key Principles:** Safety, transparency, human oversight, accuracy, non-discrimination.
- **General Data Protection Regulation (GDPR)**
  - **Cornerstone of Data Privacy:** Strict rules on processing personal data, including data used to train AI models or gathered through AI-powered fashion tech.
  - **Key Principles:** Lawfulness, fairness, transparency, purpose limitation, data minimization, accuracy, storage limitation, integrity, confidentiality, accountability.
  - **Individual Rights:** Rights to access, rectification, erasure, restriction of processing, data portability, and objection, particularly relevant for AI profiling.
- **Other Relevant EU Legislation**
  - **Digital Services Act (DSA) & Digital Markets Act (DMA):** While not specific to AI, they impact online platforms and gatekeepers, influencing how AI-powered services are delivered and regulated within fashion e-commerce.
  - **Product Liability Directive:** Potentially relevant for defects arising from AI-driven design or manufacturing processes.

Key Jurisdictions – Italy, France, Germany, Spain (Part 1: IP & Data)

- **Intellectual Property (IP) Enforcement**
  - **Design Rights:** Strong protection for industrial designs. AI-generated designs could be protected if they meet novelty and individual character criteria.
    - *Italy:* Industrial Property Code (Legislative Decree No. 30/2005).
    - *France:* Intellectual Property Code.
    - *Germany:* Design Act (Geschmacksmustergesetz).
    - *Spain:* Design Act (Law 20/2003).
  - **Copyright:** Protection for original artistic works. AI-generated visual elements or patterns may face challenges in meeting the "human authorship" criterion.
  - **Trademark:** AI-assisted brand development requires careful clearance to avoid infringement.
- **Data Protection Nuances & National Initiatives**
  - All adhere to GDPR, but national implementing laws may add specifics.
  - **Italy:** *Garante per la protezione dei dati personali* (Data Protection Authority) has been proactive on AI's privacy implications (e.g., ChatGPT temporary ban). Italy's national strategy focuses on AI development and ethics.
  - **France:** *Commission Nationale de l'Informatique et des Libertés* (CNIL) focuses on AI data processing and algorithmic transparency. France has a strong national AI strategy emphasizing ethical AI and industrial application.
  - **Germany:** Strong emphasis on data protection and cybersecurity. The German Ethics Commission on AI has published influential guidelines.
  - **Spain:** *Agencia Española de Protección de Datos* (AEPD) has issued guidance on AI and data protection. Spain's National AI Strategy aligns with EU goals.

Key Jurisdictions – Italy, France, Germany, Spain (Part 2: AI Act Implementation & Caselaw)

- **AI Act Implementation & National Approaches:**
  - These countries are actively involved in the EU AI Act's implementation, preparing national supervisory authorities and sandboxes.
  - Expect national legislation to complement the AI Act, specifying procedural aspects, penalties, and competent authorities.
- **Relevant Caselaw & Principles (although not AI-specific unless noted):**
  - **General IP Principles Applied to AI Context:**
    - **Authorship in Copyright:** National courts across these jurisdictions generally require human originality for copyright protection. Cases involving software-generated works (though not AI directly) tend to attribute authorship to the human programmer/creator. For AI-generated content, the debate on "human intellectual creation" remains central.
    - **Design Infringement:** Cases establishing similarity criteria for design infringement (e.g., *Samsung v. Apple* across Europe) are relevant for AI-generated designs that might too closely resemble protected designs.
  - **Data Protection Principles:**
    - **Right to Explanation (GDPR Art. 22):** While not extensively modeled on AI, the principle that individuals have a right to meaningful information about the logic involved in automated decision-making is critical. National DPAs are likely to enforce this as AI systems become more prevalent.
    - **Data Breach Litigation:** Numerous cases across the EU involve fines and damages for data breaches, highlighting the need for robust security in AI systems handling personal data.

Serbia – AI Landscape & Legal Framework

- **Growing Digital Hub:** Serbia has actively positioned itself as a regional leader in IT and digital transformation.

- **Law on Artificial Intelligence (2023 - draft/discussion):**
  - Serbia is among the first non-EU countries to consider a dedicated AI law. While still evolving, early drafts indicate a focus on ethical development, data governance, and potential risk classification similar to the EU approach.
  - Aims to foster innovation while ensuring responsible AI use.

- **Data Protection Law (Law on Personal Data Protection, 2018):**
  - Largely harmonized with the EU GDPR.
  - Key principles (lawfulness, fairness, transparency, data minimization) and individual rights (access, erasure, objection) apply fully to AI systems processing personal data within Serbia.
  - Enforced by the Commissioner for Information of Public Importance and Personal Data Protection.

- **Intellectual Property Protection:**
  - **Law on Copyright and Related Rights (2004, amended):** Protects original literary, scientific, and artistic works. AI-generated works face the same human authorship challenges as in EU jurisdictions.
  - **Law on Industrial Design (2013, amended):** Protects novel and individual designs. AI-generated fashion designs can be registered if they meet these criteria.
  - **Law on Trademarks (2009, amended):** Protects distinctive signs.
  - Serbia is a party to major international IP treaties (e.g., Berne Convention, Paris Convention).

Serbia – Practical Considerations & Caselaw

- **Challenges for Fashion Companies using AI in Serbia:**
  - **Evolving Legal Landscape:** Staying updated on the specific nuances of the new AI law and its implementing regulations will be critical.
  - **Data Transfer:** Ensuring compliance with data transfer rules if data processed by AI is moved outside Serbia (or vice-versa).
  - **Talent & Infrastructure:** While growing, access to specialized AI legal and technical talent for compliance might still be a consideration.

- **Notable Serbian Caselaw / Regulatory Guidance:**
  - **Data Protection Enforcement:** The Commissioner for Information of Public Importance and Personal Data Protection has issued numerous opinions and initiated proceedings regarding GDPR-like violations, particularly concerning unlawful data collection and processing. These cases underscore the importance of robust data governance for any AI system.
  - **IP Infringement Cases:** Serbian courts frequently rule on copyright and design infringement cases, establishing precedents for protecting original works. While not AI-specific, these cases demonstrate how AI-generated infringing content would likely be treated under existing IP laws.
    - *Example (General IP):* Cases related to the protection of clothing designs under the Industrial Design Law emphasize the criteria of novelty and individual character, which would apply to AI-generated designs seeking protection or challenging infringement.

Albania – AI Landscape & Legal Framework

- **Digitalization Efforts:** Albania is actively pursuing digital transformation, aiming to integrate technology into public services and the economy.

- **Absence of Specific AI Legislation (as of mid-2025):**
  - Unlike Serbia, Albania does not yet have dedicated AI legislation.
  - AI applications are currently governed by existing sector-specific laws, primarily data protection and intellectual property laws.

- **Data Protection Law (Law No. 9887/2008, as amended, "On the Protection of Personal Data"):**
  - This law is largely aligned with Council of Europe Convention 108 and aims for harmonization with EU data protection standards, though not a direct GDPR transposition.
  - **Key Principles:** Lawful processing, specified purpose, data quality, data security.
  - **Enforcement:** Commissioner for the Right to Information and Protection of Personal Data.
  - Any AI system processing personal data in Albania must strictly adhere to these provisions, especially regarding consent, security measures, and data subject rights.

- **Intellectual Property Protection:**
  - **Law No. 35/2016 "On Copyright and Related Rights":** Protects original literary, scientific, and artistic works. Similar to EU and Serbian law, human originality is a prerequisite for copyright.
  - **Law No. 9947/2008 "On Industrial Property" (as amended):** Covers patents, trademarks, industrial designs, and geographical indications.
    - **Industrial Designs:** Protects designs that are new and have individual character. AI-generated fashion designs can potentially be registered.
  - Albania is a signatory to major international IP agreements (e.g., TRIPS Agreement, Berne Convention, Paris Convention).

Albania – Practical Considerations & Caselaw

- **Challenges and Opportunities for Fashion Companies in Albania:**
  - **Legal Uncertainty:** The lack of specific AI law means navigating a patchwork of existing regulations, requiring careful legal interpretation.
  - **Enforcement Capacity:** While laws exist, the practical enforcement environment and judicial experience with complex AI-related cases might be less developed compared to EU countries.
  - **Opportunity:** Early adoption of ethical AI practices can position companies as leaders in a developing market.

- **Relevant Caselaw / Regulatory Developments:**
  - **Data Protection Enforcement:** The Albanian Commissioner for Personal Data Protection has issued various decisions and fines, emphasizing compliance with data processing principles. These cases, though not AI-specific, set precedents for the careful handling of personal data that AI systems would require.
    - *Example (General Data Protection):* Decisions on consent for data processing or secure data storage would be directly applicable to AI systems relying on user data.
  - **IP Litigation:** Albanian courts have handled cases concerning copyright infringement (e.g., unauthorized reproduction of textile patterns) and industrial design infringement. These cases demonstrate the principles that would be applied if an AI-generated design were to infringe on existing Albanian IP.
  - **No Specific AI Caselaw:** Due to the nascent stage of AI regulation and adoption in Albania, there is currently no significant body of caselaw directly addressing AI-specific issues (e.g., AI authorship, liability for AI errors).

- **Sources:** Official Journal of Albania, website of the Commissioner for the Right to Information and Protection of Personal Data, Albanian General Directorate of Patents and Trademarks.

Due Diligence Checklist for Fashion Brands

- **Legal & Compliance Audit:**
  - **Data Mapping:** Identify all data sources, types, and flows involved in AI systems.
  - **Regulatory Scan:** Monitor evolving AI regulations in all relevant jurisdictions (EU, national, and beyond).
  - **GDPR Compliance Check:** Ensure all personal data processing by AI systems adheres to GDPR and national data protection laws.
- **Contractual Safeguards:**
  - **AI Vendor Agreements:** Negotiate clear terms on data ownership, IP rights for AI outputs, liability for errors/infringement, security measures, and audit rights.
  - **Licensing:** Secure necessary licenses for training data, existing IP used by AI, and AI model components.
  - **Employee Agreements:** Address IP ownership for AI-assisted employee creations.
- **Risk Assessment & Mitigation:**
  - **IP Risk Assessment:** Regularly vet AI-generated content for potential infringement.
  - **Cybersecurity Review:** Implement robust security protocols for AI infrastructure and data.
  - **Ethical Review:** Conduct bias audits on AI models and establish human oversight mechanisms.
- **Internal Policies & Training:**
  - **AI Usage Policy:** Develop clear guidelines for employees on responsible and ethical AI use.
  - **Data Protection Training:** Ensure all staff handling data for AI purposes are trained on privacy compliance.
  - **IP Awareness:** Educate creative teams on IP considerations when using AI tools.

Conclusion & Key Takeaways

- **Embrace AI Responsibly:** AI is an undeniable force for innovation in fashion, but its adoption must be grounded in responsibility, ethics, and legal compliance.

- **Proactive Legal Strategy is Crucial:** Waiting for issues to arise is not an option. A forward-thinking legal strategy can turn potential threats into competitive advantages.

- **Stay Updated on Evolving Regulations:** The legal landscape around AI is dynamic. Continuous monitoring and adaptation are vital for long-term success.

- **Human Oversight Remains Paramount:** Technology augments, but does not replace, human ingenuity and ethical judgment

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Emanuela specializes in contentious and non-contentious intellectual property matters (including new plant varieties and personality right) and commercial litigation (including international and national debt recovery), across a wide-ranging local and international practice.

She has developed particular expertise in the negotiation and drafting of agreements such as license, non-disclosure, non-compete and coexistence agreements concerning IP rights and copyrights as well as for commercial transactions. She has also developed a specific expertise as general counsel (with reference to commercial and IP matters) of medium sized Italian companies, with a particular focus on exports. She graduated in law with honors from the University of Turin in 1999. She was admitted to the (Turin) Bar in 2003. In 2006 she graduated with honors from the University of Turin School of Economics with a Post-graduate Masters in marketing and communication, with her dissertation on brand value and brand equity in the automotive sector "Per far correre Fiat 500: marketing e licensing per un brand icona".

Emanuela is a frequent speaker at IP seminars as well as regarding contractual matters and collaborates with the Chambers of Commerce of Turin, the Italian Chamber of Commerce in the United Kingdom, the University of Turin – Economy Faculty – the University of Genoa – Economy Faculty - in relation to IP seminars and training activity.

Emanuela regularly lectures at the School of Economics of the University of Turin and Genoa and at the University of Gastronomic Sciences of Pollenzo (CN).

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She is Contributor for Law360 Canada, part of LexisNexis Canada, for Thomson Reuters and for Lexology.

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