INTERNATIONAL JOURNAL OF LEGAL AFFAIRS AND EXPLORATION

Volume 3 | Issue 1

2025

Website: www.ijlae.com

Email: editor@ijlae.com

AUTHORSHIP AND OWNERSHIP OF AI-GENERATED WORKS UNDER COPYRIGHT LAW

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ABSTRACT

AI's growing role in the creative field has triggered a major reconsideration of the basic rules behind copyright law. Since AI writes books, makes music, produces art and creates software, the regulations aimed at protecting original creativity are struggling to meet these changes. This article looks at problems related to who owns and created the works made by AI, studies the key approaches in major jurisdictions and engages with ongoing policy and ethical issues. At the end of the article, recommendations are given for updating laws and making them similar internationally, given that AI greatly transforms and will continue to, the creative industry across the globe.

Keywords: *Artificial Intelligence (Ai), Ai-Generated Works, Copyright Law, Authorship, Ownership, Intellectual Property Rights, Originality Requirement, Human Creativity.*

INTRODUCTION

Over the last decade, artificial intelligence has caused a significant technological change that has automated regular activities and started to affect areas where humans used their creativity the most. Using OpenAI's GPT series, DALL-E, Deep Dream from Google and many other similar machine learning algorithms, generative AI systems can now create text, pictures, music and code that is either as good as or even better than what humans produce. Not only are these applied in experiments; they are also being used quickly in journalism, advertising, entertainment and software design, fundamentally changing how people create content.

Thanks to this new technology, many important problems in the area of copyright law are now being asked. The idea of "author" in relation to copyright, as defined first in the Berne Convention, means that a creative natural person controls their intellectual property. Being original means that a person or group of people have used their creativity in the work.[1] When AI systems create without human involvement, these basic ideas are put under review. Are such publications eligible for copyright protection? If that's the case, who is the creator—is it the AI, the person who built it, the person using it or someone else? Whose roles should ownership take and what are the results for both the creative and wider communities? Should artwork

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[1] Berne Convention for the Protection of Literary and Artistic Works (1886).

created by AI have new protections or should they just be open for anyone to use? These questions are important because they affect creators, developers and users in the short term and have much broader impacts as well.

This article seeks to explain these topics by analyzing passed laws, court judgments and related research from the United States, United Kingdom, European Union, India and China. The book is designed to help readers explore current legal issues, understand the hurdles related to AI-generated content and find suggestions for adapting copyright provisions in the age of AI.

AUTHORSHIP, ORIGINALITY, AND THE AI CHALLENGE

Copyright law has its foundation in the belief that creative materials are made by humans. While the main goal of the Berne Convention is to protect literary and artistic works, fundamental in international copyright law, does not define "author" itself, its terms and later understandings confirm that, under it, an author must be a real person.[2] According to Article 2(1) of the treaty, "literary and artistic works" are covered and Article 7(1) tells us the term's protection lasts until fifty years past "the life of the author," proving that the drafters meant Works were made by people. This view is also supported by national laws.[3] According to the Copyright Act, both works and their authors are included and when registering, the Compendium specifies human authorship. The CDPA of 1988 defines what an "author" is in terms of humans and makes a special provision for computer-generated content.[4] Under India's Copyright Act 1957, a person creates a work,[5] but according to EU rules, the person must make the intellectual work themselves. [6]

By requiring people to be original, it becomes even more obvious how central creativity is to education. The Supreme Court of the United States ruled in Feist Publications, Inc. v. Rural Telephone Service Co. that something must be independent and require even a little thought to be thought of as creative.[7] In the case of Infopaq International A/S v. Danske Dagblades Forening points out that a work is original if it displays the author's own thought.[8] Previously, only people, not animals or machines, could receive copyright protection.

Yet, AI is now challenging these main ideas about art. Systems that use machine learning and deep learning create answers or make decisions depending on what they find in their training data. Because the process doesn't rely on human creativity such outputs are usually considered unoriginal by the courts and copyright agencies. The difference between AI-assisted and AI-generated works matters a lot. Usually, AI supports the user's creativity by offering tools, so an artist can produce various background textures without setting the entire composition and outcome. Because of the human's creative work, the conditions for the AI to be the" author" might be met. Alternatively, AI systems sometimes create the work without much or any

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[2] Ibid.

[3] U.S. Copyright Act, 17 U.S.C. § 101 et seq.; U.S. Copyright Office, Compendium of U.S. Copyright Office Practices (Third Edition).

[4] Copyright, Designs and Patents Act 1988 (UK).

[5] Indian Copyright Act, 1957.

[6] Directive 2001/29/EC of the European Parliament and of the Council (EU Copyright Directive); *Infopaq International A/S v. Danske Dagblades Forening* (C-5/08).

[7] *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991).

[8] *Infopaq International A/S v. Danske Dagblades Forening* (C-5/08).

human's help at all. As an example, an AI that processes lots of paintings can make an original painting on its own. Because there is no human creativity in works like these, copyright is hard to justify.

How judicial and administrative agencies have handled these issues has been unclear and inconsistent. Various works made only by AI have been refused registration by the U.S. Copyright Office and in Naruto v. Slater[9] confirmed the rule that human involvement is necessary. In Slater, the Ninth Circuit decided that a monkey could not be the owner of any photos it took.[10] Human literary creation is considered to be very important by the European Court of Justice[11] and in its 2020 decision on intellectual property rights, the European Parliament pointed out the challenges from AI-generated work but did not recommend setting up a shared solution.[12] Computer-generated works are given copyright protection in the United Kingdom and the act says that whoever arranges the data is the author, although the UK's copyright term is significantly shorter and the courts have not looked in detail at what is required to arrange data.[13] The courts in China agree that where a human contribution is detectable in the work, AI may fall under copyright.[14] Under Indian law, AI-generated works are not protected by copyright and unless major human intervention can be shown, this situation persists without any required changes in the law.

Once, creativity was not required for copyright, but now, much of the law depends on real creativity, not just sweat and labour. That means while AI-only works remain in the public domain, those with some human input may be tradable assets as long as the exact guidelines for protection are still being debated. Because of this uncertainty, allocating rights, encouraging investment and growing creative fields are all affected.

OWNERSHIP OF AI-GENERATED WORKS: LEGAL MODELS AND UNCERTAINTY

In regular copyright law, the first holder of copyright is the author. In most cases, the author owns the copyright to a work, but these changes if works are made for hire or completed as part of everyday employment. Because this framework depends on having a human author, there is a legal problem for AI-generated works because AI does not have a human creator. Consequently, a range of ownership structures have been created and some have been implemented around the world.

In one model, the AI would take on the role of author and owner for its work. But this approach is not accepted anywhere, as AI can't be regarded legally, as it cannot be given rights or responsibilities.[15] Most people in the legal field and policy decision makers believe granting

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[9] U.S. Copyright Office, Denial of Registration to "Creativity Machine" (2022).
[10] *Naruto v. Slater*, 888 F.3d 418 (9th Cir. 2018).
[11] *Painer v. Standard Verlags GmbH* (C-145/10).
[12] European Parliament Resolution of 20 October 2020 on intellectual property rights for the development of artificial intelligence technologies.
[13] Copyright, Designs and Patents Act 1988 (UK), Section 9(3).
[14] *Shenzhen Tencent Computer System Co., Ltd. v. Shanghai Yingxun Technology Co., Ltd.* (2019).
[15] P. Samuelson, "Allocating Ownership Rights in Computer-Generated Works," University of Pittsburgh Law Review, Vol. 47, 1986.

legal personhood to AI would be neither helpful nor desirable. A second approach identifies as the owner of both the AI and the output the person who developed or owns the AI. This model can be established by contract, yet it is not the standard position for most copyright statutes. People may agree that the developer should own the work as creator of the system, but it still brings up questions about what users contribute to the outcome.

In this most talked-about model, if a user contributes sufficiently innovation to an AI system, they can be recognized as the AI's owner. This method is especially suited to AI-assisted works, because the user takes on a creative role. There is some reason to think that the UK's CDPA "necessary arrangements" provision supports remote copying, even if how broadly it applies is not fully settled. Both developer and user might be joint owners if they play a part in creating the work, but this model is too difficult for judges to use and is not common. Because humans do not create AI-generated work in many cases, these works are typically open and can be used freely by everyone.

Where the rules are unclear in law, parties tend to depend on written agreements to handle rights to AI-generated works. For instance, in terms of service for OpenAI's GPT or DALL-E, it might be stated whether the user or the platform owns what is produced. They are enforceable between the parties, yet they only allow the management of rights. Only in the U.K. does Section 9(3) of the CDPA treat the person arranging the music as the copyright owner when it comes to dramatic works. Yet, since guidance from the courts is missing, it is unclear what limits exist for this provision. Because animal copyright does not exist in the U.S. and EU, any ownership in works by animals depends simply on whether a person authored them. If a human author made the content, they own the copyright; when no human artist is acknowledged, the work belongs to the general public. Depending on the case, the courts in China treat AI users like creators provided their role is original enough.

COMPARATIVE AND PRACTICAL ANALYSIS

It is clear in the United States that only those works that a human made can be protected by copyright. According to the U.S. Copyright Office, if work is entirely from an AI, it won't receive registration.[16] Naruto fans know their way around the series. Slater, the Ninth Circuit decided animals do not have rights to copyright, recalling that humans must be the authors.[17] Whenever AI is involved, the Office assesses the level of human involvement and if a human plays a part such as choosing, arranging or modifying the AI's results, their handwork is potentially subject to copyright.

The directive of the European Union, together with rulings from the CJEU, state that a work must be the expression of the author's own ideas. European lawmakers recognize the problems arising from AI-generated creations, but they have not created a single law to deal with them. [18] Most countries in the EU want authors to be human, though a few, like Ireland, follow the UK's rules on computer-generated songs which hardly get used. Copyright doesn't apply to

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[16] U.S. Copyright Office, Denial of Registration to "Creativity Machine" (2022).

[17] *Naruto v. Slater*, 888 F.3d 418 (9th Cir. 2018).

[18] European Parliament Resolution of 20 October 2020.

AI-created goods that rely only on machines, but creative input from people can make their part copyrightable.

The way the United Kingdom does this is different, thanks to Section 9(3) of the CDPA giving the creator of such works the position of author. The copyright period is 50 years after creation, shorter than for everything a human makes. Jurisprudence does not say explicitly what "necessary arrangements" means and many commentators think this part of the treaty refers to cases where a human does not record the work. Under the UK approach, there is a certainty about AI-made works, but the litigation process hasn't covered many important issues.

A work that is created by AI is not addressed by the Copyright Act and according to the Act, author only refers to a person. Direct consideration of AI-generated works by Indian courts is lacking, while academics generally agree that, if legislation is not updated such creations do not benefit from copyright unless it can be shown they were largely contributed to by humans. According to the law, for work to be copyrighted in China,[19] it must be made by a human, but the courts have demonstrated a willingness to do so when the AI creator has enough input by the user. In this case, the court decided that copyright applied to the Tencent news article, because the user decided the article's style and structure. A copyright in AI-generated works may be granted by Chinese courts when the user's part is original enough.

Case studies show how determining who owns and created AI-generated works can be very complicated. During 2018, Christie's auctioned "Edmond de Belamy," which was a portrait made through a Generative Adversarial Network (GAN). After selling for $432,500, many started to question who wrote the work. The AI used hundreds of portraits for training and the people making art decided which image was best. Under today's legislation, the human curators can be identified as the authors, although the role of the AI is not easy to interpret. AlphaGo from DeepMind spent time playing and recording games with human world champions at the game of Go. While AlphaGo's moves may be creative, right now only what humans do or say can be protected by copyright. The wondering of copyright applies to any text that large language models like GPT-3 or ChatGPT create. If someone edits the results offered by ChatGPT and adds their own contributions, they may say they wrote the text. Minimal input during the generation process might make the output insecure.

POLICY, PRACTICAL, AND ETHICAL IMPLICATIONS

A lack of copyright for AI-generated items has many impacts on creativity, new ideas and the wider creative scene. Copyright law is supported by many on the idea that it motivates intellectual activity by giving inventors exclusive rights. Making AI-generated works public can encourage new ideas, because anyone can borrow, adapt and use what has been created. Yet, AI developers and users may not feel the need to produce valuable AI products if they do not control their sales or profits. On the other hand, denying protection may undercut incentives for investment in creative AI.

Because AI-generated works can be challenging to attribute, it is a significant challenge to copyright law's value of attribution. Is it legal for an AI to be credited if it is not considered a person? Who should have their credit given, the developer or the user or both? Who is

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[19] *Shenzhen Tencent Computer System Co., Ltd. v. Shanghai Yingxun Technology Co., Ltd.* (2019).

responsible when infringement or misuse of copyright protected work occurs? There are practical as well as moral aspects to asking these questions. Many fields are seeing AI-generated works compete with human creativity which makes people worry that human artists may lose work. At the same moment, AI helps human creators express themselves in new ways and join in collaboration.

Due to not all countries having the same laws on AI-generated works, there is uncertainty about them in many parts of the world online. A lack of unification among countries complicates problems related to enforcement on a cross-border level and licensing. Apart from legal concerns, people wonder if using AI affects creativity, if AI-made content reflects normal human biases and what happens as machines take over more of our creative work. People often disagree about whether to protect AI-generated works by copyright because of their beliefs and policies, in addition to the law.

THE PATH FORWARD: REFORM AND RECOMMENDATIONS

A number of answers have been suggested for the challenges presented by works created by AI. An alternative is to require any work generated by AI to be copyrightable only when substantial human efforts are noticeable and the work itself is original and to make the original AI materials available to the public unless those conditions are met. The approach keeps the main interest on human creativity, yet it does not fully motivate investment in AI that boosts creativity. It is possible to go further and grant copyright to any work generated by AI with copyright rules amended to give the author or owner legal rights, either to the user, the software developer or another party. This way, we must consider the effects of policy and make sure we continue to motivate human creativity.

A different approach would be to establish a new variety of protection for AI-generated creations, the same way database rights have been created in the EU. Limited protection can be given by doing this, while still maintaining the basic principle of copyright. Online technologies can be added to copyright such as digital watermarks and blockchain, to help monitor who created the work. The WIPO and other groups around the world are looking into the issue and a common solution between countries would make it simpler to resolve problems facing many markets and increase legal security for businesses.

From the analysis, some recommendations can be put forward. The question of what involvement by humans is needed for AI-assisted works to receive copyright protection must be better addressed by legislatures and courts. Governments and those creating policies should explore whether AI-created works need a separate kind of right that creates both incentives and a benefit for everyone. Both developers and users are encouraged to describe how AI helped in producing any content and to give credit where it is deserved. It is necessary for nations to cooperate so that rules about AI-created content are handled the same way everywhere. We should keep examining how AI in creativity influences people and could be used badly or biased.

CONCLUSION

The use of AI for creativity has showed that today's copyright laws are not well suited to new content created by AI. The majority of jurisdictions do not contribute these works to the public

domain but permit them to go without copyright protection. Copyright may apply to what people create or design, but the line for this protection is still unclear. Deciding who owns the outcome of AI in art remains a problem because of different models and laws around the world. Because each jurisdiction handles AI differently, there is more legal confusion and difficulty getting and keeping licenses for AI-created content. When AI grows, the law should be updated to ensure it protects creators, developers, users and society. It is important for policymakers to find solutions that adapt to technology, appreciate what people can do best and handle the special problems presented by AI. There is still uncertainty about writing and ownership with the rise of AI and this question will define creativity and innovation for many years ahead.