



AI-Generated Works: Copyright Ownership

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Abstract

Generative AI systems have taken over the world at a raging rate. While loads of content are being produced online by generative AI tools such as ChatGPT using existing works that are a subject of copyright, there has been a sudden rise in disputes regarding the question of who would be the rightful owner of a copyrighted work generated after AI machine learning from existing sources. While the jurisprudence for copyright ownership of compilations and the ‘Sweat of the Brow’ doctrine was laid down by the US Supreme Court in Feist Publications, Inc. v. Rural Telephone Service Co., the answer to ownership of AI-generated works is not that simple. The doctrine says that one who spends even a minimal degree of effort and creativity coming from oneself to create a new work on the basis of existing works becomes the rightful owner of the ‘compilation’. However, with AI, there are several inherent problems that hinder it from being eligible to be a copyright owner of works generated by it. In this article, the author has discussed in detail the reasons why AI cannot be the rightful copyright owner of works generated by it.

Keywords: Copyright, AI system, ChatGPT, copyright ownership

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Introduction

How Generative AI Systems Work?

At the base of the abilities of any generative AI system, lies their “training data”. These massive amounts of training data are nothing but existing databases, literature, public records, and information which are accessed by AI software in order to learn language and intelligence patterns² after which the AI software can develop content as per users’ needs on the basis of patterns picked up by it from the training data.

The training data that is fed while developing such AI software is what raises many concerns³ about the ethical use of such information and literature since many of these pieces are protected by copyright laws and they are reproduced directly or indirectly by the usage of AI. Many actions have been initiated against Open AI (proprietor of ChatGPT) by organizations like the New York Times Company, Tremblay, Silverman, and so on.⁴

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² CD Manning and H Schutze, Foundations of Statistical Natural Language Processing (Cambridge, MA, MIT Press 1999) p 3.

³ RA Reese, ‘Transformativeness and the Derivative Work Right,’ (2008), 31 Columbia Journal of Law & the Arts 467, 485.

⁴ Jonathan Gillham, ‘OpenAI and ChatGPT Lawsuit List’ (Originality.ai) <<https://originality.ai/blog/openai-chatgpt-lawsuit-list>> accessed on 24 November 2024

While the jurisprudence on the question of such infringement by AI is yet to be developed, a very elementary and intriguing question that must be answered first is whether AI can be a copyright proprietor or not.

Who is The Owner of Works Produced by AI?

A Preliminary Inquiry

The author conducted preliminary research by feeding in the following prompt: “Who is the owner of texts produced by ChatGPT?” To this, the AI software replied:

“The text produced by ChatGPT is generated based on patterns learned from diverse data sources during training. The ownership of the text lies with OpenAI, the organization that developed and maintains the GPT-3.5 architecture, which powers ChatGPT. Users interact with ChatGPT under OpenAI’s usage policies and terms of service. It’s important to note that while users provide input to the model, they do not own the underlying model or the generated text.”

ChatGPT claims that it is the proprietor of the works produced by it. However, this claim can be supported as well as opposed by several arguments discussed further.

Judicial Interpretation

Although there is a void in substantial jurisprudence developed by precedents that have dealt with the matter of data theft and lack of novelty in AI-generated works, some logical understanding can be derived from a few clear precedents that go against the proposition that AI can be the owner of works produced by it.

In 2018, *Naruto v. Slater*⁵ set a strong precedent by rejecting the claim of copyright on behalf of a monkey for a picture clicked by it without any human intervention. The court clarified that copyright protection is to be granted only to natural persons who are subjects of copyright law. Even though the monkey performed the act without human interference, a monkey cannot be said to be subject to copyright laws, and therefore, no protection whatsoever can be granted without even delving into the artistic merit of the shot. Similarly, when the Court was faced with a question of providing copyright protection to a book that was claimed to contain opinions and sayings of celestial beings of higher order than humans, the Court rejected copyright protection to the book since it was not a product of human intellect as claimed by the plaintiffs themselves.⁶ In such a scenario, it is highly unlikely that an AI system would be recognized as a suitable owner for copyright protection.

In an even stronger precedent by the US Supreme Court in 2018, Beryl A. Howell, J. opined. “Human authorship is a bedrock requirement.” The plaintiff, Thaler, had created an AI system called “The Creativity Machine”. He claimed that the machine must be designated as the author of the works produced by it and resultantly, the copyright ownership must further transfer to Thaler as he was the sole owner and creator of the machine. The Court rejected these arguments and laid down that the “U.S. Copyright Office will register an original work of authorship, provided that the work was created by a human being.”⁷

⁵ *Naruto v. Slater*, No. 16-15469 (9th Cir. 2018).

⁶ *Urantia Found. v. Kristen Maaherra*, 114 F.3d 955, 958-59 (9th Cir. 1997)

⁷ *Stephen Thaler v. Shila Perlmutter*, No. CV 22-1564 (BAH) (D.D.C. Aug. 18, 2023)

Not just AI which can work independently from a human, even a machine that works with some or little human input cannot be said to be the author of the work produced by it. The human producing the work with the substantial aid of a machine for automation is also not a subject of copyright. An Australian precedent in this regard acts as the guiding light: *Acohs Pty Ltd v Ucorp Pty Ltd*.⁸ In this case, a computer program was used to create a database of customers and goods to be transacted called Material Safety Data Sheets (MSDS). It was held by the Court that such a work can be said to have no author since it was completely machine-generated with negligible human input. All of these precedents make one stance clear that a product of human intellect is an absolutely necessary element for extending copyright protection.

An Analysis of Applicable Doctrines

The Fair Use Doctrine

An argument in favor of AI is that this software does not replicate copyrighted works but only takes inspiration and creates derivative works.⁹ The works used by AI software for their training are claimed by them as their fair use. The parameter for testing this argument can be found in a judgment by the US Supreme Court in 1990¹⁰ which laid down that the counterbalance between the needs of the public and the moral rights of the author is where ‘fair use’ of any protected work exists.

The author submits that according to this parameter, AI stands at a slightly unfavorable position since the advent of AI software has surely catered to public needs, however, it has compromised the economic benefits of the primary works. Therefore, the perfect counterbalance does not exist here.

The Doctrine of Sweat of the Brow

The Doctrine of Sweat of the Brow propounded in *Feist Publication Inc. v. Rural Telephone Service*¹¹ asserts that whoever spends his/her hard work, skill, and a minimal degree of creativity is entitled to become the proprietor of a compilation. It is true that the output of AI software is a substantially newly created work and not a mere reproduction, however, the parameters of skill and hard work are those that can be possessed only by a human and not a machine. Therefore, even by this parameter, the AI cannot own an AI-produced work.

AI’s Inability to Hold Copyright

Copyright is Predominantly Anthropocentric

Copyright laws have been developed in order to protect creations by humans and products of human intellect. This has been reflected in many judgments such as *Cofemel v G-Star Raw*¹² where the Court referred to the “expression of author’s own personality” as a modicum of novelty in his

⁸ *Acohs Pty Ltd v Ucorp Pty Ltd* [2012] FCAFC 16 (Australia, Full Federal Court of Appeal, 2 March 2012)

⁹ Mathew Ingram, ‘An AI engine scans a book. Is that copyright infringement or fair use?’ (2023) *Columbia Journalism Review* <https://www.cjr.org/the_media_today/an-ai-engine-scans-a-book-is-that-copyright-infringement-or-fair-use.php> accessed on 25 January 2024

¹⁰ *Stewart v. Abend*, 495 U.S. 207 (1990).

¹¹ *Feist Publication Inc. v. Rural Telephone Service*, 499 U.S. 340.

¹² *Case C-683/17 Cofemel v G-Star Raw* [2019].

work. At another instance, the court also said, “An intellectual creation is an author’s own if it reflects the author’s personality.”¹³

A personality belongs to a person. These views by courts of law and the origin of copyright law itself show that the legal framework is to protect and give recognition to the ideas of humans rather than machines who do not possess a personality.

AI has No Legal Identity and Ability to Possess Property

ChatGPT, being an AI language model, also lacks legal identity and the ability to own assets or property in the conventional sense since it is not a human. The jurisprudence regarding legal personality through its extended definition, includes corporations, companies, and a few other entities apart from natural persons¹⁴, however, no extended definition has been yet formulated that can be said to include the mind of an AI.

Even if the content created by an AI language model is creative and original enough to be protected by copyright law, the AI will not own it. According to the various jurisdictions mentioned, the copyright for any material belongs to the entity or an individual that has legal authority over the AI, such as the AI system’s developer or owner.

Ownership of property brings along with it a bundle of rights to be exercised¹⁵ such as alienation, selling, licensing, broadcasting, and so on. These rights are to be administered according to human intellect and wisdom. This is an inherent lacking factor in AI systems.

Difficulty in Establishing Accountability

Authors are often held accountable for their creations which might turn out to be offensive or defamatory towards other individuals. However, when it comes to AI, the fundamental elements of defamation such as malice and ill intention cannot be established for an AI. When there is no legal identity of an AI system, it will indeed be a legal drawback to attribute accountability to an AI system for its actions and words. Also, since an AI system learns from existing information and internet databases, it has no system for fact-checking or distinguishing between fact and fiction. The disclaimer of ChatGPT explicitly mentions that the AI “may occasionally generate incorrect information”¹⁶ and yet the AI system is projected as a reliable source of information and its reach is worldwide. Does providing such a disclaimer justify the publication and spreading of fake news without any liability?

The creators of the AI system would also reject responsibility for such content since AI is said to have a mind of its own and the defamatory statement was not a product of the software-creator’s mind or his ill intention. If an AI system is given copyright ownership, it will be no less than a

¹³ Case C-145/10 Eva-Maria Painer v. Standard VerlagsGmbH and others [2011], para 88

¹⁴ John Dewey, ‘The Historic Background of Corporate Legal Personality’ (1926) 35 The Yale Law Journal 655-657; Arthur W. Machen, ‘Corporate Personality’ (1911) 24 Harvard Law Review 256

¹⁵ Kalpesh Bhagat, ‘Bundle of Rights under Copyright Law’ [2021] The IP Matters <<https://www.theipmatters.com/post/bundle-of-rights-under-copyright-law>> accessed on 2 February 2024

¹⁶ James Vincent, ‘OpenAI sued for defamation after ChatGPT fabricates legal accusations against radio host’ (2023) The Verge <<https://www.theverge.com/2023/6/9/23755057/openai-chatgpt-false-information-defamation-lawsuit>> accessed on 6 February 2024

monopoly where the audience of the content will have no legal redressal system available to hold the AI accountable.

The issue here does not stop only at the production of defamatory statements by AI. False generative images created by AI¹⁷ erode one's judgment of right and wrong as they have the psychological effect of acting as evidence for a false statement. Disputes in this regard have already begun emerging but are yet to be decided. For instance, one can refer to a complaint filed by Georgian radio host, Mark Walters against OpenAI's ChatGPT which made false allegations regarding money laundering.¹⁸

The Arranger gets Copyright Credit

The only country where works generated by computers or with the aid of computers are given recognition is the UK. The same is governed by Section 9(3) of the Copyright, Designs and Patents Act 1988 (CDPA). This legal provision also lays down that "the person who makes the necessary arrangements for the creation of the work shall be deemed to be the author."¹⁹

This leads us to the understanding that even in a machine-generated work, the inputs and commands given by the human user who leads the machine to create the work are recognised. Human input is an indispensable part²⁰ of even works produced by machines where the human gets the copyright credit.

Work Produced by AI is Not Novel

Works produced by AI do not produce new theories or a new perspective on existing aspects. It rearranges and reproduces existing information to give different outputs as per the needs of users. Though such works are original, they are not novel. The element of 'novelty' is a fraction of the minimum degree of creativity for a work to be eligible for copyright. Though it is not a compulsory element for copyright claims, it goes a long way to evaluate the inherent incapacities of AI and to understand why it cannot stand as a rightful proprietor of intellectual property rights.

The principle of the modicum of creativity runs close to the concept of novelty.²¹ It asserts that there must be a minimal degree of creativity in a work for it to be eligible for copyright protection. On both parameters, works produced by AI cannot be said to be creative or novel.

Conclusion

Forming a robust legal framework to tackle problems of copyright infringement will be a boon for the works of many writers, artists, and creative intellectuals who are currently suffering from a hijack of their intellectual creation due to AI which is omnipresent. AI has begun replacing such

¹⁷ Joseph Kroetsch, 'Skepticism in Era of AI Deep Fakes Will Erode Defamation Claims' (2023) Bloomberg Law <<https://news.bloomberglaw.com/>> accessed on 6 February 2024

¹⁸ Supra note 16

¹⁹ 9(3) of the UK Copyright, Designs and Patents Act 1988

²⁰ R Yu, 'The Machine Author: What Level of Copyright Protection Is Appropriate for Fully Independent Computer-Generated Works?' (2017) 165 University of Pennsylvania Law Review 1245, 1253

²¹ Manish Jindal, 'Originality in Copyright' [2023] Bytes Care <<https://bytescare.com/blog/originality-in-copyright>>

creative individuals from their respective industries.²² Industries are being revolutionized by AI at such a pace that musicians and composers who are regarded as the ultimate creative persons for creating new melodies altogether are being replaced by AI software which can produce new tunes and lyrics on the basis of written information fed into the software describing the desired thought and theme of songs.²³ It is here that copyright laws come to the rescue.

The author submits that an AI system cannot be a rightful proprietor of copyrights for the works produced by it given some inherent incapacities such as copyright laws being created for protecting creations of human intellect; not having a legal identity and ability to possess property; failure to attribute accountability for its creations; lack of novelty and the arrangers of content being the rightful owner since human involvement is a necessary element.

Since there is a lack of substantial judicial interpretation by way of precedents in the field of copyright ownership related to AI systems, the jurisprudence in this regard is yet to be developed with clarity. There is an acute need for legislation to be developed soon so that the current copyright laws align with the new problem of large amounts of data emerging from AI. It will be worthwhile to observe how a uniform global jurisprudence will develop and ambiguities will be removed.

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²² Winston Cho, 'AI-Created Art Isn't Copyrightable, Judge Says in Ruling That Could Give Hollywood Studios Pause' [2023] *The Hollywood Reporter* <<https://www.hollywoodreporter.com/business/business-news/ai-works-not-copyrightable-studios-1235570316/>> accessed on 6 February 2024

²³ Andres Guadamuz, 'Artificial intelligence and copyright' (2017) *WIPO Magazine* <https://www.wipo.int/wipo_magazine/en/2017/05/article_0003.html>