

Navigating the Complexities of Intellectual Property in the Age of AI: Ownership and Legal Challenges

By Parth Parnami and Navneet Chugh



AI or Not?

To begin this article, I would like to ask you a simple question: Do you think the image of the question mark-shaped galaxy above is AI-generated?

As plausible and deceiving as an AI ironically crafting a celestial body resembling a question mark casually drifting in the endless terror of space may seem, this image is not AI-generated. In fact, it is a recent finding captured by NASA's James Webb Space Telescope.

But what if it were to be AI-generated? What if it was produced by DALL-E 3, an AI model, after a user input a prompt into the software, rather than discovered by NASA's Telescope after a scientist noticed it photobombing another picture? More importantly, who would own the image?

The latter question is what intellectual property lawyers across the world are struggling with. The AI industry has been evolving rapidly, not sparing enough time for legal systems to catch up alongside. As such, the large-scale use of AI in every aspect of modern society raises several intellectual property questions.

Ownership Challenges

For instance, would it make sense to claim that an AI-generated image is owned by the prompt providers? Or the AI company? Or the copyright holders of the intellectual property used to train the AI? Or maybe the creature in the image—perhaps even the AI?

In the above scenario, would ownership of the AI-generated question mark image belong to the scientists, the DALL-E 3 developers, the astronomical artists whose artworks were used to train the AI, the inhabitants of the alien galaxy—despite it being slightly impractical to impose our jurisdiction on them—or would it be the AI that would own the image?

Can AI be an Inventor?

An AI system termed as ‘Device for the Autonomous Bootstrapping of Unified Sentience’, abbreviated to ‘DABUS’ and created by computer scientist Stephen Thaler, is renowned for devising a fractal food container, a flashing beacon, as well as a neural flame. These products have sparked a global debate on the legal status of AI as inventors after Thaler had filed patent applications considering DABUS as an inventor in several countries: Can DABUS’s inventions be patented, thereby considering the AI as an inventor?

The US Federal Circuit is of the view that since DABUS is not an ‘individual’, it cannot be deemed an inventor, leading to the rejection of its patent application. The IPOS (Intellectual Property Office of Singapore) also shares a like-minded perspective because according to the Singapore Patents Act 1994, the patent application must be filed with regards to a ‘natural person’ being the inventor.

However, unlike the US and Singapore, intellectual property officials from South Africa legally recognize DABUS to be an inventor, endowing it ownership and patentability. This controversy, once again, re-emphasizes the challenges regarding intellectual property ownership of AI-generated content.

Liability for Unauthorized Use

A key question that emerges by recognizing AI as inventors is whether the copyright owners of the materials used to train the AI can pursue infringement claims for unauthorized use, and against whom.

This question was somewhat addressed when The New York Times Company filed a case against OpenAI and Microsoft for infringement of The Times' copyrighted content. In this case, The Times alleged that their copyrighted material, among others, constituted the data OpenAI and Microsoft made unlicensed use of to train their AI Software, ChatGPT and Copilot respectively. The Times also claimed that the AIs reproduce exact content from their articles.

OpenAI, in opposition, argued that their actions were protected by the fair use defense under copyright law, enabling OpenAI to legally use The Times' contents. They further explained that verbatim copy is a rare bug which does not reflect usual responses from ChatGPT.

A similar situation transpired in the District Court, N.D. California in January 2023, when three artists, Sarah Andersen, Kelly McKernan, and Karla Ortiz, filed lawsuits against the triad of image generating giants in the AI development industry: Midjourney Inc, DeviantArt Inc, and Stability A.I. Ltd.

These AI generators use the LAION-Aesthetics dataset which comprises user-generated content to train software algorithms. The plaintiffs contended that the copyrighted artworks of many artists, including theirs, were a part of the LAION-Aesthetics dataset and hence infringed by the tech companies, without them seeking licensure, nor offering compensation.

While this case remains sub judice, one aspect that stood out during this legal action was when the CEO of Midjourney, David Holz, was questioned regarding the ethics of using images from the internet to train AIs. His response was, and I quote, "There are no laws specifically about that." This highlights the crucial necessity for intellectual property laws to regulate the use of AI in the current era.

Legal Stances on AI-Generated Content

Essentially, when intellectual property laws were being shaped across the globe, no one had envisioned for entities other than humans to autonomously produce; hence AI was never factored in. Thus, we now face challenges arising from this oversight. Countries are grappling with this issue, albeit with varying perspectives due to their different legal systems.

In the US, the Copyright Office has declared that Generative AI output cannot be copyrighted by anyone—it is classified as public domain. Furthermore, to officially register AI-generated output, human intervention and enhancements are required rather than merely inputting the prompt.

The European Union remains uncertain about the ownership of, and copyright protection criteria for AI-generated works since the EU AI Act does not directly cover this and is yet to be implemented. However, by considering similar previous cases, such as those in the Court of Justice of the European Union, and legislation like the German Copyright Act, is interpreted that prominent human input is essential for an individual to attain copyright protection in European countries.

Similar to the EU, the UK also requires AI-generated output to have substantial human effort otherwise, copyright protection will not be issued. Additionally, the UK legislation, the Copyright Designs and Patents Act 1988 to be precise, corroborates as proof for this law, stating that, “In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.”

In China as well, computer-generated works must have human input to qualify for copyright protection. In fact, according to the Beijing Internet Court’s decisions, the user should own the copyright as they were the ones who strategically filled in the prompts based on their desired output.

In contrast, in the case of *Shenzhen Tencent v. Shanghai Yingxun*, Tencent, the AI software developer, was granted copyright protection simply because he and his team contributed significantly to the AI to ensure adequate functionality, birthing originality and ‘intellectual activity’. Therefore, it can be concluded that those who provide greater input will be entitled to copyright protection in China.

In some other countries like India, Ireland, New Zealand, and South Africa, copyright protection is granted for computer-generated works without having any human authors. In fact, Ukraine has recognized rights for “nonoriginal objects” formed by computer programs.

Conclusion

As countries develop their legal systems in response to the ignition of emerging ideas, the standardization of intellectual property laws across the globe is inevitable. This will open the gates for the enhancement of legal systems and the optimization of intellectual property protection.

To conclude, here is a poignant quote from the remarkable artist, Shepard Fairey, recognized for his experiences with copyright matters and acknowledgment of the balance between creativity and copyright: “The most important thing about intellectual property vs. creative expression is that copyright law was created not to stifle creativity but to encourage creativity.”

Authority

This article is co-authored by Navneet Chugh and Parth Parnami. All the data has been gathered from reliable sources on the internet so neither of us are responsible for any misinformation.



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