

Solving a Copyright Quandary: Proposing a Framework for Assigning Copyright to Creative Works Made by AI

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Human beings no longer have a monopoly on creativity. Increasingly creative AI are pushing the boundaries of manufactured creativity and have produced works that are indistinguishable from human-made creations. Creative AI can now paint, write, and compose as well as — if not better than — human authors. Sadly, existing laws and regulations have not been able to draw level with these advances in technology.

There are jurisdictions that provide copyright protection to creative works made by computers/AI and there are those that do not. The question now presents itself: should creative works made by computers/AI be granted copyright protection?

Because of the confusion as to who is the party who should own the copyright of a creative work made by AI, “it is necessary to consider the overall societal value of the copyright attribution process.” This Article submits that joint authorship, in any of the permutations of the potential claimants to the copyright, is an untenable proposition. In view of the nature of existing creative AI which learns through unsupervised deep learning where even the AI programmer/developer cannot predict or anticipate its output, the AI programmer/developer cannot be reasonably said to have significantly contributed to the actual creative process.

Forwarded, instead, is a proposal that incorporates new approaches to address concerns brought about by the similar radical advances in technology: a *sui generis* form of copyright, covering both economic and moral rights, vested on the end-user of the AI who had a valid and legitimate right to use the said AI, albeit in a drastically different regulatory regime from that of existing frameworks. To determine whether to allocate the *sui generis* copyright to the AI programmer/developer or the end-user, purpose or causation, enforcement, and ease of applicability, particularly in difficult cases, shall be the primary considerations.