

Who would get the Copyright if AI Starts Writing Books?

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Abstract

Artificial intelligence is becoming more advanced and can generate content with little human input. Artificial intelligence (AI)-related technological developments have produced tools and systems that can create original content for various media. The field of intellectual property is now facing some intriguing problems due to this evolution, not the least of which is how to assign authorship to works made by artificial intelligence. This article first analyses if AI can be considered a legal person. The article also discusses the prevalent issues that can be brought up concerning conferring legal status to AI. The paper aims to analyze the legal discrepancies about granting copyright to AI-created works and the legal stance surrounding the same.

Keywords: Legal persons, Copyright, rights, duties, Artificial Intelligence

INTRODUCTION

Persons are not always human beings. They are entities that have some legal status in society and thereby have rights and duties. Although enslaved people were human, they were not considered persons as they did not have rights and obligations. On the other hand, a corporation has certain rights and duties and can be viewed as a person. However, along with rights and duties, the capability of attributes is the underlying concept.

Does AI have a legal status?

Robots can perceive things using AI and respond in such a fashion that they seem to have interests that are affected by the acts of others around them. Hence it appears capable of having rights and duties; we fail to consider that humans program them to behave in a particular way. They can be unprogrammed too and do not have a personality. An animal is capable of acts and even possesses interests; however, one cannot associate rights or duties with them. If they have a right, then they should have a corresponding duty. An animal cannot have the right to own property as there is no way an animal would know how to take care of the property. In a similar way, how can AI possess property? Anyone can dismantle the robot and unprogram it; whom would the property belong to then? Moreover, in law, it is known that a property has to be owned by someone or vested with someone; there cannot be any vacuum. If a property is vested with AI, then there is a chance for this vacuum to occur.

Animals are thought to possess legal rights, as it is wrong to oppress animals. It is a criminal offence.

Moreover, even creating a Trust for a particular class of animals is permissible. However, they do not have private legal rights, but these rights are for the benefit of society [1]. If we assume that society gets concerned about the ill-treatment of humanoid robots as they are programmed to have emotions. If the legislature enacts an act that prohibits any Act such action, it would be like assigning rights and duties to robots. They can be given rights and duties if no longer owned by any other person, have additional protections, and cannot be reprogrammed. They would have to be self-

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sustaining. This would make them legal entities. Another outcome could be movies' warnings, such as humanoids taking over humankind in the future, as they cannot find any goodness in humanity.

Dead persons are not legal persons as they have no interests. In the case of a deceased person, the law takes care of the man's body, reputation and estate [2]. An AI is not living; it is like a living being created in such a manner. Even a corporation consists of a group of living entities that make rational decisions. AI is a machine programmed to behave like a living being with human intelligence would. In the case of AI, the owner takes care of the humanoid's body; the owner is liable. Moreover, even the reputation of the AI depends on the owner's reputation. Furthermore, as discussed above, a humanoid cannot own or possess property.

Who would be held liable if a robot with the help of AI does a criminal act (like homicide)? The owner or the programmer could be held responsible if they programmed it in such a manner. However, what if the homicide was due to a technical glitch inside the robot and it was unaware or in control of its actions? In such a case, who would be accountable?

Copyright and AI

We have been advancing at a fast pace in terms of technology. The creation of technologies in such a manner to create original content is one such advancement. This gives rise to pertinent questions regarding ownership of content created by AI in copyright law. AI no longer depends on human instructions; it can apply logic, make decisions and automatically perform tasks based on the needs and requirements and process and interpret large quantities of data. Copyright protection aims to protect the creator's rights. It is the States that offer protection of copyrights. The states can deny copyright protection to AI in totality or attribute the authorship to AI itself and, lastly, may give it to the program's creators. Now, let us take these scenarios one by one.

If the states deny copyright protection, it would, in a way, de-incentivise creativity. AI is also producing original work, and there is a right for it to be protected so that no one else can gain an undue advantage. AI has advanced so much that it has come to a stage where it can do things independently. If the programmers realise that they will not get any protection from the law for the work they have been doing, it would indirectly hamper the rate of innovation. At the same time, some countries say that the work created by AI is to be considered community property; hence, it is not justifiable to offer any protection. Currently, AI is used to create local news articles [3], poetry [4], music albums [5], architecture [6], etc.

If States give authorship to AI, it would be like considering them, legal persons. Because once they do, they will have corresponding duties too. AI, in a way, is the object of legal rights and duties. Copyright protection is offered to natural persons; nevertheless, in some way, the rights can be vested based on the creativity of the work. Even then, there would be difficult to transfer or license the rights without human intervention. If all rights are given, AI should also be liable for infringement. In cases wherein any work is in violation of a copyrighted work then the author of such infringed work is held liable. Going by this reasoning if the programmer is considered as an author of any works created by AI, then the programmer will be held liable for any violation of the copyright law. Moreover, that would not be fair to the creator of AI.

Now, if we look at the last scenario, it seems wrong to give ownership to the creator of AI as they are not the original creators of the work but, at the same time, seem reasonable. If there are any liabilities, it would inevitably fall unto the owner, so it seems fair to do so.

Legal Position

Jurisdictions like Spain and Germany attribute copyright only to original works humans create [7]. In the United States, the Copyright Office declared that it would register an original authorship work if

a human being made it [8]. In an Australian case, the court took a similar stance. They went one step further to state that a work created with the intervention of a computer cannot have copyright protection as a human-produced it [9]. Even the Court of Justice of the European Union held that originality mattered, and the work should reflect the author's intellectual creation. This means that a human is needed to get copyright protection [10]. According to the Delhi High Court, an artificial person may only assert copyright in a work if it can demonstrate that it engaged natural persons to do the actual work under a written contract. Therefore, authorship must always be credited to a real person in India if any protection is sought to be granted to works made by AI [11].

The alternative of giving the authorship to the programmer is prevalent in a few countries like Hong Kong, Ireland, New Zealand and the UK. But this raises a few issues again. Copyright should lie with the user. But the user's contribution can be as simple as pressing a button. So it needs to be analysed on a case-to-case basis.

CONCLUSION: THE ROAD AHEAD

As time passes, things may get more complicated as the use of AI by artists becomes more rampant. It may blur the line between work created by a human and that made by AI. The most logical course of action now seems to be to provide the programmer copyright protection. With the guarantee that they will see a positive return on their investment, such a strategy will ensure that businesses continue to invest in the technology.

REFERENCES

1. Robert Garner, Political Ideology and the Legal Status of Animals, *Animal Law*, 2002, 77, 79–80
2. Sodesaki K, The legal status of a human corpse, *The Japanese Journal of Legal Medicine*, 2001, 55(2), 235–242.
3. In 2017, The Press Association won a €706,000 Google grant to run a news service with computers writing 30,000 local news stories a month with the help of human journalists
4. 5 Samuel R. Bowman, Luke Vilnis, Oriol Vinyals, Andrew M. Dai, Rafal Jozefowicz & Samy Bengio, Generating Sentences from a Continuous Space, 12 May 2016, <https://arxiv.org/pdf/1511.06349.pdf>, Accessed March 21, 2022
5. Dom Galeon, The World's First Album Composed and Produced by an AI Has Been Unveiled, *FUTURISM*, (21 August 2017), <https://futurism.com/the-worlds-first-album-composed-and-produced-by-an-ai-has-been-unveiled>, Accessed 23rd March 2022.
6. Elizabeth Stinson, What Happens When Algorithms Design A Concert Hall? The Stunning Elbphilharmonie, *WIRED*, (12 January 2017) <https://www.wired.com/2017/01/happens-algorithms-design-concert-hall-stunning-elbphilharmonie/>, Accessed 23 March 2022.
7. World Intellectual Property Indicators, WIPO, (2019), <https://www.wipo.int/publications/en/details.jsp?id=4464>, Accessed 20 March 2022.
8. *Feist Publications v. Rural Telephone Service Company, Inc.*, 499 U.S. 340 (1991)
9. *Acohs Pty Ltd v. Ucorp Pty Ltd.*, (2012) FCAFC 16
10. See the European Parliament resolution of 20 October 2020 on intellectual property rights for the development of artificial intelligence technologies, https://www.europarl.europa.eu/doceo/document/TA-9-2020-0277_EN.html, Accessed 30 March 2022.
11. *Rupendra Kashyap v. Jiwan Publishing House Pvt. Ltd.*, 1994 IAD Delhi 1, 1994