



GENERATIVE ARTIFICIAL INTELLIGENCE AND COPYRIGHT: WHO OWNS "AUTHORSHIP" AND HOW DO WE PROTECT AUTHORS' RIGHTS

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Abstract:

Artificial intelligence (AI) has revolutionized the world of creativity, as it has in many other fields, raising several legal issues related to intellectual property and copyright ownership. Today, a new technology has emerged in the field of information technology that is raising numerous legal issues. This technology, "artificial intelligence," has gained widespread popularity, both due to its ease of use and the ease of work and achievement in several sectors. Artificial intelligence, known as AI, is considered a technology with problem-solving capabilities similar to human capabilities. AI enables programs to become more intelligent, interact with data, and solve increasingly complex problems.

Because AI systems are capable of generating original content, we ask: Who acquires the status of "author" of content created using AI? Or content that is a combination of human labor and AI technologies?

And how are the rights of human authors protected against AI-generated creations? These are the most important issues raised by the topic of artificial intelligence in the intellectual property arena, which we will attempt to discuss and answer in this research paper, drawing on the views of jurisprudence and comparative judicial reasoning in the absence of explicit legal texts.

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Introduction:

Legal scholars often say "the law lags behind technology". This expression truly describes the relationship between technology and law. Technology is advancing the law in its continuous and rapid developments, which requires it to update its provisions and articles to keep pace with new developments and regulate all aspects of society.

In such cases, this requires much effort. Firstly, to establish a definition that clarifies the features of these phenomena despite their novelty. Secondly, to quickly adapt and update legal provisions that align with these developments, so that they can effectively regulate all domains.

As the internet revolutionized the legal arena yesterday, today a new technology has emerged in the field of information technology, leading to many legal issues that legislation must address, after attempts by jurists and comparative jurisprudence. This technology is "artificial intelligence," which has become popular due to its ease of use and its ability to facilitate work in several areas.

Artificial intelligence (AI) is considered a technology with problem-solving capabilities similar to those of humans. At work, it mimics human intelligence and may even surpass it in many cases. It can recognize millions of images in record time, write poems, make predictions based on reading and analyzing data, and so on.

It is a comprehensive term for the various techniques that have made machines outperform humans in their tasks, such as self-driving cars, intelligent assistants, facial and voice recognition applications, and many others.

Modern institutions store a huge data from diverse sources, such as smart sensors, statistics, data generated by various monitoring tools, and organized records. Artificial intelligence technologies analyze these data and use them in business processes. Artificial intelligence makes programs intelligent to better handle and exploit data in different fields¹.

Among the most famous applications is "diagnostic assistance" in the medical field, as well as robot-assisted surgery, which spares surgeons from opening up patients, relying instead on endoscopy that provides a level of precision surpassing the human eye. Additionally, AI can process and manage healthcare records electronically, as well as in medical education and training.



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Artificial intelligence is also useful in the agricultural field in several ways, such as crop monitoring, also known as "precision agriculture," which involves collecting detailed data about crops, soil quality, weather conditions, and other factors, and analyzing it to make informed and automated decisions. Examples include drones and automated robots that accurately detect harmful weeds and eliminate them mechanically or by targeted fertilizer spraying. This allows for the rational use of fertilizers without harming human and animal health, while preserving a healthy environment. Additionally, the "smart irrigation" technique determines the optimal amount of water at the right time, enabling double production yields at lower costs. In this regard, the University of Constantine has developed an artificial intelligence system that monitors plant health and detects pests early. This system works by using visual recognition techniques to identify signs of infestation and predict them before they spread, thus farmers take preventative measures at the right time and avoid heavy losses.

Another example is the "Saqqai" experiment, conducted by two Algerian researchers in physics and robotics. These robots are equipped with highly sensitive sensors that can measure soil moisture levels, providing plants with only the amount of water they need. They also recognize signs of plant diseases and distribute fertilizer in a controlled and targeted manner, eliminating any human intervention. A single robot can cover around 120 hectares in an environmentally friendly way.

According to the Jurist, John McCarthy, artificial intelligence is the science of engineering and manufacturing intelligent machines, specifically intelligent and super-intelligent software. The International Organization for Standardization (ISO) also defined artificial intelligence as the ability of a functional unit to achieve performance that mimics human intelligence in its multiple capacities, such as thinking, comprehension, perception, and learning. In addition, it is defined as a branch of computer science concerned with developing technology that enables computers and electronically controlled machines to possess capacities that approximate human traits of intelligence².

The World Intellectual Property Organization (WIPO) clarified that there is no single universal definition of artificial intelligence (AI), emphasizing that it is a discipline within computer science. It aims to develop systems and machines capable of performing tasks with the same efficiency and abilities as human intelligence. At the same time, it pointed out that the AI systems can generate original intellectual works, known as creative or generative artificial intelligence. It is one of the latest technologies which have completely transformed the way we think about creative expression.



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Computers can now learn from large datasets and databases (BIG DATA) and create new data that resembles, or even improves upon, the types they have learned. This development raises numerous legal issues today. They can create new texts, images, and music simply by examining and deducing from databases. One of the exciting aspects of generative AI is its ability to create unique content that pushes the boundaries of known forms and traditional patterns.

In light of the rapid advancement of generative artificial intelligence (GAI), it is necessary for legislation to decide the legal framework for these new creations. This also calls for a rethinking of the legal system for intellectual property, as traditional texts designed for the era of human creativity can no longer keep pace with AI generators, which are now producing texts, images, music, and other creative works with the same quality as, or even better than, those created by humans. This raises the question:

To what extent can AI innovation be considered "intellectual works" subject to protection? Who owns authorship and holds rights in this case?

In the absence of explicit legal provisions, we will attempt to find an answer from jurists and comparative law. First, we will discuss the issue of protecting AI-generated creations by verifying whether they fulfil the conditions of intellectual works. Then, we will address the matter of determining the author and rights holder of these creations, which requires us to decide on the legal personality of artificial intelligence.

THE FIRST TOPIC: THE PROTECTION OF AI GENERATORS: TO WHAT EXTENT THEY CAN BE CONSIDERED "INTELLECTUAL WORKS"

To discuss the possibility of considering AI generators as creative works deserving legal protection, we first examine the extent to which these creations meet the legal requirements to be considered "intellectual works" under intellectual property laws. Then, we address whether they are actually subject to protection in their various forms and types.

FIRST REQUIREMENT: AI CREATIONS AND THE CONDITIONS For THE PROTECTION OF INTELLECTUAL WORKS

All intellectual property legislations around the world determine the conditions that must be met by any creation to be considered an "intellectual work" that enjoys legal protection. Can AI-generated creations meet these conditions? Is it possible, in practice, to apply these conditions, set for classical works, to this new and special type of creation?



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The Egyptian legislator defined intellectual works as any innovative work, whether literary, scientific, or artistic, regardless of its method of expression (writing, drawing, sculpture, rhythm, and others), and of its importance and degree of merit³.

This is the same in Article Three (03) of Order 03-05 concerning copyright and related rights, under the title: "Protected works". In general, the same conditions are in most legal provisions related to the protection of copyright and intellectual property: all creations in the field of literature, science and the arts have specific protection conditions, namely external form and originality⁴.

Originality means the presence of each author's personal imprint on their creation, whether in terms of the idea, style, or everything that reflects the author's personality in the intellectual work they have created. It refers to the fact that the work truly rises to the level of creativity and is not a mere repetition or copy of an existing work.

However, this does not mean that the work must be completely new. Rather, it is sufficient to display the personal touch of its author and be distinct from other intellectual works. In fact, it is a matter within the judge's discretion. Comparative jurisprudence established several criteria for determining originality, as a different method of classification and a distinctive style in written novels. Originality is neither invention nor novelty, but rather a reflection of a set of choices made by the author in the work he created⁵.

Traditionally, the concept of originality has been the subject of much debate regarding computer works and software, due to the difficulty of applying the subjective standard of originality to such technical works. The problem is even more acute for works generated by artificial intelligence applications. It is hard to integrate and define originality in these new creations, due to personal criteria, which makes it difficult to reflect the author's personality in computer programs, regardless of their nature. However, the author's personality may be reflected through their creative use of algorithms and the way they are programmed to deliver a creation that is distinctive in its performance and functions⁶.

As for the condition of external form, the author must present their creation to the outside world to be recognized and legally protected. It should not remain merely the ideas in the minds of its authors. This is regardless of the form or format in which these ideas were expressed: a novel, a painting, a photograph, an architectural drawing, and others, and regardless of their importance, value, and utility.



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This principle is confirmed in Article 7 of the Copyright Law, which stipulates that ideas must have a "structure" or an "independent formal expression" to be legally protected. In the absence of this, they cannot under any circumstances be considered intellectual works.

By applying the previous conditions to "artificial intelligence creative generators," we find that the latter do not lack any of them, and that both conditions can be met: they are original and innovative creations, possessing a specific form through which they were presented to the outside world.

On this basis, AI-generated creations and innovations can be considered "intellectual works" under copyright law and the relevant international treaties. Conversely, the question that arises is: Does the fulfilment of AI-innovations' legal conditions for intellectual property rights qualify them for legal protection?

SECOND REQUIREMENT: THE ELIGIBILITY OF AI-GENERATED CONTENT FOR LEGAL PROTECTION

It is not easy to establish a comprehensive definition for AI, due to the multiplicity of its fields and related sciences, as well as the diversity of its types. Narrow AI is a branch that performs limited tasks within a predetermined scope, such as facial and voice recognition, or machine driving (as face-reading software, chess applications, drones, and others). It is distinguished by great precision and excellent performance in assigned tasks. However, it cannot think; it merely performs a set of pre-defined functions.

General AI, also known as strong or deep AI, can perform tasks and is capable of independent thinking and planning for human intervention. In this case, it is closer to human abilities, such as those of artificial neural networks.

Super-intelligent or virtual artificial intelligence can perform tasks that exceed human abilities, especially in terms of accuracy and innovation. It is capable of analyzing and linking information to reach conclusions and issue judgments. It is in which the machine is aware of itself and its capacity that exceeds human abilities, and it is the subject of great controversy because most specialists view it as a threat to humanity, and it is still surrounded by a great deal of secrecy⁷.

In the absence of legal provisions detailing this issue, we should examine the eligibility of various types of AI-generated content for legal protection based on intellectual property laws in other sources, juris and case law.

The first judicial ruling in Europe addressing the issue of copyright and AI was issued by the Prague Court in 2023. The court ruled on the eligibility of AI-generated content for legal copyright protection. The judgment concluded that AI-



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generated content is not considered an intellectual work. Therefore, they cannot benefit from any legal protection, as it is not the result of individual creative activity by a natural person⁸.

The doctrine regarded that the judge, although he was somewhat strict in this case by refusing to grant the status of "intellectual work" to the creations produced by artificial intelligence, did not completely close the door to the idea of legal protection for these creations. He restricted it to clear human involvement in using the artificial intelligence. This is something the judge lacked in this case. This is the same approach in American jurisprudence, which holds that any content produced "entirely" by artificial intelligence cannot be protected under copyright⁹.

The position of the Chinese judiciary was embodied in the famous decision issued by the Beijing Internet Dispute Resolution Court on November 27th, 2023. It is considered a historic decision because it is the first to recognize legal protection under copyright law for creations produced by artificial intelligence technology, and comparative jurisprudence had previously rejected this on the grounds of the absence of "sufficient human intervention." The Chinese judiciary held that the effective role of the individual in creating a work—or lack thereof—is what justifies the recognition of copyright, and vice versa.

This decision served as a cornerstone for comparative jurisprudence regarding the legal protection of creations generated by artificial intelligence technologies. It will contribute to the development of a legal system with clearly defined provisions and principles in the future. The Beijing court considered artificial intelligence a technology that accompanies human creativity, likening it to the camera used by a photographer to create diverse photographic works¹⁰.

The SECOND TOPIC: OWNERSHIP OF RIGHTS TO CREATIVE AI WORKS: TO WHOM DO THEY BELONG?

To understand and determine to whom the ownership rights of AI creations and innovations belong, we must address the issue of the "legal personality" of AI. The question is whether this tool could acquire rights, bear responsibility for its actions, and be recognized as the "author" of the works it generates.

FIRST REQUIREMENT: THE LEGAL PERSONALITY FOR ARTIFICIAL INTELLIGENCE

Social developments have led to the recognition of the legal personality for juridical persons such as companies, associations, organizations, and others. In principle, legal personality has been granted to non-humans. The jurisprudential



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debate over the possibility of granting AI programs legal personality is not merely a matter of imagination. Thus, why doesn't AI benefit from the same legal framework that recognized judicial persons in the recent past to facilitate relationships within society? Can't judicial persons and algorithms merge into a single entity?¹¹

Among the prominent arguments in favor of AI personality is its ability to mimic human intelligence, thus coming closer to being human. For this reason, it is considered more deserving than other entities, such as commercial companies and economic institutions, to be endowed with legal personality. Proponents of this trend also regard developing a new legal personality, similar to that established for a legal entity. AI systems would acquire an electronic legal personality, which would allow them to bear civil and criminal responsibility for their actions¹².

We believe that the ongoing debate over granting legal personality to AI—despite its many opponents—has been largely settled since European legislation recognized, for the first time, the legal personality of AI-powered robots, holding them liable for damages resulting from their actions, all of which are independent of human decision-making¹³. This suggests that we are at the beginning of a radical change in the world through the social and legal integration of a special type of person. Today, they are merely "things" in the law that in the near future could become "legal persons" owning rights and bearing liabilities similar to those of humans¹⁴.

Opponents of granting legal personality to artificial intelligence believe that this idea is illogical because, in their view, artificial intelligence is merely a tool that cannot exist or operate without humans. It lacks an independent creative will. They also criticize the idea of measuring and likening artificial intelligence to a legal person, which the law sometimes recognizes as an author, as in the case of a collective work or a work completed in the context of an employment contract. This is because the legislator intends "ownership of rights" rather than the legal person being an "author" in the true and actual sense¹⁵.

Amid a deep divide between supporters and opponents of the idea of granting legal personality to artificial intelligence, European legislation's recognition of the legal personality of AI-powered robots, by holding them liable for damages resulting from their actions, based on decisions made independently of humans, represents a qualitative leap that heralds radical changes to come and the possibility of recognizing new entities as legal persons who have rights and bear obligations.



SECOND REQUIREMENT: WHO IS THE "AUTHOR" OF AI CREATIONS?

After demonstrating that works generated by creative AI can constitute "intellectual works" that are subject to protection, like any other original creation with an external form, the question is: who holds "authorship" of these intellectual works? Especially, where AI technology is the sole creator, without any human involvement.

Intellectual property legislation, both domestic and international, indicates who is considered the "author" of innovative works. It pointed out to "the person who published the work in his name," unless proven otherwise. This is confirmed by Article 12 of Decree 03-05 on Copyright, stating that the author of an intellectual work is the natural or legal person who created it.

Article 13 adds that ownership of the rights belongs to the person who has authorized the work in his or her name, or who has made it available to the public, such as by publishing or displaying it on the internet, or who has declared in his or her name with the National Office of Copyright and Neighboring Rights (ONDA), he has registered the work with the Office as its owner and author.

Registration with (ONDA) is not a condition for obtaining legal protection, as protection in the field of copyright is granted by the mere creation of the intellectual work, and there is no need to undertake any administrative procedures, as is the case with patents, trademarks, and other elements of industrial property.

This procedure can only facilitate the author's proof of this status in the courts in the event of a dispute. This is a general principle, and the burden of proof falls on anyone who claims otherwise.

In principle, the author is the person who created the work, to whom ownership of the rights naturally belongs, except in such cases specified by the legislator. For example, a collective work, in which the copyright belongs to the person who initiated its creation, and a work created within the framework of a work relationship or contractor in which the copyright belongs to the employer or contractor¹⁶.

Therefore, the author of AI works is the "programmer" when interacting with the software to produce their creation, or the "user" of the AI software who exploits the technology to create a new work. In reality, this does not raise any legal issues. Rather, the problem is in the creations and innovations that involve both humans and AI simultaneously, or works generated solely by AI without any human intervention.



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In general, the current practice regarding ownership of intellectual property rights and who has the "authorship" can be limited to three possible cases:

Firstly: A work created by a human with the help of artificial intelligence

If artificial intelligence is merely a means used by humans for creativity and innovation, then the author is the natural person who created it. That is, the person using artificial intelligence technology to generate a new creation, whether the author of the program or simply the user who created it.

Secondly: A work created by humans and artificial intelligence at the same time

In some cases, intellectual work is created jointly by humans and artificial intelligence. For example, a common creation is generated based on instructions given by humans and settings set by artificial intelligence. In this case, jurisprudence that copyright can be considered to belong to both humans and artificial intelligence although the concept of "co-creation with artificial intelligence" has not yet been clarified, even by the judiciary.

Comparative jurisprudence currently relies on the idea of legal protection for creations generated by artificial intelligence, provided that there is clear human involvement. Will artificial intelligence be granted the authorship, just as for humans, given that both have participated in the creation? This is what the judiciary and legislation will answer in the coming days argues.

THE THIRD TOPIC: A WORK ENTIRELY CREATED BY ARTIFICIAL INTELLIGENCE

It refers to works and creations produced without human intervention, which are solely created by artificial intelligence. This is often found in super-intelligent or virtual artificial intelligence, which performs tasks beyond human potential, particularly in terms of accuracy and innovation. Its potential exceeds that of human beings, and it is currently subject to great caution and high secrecy worldwide, and dominated by research centers.

To date, any creation produced entirely and independently of human intervention using artificial intelligence technologies does not qualify as an "intellectual work," and any creation generated in the absence of a "human author" does not acquire any legal protection under copyright and intellectual property law. The authorship of artificial intelligence has also been denied because, in this case, no intellectual work exists.

Experts around the world agree that content generated by artificial intelligence is not protected by copyright due to the lack of personal creativity,



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which is an essential condition for recognition as an intellectual work. This is generally the case around the world, with exceptions, such as in Singapore. While AI is not recognized as the author or inventor without human input, and protection is not granted to creative works unless there is sufficient human contribution, legal protection has been established for some works, such as audio recordings and films that are generated without identifying a human author, provided that the entity producing them is specified.

The question of who owns the legal rights to AI works remains controversial: Is it the developer? The user? The company that owns the system? In reality, there is no consensus on this, and it is therefore advisable to clarify this relationship with precise provisions as well. In the Arab world, most legislation still lacks clear provisions regulating this type of content, despite the awareness of the need to update legal provisions in this area.

Conclusion:

In conclusion, artificial intelligence is the intelligence demonstrated by machines and programs that mimic human mental abilities and working patterns, such as the ability to learn, infer, and make decisions in situations not programmed into the machine for learning from errors, studying statistics, and other tools and data.

The concept has changed radically today. We no longer use computers and technological tools as we did in the past, when humans supervised and managed them. The idea today is for the machine to self-operate after being programmed to do so and equipped with everything that allows it to make decisions independently, find solutions to problems, and generate new creative works. We have thus begun to wonder about how to protect them and who has the authorship and copyright. The most important conclusions we have reached through this research are that:

- Artificial intelligence programs are high-tech digital works and can be protected according to copyright laws, like information technology and computer programs.
- The work generated by "Creative Artificial Intelligence" programs is a creation resulting from creativity.
- The ongoing debate regarding the consideration of "Creative Artificial Intelligence" generators as protected intellectual works has been defined by prevailing jurisprudence and comparative jurisprudence as a criterion: the extent of "human contribution" to the machine.
- The necessity of developing an "Artificial Intelligence Ethics Charter" to regulate the fields and uses of AI in Algeria.



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- The legislator must not overlook the issue of creative AI when amending intellectual property provisions, particularly Order 03/05 relating to copyright and related rights. He should draw on the experiences of other countries, particularly comparative jurisprudence, and clarify:

a- Definition of works created using artificial intelligence technology.

b- Determining the conditions for granting the status of "intellectual work" to works generated using artificial intelligence.

c- Determining the issue of rights ownership and who has the "authorship" of creations created using artificial intelligence in all cases. Legislators must draw clear boundaries for protecting the programmer's intellectual property, the user, and AI technology if it is recognized as a legal entity.

We conclude by questioning the bold step taken by European legislation in recognizing the legal personality of AI. Is this a commendable precedent, or is it reckless and potentially detrimental? Would it have been more appropriate to ensure AI programs for the event of a harmful act, rather than recognizing their legal personality and holding them liable in such cases?

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