

London Study Question – 2019 – Explanatory Note

Copyright in artificially generated works

Of all the technological advances that attract lawyers' attention, artificial intelligence (AI) stands as a good a chance as any of proving to be genuinely transformational. As more AI systems are deployed that can assist or replace humans in the performance of everyday tasks and creative endeavours, they will inevitably encounter the same kinds of IP questions as humans do. Can something made by or using an AI system be a copyrighted work and, if so, where do the rights lie? Can an AI system's operation or output infringe copyright and, if so, who or what is liable? Can an AI system invoke any exceptions or limitations and, if so, whose use and expression rights should the law balance against the exclusive rights of the author? How is any term of copyright protection measured if the author is a machine?

There is already a lively debate about whether the advent of AI challenges the fundamental assumptions, structures and concepts of copyright law, or whether current laws will suffice as long as its practitioners understand how the technology works. In part, these mirror familiar philosophical debates about the justifications for copyright protection. If the rationale is to promote the progress of science and useful arts, it may be possible to make room for non-human authors, users and infringers. However, if copyright is conceived as a fundamental, moral right afforded to human creators, it is harder to accept protection for algorithms, even as they learn to create stories, music and images that are indistinguishable from human works. There are also more practical questions around the relevance and application of classic copyright concepts such as reproduction, distribution, display and communication.

AI was a major topic of discussion during the Panel Session on big data held at the Sydney Congress (2017). That discussion showed that we are still at an early stage in the evolution of AI but that it already plays a far larger role in everyday life than most people appreciate, and that copyright law will need to adapt to keep up.

For now, most jurisdictions appear to consider human intellectual authorship a prerequisite for copyright protection. However, that leaves open the question of whether a human who programmes or operates of an AI application might qualify for authorship. As AI systems becomes more pervasive, more able and more consequential, national copyright approaches may diverge further. Disputes are also likely around less philosophical aspects of copyright



Copyright – Option 2

protection, from the delineation of the reproduction right to the need for new exceptions in areas such as text and data mining.

Thus, this is an opportune moment for AIPPI to study the intersection of AI and copyright. Examples of questions that could be considered as part of this Study Question include: Should artificially generated works be protectable by copyright? If so, how should authorship be determined and where do the rights lie? Are the classic principles of copyright applicable to artificially generated works, or is something new and different required?