HSR (LONDON),
HOUGHTON STREET REVIEW JOURNAL
ISSN: 2058-5519|Impact factor-15.9
http://houghtonstreetreview.com/index.php/hsr

ISSUES OF COPYRIGHT AND INTELLECTUAL PROPERTY OWNERSHIP IN RELATION TO CONTENT CREATED BY ARTIFICIAL INTELLIGENCE

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Doi: https://doi.org/10.5281/zenodo.24533061

Abstract: This paper looks at the legal position of content generated by generative AI and the difficulty of determining who owns the copyright in such content. Under current copyright law only human creative endeavour is recognised so it is not at all clear who owns the texts, images and music that are produced by algorithms: the developer, the user or the AI itself. The paper considers how the US, the UK and the EU deal with the issue, identifies gaps in Uzbekistan's national legislation and concludes with some practical suggestions as to how intellectual property objects created with the participation of AI might be regulated.

Keywords: artificial intelligence, generative AI, copyright, intellectual property, digital content, subject of authorship, legal regulation.

Over the last few years digital innovation has impacted every facet of our lives, particularly in the realms of science, art and creative work. Generative AI platforms (ChatGPT, Claude, Midjourney, DALL-E, Suno etc) have all become very much in use and have completely upended the traditional model of how creative work is done. Today these systems can generate complex analytical texts, literary works, high quality images, music and even software code in their own right, all in the space of a few seconds.

Yet the pace of progress is forcing the law to confront issues it has not previously had to grapple with. The traditional doctrine of intellectual property and copyright, which has been in place for centuries, is predicated on the idea that creation is the sole province of human mental activity. The law has always assumed that only a natural person can be the author of a work. The question now is who is the author when the work is in fact the product of a complex quantitative algorithm and neural networks? That is the issue which is currently being debated amongst lawyers the world over.

The primary purpose of the article is to determine the legal status of content produced using artificial intelligence, to examine on the basis of foreign experience the issue of identifying the subject of copyright and to formulate both scientific and practical recommendations for the improvement of the

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legislation of the Republic of Uzbekistan. In international legal practice a work has to be original (i.e. distinctive) and the product of human creative labour in order to be entitled to copyright protection. With respect to AI-generated content, different jurisdictions are taking different approaches.

The US experience (a strictly anthropocentric approach). The US Copyright Office and US courts are very clear on this point: copyright can only be granted to works of human authorship. The most well known example is the case of Thaler v. Perlmutter. Researcher Stephen Thaler applied to register copyright in a picture which had been independently created by his own AI system (the "Creativity Machine"). The court dismissed the application, reiterating that copyright has always been a product of human authorship. The same principle was applied in the 2023 decision on the comic book "Zarya of the Dawn" where the text was protected as it was the work of a human, whereas the copyright in the images generated by Midjourney was struck down.

The UK experience (a realistic approach). The UK is different from the US in that it has a legal concept of computer generated works. Under the 1988 Copyright, Designs and Patents Act (CDPA), section 9(3) provides that where a work is created by a computer and there is no natural author, the person who made the arrangements (the programmer or the user) is the author and the work is protected for 50 years.

The approach of the EU and China. The EU's "Artificial Intelligence Act" (the EU AI Act) imposes a transparency requirement on generative AI systems: AI-generated content must be clearly labelled and the copyrighted works used to train the model must be disclosed. The Chinese courts have taken a similar view (for instance in a 2023 decision of the Beijing Internet Court). If a user is creating an image by entering a number of complex prompts (text instructions), selecting the parameters and applying their own aesthetic and intellectual input, the resulting image can be a protected work.

Who is the "author"? The main legal conflicts

When content is created via AI there's a conflict (a collision) between the three parties who each claim ownership of it and one legal situation:

There are four possible subjects of copyright in works made with the aid of AI.

The first is the AI developer or company who put in the intellectual effort and capital to build the algorithm. They're the ones who actually build the tool, they don't in any way pre-determine what the final output will be.

The second is the user (the author of the prompt) who comes up with the idea, writes the commands and edits the output. A brief prompt is not necessarily a creative contribution that would be eligible for copyright.

The third is the AI itself. It generates the work directly but in most legal systems the AI is not an independent subject of rights and therefore cannot be the holder of copyright.

The fourth is the public domain. If a work has so little human creative input in it that copyright doesn't really apply, then you're left with the question of whether it should be in the public domain. That in itself could be a disincentive to develop AI and to produce new AI products.

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There's another big issue too: the training of AI models (text and data mining). In order to learn how to generate new content, generative AI has to analyse millions of copyrighted books, articles and images from the internet. That raises the question of whether such use of the original authors' works (without their permission and without payment) constitutes copyright infringement or is within the bounds of "fair use" which is the issue in a number of lawsuits currently being pursued around the world.

Analysis of the legislation of the Republic of Uzbekistan

In Uzbekistan the development of the digital economy and AI technologies is a state policy priority. The President's decision to rapidly roll out AI technologies and the adoption of the 'Strategy for the Development of AI Technologies until 2030' are clear indications of this.

However an analysis of our current civil and intellectual property legislation would suggest that there are still no clear rules as to the legal status of AI created content (a legal gap or lacuna):

1. Art 1046 of the Civil Code of the Republic of Uzbekistan and Art 4 of the Law "On Copyright and Related Rights" provide that the natural person whose own creative labour has produced the work is the author of that work. Our national legislation is therefore firmly grounded in the human factor and an AI system cannot be the author.

2. Under Article 5 of the Law, copyright applies to works of science, literature and art arising out of creative activity. If a designer, a journalist or a programmer working in Uzbekistan is using Midjourney or ChatGPT as part of their work then the Law makes no provision for how the "human creative labour" component of the resulting work is to be apportioned.

3. If content that's been entirely auto-generated by AI (e.g. an ad banner or an article) is copied by someone else without permission, the original creator will have a very difficult time in court when trying to assert their copyright. The defendant could very easily argue that "it was a program that produced the work, not a person".

AI doesn't kill human ingenuity. It's a very powerful tool which takes creativity to a whole new level. It's different from a conventional tool (a calculator or a camera for instance) in that it can make its own decisions and produce results which cannot be predicted in advance. For that reason, the old rules of copyright need to be modified to reflect the realities of the information age.

On the basis of the above analysis the following scientific and practical proposals can be made with regard to the improvement of the national legislation of the Republic of Uzbekistan:

Separate out the legal categories**:** we need to introduce into the Law "On Copyright and Related Rights" the concepts of "works created with the assistance of AI" (AI-assisted works) and "works created independently by AI" (AI-generated works) and we need to clearly draw the line between them.

Introduce a creative contribution criterion**:** where a user is using AI as a tool in the creation of a work, giving it complex and systematic prompts, substantially editing the output and making a genuine creative contribution of their own, there should be a mechanism in place to recognise the user's copyright in that work.

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A special (sui generis) legal regime**:** for objects which are primarily the product of an algorithm, created automatically with very little human intervention, a special proprietary right regime (*sui generis*) should be introduced, with a shorter term than that of classical copyright (e.g. 5 to 10 years). This would serve to protect investment and keep the economy stable.

Disclosure and labelling requirement: To protect the consumer's right and prevent plagiarism there should be a practice in place of labelling any commercial content which has been created entirely by AI.

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