

WHO OWNS AI-GENERATED CONTENT?

EU Perspectives on AI and Copyright

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Generative AI has shaken up how we create. What once took weeks or months of work by a designer, a writer, or a production team can now be made in seconds with the help of AI. As a result, more companies and creators rely on AI-powered tools to generate text, images, video and other types of content.

The development is rapid and raises a number of important questions. One of these questions is: Who owns the copyright to the AI-generated creations?

While many users may assume they automatically own the rights to the content produced by the AI tools they use, the reality is more complex.

AI-GENERATED CONTENT

AI-generated content refers to material created by AI systems, typically based on machine learning, trained on large datasets, and designed to generate outputs in response to user instructions, the so-called 'prompts.'

These creations can range from a simple image made with a prompt like "a cat in a business suit" to an entire realistic-looking film. The latter type of content is typically created with stronger human involvement, with the human guiding the AI through lots of prompts, refining outputs intensively, and combining various elements into a final outcome.

From a legal perspective, the type and

level of human involvement seems to matter, as copyright law rewards human creativity rather than machine output.

NO COPYRIGHT WITHOUT HUMAN CREATIVITY

Copyright laws across the EU tend to agree that only works created by a human author are protected by copyright.

This principle has already been reaffirmed with respect to AI-generated content in a few national court rulings, such as in the decision of the Municipal Court in Prague in case 10 C 13/2023 which specifically states that "image created by artificial intelligence does not constitute a work of authorship, as

it does not meet the defining characteristics of a copyrighted work. Specifically, it is not a unique result of the creative activity of a natural person - the author.

In other words, if a work is generated entirely by an AI system without meaningful human input, it is not eligible for copyright protection. Such creations would fall into the public domain, meaning that anyone could use, reproduce, or adapt them (within the limits described below) without needing permission or paying royalties. The nature of AI systems, combined with the absence of copyright, may also mean a lack of legal basis for claiming the content as exclusive or treating it as such.

However, if a person makes a sufficient creative contribution (such as by originally selecting, combining, editing, or refining the AI's output), then, in our opinion, they may be considered the author and their creation may be considered a copyrighted work, even if an AI tool has been involved in the process - as long as the other requirements for copyright protection, such as creativity and originality, are met.

Since the law is notoriously slow to catch up with technological reality, we are still waiting for a clear key precedent recognized at the EU level that would confirm this view and define the required level of human involvement. Even the above-mentioned Czech decision leaves the door open for such cases to be reconsidered in the future.

Nevertheless, proving authorship or originality in such cases can be challenging. Therefore, it is advisable to document the extent and timeline of human involvement in such a creative process (prompts, version history and human edits) to demonstrate when and how the work was created and to support potential copyright claims.

The U.S. Copyright Office has taken a similar stance, confirming that materials generated entirely by AI are not eligible for copyright protection. Recent decisions, such as the *Zarya of the Dawn* case, confirm that only the human-authored parts of AI-assisted works are to be protected. The quality and nature of the necessary human involvement are also being challenged in other cases, such as in the *Théâtre D'opéra Spatial* case.

Even though the U.S. and EU copyright systems differ in some respects, the underlying principle remains the same: no human authorship, no copyright.

IF THERE IS NO COPYRIGHT, WHO OWNS THE CONTENT AND WHO MAY USE IT?

The absence of copyright does not necessarily mean that AI-generated content is always completely free to use by the entity

that generated it or by any third person.

Some of the limits may stem from the terms and conditions of the AI tool used to create the content. It is thus important to read the fine print, as some platforms grant users full rights to use the output, while others place limitations. Licensing and ownership terms, leaving aside whether they are always enforceable, often vary depending on whether a free or paid plan is used.

It is advisable to maintain oversight of the AI systems used within one's business, both by employees and vendors. In addition to specifying which tools and versions may be used and for what purposes (including the handling of sensitive data or materials in prompts), the relevant policies or contracts should also address the issue of who owns the AI-assisted content, who may use it and to what extent.

The (possible) lack of copyright protection also does not mean that AI-generated content cannot infringe on someone else's rights. For example, an image generator might produce visuals that closely resemble a famous brand, artwork or identifiable person. Whether intentional or not, such outputs may violate copyright, trademark or publicity rights, or could amount to unfair competition and can be challenged in EU countries.

This risk is closely linked to the way AI systems work. Since they learn from existing data, their output can only be as reliable and legally sound as the data on which they are trained. Algorithms and training data are often not disclosed, which leaves users uncertain about what the AI system was trained on and whether copyrighted content may be reflected in its outputs.

In general, everyone remains responsible for ensuring that their actions do not infringe laws, contracts, or the rights of others, and in most cases, liability will fall on the person or entity using the AI-generated content. Therefore, it is strongly advised that users review and control that the outcomes do not imitate real people, brands or copyrighted styles before they are published or used commercially.

AI tools rarely accept any liability in their terms and conditions - it is usually quite the opposite. Cases where the liability of an AI tool is claimed will, however, certainly become more frequent, and it will be interesting to follow how they unfold.

In the EU, there has been an attempt to address the issue of liability through a proposal for a Directive on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive). The draft included a rebuttable presumption of causality and better access to information about high-risk AI systems if harm occurs. Nevertheless, the

adoption of this Directive was postponed, and its future now remains uncertain.

THE EU REGULATIONS

The first piece of legislation successfully adopted to regulate AI in the EU is the AI Act (Regulation (EU) 2024/1689), which introduces a risk-based regulatory framework - the higher the risks posed by an AI system to fundamental rights, the stricter the legal obligations.

Although complex, the AI Act addresses copyright only marginally. In particular, it requires the providers of general-purpose AI models to put in place a policy that complies with the EU law on copyright and related rights and to disclose information about the content used for training, thereby improving transparency for users.

The AI Act also introduces several obligations concerning the use of AI-generated content, particularly in terms of transparency. For instance, AI-generated content that falls within the definition of a deep fake will need to be clearly disclosed as such.

Many additional details still need to be addressed through guidelines and templates to be developed by the European AI Office, which was also established under the AI Act.

CONCLUSION

Copyright is not guaranteed when AI takes the lead in the creative process, but that does not mean AI-generated content is to be left entirely unprotected. Other forms of protection may apply, such as trade secrets, unfair competition law, contractual arrangements, or trademark rights. A smart mix of legal tools, proper assessment of the AI systems in use, and clear documentation and contracts can help users stay compliant and competitive as AI reshapes the creative landscape.

The current copyright system, now perhaps more than ever, remains open to future revisions, and it is not unthinkable that some key rules may be completely transformed. That is why regulatory developments and upcoming court decisions should be watched. Until the legal framework becomes more settled, AI-generated content should be treated as a high-potential, but high-risk asset.



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