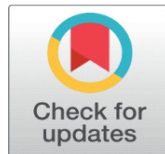


ARTIFICIAL INTELLIGENCE, LEGAL PERSONHOOD AND INTELLECTUAL PROPERTY RIGHTS: NAVIGATING THE NEW FRONTIER OF CREATION

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ABSTRACT

Artificial intelligence and its implications are reshaping traditional legal contexts - especially in the context of intellectual property rights (IPRs) and the emerging debate on legal personhood. Now that machines are capable of self-generation, invention and authorship, issues of ownership, liability, and legal personhood beg to be answered. This article examines the shifting terrain which AI-generated content is now creating for human-based IPR regimes. It explores the possibility that legal personhood for AIs offers a workable means of attributing rights and responsibilities or an incoherent one that challenges the agency and ethical requirements of the law. Through a comparison of laws, analysis of technology, and analysis of policy, the research seeks to engage penetratingly with discussions about the interplay of innovation and regulation in this novel space of creation. The results are intended to inform future legal reforms, and set a framework for fair, accountable, and innovative AI in the future.

Keywords: AI, Legal Personhood, Intellectual Property Rights, AI-Generated Content, Legal Framework

1. INTRODUCTION

The intersection of AI, legal personhood, and IPRs is shifting the legal and technological landscape of creative authorship and innovation. With AI systems showing more and more autonomy and capability of generating artistic creations, inventions, and software, a conventional concept of this intellectual creation as being human-centered is deeply called into question. Historically, IPRs – i.e., copyrights, patents, trademarks – are intended to protect human inventiveness, and as such, IPRs grant authors, inventors, and creators rights and economic rewards. But if AI systems, be they generative models or self-learning design algorithms, are creating content or innovating without input from a human, legal experts around the globe are finding it difficult to decide who the author of a piece of work is and who can be held responsible.

The heart of the matter is that it should we paraphrase legal subjects by attributing rights to the machine, or pay them to those who are under the duty or carry the burden for the development and use of AI. This has set off a worldwide legal controversy. Some legal systems, including South Africa and Australia, have flirted with the idea of recognizing AI-

generated inventions; however, the majority of those have held that applicants must be human. At the same time, the call for a restricted form of legal personhood for AI (a kind of corporate personhood) has been heard, proposing that attributing this partial juridical identity might solve attribution and liability problems in the creation of AI. But this leads to philosophical, ethical and policy challenges around responsibility, human dignity and technological overstep.

The World Intellectual Property Organization (WIPO) and other international organizations are debating the shape of new norms that can help reconfigure how we approach IP in light of this new reality. What is more, the fast pace of AI progress requires flexible and efficient legal answers that won't hinder innovation on the one hand and protect developers, users, and society on the other. One potential compromise could be to regard AI outputs as derivative works at the root, credited to the human or entity responsible for programming and training the AI, in order to uphold the legal coherence and moral responsibility. Alternatively, a sui generis type of intellectual property for AI-generated content might be developed which counterbalances novelty with the necessity to attach rights. Legal Doctrines and it navigate this brave new frontier, it is increasingly important that legal doctrines reconcile themselves to the technological dynamic of dehumanized creation without abandoning an understanding of law that continues to be based on a rights-respecting, humanist vision. This will be a multidisciplinary challenge that combines elements of law, computer science, ethics, and policy, for the development of systems that are robust, adaptive, and fair. In the end, how these dilemmas are resolved will shape not just the tells of creative industries in the future but also the broader architecture of human-AI cohabitation and the texture of our digital legal systems.

2. UNDERSTANDING ARTIFICIAL INTELLIGENCE AND CREATION: DIFFERENTIATING HUMAN AND MACHINE CREATIVITY

The development of artificial intelligence has sparked difficult conversations about creativity and the role of artistic practice. Although traditionally, creativity was considered a human-only affair grounded in consciousness, emotion, intuition, and experience-based learning today AI systems are capable of generating paintings, music, literature, and inventions that are often comparable to, if not better than, those produced by humans in terms of complexity and accuracy. But the intuition behind creativity in machines is quite different from that of a human. Humans spontaneous and culturally, socially, and emotionally contingent creativity driven by negative escalated and by abstract reasoning and personal experiences.

It is an issue of intent, perception, and sometimes a need to communicate or express oneself. Machine creativity, impressive as it may be in its achievements, is the result of algorithmic computation, data-trained structure, and statistical pattern detection. AI doesn't "invent" in the passionate, thought-processy sense; it spits out results based on programmed goals and known antecedents just as it swims into fetid lagoons and launches rifle-sized lunch at passing gulls. For example, a generative language model could write poetry or a novel by generating new patterns based on large-scale patterns it has recognized in extensive bodies of literature but still a one without awareness, intention, or an emotional relationship to what it produces. And that's the same with the image-generating AIs as well, they can be making beautiful work, but they are working based on an algorithm rather than an aesthetic viewpoint.

This disjunction is not just some sort of juridico-ethical technicality: it matters, for example, in discussions of legal and ethical aspects of the rights of intellectual ownership and authorship, where issues of originality and the intentionality of the author are essential to determining matters of ownership and the conditions under which certain rights might be ceded to others. AI-produced work has the same value as human work if creativity is naught but a computational process rather than a cognitive and a volitional one. "Computers can mimic the content generated as style and invents new combination, however, it lacks the self-awareness, the emotional gaze and the transformative impact which make human creativity authentic" scholars say. What's more, human creativity typically works in iterations, with failure, reflection and revision a dynamic that machines aren't attuned to. But the boundary is growing more porous as AI systems start to show "emergent behavior" that astounds even those who create them, calling into question what it means for a machine to be a passive tool.

This calls for a redefinition of "originality" and of whether and how the legal system should recognise that a novel category of non-human authorship is a possibility which can be addressed: should we adopt a new definition or perhaps an extension of the present definition) of author who is the non-human author itself. The distinction between human and machine creativity is not a theoretical game but has significant consequences for the nature of the future of innovation, ownership and cultural production. It determines how projects are credited, how gains are shared, and how society

attributes worth to the products of intelligent systems. Clarity on this difference is essential for the preservation of human agency, artistic integrity and alignment of technology with ethical, cultural and legal expectations as AI continues to advance. Recognizing the distinctions between them, while acknowledging the potential of AI as a creative partner as opposed to an autonomous progenitor could provide a more even-handed way out in this time of transformation.

3. LEGAL PERSONHOOD IN THE CONTEXT OF AI: COMPARATIVE JURISPRUDENCE AND GLOBAL PERSPECTIVES

The debate, whether AI systems should be given the status of a legal person, is one of the most important legal philosophical discussions of the 21st century. History In the traditional legal sense, a person has been human (or, in the case of corporations, regarded as one, collectively. There is no identity of legal personality and human personality but merely a legal fiction whereby an entity has rights, duties, and responsibilities. As AI systems become ever more independent, capable of making decisions, learning from data and producing creative or commercial works without persisting human oversight, the legal no man's land with respect to accountability, authorship and responsibility becomes all the more apparent. Comparative law offers disparate worldwide views on the subject. Indeed, the European Parliament, in its 2017 resolution, raised the idea of "electronic personhood" for particularly advanced AI systems to address the issue of responsibility for damage or loss attributed to machines.

This proposal met with quite a lot of pushback from academics and civil society groups, who worried that it would have the effect of lowering accountability on the part of the developers and corporations responsible for such systems. However, the United States has been much more skeptical in confer legal personhood on AI and has instead worked to increase obligations on developers, users, and owners of AI under the limits of tort and contract law. At the other end of the spectrum, countries such as Japan and South Korea have taken a more assertive stance in incorporating AI into the legal world, although they have not technically recognized AI systems as legal persons. Role of Law Japan's Society 5.0 model envisions a human-AI collaboration paradigm where AI and information enhances social function but legal rights and responsibilities are human-centered. In 2017, the decision in Saudi Arabia to give legal personhood to "Sophia," a human-like robot, proved highly polemic and brought to the fore discussions around symbolic versus operational (i.e., functioning) legal status of AI—raising similar concerns about gender as well as labor and ethical paradoxes, particularly at a time when real human rights continue to be contested in various parts of the world. South Africa gained international attention in 2021 when its patent office accepted the designation of an AI entity, DABUS, as the inventor in a patent application, sparking international debate over whether AI is a legitimate creator under law as it currently exists, despite lacking personhood.

These developments highlight a fragmented and inconsistent global legal environment, and demonstrates cultural, political, and economic divergences governing AI development. From a policy standpoint, bestowing legal personhood upon AI created a bedrock of convoluted ethical and practical incongruities (the robots have us surrounded), including the potential for abuse, an abuse of legal gray area, a dilution of human culpability, and so on. Opponents contend that legal personhood could provide corporations with a way to avoid responsibility by attributing guilt to a legal entity that is morally void and legally independent. Advocates, though, view legal personhood as a way to disentangle responsibility, particularly when it comes to high-risk AI applications including self-driving cars, financial algorithms and medical diagnostics. Not adopting a global framework for the development and deployment of AI that does not strictly reach full personhood but acknowledges the legal autonomy of AI with responsibilities delegated to human actors for AI configuration. And, finally, the convergence of global views and the grounding of these into ethical jurisprudence is of paramount importance to lead us through the system of AI governance in the future.

4. INTELLECTUAL PROPERTY RIGHTS AND AI-CREATED WORKS

The quest for original (AI generated) content: To a certain extent the mass expansion of AI technologies capable of generating original content, such as literature, music, art, inventions and software, seriously affected the traditional concept of IPR. IP law has gone on the premise that creativity and ingeniousness are associated with the human being for a very long time. Dominant tenets of copyright and patent and trademark law are predicated on human modes of authorship and inventorship, and attach rights to the moral and economic concerns of human creators⁸. But when a computer-generated invention or creative work comes from AI, the legal system finds itself in an impossible position: Who actually owns that thing, if anyone owns it at all. Most legal systems do not see AI as an author or inventor under

current IP regimes. Thus, rights accrue to the individual or organization programming, training, or managing the AI. This attribution, however, leads to further questions on the level of human involvement and creative control necessary to be considered an author or inventor, and even more so when the created work is independently produced with no human intervention.

Some areas are already starting to push the limits. For example, in 2021, South Africa issued a patent listing an AI called DABUS as the inventor, a world first that reignited the discussion around whether AI is eligible for IP protection. The United Kingdom and the European Patent Office, which share a similar legal system, have also dismissed claims about robots being inventors on the ground that it is the human being who ultimately holds the rights to the invention. Divergence between IP regimes worldwide also makes enforcement and commercial use of the achievements difficult across borders. Furthermore, if AI-generated works are denied protection outright, that would chill the development of AI-based innovation. On the other hand, if those works are afforded too much protection, it could flood the market and will make it harder for human creators to compete.

Some academics or advocates would propose a new sui generis IP regime specific to AGI-created content that would protect this content in limited terms while upholding the essential human-based values of IP. Yet others propose enlarging existing doctrines to treat AI as a “tool” and assigning rights to the user or creator in particular cases. As AI continues to become deeply rooted in creative and industrial activities, legal certainty becomes needed to calibrate the relation of innovation incentives on the one hand and fairness, accountability and the basic purposes of IPRs on the other. A careful, responsive solution possibly the product of international cooperation is needed to protect not just technological advancement but legal integrity in the era of AI.

5. CONCLUSION, PROPOSED LEGAL FRAMEWORKS AND FUTURE DIRECTIONS

Artificial intelligence in the creative and inventive processes has opened a new transformative phase, questioning traditional legal doctrines on Intellectual Property (IP) rights and legal personhood. While AI systems are demonstrating more autonomy in creating original works and inventions, traditional systems, where the aim was to identify and reward human creativity, find it difficult to be adapted. The underlying question is the ownership and accountability of authorship in a world where machines (which are working without any consciousness or intent) are producing work which is reflective of any human character or creativity. Some regions have tried to push the envelope and define AI generated content as something original, yet the legal sphere is still torn and unprepared for the imminent mass AI production.

Such challenges require a multilateral approach and coordination. First, we need to reconsider existing IP laws in light of human's role in AI-created works, perhaps by redefining “authorship” and “inventorship.” Second, international cooperation is needed to prevent a fragmented set of laws that stifles innovation and cross-border IP enforcement. Thirdly, instead of extending the full legal status of personhood to AI (which could entail ethical and legal challenges), it is also possible that AI can be treated as a sort of legal instrument to which rights and obligations would be ascribed to the human agents who created and deployed it. Moreover, creating a sui generis legal regime tailored to AI-generated works might be a possibility to offer some protection and still maintain that human focus. Finally, inter-disciplinary conversations among legal scholars, technologists and policy makers or ethicists are key to shaping law reforms adequate to the task of regulating new, online and digital technology. Creation's future will be about working together more, and the legal systems will need to reflect that shift to nurture-innovation and, at the same time, hold the creators responsible for their creations, that they have the rights, transparency and fair operating environment.

CONFLICT OF INTERESTS

None.

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