Resolution

2019 – Study Question

Copyright in artificially generated works

Background:

1)   This Resolution concerns the intersection of artificial intelligence ("AI") and copyright.

2)   This Resolution seeks to establish if and under what conditions Copyright and/or Related Rights should be available for works generated by AI.

3)   This Resolution does not address the following related issues:
   -   copyright infringement by AI-generated works;
   -   copyright in computer programs or algorithms used for AI systems;
   -   copyright in intermediate works, i.e. works created during each step of the process. Only the final work is within the scope of this Study Question.

4)   For the purpose of this Resolution:
   -   The term "Copyright" means the rights associated with copyright as set forth in the Revised Berne Convention 1979 (RBC). Certain jurisdictions also provide for exclusive rights protection as a copyright beyond the RBC and not regulated by the RBC. Such copyright protection is not included in the term Copyright.
   -   The term "Related Rights" means all other copyright-type rights, e.g. "related rights", "neighbouring rights", "sui generis rights", etc.
   -   The term "Economic Rights" means the exclusive rights of Copyright or Related Rights granted to the owner, e.g. the right of reproduction (Art. 9 RBC), Art. 1 (4) World Copyright Treaty 1996 - WCT), the right of distribution (Art. 6 WCT) or the right of communication to the public (Art. 8 WCT).
   -   The term "Moral Rights" means the rights of Copyright granted to the author apart from Economic Rights according to the RBC, e.g. the right to object to distortion of the work.

5) To provide a concrete basis for this Resolution, the following Working Example is adopted:

-   Step 1: One or more AI entities are created that are able to receive inputs from the environment, interpret and learn from such inputs, and exhibit related and flexible behaviours and actions that help the entity achieve a particular goal or objective over a period of time[1]. The particular goal or objective to be achieved is selected by a human and, for purposes of this Study Question, involves generation of works of a type that would normally be afforded copyright protection.
-   Step 2: Data is selected to be input to the one or more AI entities. The data may be prior works such as artwork, music or literature. The data also may be inputs from sensors or video cameras or input from other sources, such as the internet, based on certain selection criteria.
    -   [Case 2a]. The data or data selection criteria are selected by a human.
    -   [Case 2b]. The data or data selection criteria are not selected by a human.
-   Step 3: The selected data is input to the one or more AI entities, which achieve the particular goal or objective over time by generating "new works" that are not identical to any prior work.
    -   [Case 3a]. A human makes a qualitative or aesthetic selection of one work from the new works.
    -   [Case 3b]. No human intervention is involved in selection of a work from the new works.

6) 32 Reports were received from AIPPI's National and Regional Groups and Independent Members providing detailed information and analysis regarding national and regional laws relating to this Resolution. These Reports were reviewed by the Reporter General Team of AIPPI and distilled into a Summary Report (see links below).

7) At the AIPPI World Congress in London in September 2019, the subject matter of this Resolution was further discussed within a dedicated Study Committee, and again in a full Plenary Session, following which the present Resolution was adopted by the Executive Committee of AIPPI.

AIPPI resolves that:

1) Harmonization regarding the protection of AI generated works is desirable.

2) AI generated works should only be eligible for protection by Copyright if there is human intervention in the creation of the work and provided that the other conditions for protection are met. AI generated works should not be protected by Copyright without human intervention.

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[1] This is the AI definition proposed by Daniel Faggella, Emerj, https://emerj.com/ai-glossary-terms/what-is-artificial-intelligence-an-informed-definition/

This principle is considered to apply to the Working Example as follows:

-   In Step 1, the AI generated work should not be eligible for Copyright protection merely because of the human creation of the AI system to achieve a work as output;
-   In Step 2, case 2a, the AI generated work should be eligible for Copyright protection where there are human data selection criteria for the input into the AI;
-   In Step 2, case 2b, the AI generated work should not be eligible for Copyright protection where there is only non-human data selection or non-human data selection criteria;
-   In Step 3, case 3a, the AI generated work should not be eligible for Copyright protection merely because of a human selection of one work from the newly generated works;
-   In Step 3, case 3b, the AI generated work should not be eligible for Copyright protection merely because of non-human selection of one work from the newly generated works.

3)   Originality (as interpreted by national laws) of the generated work resulting from the human intervention should be a condition for the protection by Copyright.

4)   In case of Copyright protection for the work generated by AI, because the requirements set out in 2) (human intervention) and 3) (originality) above have been met, the protection regime should be identical to other works protected by Copyright. This is in particular true for:
-   Economic Rights;
-   Moral Rights (as interpreted by national laws).
-   Term of protection;
-   Exceptions and limitations;
-   Initial ownership.

5)   AI generated works may be eligible for protection other than Copyright protection (as set forth in the RBC), even without human intervention.

AI generated works should not be precluded from obtaining protection by existing Related Rights on the basis they are AI generated and should obtain that protection as long as they meet the required criteria for obtaining protection. Jurisdictions may grant exclusive rights protection under their copyright regimes (not in the meaning of the RBC), as far as such protection already exists.

As AI is still developing, it is too early to take a position on the question, whether AI generated works not covered by such existing protection should be eligible for exclusive rights protection as a Related Right or as exclusive rights under copyright (not in the meaning of the RBC).

Links:

- [Study Guidelines](#)

- [Summary Report](#)

- [Study Reports page](#)