

Artificial Intelligence and Intellectual Property

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The birth of Intellectual Property (IP) Law in Cyprus was the introduction of the Trademarks Law of 1951. This was modelled on the British Trademarks Law of 1938, and it has since undergone many amendments.

Following the enactment of the Trademarks law, some years later the Copyright Law, Patents Law and Industrial Designs & Utility Law were also enacted with a view to protecting intellectual property rights in works created by human beings.



At the time of the formation of this legal framework, the development of Artificial Intelligence (AI) was not foreseen, and AI was a notion confined to works of science fiction. However, AI's development and growth in our society is becoming a reality that cannot be ignored. This gives rise to the question of whether works which are created by human beings can now be replaced by AI technology and, whether such AI created works can be recognized and protected under existing IP laws?

In recent years, there has been an increase in the emergence of so-called "prompt art". This is a process whereby Internet users will give instructions to websites, such as MIDJOURNEY, DALL-E, and ILLUSTROKE which use AI in order to generate images based on said instructions. In other words, the indirect use of AI now allows a layman to translate a simple idea into a materialized work. By way of illustration, the 'portrait of Edmond de Belamy', the first work entirely created by AI, was sold at an auction for \$432,000 in New York .

As AI evolves and becomes increasingly sophisticated, numerous legal and practical questions are raised. Can AI generated work be protected under the existing IP Laws? And, if so, who owns the rights to it? Is the training of the AI, or its output, infringing any copyrighted work?

It is crucial that answers to these questions are found. The costs of developing, acquiring, using and maintaining AI technology can be considerable. If, in the absence of protection, the benefits for investors can escape, funders and businesses will be disincentivised from pursuing useful research involving AI technology.

At present, most legislators consider that only works created by human beings' merit copyright protection². To benefit from copyright protection, an artwork must be original, and it is deemed as such when it reflects the author's personality. The issue is that AI is already creating content which would have been protected under copyright had a human created it rather than it being a product of AI.

1. <https://www.bbc.com/news/technology-45980863>

2. Article 5 of regulation (EU) 2017/1001 "Persons who can be proprietors of EU trade marks
Any natural or legal person, including authorities established under public law, may be the proprietor of an EU trade mark".

35 U.S. Code § 100 – Definitions: "(f)The term "inventor" means the individual or, if a joint invention, the individuals collectively who invented or discovered the subject matter of the invention."



An interesting case on the topic is the one of the novel “Zarya of the dawn” in which the images were AI created. At first, the author of the novel, Kris Kashtanova, managed to obtain copyright protection over the artwork by describing herself as the sole author. But later, Kashtanova was informed that the copyright registration would be cancelled, as the information given was incorrect, or at least incomplete, since there was no mention of the AI’s input in the creation of the novel.

Following on from this there is also the case of “DABUS” (Device for Autonomous Bootstrapping of Unified Sentience) for consideration. DABUS is an AI machine, invented by Stephen Thaler, who filed international and national patent applications which mentioned DABUS as an inventor. The European Patent Office (EPO) rejected the patent applications as it held that the European Patent Convention requires the inventor to be a natural person³. The United States Patent and Trademark Office also denied the application on the same grounds.

However, this view is not a unanimous one and there are some hopes of change since the South African IP Office has granted Thaler’s application (although it must be noted that South Africa is a non-examining country which means that it only checks for basic formal requirements when confronted with such application). More significantly, in the UK, whilst the Intellectual Property Office initially refused the application, there is now a case relating to the application pending before the High Court. The outcome of the case will be watched with interest by many. However, it is interesting to note that UK law does appear to be ahead of its time. Under the UK Copyright, Designs and Patents Act 1988 (section 9.3⁴), work produced by a computer, or with the assistance of one, can be granted copyright protection. Further to this the copyright is owned by the person who enabled the generation or creation of the work.

In Cyprus there are not, as yet any reported cases concerning AI created works seeking IP law protection. However, in the absence of a reported case, if authorship in a created work was challenged as being AI created rather than by a human being, it is probable that the Cypriot Courts would seek guidance from decisions in other EU Member States.

One final issue which must be tackled is the possible infringement of IP protections relating to the input used for the training of the AI. Indeed, there have already been several lawsuits linked to this topic. The main one being Getty Images lawsuit⁵ against Stability AI Inc., an artificial intelligence company accused of copying more than 12 million photos, without a license, to train the company’s Stable Diffusion AI image-generation system. The outcomes of these various legal procedures are still pending, and what the Courts eventually decide will be of interest to many.

However, whilst we wait for the Courts to conclude their deliberations it is possible to suggest that, since most countries are reluctant to recognize AI generated work under IP law, there could be a system of coexistence of both types of works. A situation could be envisaged where IP laws would only protect the fruits of intellectual human mind and, in parallel, a sui generis protection of AI generated work could exist as an integral independent protection.

3. <https://www.epo.org/news-events/news/2020/20200128.html>

4. In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken. <https://www.legislation.gov.uk/ukpga/1988/48/section/9>

5. Getty Images lawsuit says Stability AI misused photos to train AI <https://www.reuters.com/legal/getty-images-lawsuit-says-stability-ai-misused-photos-train-ai-2023-02-06/>