



Agency for Cultural Affairs,  
Government of Japan

# Copyright Protection of AI-Generated Material and Recent Topics in Japan

---

Japan Copyright Office (JCO)

(Copyright Division, Agency for Cultural Affairs (ACA), Japan)

# Background of the “General Understanding”

- ❑ In 2023, with the rapid development and widespread use of generative AI in recent years, there were concerns about the lack of clarity regarding the relationship between AI and copyright.
- ❑ In order to address these concerns without waiting for court precedents to accumulate, since July 2023, a national council composed of experts had discussed how the current Copyright Act should be applied in relation to AI aiming to provide a general understanding of this topic.
- ❑ The Council published the “General Understanding on AI and Copyright in Japan” (hereinafter, the “**General Understanding**”) in March 2024. The main topics covered in the General Understanding included the following:

## AI Development / Training Stage

Exploitation of copyrighted works for AI development / training etc. (Article 30-4 etc.)

## Generation / Utilization Stage

Copyright infringement in the generation and utilization of AI-generated materials

## Copyrightability of AI-generated Material

Criteria for determining the copyrightability of AI-generated material

# Overview of the General Understanding

## : Copyrightability of AI-generated Material

---

- According to the Copyright Act, a (copyrighted) “work” is defined as a “creatively produced expression of thoughts or sentiments that falls within the literary, academic, artistic, or musical domain.”
- Materials autonomously generated by AI\* are not “creatively produced expressions of thoughts or sentiments” and are therefore not considered (copyrighted) “works.”

\*i.e., material that is generated by AI without any instructions from humans (or only by giving simple instructions as prompt (e.g., “Draw a cat.”))

- On the other hand, if AI is used as a “tool” by a person to creatively express thoughts or sentiments, such material is considered a “work”, and the user of the AI the “author”.

\* Please note that only a person (i.e., a natural or legal person) can be an “author” under the Copyright Act. An AI itself, which does not have a legal personality, cannot be an author.

- Determining whether a person has used AI as a “tool” depends on two factors: whether the person had a “creative intention” and whether the person has made a “creative contribution”.

# Overview of the General Understanding

## : Copyrightability of AI-generated Material

### Relationship between the specificity of instructions given to an AI and the copyrightability of AI-generated materials

- The following outlines under which circumstances AI products are recognized as containing the AI user's "creative contributions."<sup>\*1</sup>

- The copyrightability of AI-generated content will be determined on a case-by-case basis.<sup>\*2</sup>
- Specifically, it is assessed through a comprehensive consideration of the extent of creative contributions that surpass mere effort.

#### Examples of factor in determining copyrightability of AI-generated material

- ✓ Amount of instructions/input: "Detailed instructions that specifically indicate what constitutes creative expression" are more likely to be considered as creative contributions. However, lengthy instructions (i.e., prompts) that merely suggest an idea do not influence the assessment of creative contribution.
- ✓ Number of generation attempts: A large number of attempts alone does not affect the assessment of creative contribution. Repeated attempts, while checking the generated materials and correcting the instructions/input, may be recognized as a creative contribution.
- ✓ Selection from multiple output materials: The mere act of selection itself does not influence the determination of creative contribution. However, certain elements of choice may be involved which may be considered as creative.
- In addition, any additions or corrections made by humans to AI-generated materials that can be considered creative expressions are generally considered to be copyrighted works.

<sup>\*1</sup> The issues of "whether an AI-generated work can be copyrighted or not" and "whether generation by AI or the usage of AI-generated materials constitutes the copyright infringement" need to be separately. Even if an AI-generated material is copyrighted, it can still constitute copyright infringement of the existing copyrighted work, if it meets the necessary requirements for infringement.

<sup>\*2</sup> Hence, whether or not an AI product corresponds to a copyrighted work is not solely determined by "the fact that it is an AI product".

## Network of Relevant Stakeholders on AI and Copyright

- ❑ “Network of Relevant Stakeholders on AI and Copyright” has been established as a forum for dialogue to facilitate appropriate communication among relevant stakeholders. This network includes a wide range of stakeholders related to AI and copyright, such as creators, performers, right holders (including media entities) and AI businesses. During the network meetings, participants engaged in sharing information and discussions to foster a collaborative relationship between creators and AI and related businesses for the creation of new contents and the development of culture. (A total of 43 organizations have participated, and the meetings have been held 6 times to date.)
- ❑ The network meetings are held privately to promote open and active information sharing and discussions. Through continuous meetings, the following information has been shared, contributing to the promotion of mutual understanding between right holders and businesses.
  - ✓ Overview of generative AI technology, and the actual use of copyrighted works in the development and utilization of generative AI
  - ✓ Overview of content production and creative activities, and the possibilities and challenges of utilizing generative AI for such activities
  - ✓ Possibilities of copyright licensing agreements and data provision agreements for the development and utilization of generative AI (Japan Academic Association For Copyright Clearance, one of the participating organizations, has begun to provide licenses for the use of copyrighted works in connection with the use of AI)
- ❑ There are other several cases in Japan where right holders and AI businesses have formed partnerships.