

Derivative works

Requirement for protection & copyright infringement

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1. What AI?

Generative AI

Predictive AI

What does it mean
in legal terms?

One key term:

AI-assisted outputs.

Creation (?) under some patterns (or prompts)
provided by someone.

A guided output

Sufficient intellectual skill (?)

2

Derivative works

Added value of derivative works

The concept of **enriched material**

AI-systems trained upon preexistant works

Authored

Authors

Copyright holders (e.g., collective works)

Copyrighted

Copyright infringement

- Data mining – Data breach
- Unrecognized derivative Works
 - Also consider the importance of moral rights (paternity, integrity rights)
- Merging vs plagiarism.

“Copyright doctrine is similarly refractory to the protection of nonhuman productions. First among the doctrinal arguments is that machines cannot make the creative choices that are required to generate originality, and originality is a *sine qua non* of copyright. In short, current law does not protect machine productions”

Daniel J. Gervais, 2016

Is it possible to have an output
with **no original human intervention at all?**

“According to our copyright law as well as some international conventions, the definition of a work first emphasizes that the creation is original, reproducible and produced based on human intellectual activity, so human intelligence is the core and premise”.

Wang Guohua, Dreamwriter/Tencent v Shanghai Yingxun Technology Company , China, 2020

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Remedies

Fair use v legal exceptions

Agreements (and vetoes)

Technical solutions

Litigation

Enacting new legal provisions

European Parliament to for AI companies to unveil whether they are using third parties' contents for commercial exploitation.
Expected before the end of 2024.

Policy paper

A pro-innovation approach to AI regulation

Updated 3 August 2023

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<https://www.gov.uk/government/publications/ai-regulation-a-pro-innovation-approach/white-paper>



*NATIONAL ARTIFICIAL INTELLIGENCE
RESEARCH AND DEVELOPMENT
STRATEGIC PLAN
2023 UPDATE*

A Report by the

SELECT COMMITTEE ON ARTIFICIAL INTELLIGENCE
of the
NATIONAL SCIENCE AND TECHNOLOGY COUNCIL

May 2023

Individual vs collective works

Managing rights

Authorship vs economic exploitation rights

Compensation



Principles for Development and Governance of Generative AI

INTELLECTUAL PROPERTY

1) Developers and deployers of GAI must respect creators' rights to their content. Developers and deployers of Generative Artificial Intelligence (GAI) systems—as well as legislators, regulators and other parties involved in drafting laws and policies regulating GAI—must respect the value of creators' proprietary content.

2) Publishers are entitled to negotiate for and receive fair compensation for use of their IP. Use of original content by GAI systems for training, surfacing or synthesizing is not authorized by most publishers' terms and conditions, or contemplated by existing agreements (for example, for search). GAI system developers and deployers should not be crawling, ingesting or using publishers' proprietary content for these three stages without express authorization.

3) Copyright laws protect content creators from the unlicensed use of their content. Like all other uses of copyrighted works, use of copyrighted works in AI systems are subject to analysis under copyright and fair use law. Most of the use of publishers' original content by AI systems for both training and output purposes would likely be found to go far beyond the scope of fair use as set forth in the Copyright Act and established case law. Exceptions to copyright protections for text and data mining (TDM) should be narrowly tailored to not damage content publishers or become pathways for uses that would otherwise require permission.



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Global Principles on Artificial Intelligence (AI)

By *Staff* September 6, 2023

1) Developers, operators, and deployers of AI systems must respect intellectual property rights, which protect the rights holders' investments in original content. These rights include all applicable copyright, ancillary rights, and other legal protections, as well as contractual restrictions or limitations imposed by rightsholders on the access to and use of their content. Therefore, developers, operators, and deployers of AI systems—as well as legislators, regulators, and other parties involved in drafting laws and policies regulating AI—must respect the value of creators' and owners' proprietary content in order to protect the livelihoods of creators and rightsholders.

Global Principles on Artificial Intelligence (AI)

By *Staff* September 6, 2023

2) Publishers are entitled to negotiate for and receive adequate remuneration for use of their IP. AI system developers, operators, and deployers should not be crawling, ingesting, or using our proprietary creative content without express authorisation. Use of intellectual property by AI systems for training, surfacing, or synthesising is usually expressly prohibited in online terms and conditions of the rightsholders, and not covered by pre-existing licensing agreements. Where developers have been permitted to crawl content for one purpose (for example, indexing for search), they must seek express authorisation for use of the IP for other purposes, such as inclusion within LLMs. These agreements should also account for harms that AI systems may cause, or have already caused, to creators, owners, and the public.

Global Principles on Artificial Intelligence (AI)

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3) Copyright and ancillary rights protect content creators and owners from the unlicensed use of their content. Like all other uses of protected works, use of protected works in AI systems is subject to compliance with the relevant laws concerning copyrights, ancillary rights, and permissions within protocols. To ensure that access to content for use in AI systems is lawful, including through appropriate licenses and permissions obtained from relevant rightsholders, it is essential that rightsholders are able effectively to enforce their rights, and where applicable, require attribution and remuneration.

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4) Existing markets for licensing creators' and rightsholders' content should be recognised.

Valuing publishers' legitimate IP interests need not impede AI innovation because frameworks already exist to permit use in return for payment, including through licensing. We encourage efficient licensing models that can facilitate training of trustworthy and high-quality AI systems

5

Some conclusions

Machines do not create

Machines help people creating

The Chinese “solution”

Separating authorship and property

A more general “solution”

Giving up some authorship to companies

A possible key question?

Transparency

Happy to answer any question!

Thank you so much!

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