

## General Study question

**National Group:** Latvia  
**Title:** Copyright in artificially generated works  
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**Reporter within Working Committee:** Reporter General: Jonathan OSHA  
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## Questions

### I. CURRENT LAW AND PRACTICE

Please answer all questions in Part I on the basis of your Group's current law.

*To answer questions 1 to 11, please base your answers on the Working Example. If you believe that reference to other scenarios/examples is useful, please raise such scenarios/examples and their relevance to the questions presented.*

- 1) Does your current law / practice contain laws, rules, regulations or case law decisions specifically relating to Copyright and/or Related Rights in artificially-generated works? If YES, please describe.

No

### A. Application of general Copyright criteria to artificially-generated works

#### **Authorship**

- 2) Does your current law / practice require that a work has to be created by an identified author (natural or legal person) to be protected by Copyright?<sup>1</sup>  
Yes, author is an identified natural person, as a result of whose creative activities a concrete work has been created
- 3) Does your current law / practice require that a work has to be created by a human to be protected by Copyright?<sup>2</sup>  
Despite that there is no direct definition of “natural person” in Copyright law, in accordance with general understanding from Civil Law, and according to the dictionary and practice “natural person” means “human being”<sup>3</sup>
- 4) Could one or more of the natural persons involved in the process of the Working Example be qualified as authors of the resulting work in your jurisdiction?
  - a. The authors of the program or code that defines the AI entities<sup>4</sup>?

<sup>1</sup> By answering this question, don't take into consideration anonymous works and pseudonym works. Please also note that this question is independent from the question of the rights holder.

<sup>2</sup> Please note that this question is independent from the question of the rights holder

<sup>3</sup> Legal Definition of natural person (noun): a human being as distinguished from a person (as a corporation) created by operation of law. Merriam-Webster. Law Dictionary. Accessible from: <https://www.merriam-webster.com/legal/natural%20person>

Yes

- b. A human who defines the particular goal or objective to be achieved by the AI entities?
- c. **Yes** A human who selects the data or the data selection criteria (inputs)?
- d. **Yes** A human who selects a particular artificially-generated work from multiple works generated by the AI entities?

Yes

- e. Someone else?  
Any other natural person whose substantial creative activity contributed to the creation of artificially generated work

### **Originality**

- 5) If, in your jurisdiction, originality is a requirement for a work to be protected by Copyright, could an artificially-generated work qualify as an original work in your jurisdiction?

**No**, an artificially-generated work could be qualified as a *derivative work*. *Without prejudice to the rights of authors as to the original work, derivative works are also protected (Copyright Law, Clause 5)*

### **Supplementary criteria**

- 6) If there are supplementary or other requirements for a work to be protected by Copyright in your current law / practice, can an artificially-generated work in accordance with the Working Example fulfill them?

There is one other requirement for a work to be protected by Copyright – work is the result of an author’s creative activities. Creative activity is inherited to human being. However, an artificially-generated works in accordance with the Working Example can fulfil this requirement if (1) human is involved in process of creation an artificially-generated work and (2) it is required some intellectual activity from this human which is not just technical act.

### **Original ownership**

- 7) Assuming that, under your current law / practice, an artificially-generated work is protectable by Copyright, who would be the “first owner” of the Copyright, *i.e.* the person defined by the law as the *original owner*?

The “first owner” of the Copyright would be natural person selects the data since it’s requires creative (intellectual) act.

If individual contribution of each natural person to the creation of the work cannot be segregated as a separate work and activities of all these natural persons qualifies as creative activities, copyright to the work shall belong to all the co-authors jointly to persons (co-authors):

- 1) makes the program or code that defines;
- 2) defines the particular goal or objective to be achieved;
- 3) selects a particular artificially-generated work from multiple works generated by the AI entities;
- 4) performs any other substantial creative activity contributing to the artificial generation of work.

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<sup>4</sup> As noted in Paragraph 2 of the Discussion above, “AI entities” refers to the system(s) that creates the AI-created work and does not refer to a legal or juridical entity.

- 8) Under your current law / practice, could an AI system or machine be qualified as a juridical entity capable of holding Copyright or Related Rights?

No, since subject can be qualified as legal entity only by the law in two cases – after registration or after establishing by only is cases prescribed by the law.

In order to obtain copyright, an entity must have the legal personality (capacity), but the system or machine does not have it under the law.

- 9) Does your current law / practice allow non-humans and/or non-juridical entities to hold Copyright?

No, only natural or legal persons or partnerships can hold copyright.

***Term of protection***

- 10) Assuming that, under your current law / practice, an artificially-generated work is protectable by Copyright, what is the term of protection?

Copyright is in effect for the entire lifetime of an author and for 70 years after the death of an author.

Copyright to a work created by co-authors are in effect for the duration of the lives of all the co-authors and for 70 years after the death of the last surviving co-author.

**B. Application of Related Rights criteria to artificially-generated works**

- 11) Could a work created with the process of the Working Example be protected by any type of Related Rights?

It would be possible

If YES, please answer the following sub-questions:

- a. What type(s) of Related Rights would be applicable?

Rights of performers, film or phonogram producers, broadcasting organizations, creators of databases

- b. What would be the requirements for protection by Related Rights?

- 1) It is the result of creative activity (for performers) and 2) substantial qualitative or quantitative investment (for film or phonogram producers, broadcasting organizations, creators of databases)

- c. Who would be the original owner of the Related Rights?

*For artificially generated performance:* a natural person who contributed to the artificial performance of a literary, musical or artistic work (singing, playing, dancing e.t.c.)

*For artificially generated film or phonogram:* a natural or legal person who has organized and provided the first fixation of sound or audiovisual work by means of an AI entity;

*For artificially generated data base:* a natural or legal person who has organized and provided the creation of a database by means of an AI entity

- d. What would be the term of the protection?

15 years from the day when the formation of a database was generated  
50 years from the day when the performance was generated

50 years from the day when film or phonogram was generated

## **II. POLICY CONSIDERATIONS AND PROPOSALS FOR IMPROVEMENTS OF YOUR GROUP'S CURRENT LAW**

12) Could any of the following aspects of your Group's current law or practice relating to artificially-generated works be improved? If YES, please explain.

a. Requirements for artificially-generated works to be protected by Copyright and/or Related Rights?

No

b. Ownership of artificially-generated works?

No

c. Term of protection of artificially-generated works?

No

13) Are there any other policy considerations and/or proposals for improvement to your Group's current law falling within the scope of this Study Question?

No

## **III. PROPOSALS FOR HARMONISATION**

**Please consult with relevant in-house / industry members of your Group in responding to Part III.**

To answer questions 14 to 32, please base your answers on the Working Example. If you believe that reference to other scenarios/examples is useful, please explain such scenarios/examples and their relevance to the questions presented.

14) In your opinion, should Copyright protection and/or Related Rights protection for artificially-generated works be harmonized? For what reasons?

Yes

15) In your opinion, should artificially-generated works be protected by Copyright and/or Related Rights? For what reasons?

Yes, mostly artificially-generated works should be protected by Copyright as derived works, and artificially-generated performances should be protected by Related Rights with the same level of protection as ordinary works and performances, as in their generation is invested creativity of humans (natural persons).

Yes, artificially-generated databases, films, phonograms and broadcasts should be protected as objects of Related Rights with the same level of protection as conventional objects, as in their generation is invested quantitative or qualitative investments by legal entities

### **A. Copyright protection of artificially-generated works**

16) Should intervention by a human be a condition for Copyright protection of an artificially generated work? If yes, at which step or steps in the Working Example would human intervention be required?

Yes, intervention by a human should be a condition for Copyright protection of artificially generated work. For instance, creative data selection and/or definition of the particular goal or objective to be achieved by the AI entities.

- 17) Should originality be a condition for Copyright protection of an artificially-generated work?

Originality should be a condition for protection, however derived works shall be protected irrespective of whether the works from which they are derived or which are included within them can have copyright protection applied to them.

- 18) What other requirements, if any, should be conditions for Copyright protection of an artificially-generated work?

There should be no other conditions (requirements, restrictions, limitations or exceptions) for Copyright protection on artificially-generated works

- 19) Who should be the original owner of the Copyright on an artificially-generated work?

See answer to the question No 7.

- 20) What should be the term of Copyright protection for an artificially-generated work?

The term of Copyright protection for an artificially-generated work should not be longer than term of copyright protection for regular works.

- 21) Should Economic Rights differ between artificially-generated works and regular works?

No

- 22) Considering existing exceptions to Copyright, should any exceptions apply differently to artificially-generated works versus other works?

No

- 23) Should there be any new exceptions to Copyright specifically applicable to artificially generated works?

No

- 24) Moral Rights

- a. Should moral rights be recognized in artificially-generated works?

Yes

- b. If yes, what prerogatives should the moral rights include (for example, the right to claim authorship of the work, the right to object to any distortion, mutilation or other modification of the work)?

The author of a work will have the following moral rights: to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation

- c. If yes, who should exercise the prerogatives of moral rights?

The author or his or her heirs.

## **B. Related Rights protection of artificially-generated works**

- 25) Considering existing Related Rights, should any Related Rights apply to artificially generated works?

Yes

26) Should there be any new Related Rights specifically applicable to artificially-generated works?

No

27) If an existing or new Related Right is applicable to artificially-generated works, what requirements should be conditions for protection?

To artificially-generated works and performances - originally and result of creative act  
To artificially-generated films, phonograms, broadcasts and databases - substantial qualitative or quantitative investment

28) Which Related Rights' economic rights and moral rights should apply to artificially generated works?

The following moral rights for creators of artificially generated performance:

- 1) to require that he or she be identified as a performer, except in cases when such right is not possible due to the type of use of the performance;
- 2) to object to any distortion, modification or other transformation of his or her performance, which may harm the reputation of the performer.

No moral rights for creators of films, phonograms, broadcasts and databases.

The following economical rights for creators of artificially generated films, phonograms, broadcasts and databases:

- 1) to communicate the object to the public;
- 2) to publish the object;
- 3) to publicly perform the object;
- 4) to distribute the object;
- 5) to broadcast the object;
- 6) to retransmit the object;
- 7) to make the object available to the public by wire or by other means, so that it is accessible in an individually selected location and at an individually selected time;
- 8) to lease, rent or to publicly lend originals or copies of an object;
- 9) directly or indirectly, temporarily or permanently reproduce the object;
- 10) to translate an object;
- 11) to arrange, to adapt for stage or screen, or to otherwise transform an object.

29) Who should be the original owner the Related Right?

The original owner of the Related Right will be performer, creators of films, phonograms, broadcasts and databases.

30) What should be the term of protection of the Related Right?

Similar to regular Related Right objects.

31) Please comment on any additional issues concerning any aspect of Copyright protection and Related Rights protection for artificially-generated works you consider relevant to this Study Question.

The protection of artificially generated works and related rights objects should be as little as possible different from the protection of ordinary objects. Legislation should include as few technological concepts and technical solutions as possible. Legal norms must not depend on the rapid development of technologies. It is essential to maintain the basic rule that only human (natural person) can be creative, but an AI entity can only do what human has taught to it.

32) Please indicate which industry sector views provided by in-house counsel are included in your Group's answers to Part III.

Lawyers, educational sector, broadcasting sector.