

13. ARTIFICIAL INTELLIGENCE AND COPYRIGHT: THE AUTHORS' CONUNDRUM

Ultimately, this paper aims to determine whether AI-produced works should be protected under copyright law

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ABSTRACT

In the last few years, the world witnessed the generation of creative works by artificial intelligence (AI). The development of artificial intelligence towards technologies capable of autonomous creation brings to the fore several interesting yet muddled copyright questions. The questions include whether a man-made machine, or intelligent agent, may be regarded as an 'author' in the eyes of copyright law.

relating to AI-produced works. Section IV considers the possible approaches to the said issues relating to AI-produced works, particularly whether AI-produced works should be protected at all, and if yes, who should enjoy the rights with the goals of copyright law in mind. This article ends with a conclusion in Section V.

2. ISSUES ON AUTHORSHIP OF AI-PRODUCED WORKS

The discussion in this section is divided into two parts: the first considers the source of AI-produced works and the questions of originality and authorship related to it; the second discusses whether a non-human entity may be treated as an 'author' under copyright law, a broader and more general question of which the question whether an Intelligent agent can be an 'author' is a subset.

A. THE QUESTION OF ORIGINALITY

A pre-requisite for a literary, musical, or artistic work to be protected by copyright is that it shall be 'original'.¹² 'Originality' under copyright law means 'the expression of the idea must originate from the author in the sense that the work must not be a copy166 Tw1(l)-19 (2o.72 150.0 0.0 u(1.3 (t)-3.3h (er)-2.6 e w)-10 (o)-11.4 (r)-2.6k(t)-3.4 (')-3.4 (.)]TJEMC /Span <

3. THE LEGAL POSITION IN MALAYSIA

The CA 1987 of Malaysia defines an 'author' in relation to the type of work involved.³⁹ 'Author' of a literary work is defined as 'the writer or the maker' of the work while 'author' of a musical work means 'the composer' and 'author' of an artistic work other than photographs refers to 'the artist.'⁴⁰ In respect of photographs, films, sound recordings, or broadcasts, the term 'author' generally refers to the person by whom the arrangements for the making of the work were undertaken.⁴¹ In respect of literary, musical or artistic works, the 'author' appears to be necessarily a human being whereas in respect of photographs, films, sound recordings, or broadcasts, it is possible for a non-human entity be the 'author'.⁴² For example, it was held in **MediaCorp News Pte Ltd & Ors v MediaBanc (Johor Bharu) Sdn Bhd & Ors** that the author of a broadcast could be either the person or corporate entity transmitting the program who was responsible for

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agent may be regarded as a 'qualified person' and thus an 'author', it does not resolve the problem with the copyright duration in AI-produced literary, musical, or artistic works.

Another question that may arise with respect to corporate authors is whether they enjoy moral rights like individual authors do. This question was raised in *Aktif Perunding Sdn Bhd v ZNVA & Associates Sdn Bhd*

which the court first found that the plaintiff's engineering team was the 'artist' of certain mechanical and electrical engineering drawings within the meaning of 'author' in section 3 of the CA 1987. However, since the works were

commissioned by the main contractor

action had subsisted and vested in the author immediately before his death. It was held that the reference to the author's death and personal representative indicates Parliament's intention to confine moral rights to individual authors only.⁵⁷

Another reason for the court's holding that moral rights are only available to individual authors, is the provision in section 25(2)(b)(ii) of the CA 1987 which expressly provides for an author's integrity right in respect of distortion, mutilation or modification of a work that might reasonably be regarded as adversely affecting the

An analogy may be made between photographs and AI-produced works. Consider the role played by an individual user in taking photographs using an AI-powered camera. The AI of such a camera will automatically adjust the settings for a good shot depending on the type of the subject matter and other factors such as the light conditions. It is debatable whether the contribution by the individual user in the creation of photographs justifies the user being treated as the 'author' of the photographs. Yet, copyright law clearly does not vest copyright of the photographs in the AI programmer or the company developing the AI-powered camera, but vests it in the individual user. For instance, the 'author' of a photograph is defined under the CA 1987 as 'the person by whom the arrangements for the taking of the photograph were undertaken.' It appears that it is commonly accepted that the individual user using an AI-powered camera falls within the definition of an 'author' despite the little contribution which may be nothing more than aiming the camera on the object and pressing the shutter button.

whether AI-produced works are indistinguishable from human-created works and whether there is any real demand from the market or the public for such works.

With the advancement of AI technology, where creative works may be produced easily and instantly, warrants serious contemplation and deliberation on whether

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