

Copyright in the age of AI



By [Brendon Ambrose](#)

10 Jan 2018

Hollywood flirted with Artificial Intelligence (AI) long before it became mainstream, portraying it as an adversary, pitting man against machine. It is no secret though, in light of what AI actually looks and behaves like, that it got the whole narrative around AI patently wrong. What Hollywood is right about is the discourse around the rise of the machines, but outside of reel life, machines have proven to be creators rather than conquerors.



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Take for example musician Taryn Southern, who is using AI platforms to create an entire album called *I AM AI*. Southern composed her new single “Break Free” using an open source AI platform called Amper Music. She merely selected the genre, the instruments and the beats per minute, while Amper created the musical verses. The musical verses were then arranged by Southern into the backing track, which were then layered beneath her vocals.

For the thriller film *Morgan*, the IBM Watson supercomputer was tasked to make the scariest movie trailer possible. In making the trailer, Watson analysed the visual and audio composition of 100 classic horror movies, to learn what is “scary”. This trailer was created by Watson using multiple sources of data, ostensibly input by multiple humans, as well as new information Watson itself created.

Hollywood may have fictionalised AI but as these examples suggest, artists and organisations are in fact leveraging AI, giving them an unprecedented form of self-expression. As the sophistication of AI continues to grow, so will the work it produces.

The law of copyright may currently be one step behind the advances in AI. Broadly speaking, copyright - governed by the Copyright Act - protects certain defined “works”, such as computer programs, films, literary, musical and artistic works. Traditionally, the creation of these works has been a strictly human endeavour. The advances in AI, however, have resulted in a paradigm shift, in that sufficiently “smart” computers can now create their own “works” with little, or even no, human involvement.

The above movie trailer and pop song were created by AI, or at least by using the input of AI which brings us to the importance of the distinction between a computer aided work and a computer generated work. The trailer is work made by a person using the computer as a tool or instrument. Southern’s work was made by a computer where it is not possible to attribute the resultant work directly to the efforts of any person causing the work to be made.

The authorship and ownership of computer-aided works raise far fewer issues than computer-generated works so, for current purposes, computer-generated works will be the focus. Computer-generated works raise some interesting questions in terms of copyright, to which there are currently no clear answers. These questions are:

Who would be the author of a work created by an AI?

Section 1, paragraph (h) of the Copyright Act, under the definition of “author”, states that “if a literary, dramatic, musical or artistic work or computer program is computer-generated” the author would be the person “by whom the arrangements necessary for the creation of the work were undertaken”. This phrase is, nevertheless, somewhat problematic. Is the person “by whom the arrangements necessary for the creation of the work were undertaken” the person who built the AI, the person who trained the AI, or the person who fed the AI specific inputs to the AI?

Who would be the owner of a work created by an AI?

In many instances, once the work has come into existence, the authorship and ownership of copyright subsisting in it coincide. This, however, is not always the case with the exceptions being set out in section 21 of the Copyright Act. That being said, as authorship of a work created by an AI is imprecise, it follows that ownership will also be difficult to determine.

Who would be responsible if an AI creates a work that infringes on another’s copyright?

There is currently no legal framework that provides for an AI as an infringing party or even if an AI can be an infringing party. Therefore, should an AI create a work which infringes on another’s copyright, it is unclear who would be held accountable for such infringement. It may be the person “by whom the arrangements necessary for the creation of the work were undertaken” but, amongst other issues, this “person” is very hard to accurately ascertain.

As things currently stand, we are in uncharted waters in regulating and managing AI created works, without the certainty required to address these new legal concerns. This leaves policy makers and industry partners with some serious and complex work to develop a legal framework that is both flexible and comprehensive.

Perhaps we can request Watson to do it for us.

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