



**Welcome!**



# Artificial Intelligence and Copyright in the European Union

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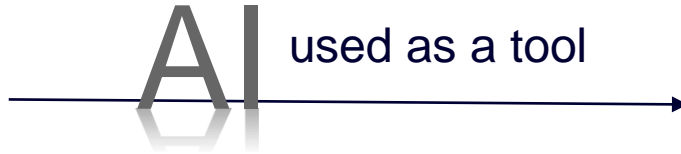
# **I. Introduction**

## Definition of AI

- **European Parliament resolution** of 16 February 2017 with recommendations to the Commission on '**Civil Law Rules on Robotics**'
- **Characteristics** of AI or 'smart robots':
  - the **capacity to acquire autonomy** through sensors and/or by exchanging data with its environment (inter-connectivity) and the analysis of those data;
  - the **capacity to learn** through experience and interaction;
  - the form of the robot's physical support;
  - the **capacity to adapt its behaviour** and actions to the environment;
  - (absence of life in the biological sense).

## Employment of AI in the creation of works

- **Computer assisted (aided) works (CA-works)**



“Idea” / selection & setting  
of parameters



- **AI generated works (AIG-works)**



Programming /  
operating

Autonomous creation  
after initialization



## **II. The Issue of AI Authorship**

## Current Stand of the Copyright Law in the EU

- Harmonized definition of „copyright work“

Art. 1 (3) **Council Directive** of 23 April 2009 **on** the legal protection of **computer programs** (2009/24/EEC):

A computer program shall be protected if it is original in the sense that it is **the author's own intellectual creation**. No other criteria shall be applied to determine its eligibility for protection.

- European Parliament on AI and intellectual property rights:

**'no legal provisions that specifically apply to robotics, but that existing legal regimes and doctrines can be readily applied to robotics, although some aspects appear to call for specific consideration'**

## Current Stand of the Copyright Law in Germany

- The “**Human Author**” requirement:
- Sec. 11 German Author’s Right Act –

Copyright protects the **author in his intellectual and personal relationships to the work** and in respect of the use of the work. It shall also serve to ensure equitable remuneration for the use of the work.

- Sec. 2 (2) German Author’s Right Act –

Only the **author’s own intellectual creations constitute works** within the meaning of this Act.



## Copyrightable works under the current German law

- **Computer aided works**
  - AI is used by human author as a ‘tool’
    - ⇒ Human **contribution to the creation**  
(Contribution to the creation of the tool is not sufficient)
    - ⇒ Individuality
    - ⇒ Copyright protection
  
- **Computer generated works**
  - **Autonomous creation** by AI
    - ⇒ No human contribution
    - ⇒ No individuality
    - ⇒ No Copyright protection

## Computer Generated Works under UK Law

- **Sec. 1 (1) U.K. Copyright, Designs and Patents Act 1988 (CDPA)**
  - (1) Copyright is a property right which subsists in accordance with this Part in the following descriptions of work—
    - (a) **original** literary, dramatic, musical or artistic **works**, [...]
- „**Originality**“ if „sufficient labor, skill and judgment“ have been applied.
- **Sec. 9 (3) CDPA:**
  - (3) In the case of a literary, dramatic, musical or artistic work which **is computer-generated**, the author shall be taken to be the person by whom **the arrangements** necessary for the creation of the **work are undertaken**.
- **Sec. 178 CDPA:**
  - “**computer-generated**”, in relation to a work, means that the work is generated by computer **in circumstances such that there is no human author of the work**.

# Copyright Protection for AI-generated works in the Future



## Shall AI generated works fall into public domain?

- **Arguments pro:**
  - No dilution of human uniqueness
  - Free access to non-human works
- **Arguments contra:**
  - No incentive
  - No reward
  - Replacement of human creations by 'free' AI generated works
  - Less works under Fair Dealing Doctrine, e.g. for
    - private study or research;
    - criticism or review,
    - caricature, parody etc.;
    - abstracts of scientific and technical articles;
    - educational use...

## Conferment of rights in the AI-G-works – To whom?

- **The author of the computer program**
  - Article 2 **Council Directive** of 23 April 2009 **on** the legal protection of **computer programs** (2009/24/EEC):
    - (1) The author of a computer program shall be the **natural person** or group of natural persons **who has created the program or**, where the legislation of the Member State permits, the **legal person designated as the rightholder** by that legislation.
  - Article 1 (2) **Council Directive** 2009/24/EEC:
    - (2) Protection in accordance with this Directive shall apply to the **expression in any form of a computer program**. [...].
      - Extend „**expression**“ of the software to encompass AI-G-works (contrary to ECJ judgment of 22 Dec. 2010 – C-393/09 – BSA/Ministerstvo kultury).

## Conferment of rights in the AI-G-works – To whom?

- **The owner / user / operator of the computer program**
  - **Article 3 Council Directive 91/250/EEC**– Beneficiaries of protection  
Protection shall be granted to all **natural or legal persons** eligible **under national copyright legislation** as applied to literary works.
  - **Sec. 9 (3) U.K. CDPA:**  
The author shall be taken to be the **person by whom the arrangements** necessary for the creation of the work **are undertaken.**

## Do we need an Artificial Person?

- **European Parliament resolution** of 16 February 2017  
**‘Civil Law Rules on Robotics’**

Whereas, ultimately, the **autonomy of robots** raises the question of **their nature in the** light of the **existing legal categories** or whether a **new category** should be created, with its own specific features and implications.



## Do we need a Copyright at all?

- **Ancillary rights**
  - Performers
  - Music producers, labels
  - Motion picture producers
- **New ancillary right** for the user / operator of AI [similar to sec. 9 (3) CDPA]
  - Exploitation rights only
    - Right to duplicate
    - Right to distribute
    - Right to display
    - Right to publically present
  - **Duration** = e.g. 70 years as of creation (50 years as of publication) of AI work.
  - **Transferability**

## ... again: U.K. Copyright, Designs and Patents Act

- **Sec. 79 Exceptions to right.**
  - (1) The right conferred by section 77 (**right to be identified as author or director**) is subject to the following exceptions.
  - (2) The right **does not apply in relation to** the following descriptions of work—
    - (a) a computer program;
    - (b) the design of a typeface;
    - (c) any **computer-generated work**.
  
- **Sec. 81 Exceptions to right.**
  - (1) The right conferred by section 80 (**right to object to derogatory treatment of work**) is subject to the following exceptions.
  - (2) The right **does not apply to** a computer program or to any **computer-generated work**.

**Thank you very much for your attention!**

## Questions? – Please contact me

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