

Writer: Madelyn Luther

AI: Creativity, Copyright, and Personhood

The rise of AI has, understandably, raised concerns about how the technology will impact intellectual property, copyright, and creativity. Artificial intelligence, or AI, is an evolving technology that computer scientists have just begun to develop. It is extremely difficult to define AI because of its vast capabilities and applications. Computer scientists and researchers Shukla Shubhendu and Jaiswal Vijay define AI as “a branch of computer science concerned with the study and creation of computer systems.”¹ They argue that AI exhibits some form of intelligence, whether that be systems that can learn from existing data to create new concepts and tasks, or use data to “reason and draw useful conclusions about the world.” Some question whether this technology is capable of ‘creating’ in the same sense humans are.

Artificial intelligence will undoubtedly forever change the field of intellectual property law. The field will definitely face great expansion in the face of developing AI technologies. AI raises significant questions as it relates to intellectual property law such as whether current intellectual property laws can be applied to artificial intelligence and how the technology will impact real creators and inventors.

The rise of AI is not the first time that legal questions of non-human creation and copyright laws have been raised. A six-year legal battle between PETA and photographer David Slater involved how to attribute authorship to the widely publicized 'Monkey Selfie.' The selfie² was an image taken as a result of a situation devised by



David Slater via Wikimedia Commons

Slater where Naruto, a macaque living in the jungles of Indonesia, was able to snap the iconic

¹ [Shukla Shubhendu and Jaiswal Vijay](#)

² [Wikimedia Commons](#)

shot because of how Slater had set up his camera. After a series of appeals, including an appeal in which U.S. District Judge William Orrick decided that Naruto cannot own the intellectual property rights to the handful of pictures that were taken,³ PETA and Slater arrived at a settlement.⁴ Furthermore, the U.S. Copyright Office was inclined to comment on the case, stating that “a photograph taken by a monkey” lacks human authorship.⁵ They will register “an original work of authorship, provided that the work was created by a human being.” Additionally, the office will not register works that are:

Produced by a machine or mere mechanical process that operates randomly or automatically without any creative input or intervention from a human author. The crucial question is “whether the ‘work’ is basically one of human authorship, with the computer [or other devices] merely being an assisting instrument, or whether the traditional elements of authorship in the work (literary, artistic, or musical expression or elements of selection, arrangement, etc.) were actually conceived and executed not by man but by a machine.”⁶

These regulations are intended to be applied to technologies that are not AI and capable of performing intelligent tasks, however, the precedent here is useful to understand.

Naturally, with the development of new technologies comes apprehension and fear. Some of the fear surrounding AI includes that it is predicted to change the global economy,⁷ alter job prospects in certain industries,⁸ and be used to plagiarize or “algiaise” college essays.⁹

Algiamism is a recent term that is used to describe how some students use AI to complete their

³ [David Kravets](#)

⁴ [Peta Statement](#)

⁵ [US Copyright Office](#)

⁶ [US Copyright Office](#)

⁷ [pwc](#)

⁸ [Nick Bilton](#)

⁹ [Marie Fincher](#)

schoolwork, such as writing essays, for them. Some fears of the developing technology are well-grounded, including the tendency for many different types of AI to discriminate—perhaps most notably, face recognition technologies that are used by law enforcement and that have been proven to racially profile people.¹⁰ Many of us tend to focus more on these negative aspects of AI and dismiss its potential benefits, aiding in a multitude of sectors such as finance, health care, criminal justice, journalism,¹¹ and more.¹² AI is efficiency and efficiency is profit in the eyes of higher-ups across many different fields. So whether people like it or not, the implementation of AI across many different fields is inevitable. And generally, people are not well informed on what AI is and how it functions. Some have a tendency to anthropomorphize AI, subconsciously equating it to human action and invention, which comes with a host of negative consequences.¹³ This gives people an inaccurate idea of what AI is and how it functions. It may also make them more likely to fear the technology.

The field of intellectual property law must be expanded to account for AI. As it stands currently, because of all the issues and difficulties that arise when attempting to regulate AI, not many countries have regulations on it.¹⁴ AI is, as previously stated, a somewhat ambiguous and very broad term, so it is difficult for lawmakers to regulate it. Despite its challenges, in the coming years, lawmakers should brace themselves for the further development and subsequent regulation of AI. Targeted approaches to regulating specific types of AI may benefit Americans. Though AI has numerous upsides and potential profitability, which proponents of nonintervention highlight so that AI can continue to make advances, the technology will need to be regulated as it has already caused significant concerns in a number of fields. In intellectual

¹⁰ [ACLU statement](#)

¹¹ [Corinna Underwood](#)

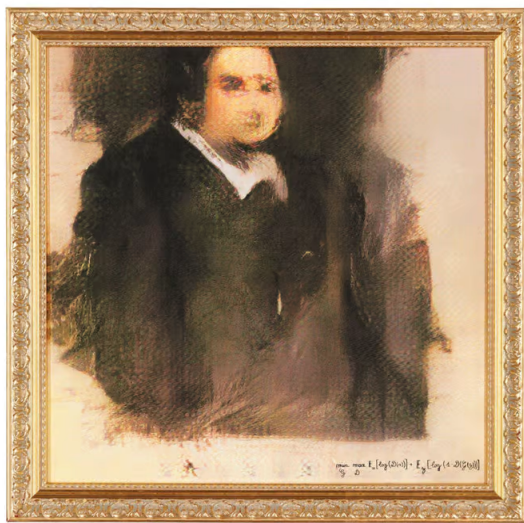
¹² [Darrell M. West and John R. Allen](#)

¹³ [Naveen Joshi](#)

¹⁴ [Amitai Etzioni and Oren Etzioni](#)

property law, AI raises questions about copyright law and attributing authorship to creative works produced with the help of AI such as literary works, songs, artistic works, and more.

One such artistic work that was created with the assistance of AI technology is *Edmond de Belamy*.¹⁵ This 2018 piece is a “generative Adversarial Network print” on canvas, signed with



Edmond de Belamy by Obvious (collective)

part of the algorithm that was used to create it. It was published by Obvious Art, Paris, and sold through Christie’s at over forty times the estimated sale price—the price realized a whopping \$432,500.

Clearly, at least some people see the artistic merit of AI-generated art and are willing to pay a hefty price for it. Ziv Epstein et al. use this work as a basis for a recent study in which they analyzed the

psychological and financial effects of

anthropomorphizing AI technology.

When people anthropomorphize AI, they falsely attribute human characteristics to the technology. Epstein et al. found in their study that there is great variety in the extent to which people anthropomorphize AI.¹⁶ They used the case of *Edmond de Belamy* as a basis for their research, noting their test subjects’ opinions on the art piece. When their test subjects subconsciously equate AI generation of the piece to the process of human invention, they falsely attributed authorship of the art to the technology. Epstein et al. argue that this has dire consequences on authorship and creativity. They argue that there were many humans involved in creating the final art piece and attributing authorship to the AI alone dismisses these humans’

¹⁵ <https://www.christies.com/en/lot/lot-6166184>

¹⁶ [Ziv Epstein et al.](#)

involvement. Furthermore, Epstein et al. argue that the words used in the media and beyond to describe AI contributes to this anthropomorphization. When we say that AI is capable of “producing,” “creating,” or “understanding,” depending on the context, this can contribute to the general public’s tendency to anthropomorphize the technology.

Lawyers and scholars should begin asking themselves whether AI should have exclusive rights to their creations and inventions. It is tricky to discern whether these rights should be granted to the inventor of the technology and if that is a single individual, company, or group of people, or whether these rights should be given to the AI itself. And if creative rights are granted to AI, what does this mean for IP? What does this mean for humanity at large? These pressing questions will inevitably expand the field of intellectual property law. Artificial intelligence law may even become its own field of law someday.

To add, AI will have unprecedented impacts on real creators and inventors. Some wonder whether fields like journalism will become obsolete because of AI. Artificial intelligence is predicted to attack creatives first, slowly and increasingly taking over the field. Some computer engineers and analysts do not believe that AI will entirely replace journalists, but instead, they will supplement the work that is being written by journalists now. These engineers and analysts technology will focus on subjects in journalism that are drier like sports and finance rather than more creative pieces.¹⁷ Regardless, this is still a pressing and legitimate concern for journalists. If these predictions come true, AI could feasibly then impact job opportunities, salaries, and more, if it does not change the industry entirely.

Maybe artistic, literary, and journalistic works produced with the help of AI are just poor taste, something akin to kitsch art. Regardless of the artistic merit of these pieces, they are being created. This brings into question how the field of intellectual property law will respond to this

¹⁷ [Nick Bilton](#)

influx of AI ‘creation.’ Up-and-coming lawyers should keep their eyes out for AI and how it will impact intellectual property law. The field may experience great job growth and opportunities in the growing decades as creatives, inventors, educators, politicians, and more struggle to regulate the technology.