

AI-generated content – who owns the copyright?

Artificial intelligence (AI) is disrupting the way businesses are operating. Increasingly, AI businesses use technologies or chatbots, such as ChatGPT, to generate content. The question then arises as to the ownership of the content created by generative AI. Is it the user, the owner of the AI, or the AI (as well as its ultimate origins). This question is open to debate due to uncertainties surrounding human involvement and training data.

In the UK, the copyright of AI-generated content is a complex and evolving legal issue. Copyright law is designed to protect the creative work of humans, so determining the copyright ownership of AI-generated content is not a straightforward exercise.

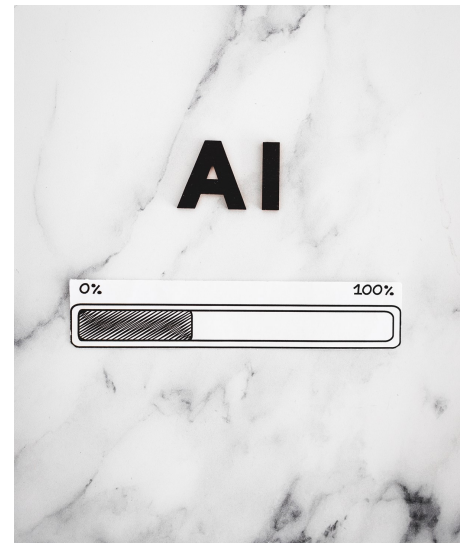
Type of tool

- **Human Involvement:** If a human is actively involved in the creative process of generating content with AI, such as providing input, guidance, or editing, they are more likely to be considered the author and copyright owner. In such cases, the copyright would typically belong to the individual or entity that contributed to the creative process.
- **No Human Involvement:** If AI generates content entirely on its own, with no direct input or guidance from a human, it can be challenging to determine copyright ownership. The UK's current copyright law doesn't specifically address this situation, so ownership might be unclear.
- **Employer-Employee Relationship:** If AI-generated content is produced by an employee during the course of their employment, the copyright would usually belong to the employer. This is a general principle of copyright law and applies to AI-generated works as well.
- **Licensing Agreements:** In some cases, AI-generated content may be created under specific licensing agreements or contracts. These agreements can define the ownership and usage rights of the generated content.

Copyright law in the UK

The following categories of works are protected under the Copyright, Designs and Patents Act (CDPA) 1988:

- Original literary, dramatic, musical, or artistic works which, in the case of literary, dramatic, or musical works, are recorded in some way.
- Sound recordings, films, or broadcasts.
- The typographical arrangements of published editions.



Both primary and secondary works are protected under English law, with primary works receiving stronger protection due to the requirement for creativity and originality.

Generally, for literary, dramatic, musical, or artistic works the author is usually the owner of the copyright unless such work was commissioned by an employer.

Content generated by AI can be copyrighted under English law. Section 178 of the CDPA defines computer-generated works as "generated by computer in circumstances such that there is no human author of the work."

Originality

Under UK law, in order for a work to be protected by copyright, it must be deemed 'original'. The courts have interpreted this requirement to mean that the work must result from the author's creative choices, skill, judgment and effort as well as exhibiting their personal touch.

Some of the AI tools draw from various sources, some of which might be copyrighted. In those cases, the test of originality is difficult to pass. In the current state, AIs create content by using existing content. However, if the user alters the output sufficiently, then the output could pass the test of originality.



Who is the author?

For a work to be capable of being copyrighted, its author(s) must be identifiable. This requirement serves both a formal and substantive purpose. From a formal perspective, a connection between the author and a relevant jurisdiction is necessary for copyright protection to be granted (based on the Berne Convention). From a substantive point of view, the identity of the author is linked to the assessment of originality.

In the context of AI-generated works, there are different possibilities:

- There is no author, as the AI cannot be deemed an author;
- The author is the user of the AI as he or she provides input;
- The author is the creator of the AI;
- The original authors of the content used to train the AI;
- The AI cannot be regarded as the author as the CDPA does not recognise a non-human as the author or owner of a work.

Can a work generated through AI be copyrighted?

In the UK, the Copyright Designs and Patents Act 1988 expressly provides for copyright protection of computer-generated works that do not have a human creator. In those cases, section 11 stipulates that the author of such work is “the person by whom the arrangements necessary for the creation of the work are undertaken”. The protection afforded is 50 years from the date the work is made.

For literary, musical or artistic works - where the concept of originality applies – copyright can only arise if the work is the author’s own intellectual creation. While a work will always have an author under English law, such an author may have little connection with the direct creative input. Indeed, the author could be the creator of the AI system and would not have made any direct or substantive creative input. The person “by whom the arrangements necessary for the creation of the work are undertaken”, identified in section 9(3) of the Copyright Designs and Patents Act 1988, could be the user of the AI and the person most closely connected and, therefore, the author. However, such a view has not been confirmed by the courts in the UK. Finally, the original authors of the content used to train the AI can also be the owner. This last option has, in fact, generated lawsuits in the US and could ultimately lead to potential claims in the UK.

With AI systems being more sophisticated and generating content more independently with very little direct input, the question remains as to who the author is. In those cases, it is worth noting that the licencing agreement might provide an answer. Indeed, platforms like ChatGPT, Midjourney and DALL-E 2 stipulate that the user owns the copyrights.

The concept of originality and author do not seem appropriate in the AI context. The Government has, however, made clear that there will not be amendments to the copyright provisions at this stage.

We can help...

AI-generated work can be copyrighted if it meets the requirements of originality and authorship. Determining ownership will depend on who exercises the required creative input. As the law is not entirely adapted to those new technologies, it can be confusing. Moreover, it could be expected that the law will be amended to fill the gap. It is, therefore, advisable to consult with a legal expert who specialises in intellectual property and copyright law for guidance regarding AI-generated content and copyright ownership in the UK.

In preparing and maintaining this publication, every effort has been made to ensure the content is up to date and accurate. However, law and regulations change continually and unintentional errors can occur and the information may be neither up to date nor accurate. The editor makes no representation or warranty (including liability towards third parties), express or implied, as to the accuracy, reliability or completeness of the information published in this publication.

Talbot Walker

16 Bridge Street
Andover
Hampshire, SP10 1BJ

01264 363 354
enquiries@talbotwalker.co.uk
www.talbotwalker.co.uk

/talbot-walker-llp
/@TalbotWalker