The Protection of Artificial Intelligence (AI)-Generated Creative Works Through Authorship: A Comparative Analysis Between the UK and Nigerian Copyright Experience to Determine Lessons to Be Learnt from the UK

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Abstract : The nature of AI-generated works makes it difficult to identify an author. Although, some scholars have suggested that all the players involved in its creation should be allocated authorship according to their respective contribution. From the programmer who creates and designs the AI to the investor who finances the AI and to the user of the AI who most likely ends up creating the work in question. While others suggested that this issue may be resolved by the UK computer-generated works (CGW) provision under Section 9(3) of the Copyright Designs and Patents Act 1988. However, under the UK and Nigerian copyright law, only human-created works are recognised. This is usually assessed based on their originality. This simply means that the work must have been created as a result of its author's creative and intellectual abilities and not copied. Such works are literary, dramatic, musical and artistic works and are those that have recently been a topic of discussion with regards to generative artificial intelligence (Generative AI). Unlike Nigeria, the UK CDPA recognises computer-generated works and vests its authorship with the human who made the necessary arrangement for its creation . However, making necessary arrangement in the case of Nova Productions Ltd v Mazooma Games Ltd was interpreted similarly to the traditional authorship principle, which requires the skills of the creator to prove originality. Although, some recommend that computer-generated works complicates this issue, and AI-generated works should enter the public domain as authorship cannot be allocated to AI itself. Additionally, the UKIPO recognising these issues in line with the growing AI trend in a public consultation launched in the year 2022, considered whether computer-generated works should be protected at all and why. If not, whether a new right with a different scope and term of protection should be introduced. However, it concluded that the issue of computer-generated works would be revisited as AI was still in its early stages. Conversely, due to the recent developments in this area with regards to Generative AI systems such as ChatGPT, Midjourney, DALL-E and AIVA, amongst others, which can produce human-like copyright creations, it is therefore important to examine the relevant issues which have the possibility of altering traditional copyright principles as we know it. Considering that the UK and Nigeria are both common law jurisdictions but with slightly differing approaches to this area, this research, therefore, seeks to answer the following questions by comparative analysis: 1)Who is the author of an AI-generated work? 2)Is the UK's CGW provision worthy of emulation by the Nigerian law? 3) Would a sui generis law be capable of protecting AI-generated works and its author under both jurisdictions? This research further examines the possible barriers to the implementation of the new law in Nigeria, such as limited technical expertise and lack of awareness by the policymakers, amongst others.

Keywords : authorship, artificial intelligence (AI), generative ai, computer-generated works, copyright, technology
Conference Title : ICPRIPL 2024 : International Conference on Property Rights and Intellectual Property Law
Conference Location : Nice, France
Conference Dates : September 16-17, 2024