

THE CAPABILITY OF ARTIFICIAL INTELLIGENCE TO GENERATE OBJECTS OF INTELLECTUAL PROPERTY LAW, EXEMPLIFIED BY CHOREOGRAPHIC WORKS

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Abstract. The rapid development of artificial intelligence (hereafter referred to as AI) and its dynamic application in creative fields raise conceptual questions regarding the nature of authorship and the definition of intellectual property rights over the results of works generated by AI. The implementation of artificial intelligence poses challenges for artists, blurring the lines between the outputs of artificial intelligence, human creativity, and the legal frameworks pertaining to plagiarism and copyright.

The article focuses on the ability of AI to generate intellectual property rights on the example of choreographic works, determining who owns the copyright and possible approaches to solving this problem. The article discusses the relevant aspects of national legislation, the international context, and how other jurisdictions have addressed similar issues.

Keywords: artificial intelligence, copyright, choreographic work, originality, anthropocentrism, intellectual property, sui generis.

Relevance. The increasing prevalence of AI in creative industries represents not only a technological shift but also a significant legal challenge necessitating careful consideration and potential adaptation of existing legislation. The capacity of AI to emulate and even surpass human creativity in certain domains compels a re-evaluation of traditional legal concepts, such as authorship, which, prior to the digital age, were conventionally considered anthropocentric. This technological disruption bears a direct causal relationship to the relevance and applicability of current intellectual property laws. Focusing on choreographic works provides a unique lens through which to examine the complexities of AI-generated intellectual property, as dance is a distinctive art form encompassing both creative expression and action in motion, thereby raising questions about the exhaustive definition of a choreographic work, its proper fixation, and the component of originality within the context of AI.

Statement of the Problem. For decades, the *droit d'auteur* system of copyright has maintained the position that only a natural person can be an author, as this process is characterized by creativity, the principal prerequisite of which is originality [1]. Given the contemporary

understanding of copyright law, the legal basis for the protection of AI-generated art is primarily contingent upon the degree of human involvement in its creation.

Choreography, in contradistinction to other objects of copyright, inherently possesses an element of physical human performance. Certain professions necessitate human agency; consequently, works demanding emotional intelligence, creativity, empathy, and critical thinking are considered less amenable to automation [2]. In our view, a choreographic work constitutes a four-dimensional entity necessitating physical execution (as a material embodiment), space, and time. This introduces an additional layer of complexity when considering the role of AI – can AI not only conceive a sequence but also “perform” it? This underscores a potential lacuna in current legal definitions, which predominantly focus on human creators and their tangible works.

Core Content.

The Nature of AI. Research and legal regulation cannot progress without defining the fundamental characteristics of AI systems. Therefore, within this context, it is pertinent to mention how neural networks function. According to the definition provided by ISO/IEC TR 24028:2020, artificial intelligence is “the capability of an engineered system to acquire, process and apply knowledge and skills” [3].

AI is increasingly employed as a tool for the creation of artistic works, including choreographic. AI algorithms possess the capability to analyse extensive datasets of human movements, encompassing diverse dance styles, and subsequently generate novel sequences of motion. Tools currently exist that can produce unique dance routines tailored to specific styles and preferences [4].

Ownership of Inventions Generated by AI. The ownership of an invention, according to the doctrine of patent law, encompasses two scenarios: that of a sole inventor and that of joint inventors. However, contingent upon the underlying configurations of the AI, there can be up to three potential claimants to an AI-generated invention, namely: (a) the inventor of the AI; (b) the owner of the AI by contract, licence, or assignment; and (c) the employee of the owner or the licensed or assigned entity who is the programmer or operator of the AI. In this context, the AI inventor, the AI licensee, the AI itself, and the employee of the licensee who operates the AI, depending on how and by whom the AI was programmed, may possess direct or indirect legal grounds to claim authorship of an invention derived through the use of AI [5].

In simpler terms, everything generated by AI is essentially the quintessence of all that humanity has already created, compressed into a single repository. AI lacks the capacity to create something genuinely novel; rather, it compiles a result based on its programming. Using choreographic works as an example, if an AI is trained on a vast dataset of existing choreographic pieces, its output may inadvertently replicate or closely resemble existing works, thereby failing the originality test under Ukrainian and international copyright law. It is with good reason that artists and scholars assert that creative works produced by artificial intelligence lack the emotional depth and intentionality inherent in human-created works [6].

Equally important is a return to the legal nature of copyright protection for a choreographic work: what constitutes a choreographic work and what characteristics must this work possess. In Ukraine, [choreographic] artworks are protected by copyright provided they are original and fixed in a tangible medium of expression. Furthermore, the legislation defines nuances such as the

duration of copyright, which is linked to the life of the author, and provisions for the inheritance of copyright, which stipulate that only a natural person can be an author.

In our opinion, a choreographic work should consist of a minimal number of sequential original movements. Given that basic movements exist within the art of choreography, these, in isolation, are not considered original and therefore do not constitute objects of copyright. However, a unique, original combination based on (or without) basic movements should be subject to copyright protection. This then begs the question: what implications do this have for AI?

On the one hand, the broad spectrum of definitions encompassing intellectual property objects suggests the existence of a legal framework that could potentially be adapted to novel forms of creativity, including those involving AI. However, in our view, specific definitions are necessary for fundamental categories of works, particularly for the concept of a “choreographic work” in the digital age. The inclusion of “choreographic works” as distinct objects of copyright in Ukraine is crucial for this analysis, as it affirms that such a work is recognized as a form of intellectual property warranting specific legal protection, irrespective of the creator's nature (human or AI). The inclusion of this concept would define the subject of our research. Whether AI can meet the criteria for authorship and originality typically applied to these human-created works will depend on this.

The diversification and specification of various works of art, particularly choreographic works, is necessary because copyright law itself distinguishes between different categories of creative and intellectual expression. For instance, works of fine art, literary works, musical compositions, dramatic works, and photographs possess distinct legal mechanisms due to their material expression, the presence of an inherent medium (cloud storage, hard drive, paper, CD/DVD etc.), and other factors. Reducing all works to a single definition in the context of AI generation could lead to disparate legal consequences. For example, in visual arts, AI can generate entire images based on textual prompts; in music, AI can generate melodies that a human composer can subsequently arrange further; in literature, AI can assist in drafting text or suggest plot points that a human author refines etc.

The differentiation of diverse types of artistic works within the context of AI application enables us to discern how the level and nature of collaboration between humans and artificial intelligence influence potential legal ramifications. In our opinion, a choreographic work stands alone among all types of works in that a human (natural person) can simultaneously be the author, the performer, the instrument, and the medium of the chirographical work. The intervention of AI into this equilibrium engenders a revolutionary approach to both the understanding of art and its legal protection.

Legal Status of Works Created by AI. The question of intellectual property rights in AI-generated works is a subject of ongoing discussion globally. Diverse jurisdictions are adopting varying approaches to this complex issue.

European Union. Directive 2001/29/EC [7] traditionally considers authorship as the outcome of the intellectual creative labour of a natural person. This implies that a work must reflect the author's own intellectual creation.

At the national level of EU member states, this position is largely consistent. For instance, the German Copyright Act requires the “author's own intellectual creation” for the existence of a

copyright-protected work [8]. It is generally held that neither a machine nor a computer program can be an author; therefore, the “intellectual creation” is presumed to be of human origin.

In late 2020, the European Parliament adopted Resolution 2020/2015(INI) on intellectual property rights for the development of AI technologies [9]. The resolution defines an “artificial intelligence system” as “a system that ... displays intelligent behaviour by, inter alia, collecting and processing data, analysing and interpreting its environment, and taking action, with some degree of autonomy, to achieve specific goals.” The resolution distinguishes between the outputs of AI assisted by humans and fully autonomous AI outputs – “AI-generated creations”. In this regard, the Parliament emphasizes the legal subjectivity of AI technologies and points to the potential negative impact on incentives for human creators. Simultaneously, legal challenges are anticipated in regulating fully autonomous AI outputs and defining the fundamental characteristics of AI systems.

For comparison, the Court of Justice of the European Union in the “*Cofemel*” case stated that for the criterion of originality, “it is necessary and sufficient that [the work] reflects the personality of its author as an expression of his free and creative choices” [10]. Although the case concerned the design of clothing, the ruling's formulation indicates its universality for all categories of works listed in Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society, which includes choreographic works as “literary and artistic works”. Thus, from a traditional perspective within the context of EU legislation, an original choreographic work should not be a mere imitation of existing movements or dance sequences. It must be the result of the choreographer's creative labour. To obtain copyright protection, a choreographic work must demonstrate not only novelty but also reflect the free and creative choices of the choreographer, bearing the imprint of their personality. Therefore, when we discuss an AI-generated choreographic work, a fundamental question arises: can AI possess “personality” and exercise “free and creative choices” in the sense understood by copyright law?

Within the EU, the so-called HUDERIA (Human Rights, Democracy, and the Rule of Law Impact Assessment) ethical code is under development [11]. This represents a methodology devised by the Council of Europe for evaluating the potential and actual impact of AI systems on these fundamental values. It is intended to provide a structured approach to assessing the risks associated with the design, development, and application of AI, particularly in the realm of copyright law. Crucially, HUDERIA employs an evidence-based approach. The methodology integrates knowledge of technical and sociotechnical governance for responsible AI innovation with expertise in human rights due diligence [12]. According to the assessment by the Centre for Democracy and the Rule of Law, the system is primarily oriented towards the protection of fundamental human rights and comprises the following stages: (1) AI system risk identification: determining whether the AI system poses a specific risk; (2) Impact assessment: engaging stakeholders to enhance the quality (accuracy) of the risk and impact level assessment of the AI system on the aforementioned rights, and the assessment itself; (3) Governance assessment: addressing sociotechnical and human rights, democracy, and rule of law-related questions; and (4) Mitigation of negative impact and AI system evaluation: identifying appropriate measures to mitigate the AI system's impact and ensuring ongoing evaluation [13].

The United Kingdom adopts a more inclusive approach to copyright in the context of AI-generated works. While sharing some similarities with the EU's requirement that a copyrighted work be the “author's own intellectual creation” and demonstrate the author's “personal touch”, Section 9(3) of the Copyright, Designs and Patents Act 1988 (CDPA) [14] explicitly stipulates that

the person who makes the “arrangements necessary for the creation of the work” is the author of the resulting copyrighted work. This position has been recently ratified by the UK government and the UK Intellectual Property Office, which conducted an open consultation in 2022 specifically on the application of Section 9(3) to generative artificial intelligence, concluding that Section 9(3) should remain in force.

At the same time, it is necessary to consider who establishes the “arrangements necessary for the creation of the work”: is it the AI developer who designed the algorithms and trained the model, or is it the user who provides the prompt, or both, or even neither? Each level embodies a different proportion of “humanity”:

First level: If the developers created the AI algorithms based on dance data and defined its parameters, they made the necessary arrangements.

Second level: If the user provided a specific prompt or parameters that led to a particular choreographic outcome, they made the “necessary arrangements”. The level of specificity and creative direction in the prompt will likely be a significant factor.

Drawing upon the current legal stance of the United Kingdom, copyright protection may subsist in AI-generated choreographic works. The challenge lies in clearly identifying the predominant “author” according to Section 9(3). This ambiguity necessitates further legal clarification as AI technology evolves.

The position of the United States, according to federal law, stipulates that copyright in works fixed in a tangible medium of expression vests in the author immediately upon creation (17 U.S.C. § 201) [15]. In the United States, the Copyright Office generally holds that copyright protection is available only for works created by human beings [16].

US case law reinforces the principle that a work must be of human creation. Even prior to the advent of AI, the case of “*Naruto v. Slater*” established that under the prevailing US Copyright Act, non-human animals cannot be considered authors and therefore lack the standing to sue for infringement of copyright in works they create. This raises the question: what commonalities exist between animals and artificial intelligence, and what distinguishes humans in this context?

Firstly, the absence of legal personhood (in most jurisdictions): Neither animals nor contemporary AI are generally recognized as legal entities capable of possessing rights, including copyright. They are treated as objects rather than subjects of law.

Secondly, the lack of conscious intent to create as humans do. While AI and some animals can produce outputs that visually resemble works (e.g., an anthill, a bird's nest, a photograph taken by a monkey), these are typically the result of instinctual behaviour rather than deliberate creative intent in the human sense. AI generates content based on algorithms and data, not its own conscious intention to express a particular idea or feeling.

Thirdly, conscious creative conception. Humans are capable of a conscious process of creation involving experiences, personal history, intention, choice, and the original expression of ideas, feelings, and images.

Fourthly, humans are autonomous creators capable of independently making decisions regarding the creation and use of their works.

The case of “*Thaler v. Perlmutter*” [17] directly addresses whether an artificial intelligence can be the author of a copyrightable work under US law. Dr. Stephen Thaler created an AI system called the “Creativity Machine”, which autonomously generated an image titled “A Recent

Entrance to Paradise”. Thaler applied to the US Copyright Office for registration of the copyright in this image, listing the “Creativity Machine” as the sole author and himself as the owner. The Copyright Office refused registration, citing its policy that copyright protection extends only to works of human authorship.

The case proceeded to the United States Court of Appeals for the District of Columbia Circuit, which, on March 18, 2025, affirmed the decision of the Copyright Office and the lower court. The appellate court held that the Copyright Act of 1976 necessitates that all works subject to copyright protection be created by a human being. Given that Thaler had identified a non-human entity (the “Creativity Machine”) as the sole author, the application for registration was rightfully denied. The court specifically noted that the term “author,” as employed in the Copyright Act, is traditionally understood to refer to a human. The court also rejected Thaler's argument that he should be considered the author under the ‘work-made-for-hire’ doctrine, as this doctrine pertains to the relationship between an employer and a human employee.

Indeed, an analogy can be drawn wherein the copyright in a choreographic work vests in the human choreographer, rather than in the software that generates a set of visual elements (movements). Similarly, in the case of visual art created by AI without significant human intervention, copyright, according to the court's decision, cannot be attributed to the AI itself. Therefore, in the United States, copyright traditionally safeguards this very manifestation of human intellectual endeavour.

The US Copyright Office has indicated that it will continue to monitor this emerging technology and may issue further guidance in the future [18]. Consequently, the current directive regarding “sufficient human authorship” could potentially support the future granting of copyright protection to AI-generated works, or portions or variations thereof.

China's approach to the definition of copyrightable works aligns with the aforementioned jurisdictions. According to the Copyright Law of the People's Republic of China, a work must be an original “intellectual achievement”. While the law does not specifically address copyright in AI-generated content, judicial practice is beginning to shape its stance.

The case “*Jing 0491 Min Chu No. 11279*” revolves around a copyright dispute concerning an image generated using the “Stable Diffusion” artificial intelligence software. Case Summary: In February 2023, Li Yunkai (the plaintiff) used the open-source AI software Stable Diffusion to create a specific image based on textual prompts and parameter adjustments. Li considered this image to be the result of his intellectual contribution. He shared this AI-generated image on a social media platform under the title “Spring Breeze Brings Tenderness”. Subsequently, it was discovered that another user, Liu Yuanchun (the defendant), a blogger on the Baijiahao platform, had used the image on his social media without attribution and with the plaintiff's watermark removed. The plaintiff contended that this unauthorized use without attribution and watermark removal infringed upon his copyright in the image and filed a lawsuit with the Beijing Internet Court.

The court had to grapple with several key issues: (1) Is an AI-generated image considered an “artwork” under Chinese copyright law? (2) Does the image meet the criteria of originality and intellectual creativity? (3) Could the plaintiff, by making modifications to the AI's output, possess copyright in the generated image?

In November 2023, the Beijing Internet Court ruled in favour of the plaintiff. The court determined that the AI-generated image did possess originality because the plaintiff had provided intellectual input through his prompts and parameter adjustments, reflecting his aesthetic preferences. The court also recognized him as the author of the image in this specific context, emphasizing his role

in guiding the AI to achieve the final result. Consequently, the court found that the unauthorized use of the image constituted copyright infringement. The court ordered the defendant to issue a formal apology to the plaintiff and pay compensation in the amount of 500 yuan.

This case is considered a landmark ruling as it was among the first in China to explicitly recognize copyright in an AI-generated image. The case has sparked debate within legal circles worldwide, as a similar analogy can be drawn with other works generated by AI. In both instances (image and choreography), the necessity of fixation in a tangible medium of expression is crucial for copyright protection. For choreography, this could be a video recording, notation, or motion capture data, similar to how an AI-generated image exists as a digital file. However, because choreography originates in the human mind and traditionally cannot be notated without material embodiment (i.e., the actual performance of the dance), a choreographic work encompasses sequences of movements in space and time, an element absent in the output provided by AI in isolation. This brings us back to the importance of standardizing the notation of choreographic movements at an international level.

In Ukraine, the legal status of AI-generated works is in a developmental phase. While traditional copyright law presupposes authorship by a natural person (human), there is a recognition of the unique nature of AI-generated content.

Ukrainian legislation, specifically Article 33 of the Law “On Copyright and Related Rights”, provides for a *sui generis* right for non-original objects generated by a computer program without direct human intervention. This could potentially apply to choreographic works created solely by AI. The subject of this right can be the owner or licensee of the computer program (AI). This right grants economic rights similar to copyright but does not include moral rights. The term of this *sui generis* right is 25 years, commencing on January 1st of the year following the year of the object's generation [19].

Ukrainian legislation recognizes and protects intellectual property rights in accordance with Article 41 of the Constitution of Ukraine [20], Chapter 35 of the Civil Code of Ukraine [21], the Law “On Copyright and Related Rights” [22], and other relevant legal acts.

Article 418 of the Civil Code defines intellectual property right as “the right of a person to the result of intellectual, creative activity or to another object of intellectual property right determined by this Code and other law”. This right encompasses both moral (personal non-property) rights and economic (property) rights. These rights are considered inviolable, meaning that no one can be deprived of intellectual property rights or restricted in their exercise, except in cases provided by law.

Article 420 of the Civil Code and Article 6 of the Law “On Copyright and Related Rights” provide a non-exhaustive list of objects protected by intellectual property law. This list includes “literary and artistic works, computer programs, databases, performances, phonograms, videograms, broadcasts (programs) of broadcasting organizations, scientific discoveries, inventions, utility models, industrial designs, trademarks, geographical indications, and trade secrets”. Particularly relevant to this discussion is the inclusion of “dramatic, musical-dramatic works, pantomimes, choreographic and other works created for stage performance” in this list.

This is precisely where the question of AI authorship arises. According to Ukrainian legislation, specifically Article 1 of the Law “On Copyright and Related Rights”, an “author” is defined as “a natural person who has created a work through their creative labour”. From this, it can be inferred that current legislation does not grant legal capacity to AI. The traditional anthropocentric definition of authorship in Ukrainian copyright law directly impedes the

recognition of AI as a legal creator of choreographic works, regardless of the level of creativity or originality that AI may demonstrate.

While AI can serve as a tool employed in the creative process, the human who provides input and guides the AI's process is typically considered the author of the final output, to the extent that the human contribution is significant and creative. If a work is generated solely by AI without substantial human intervention, it generally does not qualify for copyright protection in Ukraine because it lacks a human author. Even if an AI system is capable of generating highly original and complex choreography, the absence of a human author, as currently defined, means that the work does not automatically fall under copyright protection according to traditional principles.

The term *sui generis*, derived from Latin, signifies “of its own kind” or “unique” [23]. In intellectual property law, it pertains to a specific right created to protect something that does not fit neatly into existing categories of copyright or patents. The introduction of *sui generis* rights for non-original AI-generated content in Ukrainian legislation indicates a recognition that traditional copyright, with its emphasis on human authorship and originality, may inadequately regulate the legal status of AI creations. The aforementioned diversification of artistic works facilitates a deeper understanding of the legal challenges and potential solutions at the intersection of *sui generis* concepts, artificial intelligence, and art. This prevents us from drawing overly narrow conclusions based on a limited sample and allows for a more robust and adaptable legal discussion.

For comparison, copyright has been registered in Ukraine for works that include AI-generated images. However, as reported by the official office, if an object is created solely by AI, copyright does not arise [24].

This technological advancement directly challenges the traditional notion that only humans can create original works, including choreographic ones. While AI can generate movements, whether these movements are truly “original” with an element of novelty, in a legal sense, remains open, particularly if the AI is trained on existing, previously copyrighted material. The AI training process inherently involves analysing and potentially reproducing patterns from its training data. This raises concerns about whether AI-generated choreography might infringe upon the copyright of the works it was trained on, creating a complex causal link between existing intellectual property and new AI-generated content.

The use of AI as a “co-author”, a collaborative assistant in choreography, implies a different approach to the creative process than simply using AI as a tool. Indeed, the boundaries between human and AI contributions become blurred, complicating the determination of authorship according to current legal definitions. However, when an author invests a minimal degree of their own authorship and novelty by interacting with AI, the resulting work should be protected by copyright. As it becomes challenging to delineate who contributed what to the choreography, it is necessary to define a legal regime for AI in such collaborative scenarios.

Conclusions

We are confronted with a range of unresolved issues within the legal landscape, spanning from the definition of a “choreographic work” in the digital age to the establishment of a specific legal regime for AI. Currently, the definition is understood from a traditional, anthropocentric perspective of movement sequences fixed in a tangible medium, which falls short of contemporary requirements.

Several questions remain open: does the output of AI possess a degree of originality; if so, whose originality is it – that of the corporations, the programmers, or the user? Within the context

of a choreographic work, while an AI-generated movement can be fixed (e.g., as code, motion capture data, or video), the nature of this “fixation” and its legal ramifications clearly warrant further consideration.

Analysing the legislation of various jurisdictions reveals that in the United Kingdom, the crucial question is: who is considered the person who made the “necessary arrangements” during interaction with AI? If this is interpreted to include AI developers, it could lead to a different ownership structure than if it were focused solely on the user providing instructions during AI utilization. Consequently, AI developers may be unaware that they have “created a work of art”. In our opinion, this can be considered proxy authorship.

Simultaneously, the Beijing Internet Court in the “*Jing 0491 Min Chu No. 11279*” case emphasized the “intellectual contribution” of the AI user in creating the specific image. This somewhat aligns with the United Kingdom's requirement that a copyrightable work be the “author's own intellectual creation”. However, the UK also has a distinct provision for “computer-generated works”, focusing on who made the “necessary arrangements”.

In Ukraine, for the successful implementation of the HUDERIA methodology, the government should communicate its advantages and practical benefits to developers of artificial intelligence systems. This could involve working with the media, publishing progress reports on the methodology's implementation, and sharing successful examples of its use post-implementation. HUDERIA could establish clear criteria for determining when a human's contribution to an AI-generated work is sufficiently substantial to warrant copyright. This could provide legal certainty for artists who utilize AI as a tool for inspiration. The methodology could outline the minimum level of human editing or involvement required for copyright to arise in audiovisual art, particularly choreographic works created by AI.

Ultimately, all the examined cases underscore the pressing need to adapt legal frameworks to the increasing role of AI in creative fields. While China emphasizes the intellectual contribution of the user, and the UK offers a unique category for “computer-generated works”, the US remains firmly against recognizing AI as an author. The evolution of case law and legal interpretation across these jurisdictions will be crucial in shaping the future of copyright for AI-generated art, including the dynamic and expressive world of choreography.

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