

CIVIL LIABILITY DERIVING FROM AI-GENERATED WORKS

Hasan Kadir YILMAZTEKİN

Judge, Head of Department of Foreign Relations, Justice Academy of Türkiye, Associate Professor of IP Law. hkytekin@gmail.com,  <https://orcid.org/0000-0003-1050-4272>.

Artificial intelligence (AI) now infiltrates our culture. After a couple of difficult winters, *AI* today is a word on everybody's lips, and it attracts everyone's attention regardless of whether they are experts or not. What does AI that is on the everyone's agenda mean?

When we think of the notion of AI, we generally tend to associate it with futuristic themes. For instance, science fiction depictions such as killer robots or human-friendly androids come to our minds. However, if we see AI as 'the study of agents that exist in an environment and perceive and act,' it is possible to consider it as a much broader field of science and technology and to talk about many applications that have an impact on our daily lives. From Apple's Siri to Amazon's Alexa, Tesla's auto-driving cars to facial recognition systems in CCTV cameras, Netflix's film offering services to Google's search engine, we live in a world of AI goods.

The advent of AI-powered technologies increasingly affects people's lives across the globe. As a tool for productivity and cost-efficiency, AI also shapes our economy and welfare. AI-assisted commercial industries are becoming more and more common. It is possible to see that AI increasingly plays an important role in diagnostic medicine, transportation, investment, therapy, intelligence, alternative dispute resolution, contracts, national defence, banking and many other similar fields. Substantial economic investments have been channelled into the development of these technologies.

There are various reasons that have paved the way for another spring for AI. Remarkable innovations have recently been made in the field of machine learning. The availability and the enormous volume of big data has facilitated the training of AI systems. The speed of computer processors has exponentially increased. Cloud storage systems offer huge areas to manage this data. Internet access is now much easier and faster.

However, AI does not come without any problems. The upsurge of these novel technologies is at the centre of public debate and policy considerations. Some segments of the society have vocally raised their concern that 'robots are taking over.'

Creative industries are ones that AI can profoundly impact. AI tools and devices are currently being used to write poems, compose music, make films, create fashion designs, and picture.

When we talk about AI-generated works, we instead focus on the fruits of innovation without paying heed to who the author is. Authors invest a lot of talent, time and finances in creating their work before they release them to the public. *The Crow*, is the name of short film which won a couple of prestigious awards and is made with AI technique called CLIP, can be shown as an example to this.

When only focussed on efficiency of AI systems, its full legal consequences in copyright industries are often forgotten. An AI device's ability to generate works raises the question of who will be liable for infringement deriving from use of third-party material in AI-generated works. Will it be the person who hires or contracts with the AI programmer? Will it be the programmer? Will it be the AI itself? Or will humans and computers be jointly liable?

This study by explaining the example of the film *The Crow* examines the question of who would be held liable for AI-generated works when they cause infringement within the context of EU law.

More specifically, in this study, a three-step test, which could be used to unleash the "human" infringers (actors) around AI-generated works.

This topic well fits into the Panel 4 entitled 'Access to training data: Exploring Text and Data Mining Exceptions, Fair Use, and Moral Rights' of the Eighth session of the WIPO Conversation on Intellectual Property (IP) and Frontier Technologies.

Key words: Copyright, artificial intelligence, liability, work, intellectual property.