

Who owns the copyright to the works generated by softwares like Dall.E 2 and why?

According to section 2(d) of the Copyright Act, 1957, ““author” in relation to any literary, dramatic, musical or artistic work which is computer-generated, is the person who causes the work to be created”.

Thus, any work that is created by a software may be considered to be authored by the person who created the software. As the software designer created the software and specifically programmed the software to be able to create work. So the software may be considered as medium of producing for producing the work.

Programmers are considered to be authors of any program code written by them. Software are also program codes which when executed by computers produce certain output. Thus, the output generated may include literary, dramatic, musical or artistic work thus, the work would not have been generated without the code the programmer created.

However, with advancement of technology, different types of software have been developed such as software that use artificial intelligence based algorithms and machine learning. The artificial intelligence based algorithms are trained to perform tasks which may require human intelligence, such as visual perception, speech recognition, decision-making, and translation between languages, etc. Such functionalities are however enabled by AI based on training data which is generally inputted to the software which may be attributed as human intervention. The training data often referred to as Text and Data Mining (TDM) is protected through fair use doctrine in India.¹

Software such as Microsoft® Powerpoint® can be considered as an example of a software which allows user to present their content in an interactive manner. It provides users with suggestions to visually enhance the presentation of the literary material through animations and designs. However, Microsoft® does not claim any copyright over the content generated using their proprietary software Powerpoint®.

Similarly, Dall.E 2 is one such software that utilizes artificial intelligence to determine certain features inputted and generate an output matching the requirements of a user. It can be said that even though the software is creating the work however, it is enabled to do so based on instructions given by a user. Dall.E may be considered as a medium for generation of artistic work. Thus, if the programmers do not set parameters or training data, the computer program may not be able to work in a manner as it does. Thus, the programmer or the owner of the software should be the owner of the copyrights.

¹ Pratty Lodh ‘Generative AI is revolutionary: In beating around legal bushes’ (August 2022)
<<https://indiaai.gov.in/article/generative-ai-is-revolutionary-in-beating-around-legal-bushes>> accessed 20 August 2022

Further, Dall.E being a software providing a service to users for creating artistic work, its User License Agreement (ULA) in its terms of use of the software and its creations states with respect to copyrights that “OpenAI will not assert copyright over Content generated by the API for you or your end users.”²

Further, ULA asserts that the user should comply to their Content Policy which provides that the content should be attributed by the user to his/her name or their company and they should clearly indicate that the content is AI-generated in a way no user could reasonably miss or misunderstand.

Further, the Content Policy disallows the user to use the software for certain prohibited purposes.

Also, the terms of ULA prohibits user to “(i) distribute, sell, lend, transfer, or grant any rights in or to all or any portion of the Services or Content to any third party (except for making Content available to end users and allowing end users to use your integration of the APIs through the Application, or as otherwise authorized via additional terms for that service)”.³

The terms of ULA also prohibits the user to “remove, obscure, or alter any notice, including any notice of intellectual property right, appearing on or contained within the Services or Content.”

Thus, it prevents users from creating derivative work of copyrighted work. Further, the user is to defend and indemnify any associate associated to the company for any harm caused due to user’s non-compliance.

This makes the software owners to stay clear of any infringement claims or questions on originality of work outputted by Dall.E. By their term of use, the users need to clearly specify that the work is an outcome of an AI which would prevent the user from indicating that the work is originally created by them. Thus, any person impersonating to be the original author can be challenged based on the fact that they utilized the work generated by an AI.

Thus, understanding and putting together the terms of user license agreement for such AI based software is essential to avoid any fall outs arising related to authorship, copyright infringement, etc.

Further, most copyright laws enacted in the world consider a human to be an author. Also, since software are not mortal *arguendo*, they are considered as authors the term of copyrights over their creations will never end.

The other aspect is to consider that if works generated by an AI are deemed free of copyright as they are not created by a human author. Such work would be in public domain and open to use by anyone.

² Terms of Use, (July 2022) <<https://openai.com/api/policies/terms/>> accessed 20 August 2022

³ Sharing & Publication Policy, (March 2022) <<https://openai.com/api/policies/sharing-publication>> accessed 20 August 2022

This could hurt the companies involved in selling copyrighted artistic work and drive them out of work. Further, companies involved in creating artistic work using AI would also lose the incentives for their creations if their creations cannot be protected.⁴

Since, there is no clarity related to copyrights of work generated by an AI specially in India, there is an urgent need of legislation for prevention of disputes and frauds. Further, the legislation should make it mandatory to have visual indication for such AI generated works in order to differentiate such work from original copyrighted work. The legislation may also provide the terms of protection (if any) provided to such works and the types of infringements and the manner of licensing such work.

⁴ Andres Guadamuz, 'Artificial intelligence and copyright' (*WIPO Magazine, October 2017*) <https://www.wipo.int/wipo_magazine/en/2017/05/article_0003.html#:~:text=The%20copyright%20lies%20with%20the,create%20his%20or%20her%20work> accessed 20 August 2022