[PL] AI as a "creator" under the Polish legal framework

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Kamil Rzeczkowski
Czyżewscy Law Firm

The development of artificial intelligence (in particular, the recently released fourth instalment of the popular ChatGPT) provokes more and more questions related to the copyright protection of "works" for the creation of which AI is responsible, or in the creation of which AI had a significant contribution.

In the context of almost open access to generators of images, animations, texts and sometimes music, a number of questions arise, one of which comes to the fore: can AI be considered a creator or co-creator from the perspective of Polish legal regulations?

According to Polish law, a "work" is considered to be any manifestation of creative activity of an individual character, established in any form, regardless of value, purpose and manner of expression. Copyright protection is vested in the creator (Article 1 point 4 of the Law on Copyright and Related Rights). In accordance with Article 8 of the Law on Copyright and Related Rights, only humans can be considered as a creator. This means, therefore, that artificial intelligence will not be recognised as a creator; and the effects of its work - will not constitute a work. However, taking into account the current regulations, a situation may arise in which AI will be a quasi "co-creator," behaving in principle like software supporting the creative work of a human being. Does that mean that AI's contribution to the creation of a work will entail granting it legal rights and protection?

On 16 March 2023, the U.S. Copyright Office (USCO) published a statement regarding the rules related to the registration of works containing artificial intelligence-generated elements. The issue raised by the USCO concerned the use of so-called generative AI, responsible for creating content based on guidelines/instructions given by a human (a so-called prompt).

Notwithstanding the fact that the abovementioned scenario has been analysed by foreign authorities, the general approach to AI contributions to the creative process should also be adopted in the Polish legal system.

From the USCO's position, the following guidelines can be drawn in relation to created or co-created works:

1. Only the result of creative work of a human being can be considered as a work.

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2. In the case of the use of AI's generative functionality, human intervention is basically limited only to the preparation of general instructions on what the human wants to obtain as a result of the AI's "work." The human (author) has no influence on the way the means are selected and the "creative" elements of AI's operation, hence work created in this way will not enjoy copyright protection.

3. Creators have always used auxiliary tools in their work (such as guitar effects that modulate the sounds of an instrument, synthesizers or graphic programmes used by photographers to properly process and prepare photos). In this case, on the other hand, AI is only a tool whose principles of operation are solely influenced by a human. Therefore, in the case where a human directly influences the actions of AI or ultimately modifies the generative work of AI, the effect of the aforementioned activities may be subject to the copyright protection.

Taking into account the above assumptions, under Polish law too only a human person can be considered a creator. Moreover, bearing in mind numerous opinions of specialists, a human being should have a decisive influence on its creation/work (giving it characteristics that make it creative and individual in nature), in consideration to the use of AI in any context - from simple prose to multi-layered works such as a film or TV series.

Ustawa z dnia 4 lutego 1994 r. o prawie autorskim i prawach pokrewnych

https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu19940240083

Law on Copyright and Related Rights dated 4th February 1994 (Journals of Law 2022, position 2509, unified text)

Copyright Office Launches New Artificial Intelligence Initiative

https://copyright.gov/newsnet/2023/1004.html

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