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AI Generated Works and Copyright Law

Defining Authorship and Ownership
in the Age of Machine Creativity

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Introduction

Imagine a future where Artificial Intelligence (AI) generates works that rival human creativity. That future is here. Copyright law has long been the cornerstone of intellectual property protection, safeguarding the creative endeavors of human authors and innovators. As a property right, copyright grants exclusive ownership and control over original works, incentivizing artistic and literary expression. However, the rapid emergence of AI generated works has raised fundamental questions about the nature of authorship and ownership in the digital age.

The increasing sophistication of AI algorithms has enabled machines to create complex, original works that rival those produced by humans. Yet, this newfound machine creativity has created a conundrum. Let me illustrate this with a story. Maya created an AI named Blaze, designed to analyze complex data and produce well-structured answers. Recently, John gave Blaze a prompt to write an academic paper, the AI processed vast amounts of data, identified key concepts, and crafted a comprehensive analysis. The resulting paper was coherent and well-reasoned, this resulted in its publication in a prestigious journal.

As Blaze's paper gained academic recognition, a question arose: who owns the rights to this AI-generated masterpiece? Is it Maya, the creator of the AI? Blaze itself, which tapped into the creative zeitgeist? John, who provided prompts and guidance? Or the authors whose works Blaze drew upon? Or perhaps is the work not copyrightable?

This question has significant implications for copyright law, as it challenges traditional notions of authorship, originality, and ownership. As AI-generated works become increasingly prevalent, it is essential to redefine the boundaries of copyright protection and clarify the rights and responsibilities of various stakeholders. This article aims to explore the complexities of AI-generated works and copyright law, seeking to answer the pivotal question: who the author and owner of an AI-generated work with particular focus on the Nigerian legal system is.

Artificial Intelligence (AI)

AI is a field of science concerned with building computers and machines that can reason, learn, and act in such a way that would normally require human intelligence or that involves data whose scale exceeds what humans can analyze¹. It is the simulation of human intelligence processes by machines, especially computer system². Some examples of AI are ChatGPT-3(Chat Generative Pre-trained Transformer), Meta AI, image recognition software, self-driving cars, virtual assistants like Siri, Alexa, and Google Assistant, predictive analytics tools, and natural language processing systems.

Authorship and Ownership

Authorship

Authorship and ownership of copyright often confused to mean the same thing are two distinct concepts in relation to copyright. The author having moral rights³ may not necessarily be the owner who has economic rights. The author can however be the owner. It is therefore important to define authorship and ownership.

An author is the creator or originator of a work. For instance, the author of a work of literature is the person who writes it, while the author of a photograph is the photographer. It should be noted that the law also recognizes an “author” to include a person’s heir and successors in title⁴.

In Nigeria, the Copyright Act of 2022 provides a more detailed definition of an author. According to the Act⁵, the following individuals are considered authors of their respective works:



Audiovisual work:

The person by whom the arrangements for the making of the audiovisual work were made.



Sound recording:

The person by whom the arrangements for the making of the sound recording were made.



Collective work:

The person responsible for the selection and arrangement of the collection.



Broadcast:

The person by whom the arrangements for the making or transmission of the broadcast were undertaken.



Photographic work:

The person who took the photograph.

The Act also recognizes joint authorship⁶, where two or more authors collaborate to produce a work, and their contributions are merged into an inseparable whole.

1. <<https://cloud.google.com/learn/what-is-artificial-intelligence>> accessed January, 2025.

2. Alexander Gillis <<https://www.techtarget.com/searchenterpriseai/definition/AI-Artificial-Intelligence>> accessed 12 January, 2025.

3. Section 14 of the Copyright Act, 2022

4. Section 17(5) of the Copyright Act, 2022

5. Section 108 of the Copyright Act, 2022

6. Section 5 of the Copyright Act, 2022

Ownership

Ownership on the other hand refers to the legal rights and interests in a work, including the right to possession, control and transfer. It flows from authorship as generally the author of a work is usually the first owner.

However, in some instances, the case is different. This is addressed in sections 28 and 29 of the Copyright Act. According to these provisions, the initial owner of copyright is typically the author, unless otherwise specified in an agreement. However, if a work is created under a contract for services or in the course of employment by a government, a ministry, department or agency of a government or a prescribed international or inter-governmental organization, the copyright vests in the employer as long as there is no agreement to the contrary. Also, in cases where a private individual commissions a work, such as a photograph or portrait, the commissioner has a non-exclusive license to use the work for personal, non-commercial purposes, as well as the right to control the work's publication and distribution⁷.

For collective works, ownership of the copyright vests in the person who initiated or directed the project. Meanwhile, the individual authors of works incorporated into the collective work retain the right to exploit their own works independently⁸.



Traditional Copyright in Nigeria

Copyright is the exclusive legal right to reproduce, publish, sell, or distribute the matter and form of something (such as a literary, musical, or artistic work).⁹ Generally, works that do not meet the requirements of originality and fixation are not eligible for copyright under the Act. Section 2(1) of the Copyright Act 2022 makes provisions for works that can qualify for copyright and they include literary works, musical works, artistic works, audiovisual works, sound recordings and broadcasts.

The Act grants exclusive economic rights to owners of original works, with specific rights varying depending on the type of work. In general, they have the exclusive right to: reproduce, publish, and distribute their work; broadcast or communicate it to the public; make it available online or through other wireless means; and create adaptations or derivative works. These rights enable owners to control how their work is used and to benefit financially from its exploitation.

7. Section 28 of the Copyright Act, 2022

8. Section 29 of the Copyright Act 2022

9. "Copyright." Merriam-Webster.com Dictionary <<https://www.merriam-webster.com/dictionary/copyright>> Accessed 27 January, 2025.

Copyright infringement occurs when someone, without the owner's authorization, violates the exclusive rights conferred by the Copyright Act. This includes doing or causing someone to do an act that infringes on these rights¹⁰. Importing or causing to be imported into Nigeria any copy of a work that would be considered an infringing copy if made in Nigeria also constitutes copyright infringement. Additionally, selling, offering for sale or hire, or having in one's possession equipment used solely for making infringing copies of a work are all considered infringement¹¹.

Furthermore, permitting a public place to be used for a performance that infringes on copyright, unless the person was unaware and had no reason to suspect the infringement, is also a violation. Allowing the reproduction of a copyright work within one's premises or performing a work for trade or business purposes without authorization also constitutes infringement¹².

It's essential to note that these infringing acts must be in respect of the whole or a substantial part of the work, either in its original form or in any form recognizably derived from the original¹³.

Determining who has the right to sue for copyright infringement is crucial, as locus standi (the right to bring a lawsuit) is a fundamental principle of the law. According to Section 37 of the Copyright Act, only the owner, assignee, or exclusive licensee of a copyright can institute an action for infringement. As stated earlier, ownership of a copyright however flows from authorship, as the creator (author) of an original work is typically considered the first owner of the copyright. This means that the author has exclusive rights over the work, unless the author is not the owner.

An assignee is a person or entity to whom the owner has transferred their copyright, either partially or entirely. This transfer can be made through a contract or agreement, and it grants the assignee some or all the rights previously held by the owner. An exclusive licensee, on the other hand, is a person or entity to whom the owner has granted an exclusive license to exercise some or all the rights under the copyright. This means that the exclusive licensee has the right to use the work in a specific way, to the exclusion of all others, including the owner.

In both cases, the rights of the assignee and exclusive licensee are derived from a grant by the owner through an assignment or license. Therefore, determining who the author or owner of a copyright is crucial for establishing locus standi and identifying who has the right to sue for infringement.

The general position as to authorship and ownership is clear, despite the issues that may arise in trying to determine the owner or author of a work where there were collaborations in its creation.

Different and more prominent issues of authorship and ownership then arise when a work is created by an AI. The questions to be answered as stated in the introduction of this article is that between the creator of the AI, the AI itself, the user who gives prompts to the AI and the authors or owners of sources from which the AI got the work, who is the owner and author of the work or is such work not eligible for copyright? Arguments have been made for all sides, but however, what is the position of the law, what have courts decided if they have or is the law unclear?

10. Section 36 of the Copyright Act 2022

11. *Ibid*

12. *Ibid*

13. Section 36(2) of the Copyright Act 2022

Eligibility for Copyright

Section 2 of the Copyright Act, 2022 outlines the eligibility criteria for works to receive copyright protection. As previously mentioned, subsection (1) lists the types of works eligible for protection. Subsection (2) further stipulates additional requirements that artistic, musical, or literary works must meet to qualify for protection and subsection (3) provides assurance that, regardless of the work's quality or purpose, it will be eligible for copyright protection if it satisfies the requirements outlined in subsection (2).

To assess the eligibility of the proposed subjects, we will evaluate them against the criteria set forth in subsection (2). For clarity, the relevant provision of the sub section is reproduced below:

(2)Notwithstanding the provision of subsection (1), literary, musical or artistic work shall not be eligible for copyright unless – (a) some effort has been expended on making the work, to give it an original character ; and (b) the work has been fixed in any medium of expression known or later to be developed, from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device.

From the above, the requirements are fixation in a medium, effort and originality. The issue of fixation is settled and is not the subject of dispute here, so the other requirements would be used as yardsticks for determining authorship.



Ownership or Authorship by AI

Proponents of AI authorship argue that the creative contribution of the AI is sufficient to establish authorship. However, this argument is flawed.

Unlike in many jurisdictions where their copyright laws expressly require human authorship, the prevalent law in Nigeria in defining and referencing authorship makes continuous and specific reference to 'a person' or a "corporate entity"¹⁴. The question then arises as to whether an AI qualifies as a person, either natural (human) or artificial (corporate entity). The answer is unequivocally no.

Since an AI is not a person, it is incapable of bearing rights or duties and copyright is a right¹⁵, thus recognizing an AI as an author would be inconsistent with the fundamental principles of law.

Nigerian jurisprudence has not entertained any case on this subject; thus, reference would be made to decisions of foreign courts. In *Naruto v. Slater*¹⁶, the United States court held that a monkey who took a selfie was unable to hold a copyright in the photograph as the monkey is not human.

An AI being a tool is neither a natural person nor a corporate entity, and therefore cannot be considered an author or beneficiary of proprietary rights under the Nigerian copyright law.

¹⁴. See sections 5 and 42 (d) and (e) of the Copyright Act, 2022

¹⁵. Section 9 of the Copyright Act, 2022

¹⁶. No. 16-15469 (9th Cir. 2018)

Ownership or Authorship by the Owner of the AI



Those who attribute authorship to AI developers argue that they infuse control and creativity into the AI system by designing its functionality and controlling its inputs¹⁷. They further contend that if developers are liable for copyright infringement, they should also enjoy the benefits of authorship. However, this perspective overlooks the fact that developers already receive legal protections through copyright law, which covers the AI software itself.

Granting developers copyright protection over the works created with their AI will amount to granting them double benefits¹⁸. While developers may be seen as the creative forces behind the AI, this does not equate to authorship of the AI-generated work, as they acted solely as the creator of the creative tool. Moreover, since they aren't involved in the creation of the work itself, attributing authorship to them contradicts the fundamental principle that authorship requires the expenditure of effort to impart an original character to the work¹⁹.

This notion is analogous to suggesting that a camera manufacturer owns or is the author of photographs taken with their equipment. This is clearly absurd and inconsistent with copyright laws. Similarly, when a commission is paid for the use of an AI tool, it is comparable to buying or renting a camera for photographic purposes.

The United States Copyright Office (USCO) has established guidelines that reflect this understanding. Applicants are required to disclose the use of AI tools in generating their works and provide an explanation of the human author's contribution. More importantly though, the USCO prohibits listing AI technologies or their providers as authors or co-authors solely based on their role in creating the work²⁰.

Ultimately, AI systems are merely tools, akin to cameras or paintbrushes. Just as the manufacturers of these tools are not considered authors of the works created with them, AI developers should not be regarded as authors of AI-generated works.

17. Mackenzie Caldwell, "What is an 'Author'? Copyright Ownership of AI Art Through Philosophical Lense" [2023] Vol.3 [2]

18. *Ibid*

19. Section 2(2) of the Copyright Act, 2022

20. USCO, "Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence", [2023] Vol. 8, No. 51 - https://copyright.gov/ai/ai_policy_guidance.pdf accessed 19 January, 2025.

Authorship or Ownership by Those Whose Works are Sourced

The use of vast quantities of pre-existing human-authored works by AI systems to create new works raises important questions about authorship and copyright. While copyright protects the expression of an idea, not the idea itself, AI-generated works often build upon existing creations. However, this does not necessarily mean that the owners of the sourced works can claim authorship.

In fact, the owners of sourced works cannot claim authorship, except potentially as collective works²¹, since AI systems cannot be considered legal authors. Furthermore, AI-generated works often transform the sourced materials in significant ways, by drawing inferences, thus creating a new and original work. This transformative use could be seen as sufficient to establish a new copyright, separate from the sourced works.

Additionally, creators of sourced works are not directly involved in the creation of the AI-generated work. They do not contribute to the AI's decision-making process or exercise control over the final output. This lack of involvement and control is significant, especially when contrasted with the requirement under Section 2(2)²² that authors must expend effort and skill in creating a work.

Moreover, the ownership of collective works, as stipulated under Section 29(1) of the Copyright Act, vests in the person on whose initiative or direction the work was created. In the case of AI-generated works, this would not apply to the creators of the sourced works, as they did not initiate or direct the creation of the AI-generated work.

Nevertheless, the owners of sourced works do retain copyright in their original works. Consequently, if an AI system fails to reference or acknowledge the sourced works, the original creators may have a successful claim for copyright infringement or plagiarism. In such cases, they may have the right to bring an action for infringement.

Authorship or Ownership by User

Having the user as the author of the copyright seems to be the better standpoint. Bearing in mind the provision of section 2(2) of the Copyright Act, only the user among all players (other than the AI) can be said to have expended some effort in making the work.

Even though the user does not physically write every word, the prompts user selected reflect intentional decisions that influenced the narrative's development. Through their deliberate input and guidance, facilitated by AI tools, the user infused the work with their individual perspective and artistic expression.

As stated earlier also, just like a camera is a tool in the hands of a photographer who is recognized as the author of the copyright of a photograph taken, so also is the AI a tool in the hands of the user and should be recognized as the author of works generated. In the landmark case of **Burrow-Giles Lithographic Co. v. Sarony**²³, the US Supreme Court ruled that photographs are entitled to copyright protection as they embody the author's "original intellectual conceptions." The court emphasized that even when artists employ editing tools or other assistive technologies, their creative control and decision-making processes - including selecting visual elements, choosing tools, and making deliberate modifications - ultimately yield a final image that reflects their unique mental conception.

21. *meaning a collection of literary or artistic works, which by reason of the selection and arrangement of their contents, constitute intellectual creations and as such protected without prejudice to the copyright in each of the works forming part of such collection-section 108 of the Copyright Act, 2022.*

22. *Copyright Act, 2022*

23. *Mackenzie Caldwell, "What is an 'Author'? Copyright Ownership of AI Art Through Philosophical Lense" [2023] Vol.3 [2]*

Opponents of authorship of photography by the user (photographer) once argued that taking a picture lacks creativity and that the camera, rather than the photographer, creates the image. This argument is similar to the claim that the creator of the AI or the AI itself should be credited as authors of AI-generated work. However, if we apply this logic to photography, it leads to an absurd conclusion of considering the camera or its manufacturer the author of the photograph. Arguments on this have been made earlier and are clearly not plausible.

The photographer's creative input – pressing the shutter button, selecting the best image, and adjusting camera settings – makes them the author. Similarly, when using AI to generate art, the user provides the creative spark by choosing the prompt, guiding the AI's processing, and making deliberate decisions throughout the process. By exercising control over the final output, the user becomes the rightful author of the AI-generated work²⁴.

Opponents posit also that sufficient effort is not lent by the user to be seen as an author. From a perusal of the provision of section 2(2)(a), the Act requires effort sufficient to make the work original. This was the position of the Nigerian court in **Okoyov Prompt and Quality Services & Anor**²⁵, where it stated that:

It is pertinent to observe that a literary or musical work is not eligible for copyright unless sufficient effort has been expended in making it in order to give it an original character. This is a matter of fact which must be proved by evidence.

Similarly, in **Yeni Anikulapo-Kuti & Ors. v Iseli & Ors**²⁶, which involved the issue of authorship and copyright subsistence in a musical work, the court held that “a musical work must originate from its author who has expended special skill, and labour in producing it”.²⁷

Limitation to the Eligibility for Copyrights by A User

Just as stated above, some other jurisdictions also require a substantial level of effort from an author to register a work. For example, the USCO released a statement in 2023, wherein it stated that AI-assisted works can be registered for copyright if there is sufficient human authorship and that artists can select or arrange AI-generated materials in sufficiently creative ways or modify something AI-generated to such a degree, to merit copyright protection²⁸.

In the *Re Zarya of the Dawn* case²⁹, the U.S. Copyright Office ruled that copyright protection for a graphic comic novel featuring AI-generated images would only extend to the human-authored text. The office recognized that the text, along with the selection and arrangement of the work's elements, was eligible for protection. However, the AI-generated images themselves were not.

The Copyright Office justified this decision by emphasizing that works produced solely by machines or mechanical processes, without human creative input, are not registrable. Although the human applicant claimed to have guided the image creation process, the office found that they did not exercise sufficient creative control over the AI's output. Ultimately, the applicant's reliance on AI software to generate images based on prompts meant they could not be considered the author of those images.³⁰

It is believed that with the current position of the Nigerian law, a similar stance will be taken, since protection is only guaranteed for works which sufficient effort is expended to reflect originality.

24. [2003-2007] 5 I.P.L.R 117-135 at p130

25. [2003-2007] 5 I.P.L.R 53-73

26. [2003-2007] 5 I.P.L.R 53-73

27. Seun Lari-Williams, "Are AI-Generated Content Covered by Nigerian Copyright Law", 2024 <<https://www.theipress.com/2024/02/17/are-ai-generated-content-covered-by-nigerian-copyright-law/>> accessed January 19, 2025.

28. USCO, "Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence", [2023] Vol. 8, No. 51 <https://copyright.gov/ai/ai_policy_guidance.pdf> accessed 19 January, 2025.

29. *Re Zarya: of the Dawn* (Registration # VAu001480196)

30. Eileen McDermott, "Copyright office makes AI authorship Policy official" <<https://ipwatchdog.com/2023/03/15/copyright-office-makes-ai-authorship-policy-official/id=157831/>> accessed 19 January, 2025.

Position That AI Generated Works are Not Copyrightable

AI systems are not considered persons, thus works generated solely by them are ineligible for copyright protection. Similarly, works created with minimal effort or originality are also not copyrightable.

When a person provides direction or guidance to an AI system, they become the most plausible claimant to authorship of the resulting work. Nevertheless, if the user fails to meet the necessary requirements, the work will be ineligible for copyright and, consequently, unregistrable.

The implications of a work being unregistrable are significant, as the work automatically enters the public domain. As Caldwell Mackenzie aptly stated, "Authorship is inherently creative and to exclude the creativity of a person from the authorship of a work is to exclude the author from the work, thereby undermining the idea of copyright³¹."

In the absence of sufficient effort to demonstrate originality, the author is deemed not to be part of the work, rendering it non-copyrightable. This principle is exemplified in the *Re Zarya* case³², where the court held that insufficient effort expended to show originality rendered the work unregistrable. Similarly, in the Nigerian context, works lacking sufficient effort to reflect originality will not be eligible for registration.



Conclusion

Conclusively, the intersection of AI and copyright law raises complex questions about authorship and ownership. While AI-generated works challenge traditional notions of creativity and originality, the Nigerian Copyright Act though not directly or substantially provides a framework for evaluating these issues. Based on the analysis, it appears that in Nigeria, the user, rather than the AI or its developer or those whose works are sourced, is the most plausible claimant to authorship of AI-generated works, provided they expend sufficient effort to impart originality to the work.

Whoever authors the work is the first owner unless ownership rights are transferred, and they enjoy the benefits of such rights including the moral and economic benefits, thus, emphasizing the importance of clarifying authorship and ownership rights. However, the jurisprudence on this topic remains largely unsettled, and the inadequacy of laws on AI-generated works creates uncertainty. For example, a critical question like "what metric would be used to determine sufficient effort which reflects originality?" remains unanswered. As the use of AI in creative endeavors continues to grow, it is essential to clarify the rights and responsibilities of stakeholders involved. Ultimately, the courts and lawmakers must provide guidance on these issues to ensure that copyright law remains relevant and effective in the age of machine creativity.

31. Mackenzie Caldwell, "What is an 'Author'? Copyright Ownership of AI Art Through Philosophical Lens" [2023] Vol.3 [2]

32. *Supra*



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