



WORLD ART DAY

Copyright, Related Rights and AI

World Art Day is celebrated each year on April 15th all around the world. The date was chosen because it coincides with the birth of Leonardo da Vinci, considered one of the most important artists in history, as he was a painter, sculptor, biologist, designer, poet, and architect.

The aim is to promote the importance of the different artistic disciplines, the seven arts that surround us and that this day celebrates: Architecture, Sculpture, Painting, Literature, Music, Dance, and Cinema. It is a celebration that seeks to promote the development, dissemination, and promotion of art in general.

LEGAL FRAMEWORK

From a legal point of view, these areas find protection in the Copyright and Neighboring Rights Code, which determines as works "*the intellectual creations in the literary, scientific, and artistic domain, by any means exteriorized.*"

COPYRIGHT serves to protect authors (writers, artists, producers, music composers, etc.) with respect to the works they create. Thus, copyright belongs to the intellectual creator of the work, unless expressly provided otherwise.

The existence of copyright is recognized regardless of registration, deposit or any other formality, which gives its holders the exclusive right to dispose of their work and use it, or authorize its use by third parties, in whole or in part.

Nevertheless, there is the possibility of registering works before the IGAC, making it simpler to prove ownership to third parties.

COPYRIGHT comprises two aspects:

a) MORAL RIGHTS, which evidence the bond of the author with his work; thus, the creator of the work can never be separated from what he creates. They are personal, inalienable rights, that is, even if he has ceded the rights over his work, the author has the moral right to see his name recognized and quoted; they are imprescriptible and unrenounceable;

b) PATRIMONIAL RIGHTS, which allow the author the possibility of assigning or licensing the work, definitively or temporarily, and exploiting it economically as he wishes.

Works may only be used after prior authorization by their author or his representative, except in the case of works that have already fallen into the public domain (i.e. 70 years after the author's death) or situations of free use, as provided by law, which include, namely, educational use (including copies for classroom use), for criticism, commentary, news reporting, research and preservation (including in schools and libraries).

Private copying is also permitted as long as it is for private use only and is made from the original purchased by you.

On the other hand, and also associated with the arts, we have the **RELATED RIGHTS**, which are the rights that the law grants to artists (performers), producers (of a film or a song), and broadcasting organizations.

Artistic activities promote increased ability to concentrate, the development of a more complex thought structure, and the evolution of creativity, and should therefore be valued, encouraged, and protected.

ARTIFICIAL INTELLIGENCE AND COPYRIGHT

Artificial intelligence (AI) is becoming more and more of the order of the day. Its impact has also been debated in the field of copyright law, and it is becoming increasingly important to assess the challenges posed by the emergence and rapid development of AI, as well as to address legal gaps in this area.

The creation of a work always assumes the existence of a person (a human being) behind the creative process. Someone invested with a creative spirit develops an original work and exteriorizes it.

AI and 'chatbots' (AI-based computer programs capable of holding a real-time conversation by text or voice), such as ChatGPT, have raised a number of questions and challenges to this traditional model, and threaten, in particular, the production of original texts by an author.

The same is true for other types of works, such as painting, where artistic works have emerged based on certain algorithms, i.e. often purely the result of automated processes.

As AI develops, the human contribution to the creation of works will diminish, so we are not just dealing with a system that assists humans, but will actually be able to replace them, for example by automatically generating literary or artistic works.

The question that arises from a copyright perspective is whether or not these works automatically generated by AI will be considered protected works under the law, and on what terms.

Now, while the subject of works created using computers and software is nothing new, the truth is that these works were made with the contribution of a human being, and even though in some cases it may be more difficult to identify their author, he existed, and he was a human person.

The problem with AI is different: AI allows the creation of works where there is no human input into the creative process, or, if there is, it is not sufficient to claim that the requirement of originality is fulfilled. What case law has been saying on this topic all over the world is that there must always be a human being behind the creations.

Thus, what seems to be in question is whether we are dealing with a process of pure and simple automation or whether

there is human intervention in the creative process.

And this may be the big difference in the definition of the protection of works under law.

There have been several disputes worldwide on this topic, from lawsuits involving large copyright companies to authors seeking to have rights created using new artificial intelligence technologies recognized.

There have also been movements of various groups associated with cultural areas, the most recent and most visible being the strike of the Hollywood Actors (SAG-AFTRA - Screen Actors Guild - American Federation of Television and Radio Artists), which paralyzed the film and television industry in the United States, joining the strike of the Writers Guild of America (screenwriters). This was the first complete shutdown of the Hollywood industry in over 60 years. Among the various topics being demanded are issues posed by the growth of artificial intelligence and its potential impact on the industry.

The subject is not simple, but the impact that its rapid development has on our daily lives requires a careful analysis and urgent responses to its legal framework in various areas, in particular, regarding Copyright Law.

Vanessa Gaspar | v.gaspar@caldeirapires.pt

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