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As announced in the Federal Register, the agency wants to answer three main questions: how AI models should use copyrighted data in training; whether AI-generated material can be copyrighted even without a human involved; and how copyright liability would work with AI. It also wants comments around AI possibly violating publicity rights but noted these are not technically copyright issues. The Copyright Office said if AI does mimic voices, likenesses, or art styles, it may impact state-mandated rules around publicity and unfair competition laws.

Proposed Project Area of Research

A legal system must reflect the people it serves in order to advance society. In particular, society in this paper refers to the rights of artists. Artificial Intelligence ('AI') Copyright Laws to protect individual creative rights.

Q1 How AI models should use copyrighted data in training

Simply, be transparent

- 1) no data can be used unless permission has been granted from the authors, IE artists, musicians, writers.
 - a) Watermark is necessary to identify stolen works
- 2) All data taken must be noted, in an official register

Q2 Whether AI-generated material can be copyrighted even without a human involved.

Simply, no AI can not take responsibility and can not represent itself in court

- 1) There must be governance and compliance or else AI has capacity to take over human action and this can be dangerous outcome. Eg creating dangerous and toxic material guides society in a negative as opposed to a positive spiral.

Q3 How copyright liability would work with AI

Simply, Legal liability under current copyright law.

1. Current copyright law requires a human author.
2. Copyright liability operates by courts deciding factors such as a. has permission been granted, b. has a substantial part been used.

Below, as obiter dicta, a thesis proposal on AI and Copyright in relation to artists to expand on responses outlined above.

This thesis raises the ambit of a new legal framework to determine if copyright can subsist in a work generated using Artificial Intelligence 'AI'.

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Specifically, how much copyright protection can be afforded to AI-generated work,¹ with for example, the simulation by a machine entity, Dell-E, created with the cognitive aspects of human thinking.² On the establishment copyright subsists in a creative AI-generated work, the law needs to determine who is the owner of such a work. The third analysis is related to when AI leads to infringement of copyright and exceptions need to be identified by law.³

Questions: Who is the author and who is the owner? The artist, AI Developer or the AI user? The challenge to address this grey granular area is at the centre of the current debate. The preference to keep the current copyright law and build upon and include AI computer generated works into the current copyright law as the preferential option to creating new legislation. This ensures there are no gaps in the copyright law in the future.⁴

Further issues. Data selection creates biases by the AI developers own moral values and perceptions and requires notation. Secondly, AI developers may change location/jurisdiction to more favourable legal regimes. This reinforces why it is important, where possible to have a streamlined, consistent national and where possible international copyright legislation including AI created works.⁵

Exceptions will need to be addressed in creating this new legal framework to be inclusive of AI computer generated works.⁶ For example, an ad hoc exception created for certain acts,⁷ such as training and AI development.⁸

This leads to the third issue. AI developers are using large amounts of works/images from the internet for example OpenAI, grossly impacting artists rights. They are not being compensated for their creative works.⁹ The individual, the small artists in this case, is dismissed with the current AI developers using current copyright law to take advantage of their works/images under the guise of the fair use/dealing exceptions.¹⁰ Yet glaringly the artists works are the cornerstone of AI developers products and need to be acknowledged. As a result there have been a number

¹ Niloufer Selvadurai and Rita Matulionyte, 'Reconsidering creativity: copyright protection for works generated using artificial intelligent', *Journal of Intellectual Property Law & Practice* (2020)

² J Zibner, 'Artificial Intelligence: A Creative Player in the Game of Copyright' (2019) 10(10) *European Journal of Law and Technology*

³ Niloufer Selvadurai and Rita Matulionyte, 'Reconsidering creativity: copyright protection for works generated using artificial intelligent', *Journal of Intellectual Property Law & Practice* (2020).

⁴ N Silvadurai, 'Not Just a Face in the Crowd: Addressing the Intrusive Potential of the Online Application of Face Technologies' (2015) 23(3).

⁵ Niloufer Selvadurai and Rita Matulionyte, 'Reconsidering creativity: copyright protection for works generated using artificial intelligent', *Journal of Intellectual Property Law & Practice* (2020).

⁶ Niloufer Selvadurai and Rita Matulionyte, 'Reconsidering creativity: copyright protection for works generated using artificial intelligent', *Journal of Intellectual Property Law & Practice* (2020).

⁷ World Trade Organisation, TRIPS, Art 13. (TRIPS three-step-test).

⁸ Niloufer Selvadurai and Rita Matulionyte, 'Reconsidering creativity: copyright protection for works generated using artificial intelligent', *Journal of Intellectual Property Law & Practice* (2020).

⁹ Jan Bublitz, 'Might artificial intelligence become part of the person, and what are the key ethical and legal implications', *AI and Society*, 2022.

¹⁰ Enrico Bonadio and Luke McDonagh, Artificial Intelligence as Producer and Consumer of Copyright Works: Evaluating the Consequences of Algorithmic Creativity', *Intellectual Property Quarterly* 2020 2 112-137.

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of cases in the US Courts, *Getty v Stability AI*,¹¹ however there are no test cases in the Australian courts to date to validate.

Fair use and fair dealing doctrines are important to evaluate if it is legitimate to use unlicensed creative works for transformative purposes. It will be argued that AI developer must be transparent where they have obtained data and that licensing agreements are enforced. This in turn effects the economic and social development of society and creates competitive disadvantages.¹²

A legal system must reflect the people it serves in order to advance society. In particular, society in this paper refers to the rights of artists, for copyright laws to protect their individual rights.

AI threatens and exacerbates the ongoing disparity of social equity. It will create a shift in labour capital with the effect of threatening the livelihoods of people as voiced presently by individual artists. Metaphorically, it amplifies the ongoing concern of infringement and piracy transparent in the north south debate, individuals versus the large corporate conglomerates, David v Goliath battle of rich over the poor.¹³

AI generated images have created a new reality of what and who is an artist. The current copyright law has been created for the traditional pen and paintbrush artist not computer generated. To illustrate the point, Van Gough, who only sold one painting in his lifetime, yet monopolised today and used by AI Developers. Albeit antiquated, it is relevant, as the individual artist is similarly in Van Gough's position. Unknown, small and dismissed despite having the same human rights as anybody in society, like the AI developers. The legal system must reflect and protect the individual artists rights.¹⁴ Van Gough suffered greatly from poverty. The impact of AI ethically will have consequences on the future of the workforce with many jobs being replaced by AI and artists left impoverished.

AI is rapidly being integrated into society and the law is struggling to keep pace. So much so, there has been a moratorium put in place by the top AI players world wide, to ensure the future of society is protected.¹⁵ AI can be a danger to humanity and such a serious concern, that OpenAI founder himself, Sam Altman, has signed this six month moratorium over the development of AI until the law can develop accordingly.

¹¹ Christopher Zirpoli, 'Generative Artificial Intelligence and Copyright Law', *United States Congressional Research Service* 2023.

¹² Niloufer Selvadurai and Rita Matulionyte, 'Reconsidering creativity: copyright protection for works generated using artificial intelligent', *Journal of Intellectual Property Law & Practice* (2020).

¹³ Patricia Aufderheide, Kylie Pappalardo, Nicolas Suzor, Jessica Stevens, 'Calculating the consequences of narrow Australian copyright exceptions: Measurable, hidden and incalculable costs to creators', *Science Direct*, Vol 69 2018, 15-26.

¹⁴ Pawel Ksiezak and Sylwia Wojtczak, 'Person Interests of AI', *Toward a Conceptual Network for the Private Law of Artificial Intelligence*, 2023.

¹⁵ Jan Bublitz, 'Might artificial intelligence become part of the person, and what are the key ethical and legal implications', *AI and Society* 9 November 2022.

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Artists traditionally operate from passion, source, mystery, that by societies standards does not equate economically and artists often lack legal knowledge. Natural Law can be applied. Copyright Law is important to protect the individual who at present are being completely overridden by the AI developers, illustrated by the current cases currently in the US Courts.¹⁶

The contemporary challenge of the use of AI and creative works has created an opportunity to build a system of law to protect not only the artists but also the AI Developers and the AI users.

The current circumstance is analogous to when the first motor vehicles came into existence. There were no laws in place or future unknown, laws needed to be created to defer, control dangerous use. If not, like the motor vehicle scenario, there will be 'car accidents' from non compliance to AI regulatory use. We need AI laws both ethically and practically.

This paper will reflect the question "*Towards a legal framework for copyright protection for works generated by AI*". Is the current copyright legislation sufficient, what are the deficits and proposed reforms under the Australian federal legislation, the common law and international agreements/treaties.

Approach to the Research

The paper will begin by setting out background to Copyright Legislation both in Australia and Internationally. Current issues highlighted to evidence where artists rights are not being met and address the priority for the Australian Government to make reform to copyright legislation to include AI generated works. This paper will examine case law to analyse if current copyright legislation protect both the individual artist creative and the AI developers to ensure innovation is encouraged to build a prosperous and thriving society. That the legal framework is uptodate to foresee the new future of AI developed creative works.

Possible Methodology

This paper will use a doctrinal analysis with subsidiary normative element. It will introduce with background on the use of AI in art and describe current AI technologies such as Dall-E. The difficulty in the current climate is to be inclusive of AI created works. The requirement of the Australian legal framework to protect and be inclusive of the individual artist, AI developers and the end user of the AI products. Literature will be used to analyse the case law including theoretical natural law approach, human rights, inclusive of government's obligations to all of their citizens.

¹⁶ Christopher Zirpoli, 'Generative Artificial Intelligence and Copyright Law', *United States Congressional Research Service* 2023.