Copyright Infringement in AI-generated Works

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At the Colorado State Fair, a fine art competition, "Theatre D'opera Spatial," which is an artificial intelligence production presented by Jason Allen in August, was selected as the winner of the digital category. The news spread rapidly and created a worldwide issue. People are expressing concern that the development of AI will occupy the artist's place, describing it as the "death of artistry." Regarding the award, Baidu at MIT Technology Review said that AI is bringing great inflexion points to industries that require creative abilities such as art (Baidu, 2022). In addition to paintings, various opinions have been suggested on whether copyrights for AI-generated music, novels, and source codes should be recognized. In my opinion, the copyright of AI works should not be recognized. Because works protected by copyright law must be the result of human activities. Also, when building a dataset for learning of AI, copyright and improper use of learning subjects can be a problem. Lastly, it is difficult to determine whether the results generated by AI are truly original.

First, the author of the work must be human. What is AI's work creation mechanism? According to the interview, Robbie Barrat, an AI artist, inputs data into a neural network program and his program creates the work and produces the work by determining if it is a 'real' picture. This process is actually like the process by which humans create works of art (Pattishall et al., 2019). However, according to an article by Jane Recker, a member of Smithsonian Magazine, the U.S. Copyright Office (USCO) rejected a copyright request for the AI-generated output that Stephen Thaler appealed. USCO said they once again rejected the copyright application following 2019, judging that there was a lack of elements of human authors essential for copyright recognition. In addition, Article 101 of the Copyright Act does not define the author of a work, but the court has maintained a consistent attitude that anything other than human expression cannot be protected by copyright (Recker, 2022).

Artificial Intelligence performs tasks based on the learned data. Most of the data collected for AI learning comes from the web. With vast amounts of datasets, researchers educate AI. AI's parents (researchers and companies) insist on the fair use doctrine for copyrighted works to promote freedom of expression. However, according to an article published in The Verge, it is a distinctly different matter for AI to learn from the fair use of the work and for AI to create and distribute something based on it. If AI produces a completely new image after learning billions of images, there is very little chance of copyright infringement, but if it learns only certain artists' works to create that artist-style work, it will threaten the market for original art. In such cases, it would be difficult to say that the learned information has been sufficiently modified. There is plenty of room for this to be interpreted as unfair use (Vincent, 2022). According to an article by Paul A., amid active discussion of copyright infringement concerns, Getty Images CEO Craig Peters announced that he would not offer AI-generated works in the name of copyright legality and privacy (2022). This act of generating profits using data without paying a price is clearly not recognized as fair use.

Questions are also being raised about whether the results created by AI are original. In an article in The New York Times, programmer Matthew Butterick sued Microsoft's GitHub programming AI, Copilot, for violating the legal rights of his and other programmers to the original code. They claim that their use of data is fair use. However, some users of Copilot say that Copilot appears to be writing the same code as the existing program (Metz, 2022). The product of highly similar AI is just a plausible plagiarism.

In conclusion, I don't think copyrights should be recognized for AI-generated works based on several reasons. The court does not recognize AI as a copyright holder, and USCO also does not grant copyright to the results created by AI. In addition, the creation of AI learned through other people's works remains a concern about copyright infringement. Finally, there is an aspect that it is difficult to see AI's creations as original results that can be recognized for copyright. The fact that various people's creations are easily accessible in the web environment and are collected, transformed, and commercially used without the consent of the original author makes it difficult to support companies that claim fair use by using numerous data. 24/7/365, companies that make money by collecting data without permission using AI are unfair groups that want to hide unfair use. Therefore, works by AI should not be copyrighted.

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