

Country report: Portugal

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5.1 - Is the output generated by an artificial intelligence system likely to be protected by copyright in your country?

Portugal is a *droit d'auteur* country. AI productions cannot be protected by author's rights, because their origin cannot be traced to a person exercising is/her freedom of intellectual creation. The same applies, for ex., to works of art generated by non-human animals.

Notwithstanding, AI production are eligible for protection by related rights of producers, in particular sound and/or video producers.

5.2 - If applicable, does the production generated by an artificial intelligence system benefit from a full copyright, in particular as regards the duration and scope of the rights, or from a modified or special right?

As mentioned in 5.1, AI productions can be protected by related rights of producers provided by international instruments, in particular de Rome Convention of 1961 and EU directives.

5.3 - If there is a protection by an adapted or special copyright (as it exists sometimes for certain works, as for example, in Europe, concerning computer programs), what are the modifications or adaptations?

There is no adapted or special copyright specific for AI productions.

5.4 - Who is the author? Who would be the owner of the rights? Could the output be considered a joint work? If so, between whom and in what cases?

There is no author for purposes of copyright (author's rights) protection. AI systems are not recognized freedom of intellectual creation.

However, the user of the AI system can invoke the related rights of sound or video producers, which requires no original work, i.e., a work created by a human spirit.

5.5 - Is there a special ownership rule (presumption, or even fiction, as it exists in some countries for computer-generated creations; see for example, art. 9 (3) Copyright, Designs and Patents Act (CDPA) in England)?

No. There is no pending possible legislative change.

AI productions can be protected by related rights of sound and/or video producers. In comparison, literary works and other types, such as painting, remain outside the scope of copyright (in broad sense) protection. Equal treatment could then justify a related right for

editors, which could be similar to copyright in anonymous works, eventually with a term of protection closer to the rights of producers.

5.6 - What would be the criteria to be retained to allow access to copyright protection for AI outputs?

The criteria would be similar to the rational of related rights of producers.

5.7 - Should a specific copyright be created for these productions?

Eventually the related rights of producers could be extended to editors concerning publications of literary works generated by AI systems. A similar reasoning should apply to other types of works of art, which are not protected by related rights.

5.8 - With what particularities (e.g., duration and content of the rights) ?

The same as producers' rights for reasons of equal treatment.

5.9 - Can there still be a moral right ?

As long as AI systems are not 'moral machines' there is no reason to award a moral right for AI productions.

5.10 - Should there be a special ownership rule (presumption, or even fiction, as it exists in some countries for computer-generated creations)?

The same as with the related right of producers, i.e., the use of ©.

5.11 - Should a deposit be required? / A declaration of "origin"?

IMHO, yes.

5.12 - Should a kind of neighbouring right or a sui generis right be created?

Before creating new related or special rights, it is important to clarify whether already existing ones may apply, as we think it is the case.

5.13 - What would be its characteristics?

In case a new right is created, perhaps it could be similar to the editors' copyright in works which entered unpublished in the public domain. For ex., the term of protection would be limited to 25 years after the production of the work.

5.14 - *The rights covered?*

Economic rights of reproduction and communication to the public, including making available online. Secondary uses would be allowed by statute. Moral rights would not apply.

5.15 - *Generally speaking, what would be the limitations on or exceptions to this new right?*

The same as the limitations or exceptions which apply to neighboring rights, in special the rights of sound and/or video producers.

5.16 - *How should this protection be articulated with other existing protections?*

A new protection for AI productions should not interfere with existing protections.

5.17 - *In the absence of protection by a property right, are there any compromise solutions? For example, a kind of paying public domain for them: collection of royalties paid to a collective management organization for distribution among authors continuing to create works in the traditional way? What else?*

In case related rights such as the producers' rights do not apply, then AI productions are "copyright-free" and therefore can be used for free by anyone. They should be treated as "works of nature", such as birds singing or dancing.