Paris Congress

ALAI 2023

Artificial intelligence, copyright and related rights

June 22-23, 2023

To National Reporters:

The questionnaire uses the neutral term AI "production" to refer to content generated by an artificial intelligence system. As opposed to the term "work (of the mind)" which is the one that describes the classical object of copyright protection. This means that the content we are interested in is content produced by the artificial intelligence machine (or "system"), itself fed upstream by works of the mind, reproduced in a training data base. The margin of intervention of the final user is thus a priori very limited, but not always non-existent. The hypothesis concerned by this Congress is thus closer to what the ALAI once studied as "computer-generated creations" than to "computer-assisted creations" (see the 1989 Quebec City Congress).

In the mind of the editors of this questionnaire, an "artificial intelligence system" is defined as a computer system that allows, with a certain autonomy, automated decision making or predictions influencing real or virtual environments[1].

The questions raised are numerous because of the disruptive nature of the phenomenon, the multitude of issues and the theoretical, economic and social importance of the stakes.

Some of the questions will undoubtedly be accompanied by brief negative answers, which is already a useful answer for the General Reporters. Simply indicate these ("no", "none").

In other cases, the answers may be uncertain. In these cases, it is easiest to follow the classic pattern: "1) What do statutes and regulations say? 2) What does the caselaw say? 3) What does the national group think? To questions 1 and 2 above, the answer will often be "Nothing specific about AI but the relevant reference text/principle might be ...". Regarding 3), the national group is not obliged to have taken a position.

It is of this uncertainty and diversity that we will try to draw together, in June, a clear picture.

The team of the Scientific Committee (Alexandra Bensamoun, Jane Ginsburg, Silke von Lewinski, Pierre Sirinelli) is of course at your disposal to explain a question that might not seem, because of the particular context, immediately clear.

Thank you all and we look forward to seeing you in Paris.

Note: the questionnaires must be returned by the national groups no later than May 8, 2023. They will be sent to Pierre Sirinelli (pierre.sirinelli@univ-paris1.fr) and Sarah Dormont (sarah.dormont@u-pec.fr).

[1] *This definition is comparable to the one retained by the European Union in the discussion on the AI Act (proposed regulation COM(2021) 206 final, March 2023 position), itself inspired by the 2019 OECD Recommendation on AI.*

Artificial intelligence, copyright and related rights

The contours of the relationship

1. Understanding

1.1 **-** Has your national or regional law adopted a legal definition of AI?

No, neither Singapore nor Association of Southeast Asian Nations ("ASEAN") has a legal definition.

However, the Infocomm Media Development Authority's "Model Artificial Intelligence Governance Framework", 2nd edition, published on 21 Jan 2020 ("Framework"), defined it as:

> *"a set of technologies that seek to simulate human traits such as knowledge, reasoning, problem solving, perception, learning and planning, and, depending on the AI model, produce an output or decision (such as a prediction, recommendation, and/or classification). AI technologies rely on AI algorithms to generate models. The most appropriate model(s) is/are selected and deployed in a production system."*

This document is non-binding and act as a guideline. Therefore, this definition should not be taken as authoritative nor is it exhaustive (https://www.pdpc.gov.sg/-/media/files/pdpc/pdf-files/resource-for-organisation/ai/sgmodelaigovframework2.pdf).

We would like to bring the reader's attention to the fact that the AI divide within ASEAN is wide. In 2019, 83% of ASEAN's 10 member states are still in the early stages of its development. AI investment for Singapore then was $68 per capita. In contrast, the five largest economies in the region; Indonesia, Thailand, Vietnam, Malaysia and Philippines, only invest $1 per capita each (Jonathan Lim, "Bridging the Divide, AI Governance in ASEAN", 4 May 2022, ASEAN-Australia Strategic Youth Partnership (https://aasyp.org/2022/05/04/bridging-the-divide-ai-governance-in-asean/). This could mean that the rest of the ASEAN will take some time in catching up with their legislation.

1.2 **-** Can you provide some examples of current uses of AI and its productions in the cultural sector of your country?

None for AI productions per se. However, uses of AI – i.e., AI-assisted or AI-crafted – by visual artists are increasing (global trend), especially in the arena of NFTs, and include commissions and works bridging 'physical-digital-hybrid worlds' too numerous and varied to be usefully mentioned.

Of the artists interviewed, including:

(1) Brian Gothong Tan, flim-maker and multi-media artist (https://www.imda.gov.sg/About-IMDA/Research-and-Statistics/Support-for-Industry-Sectors/Media/film/directors/brian-gothong-tan);

(2) George Leong, award winning regional songwriter-producer (https://en.wikipedia.org/wiki/George_Leong);
(3) Hubert Ng, regional singer-songwriter and producer (https://www.8days.sg/entertainment/local/hubert-ng-kpop-singaporean-songwriter-xodiac-763681);
(4) Sun Koh, director/filmmaker (https://the-singapore-lgbt-encyclopaedia.fandom.com/wiki/Sun_Koh); and
(5) Sze Chan, dancer, multi-media artist and film director (https://filmfreeway.com/oddpuppy).

Only Brian Gothong Tan has used generative AI for his work (NFTs) in his "Mezatomia" exhibition (https://bakchormeeboy.com/2023/01/08/tworks-metazomia-exhibition-by-brian-gothong-tan-explores-realm-of-nfts-by-dreaming-up-new-worlds-and-futures/ and https://tworksasia.org/tworks/metazomia/ and the ongoing practice of Wyn-Lyn Tan https://www.wynlyntan.com/) and photography.

The use of technology in the cultural and arts industry has been promoted/encouraged by the government and drawn several global players to set up in Singapore (e.g., Lucas films, Pixar and Industrial Light and Magic, and Animeta among others).

1.3 *– (Optional) What are the issues that have been exposed in your country on this subject: stakes, difficulties, orientations, proposals…?*

1.4 **–-** Are there any initiatives in your country or region aimed at regulating the use of AI in the cultural sectors?

None that we are aware of.

2. Understanding the upstream

2.1 **–** Are the AI system or its components likely to be protected by intellectual property rights (copyright and/or industrial property – patents, trade secrets . . .) ?

Yes, they could be protected by intellectual property rights ("IPR"), such as confidential information and copyright, as long as they satisfy the necessary pre-conditions.

2.2 **–** Can rights under copyright be enforced against the use of protected contents by AI training?

Does the insertion of a pre-existing work into the computer system implicate rights under copyright?

Yes, if there is copying which can be considered as substantial reproduction in material form.

Material form is the device or article which the work is copied and stored. It includes paper, record, film, computer and other electronic medium. The court has decided that the measure for "substantial" is qualitative and not quantitative. As such, it is fact specific.

Training requires the AI to be fed materials. This means that works are being copied into a computer or a server and would fulfil the definition of copying. Usually, the works fed are complete works and not partial. Therefore, the likelihood of infringement when training an AI is high.

If so, in order to avoid a finding of infringement, are the copying or storage covered by an exception?

The copying and storage of works for training may fall within the exceptions for computational data analysis and/or fair use under the Copyright Act 2021 ("Copyright Act").

Computational data analysis is defined to include "using a computer program to identify, extract and analyse information or data from a work or recording" and "using the work or recording as an example of a type of information or data to improve the functioning of a computer program in relation to that type of information or data" (s243, Copyright Act). The definition basically covers predictive data analysis and "self-improvement machine learning". Accents for Apple's Siri is a good example of the latter. The computer programme learns to understand a user's accent to avoid miscommunication in future. Therefore, if it has misunderstood "taxi" for "sexy', after being corrected, it will not repeat the same mistake. The definition does not include the situation where an AI product is produced .

There are two types of fair use, those for specific purposes, e.g., news reporting, criticism and review, research and study, and one for all purposes (s190 – s194, Copyright Act). The copying and storage of work for AI purposes would usually fall within the general provision of fair use (s190, Copyright Act). The provision is drafted very close the US copyright law.

1. Computational Data Analysis

Copying and storage of works for AI training would be within the permitted use of computational data analysis if 5 conditions are fulfilled (s244, Copyright Act). Most of the conditions are drafted in the form of scenarios and illustrations, reminiscent of statutes in civil law jurisdictions. They are:

a. the purpose of the copying must be computational data analysis, as defined by the Act, or for preparing the work for such a purpose;
b. the copied material is not used for any other purpose. This condition refers to the actual use, whilst the preceding is one of intention;
c. the copy made is not supplied to other persons unless it is for the purpose of verifying the results of or collaborative research relating to the computational data analysis.
d. the access to the material copied is lawfully gained; and
e. the first copy made is:
    i. not an infringing copy;
    ii. an infringing copy but the user has no knowledge of the infringement or its flagrancy; or
    iii. an infringing copy but its use is necessary for a prescribed purpose and limited to the computational data analysis being carried out.

Reference to copying in this provision includes storage.

Since AI production is not within the definition of computational data analysis, the exception does not apply to upstreaming material for AI training. Further, the training materials used are usually obtained by circumventing paywalls, which would not fulfil the lawful access requirement.

The exception covers predictive data analysis and "self-improvement machine learning" subject to the fulfilment of the five conditions listed in this section.

2. Fair Use

In order to qualify for the general fair use exception, the court needs to consider all relevant matters. Of these, s191, Copyright Act named four. They are:

(a) the purpose and character of use e.g., whether it is commercial in nature or non-profit educational purposes;
(b) the nature of the work;
(c) the amount used; and
(d) its effect on the potential market or value of the work.

Whether a use is fair is fact sensitive. Commercial research could fall within the provision. In Global Yellow Pages Ltd v Promedia Directories Pte Ltd ([2017] SGCA 28), the Court of Appeal opined that scanning and photocopying the original work which purpose was for its data falls within the definition of "fair dealing" as the compilation barely attracts copyright protection (Note: s35 – 37, Copyright Act 1987, the previous copyright statute uses the phrase "fair dealing" and not "fair use". The latter is closer towards the US copyright law.).

2.3 - In your country, are there any proposals to change the law and in which direction?

For example, by deeming that the incorporation of preexisting works into AI systems does not create an actionable "reproduction" of the works? Or by creating a new exception? Or by implementing a compulsory licensing system? Other solutions?

None that we are aware of.

2.4 - Do the "terms of service" of the platforms available in your country authorize the copying and storage for the purpose of constituting "training data" and the creation of "AI outputs" of the works posted by the users of the platform? If so, give examples of the relevant Terms of Service.

If platforms here refer to social media, where works posted are user-generated, then the platforms available in Singapore are predominantly of mainstream international social media such as Facebook, Instagram, LinkedIn, Wechat, Telegram, Line etc. These are contractual terms.

None of the terms of service of any of these platforms have been required by law to be amended to cater specifically for our jurisdiction for AI.

2.5 - Are you aware of the conclusion of individual or collective licenses on this point? If yes, in which fields of creation? Under what conditions? If so, give examples.

None that we are aware of for the purposes of AI and training.

3. Using AI as a tool for rights management and administration

3.1 **-** To what extent is AI used to locate or identify protected content, to moderate it, or even to fight against infringement?

The Composers and Authors Society of Singapore Ltd ("COMPASS"), the first and largest CMO, protects musical and musical related literary (lyrics etc.) works by using song identification software. The software is not considered by IPOS within the classification of AI in this report (see .

The Music Rights (Singapore) Pte Ltd ("MRSS"), formerly known as Recording Industry Phonogram Society ("RIPS") used to pay royalties to its members/record companies by simply relying on the market share for sale of CDs. The Copyright Act has introduced provisions regulating CMO. The implementation of the Act is divided into two stages. Whilst the rest of the Act came into effect on 21 Nov 2021, the provisions related to CMO governance have not. It is envisaged that they will be declared effective in September 2023. This is to give CMO time to introduce changes to their copyright management system to ensure compliance.

Nobody in the music, film, photography and entertainment industry interviewed, however, is aware that AI is being used by CMOs or in copyright management by the music companies or non-profit organisations registered in Singapore.

3.2 **-** If computer tools are used for this identification, are there rules to allow the evaluation of the tools used in order to verify the relevance of the results produced by the AI system? (For example, in the framework of the European Digital Services Act, platforms have an obligation of transparency, notably on the tools used and the results they produce - art. 15).

> If the answer is yes, are these rules derived from practice (usages, contracts, softlaw...) or imposed by legislation or regulation, or by case law?

No laws govern this area.

However, Parliament has introduced provisions to regulate Collective Management Organisations in the Copyright Act 2021. Together with the softlaw published by the Inforcomm Media Development Authority of Singapore ("IMDA"), Model Artificial Intelligence Governance Framework ("Framework") (https://www.pdpc.gov.sg/-/media/files/pdpc/pdf-files/resource-for-organisation/ai/sgmodelaigovframework2.pdf), it is inevitable that CMOs will subject their system to be evaluated within the Framework, if AI is used.

Part 9, Regulation of Collective Management Organisations ("CMOs") in the Copyright Act has yet been declared effective by the Minister of Law, unlike the rest of the Copyright Act which came into force on 21 Nov 2021 (Copyright Act 2021 (Commencement) Notification 2021). This Part 9 regulate CMO generally. It is not specific to AI.

Regulating CMOs was not within the purview of the original initiative of amending the copyright regime, "Public Consultation on Proposed Changes to Singapore's Copyright Regime", 23 Aug 2016 (https://www.mlaw.gov.sg/files/Public_Consultation_Paper_on_Proposed_Changes_to_Copyright_Regime_in_Singapore_August_2016.pdf). It was the result of feedback from stakeholders. Following their feedback, Ministry of Law ("MinLaw") and Intellectual Property Office of Singapore ("IPOS")

published a consultative document named, “Public Consultation on Proposed Licence Conditions and Code of Conduct for Collective Management Organisations” (https://www.mlaw.gov.sg/files/Annex%20B_2020%20Consultation.pdf) on 3 June 2020.

Part 9 of the Copyright Act sets up a class licensing scheme which CMOs have to comply. Further the regulations are to be found in subsidiary legislations which have yet to be passed. However, from the draft regulations (https://www.mlaw.gov.sg/files/Annex%20A_Copyright_(Collective_Management_Organisations)_Regulations_2023.pdf) published on 7 November 2022 for public feedback, it is clear that the government intends to follow through with the policy it had expressed.

CMOs will be regulated with a light touch. Some of the principles which the CMOs should follow are accountability and transparency of policies in the administration of works and distribution of royalties, to members. The policies should be within the contracts with members. Members would be the ones to patrol the CMOs. The government will only step in when absolutely necessary. CMOs will inevitably use of the government’s published guidelines to show to members that they meet certain standards if they are using AI.

IMDA first published the softlaw, the Framework, in 2019, to create an ecosystem where there is trust in AI by the public. This will encourage its use by organizations. The Framework is supplemented by three other initiatives. They are two documents and a testing toolkit:

1. Documents
a. Implementation and Self-Assessment Guide or Organisations (“ISAGO”) – https://www.pdpc.gov.sg/-/media/files/pdpc/pdf-files/resource-for-organisation/ai/sgisago.ashx
b. Compendium of Use Cases - https://www.pdpc.gov.sg/-/media/files/pdpc/pdf-files/resource-for-organisation/ai/sgaigovusecases.ashx

2. Testing Framework & Toolkit

“AI Verify”

The Framework is designed to achieve two high level guiding principles:

1. AI-assisted decision making should be explainable, transparent and fair; and
2. Ai system should be human centric.

To further sustain a Trusted AI Ecosystem, “AI Verify” was launched in May 2022. This testing framework and toolkit allows system developers and owners to be transparent about the performance of their AI systems through a combination of technical tests and process checks. So far 10 companies have been tested. They include: Amazon Web Services (“AWS”), Development Bank of Singapore (“DBS”), Google, Meta, Microsoft, Singapore Airlines, Standard Chartered Bank (https://www.pdpc.gov.sg/help-and-resources/2020/01/model-ai-governance-framework).

3.3 **-** To what extent is AI used as a tool to recommend protected content? For example, the proposal of "playlists" by Pandora or any other online communication service making recommendations of works.

With the predominance of mainstream international platforms in Singapore (e.g., Netflix, Spotify, YouTube, Tik-Tok, Facebook etc.), it can be assumed that algorithms have been used to nudge and shape the selections/tastes of users for a long time.

3.4 - Should we fear, through this recommendation, a risk of dilution of contents and revenues due to a possible opacity of the system?

We understand:

a. dilution of contents to mean weaker and less rich contents; and
b. dilution of revenue to mean less revenue generated.

Where AI is used to recommend playlists to users/listeners, it could lead to a stagnation of creativity. Recommendations as a result of AI profiling a user's taste means "narrow-casting" and not "broadcasting". Users are steered to music which they habitually listen and not those curated by DJs on radios. They will not be exposed to a diverse range of music and discover new genres which they may like.

Revenue is dependent on licence fees collected, which in turn is dependent on use of the protected works. Unless the copyright protection for the works have lapsed, users will still have pay copyright. The life of copyright is very long. Revenue will not be lesser in the long run. However, revenue could only be channeled to a few people with the "hits".

3.5 - Does your national or regional law contain transparency obligations on the use of an AI system for rights management in your national or regional law (e.g., the European Digital Services Act)? What are they?

None for both Singapore and ASEAN. (Not aware of individual ASEAN member country contexts.). See response in paragraph 3.2.

3.6 - In general, do these tools have to comply with rules in terms of product safety or conformity? Are there procedures for certification of these tools by an authority or by professional associations? Are suppliers subject to specific due diligence obligations?

None that we are aware of.

Artificial intelligence and literary and artistic property

The contours of protection

The status of AI Outputs

1. Access to protection

- ***Characterization of the AI output as a "Work" of authorship***

Note: If an AI output has all the external aspects of a work of authorship, is it possible to consider it as a work of authorship protected by copyright?

4.1 **-** Does a "Work" always imply the presence of a physical person?

We understand works of authorship to refer to "literary, dramatic, musical and artistic works" only. These are defined as "authorial work" in Singapore's Copyright Act (s9, Copyright Act).

AI can also produce sound recordings. For subject matter other than authorial works, the possibility of not having a physical person or human being is there. This issue will not be fully explored in this response.

Not all "Work" implies the presence of a physical person i.e., a human being. Only "authorial work" does. Non-authorial works do not. This is because the copyright protection period of authorial work is pegged the life of the author. A person has a limited lifespan whilst an incorporated entity e.g., a company limited by shares can exist forever.

To clearly explain, we need to first understand the following:

1. Types of subject matter protected by our Copyright Act;
2. First ownership of a newly created subject matter;

The Copyright Act defines "work" to include authorial work, a published edition, a sound recording, a film, a broadcast and a cable program (s8, Copyright Act).

Authorial works are generally considered creative in nature, whilst subject matter other than authorial works are considered entrepreneurial. Whilst an "author" is not defined, first ownership of copyright in authorial work is vested in an author unless it is made in the course of employment (s133 and 134, Copyright Act). The fact that there is employment presupposes the existence of a human being.

The duration for protection for literary, dramatic, musical and artistic works in the 1987 Copyright Act was pegged to the life of the author. This was the reason given by the court that it implied the presence of a human being as author and/or first owner (Asia Pacific Publishing Pte Ltd v Pioneers & Leaders (Publishers) Pte Ltd, [2011] 4 SLR 381 at [82], affirmed in Global Yellow Pages Ltd v Promedia Directories Pte Ltd, [2017] 2 SLR 185 at [24] ("Global Yellow Pages case). The duration for protection for authorial work is similarly expressed in the Copyright Act 2021.

For entrepreneurial work, the duration of the copyright is not pegged to an "author" but rather to the date of publication for published work or date of creation for unpublished works. The first owner is a "maker" and not "author". For entrepreneurial works, the following are two examples:

a. For sound recording, the maker is "the person who owns the first record embodying the sounds when the recording is produced".
b. For film, the maker is "the person who undertakes the arrangement needed to make the film" (s133, Copyright Act).

"Person" is not defined in the Copyright Act, but a "qualified person" is. This is either a "qualified individual" or "a body corporate incorporated in Singapore …" (s77 – 79, Copyright Act). "Person" is defined in the Interpretation Act to include "any company or association or body of persons, corporate or incorporate". Therefore, sound recordings and films can be first owned by a company.

Further, the Court of Appeal has held that for copyright to subsist in a literary work, "there must be an authorial creation that is causally connected with the engagement of human intellect. By human intellect, we mean the application of intellectual effort, creativity or the exercise of mental labour, skill and judgment" (Global Yellow Pages case at [23]). This requirement renders it beyond doubt on the necessity of presence of a physical person. As such, an authorial work can be without an author. In such an event, it will be orphaned.

4.2 – From what threshold is it possible to consider that there is a human intervention giving rise to an original work in the realization of an AI output? What types of intervention would allow to know if this threshold has been crossed?

Other than what is clearly unprotectable, the threshold is fact specific.

The measure for "originality" is generally "skill, labour and judgment". Between the "sweat of the brow" and "creativity" approaches, the Court of Appeal has stated definitively that it preferred the "creativity" approach. This has to be connected to a human intellect.

The creativity must be towards an expression and not idea. The court named the result of certain activities to be not copyright protectable. They include managerial decisions and mechanical tasks such as algorithmic collection or arrangement of data. Outside of these obvious cases, the threshold is fact specific.

In Global Yellow Pages' case, the court decided that a database which is protectable only as sui generis database right does not attract copyright protection. As Parliament has decided against legislating such a right, the court should not extend copyright protection to such databases.

4.3 - How can we distinguish between AI-assisted outputs and outputs generated by an AI?

AI outputs can be divided into two categories. They are:

1. Resulting "work" is one which is foreseeable from the instructions given to the AI; and
2. Resulting "product" is one which shows a very high level of autonomy, creativity or input by the AI, in contrast with the instructions given to the AI.

(Note: the terms "work" and "product" in the categorization follows the definitions in the Instructions to National Reporters. This is the emphasise the difference between an AI assisted creation from that of an AI autonomous product.)

4.4 - In some countries, it is asserted that there can only be a work of authorship if the form obtained is the result of creative work by the author in the sense that the latter is aware of the result (work) he wants to achieve even if this result is a little different from his hope/expectations. This requirement, for example, would exclude the quality of author of a person deprived of discernment (for example, an insane person, a very young child, a somnambulist...) or would entail the refusal of protection of a production which would be only the fruit of random forces.

Does this condition exist in your country?

No.

If so, is it a statutory or administrative requirement? Does it derive from caselaw? From secondary authorities (e.g., academic writings)?

Non-applicable.

4.5 - Are the criteria traditionally considered to be irrelevant (such as merit, or purpose) taken into account in the framework of protecting an AI output?

Non-applicable.

- Characterization of a performer's performance

4.6 - In order to be vested with a neighboring right, does the performer necessarily have to be a natural person?

In other words, is an "interpretation" from an artificial intelligence protectable under neighbouring rights?

No, we opine that the performer does not need to be a natural person. An AI "interpretation" performance can be protected as neighbouring rights. The protection is given to the performance itself. Its period of protection is not pegged to the performer.

A performance is protected if it is a "qualifying performance" and

(1) given "live" in Singapore; *or*
(2) performed by a qualified individual.

(s173, Copyright Act)

The condition is disjunctive. It is either the place of "live" performance or status of the performer. Therefore, it the performance is in Singapore, it will be protected regardless of who the performer is.

A "qualifying performance" is defined in s37 to be a performance of one of the following:

(a) dramatic work
(b) musical work
(c) reading or recitation of a literary work
(d) dance
(e) circus or variety act

The protection period of a performance is pegged to the year when the performance is given (s174).

4.7 - In order to be vested with a neighbouring right, must the performer necessarily interpret a work created by a natural person?

In other words, is the interpretation, by a human being, of a production of artificial intelligence protectable under neighboring rights? (Suppose an AI-generated musical composition: if performed by a human being, would the performance be protectable?)

No, performances by a natural person need not be an interpretation of an underlying work created by another, to attract protection. It can be an interpretation of an AI "product".

Copyright in performances arises independently. There need not be an underlying work. A "live" recording of:

(a) an impromptu "jam" session; or
(b) a dance which choreography is no longer within the copyright duration

would be protected as a performance. Whether the underlying work is created by AI is in fact irrelevant.

- If the AI output does not qualify for copyright protection

4.8 - Are the productions generated by AI, that are not covered by copyright, in the public domain?

It could be protected by other branches of IP law, e.g., confidential information.

4.9 - In your country, could the productions generated by AI be qualified as "commons" (it being understood that, in some countries, the notion of "commons" has a different meaning than "public domain")? Under what conditions or according to what criteria?

We understand "commons" here to refer to open source software, like the world wide web, or the "creative commons". There is no legal definition of "commons" in Singapore.

The traditional principles related to copyright and licensing applies. Licensing naturally includes the law of contract. Where there are no express terms, implied terms might be read into the contract by the court.

4.10 - How can we be sure that the creation presented as realized by an author is not an artificial production?

There are no legal measures to verify such declarations. We need transparency of the creative process.

This is a problem not just in Singapore. It is a problem which copyright has not foreseen, be it a registration system or one where copyright accrues automatically.

For countries with a registration system, registration is more for the purpose of claiming copyright ownership. Whilst the identity of an author may need to be declared when registering a work (for example, see the registration forms for literary works and musical works of the US Copyright Office - https://www.copyright.gov/forms/formtx.pdf and https://www.copyright.gov/forms/formpa.pdf), it is the creative process which is relevant. We need transparency on this and penalties for misrepresentation.

Singapore does not have an official copyright register. Whilst Singapore acceded to the Berne Convention only in 1998, as a former colony, we inherited the UK Copyright Act 1911 (Ng Sui Nam v Butterworth & Co (Publishers) Ltd [1987] SGCA 8). As such, since promulgation of statehood on 9 August 1965, Singapore has adopted the Berne system of automatic protection (the UK being an original member of the Berne since 1887).

The creation of a copyright registry where registration is voluntary was mooted during the consultative stage for the Copyright Act. It was decided that a voluntary registration system would not confer much benefit on protection and prove of ownership. The burden of costs was also unpopular with the respondents (see Ministry of Law and Intellectual Property Office of Singapore, Singapore Copyright Review Report, 17 Jan 2019 - https://www.mlaw.gov.sg/files/news/press-releases/2019/01/Annex%20A%20-%20Copyright%20Review%20Report%2016%20Jan%202019.pdf).

The CMOs' databases act as unofficial registers in Singapore. There are CMOs for music and related lyrics (COMPASS), sound recordings (MRSS), books (Copyright Licensing and Administrative Society of Singapore Ltd/CLASS) and films and video (Motion Pictures Licensing Company (Singapore) Pte Ltd/MPLC).

For music, it is common to have the © sign, the year of publication and owner indicated in the work as required under the Universal Copyright Convention. There is also the database of COMPASS and the music publishers which could be used as reference. However, authorship and ownership are distinct. These databases are concerned with ownership for the purpose of distribution of royalties. We are interested in authorship for the purposes of attributing "originality" and first ownership. Ownership can change automatically e.g., through inheritance, nor does not it need to be recorded in any registers. Therefore, these databases may not be useful. (p) is similarly published for sound recordings.

Until there is a law and "culture" on transparency, as well as the establishment of an authoritative archive, we can never be sure who or what has created a work/production.

4.11 **-** Usually, a collective management organization (CMO) manages a catalog attached to an author without making distinctions between "works" / "productions". How to manage the case of an author whose usual works belong to his repertoire but who would also use an AI system to generate other "productions"?

We should strive for an ecosystem where transparency and recordals (not necessarily the creation of a registry; it can be a notice on the record sleeves or information related to the work); are legislated and are respected by industry players – creators, users and administrators. Further, the benchmarks or guidelines on when a work is considered generated by AI rather than mere assistance should be published.

2. The rights regime

- The choice of the right (nature, ownership, regime, limitations)

** As your legislation currently stands:*

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

We are confining our response to "authorial work". Singapore Copyright Act is silent on this point. Where the work is "authorless", it is unlikely to be protected.

We may not be able to link an output generated by AI to the person responsible for entering the instructions. Therefore, there is no causal connection between the output and the intellect of the

individual. An output could have all the features of a copyright protectable work except for the lack of a natural author without which we may not have a first owner under the Act's existing provisions. This means that the AI product could be authorless. (see also paragraph 4.1).

Without an author, there can be no first owner, a fortiori, subsequent owners. Ownership is necessary for rights to be claimed or enforced.

There has been a recommendation that the owner for such works be the person who made the necessary arrangements for its production, very much like a producer for entrepreneurial work.

The Ministry of Law and Intellectual Property Office of Singapore did not consider this point in its copyright reform for the Copyright Act (see Ministry of Law and Intellectual Property Office of Singapore, Singapore Copyright Review Report, 17 Jan 2019).

The Singapore Academy of Law's Law Reform Committee in its report, "Rethinking Database Rights and Data Ownership in an AI World , July 2020 (see Section C, Recommendations 2, Chapter 2, https://www.sal.org.sg/sites/default/files/SAL-LawReform-Pdf/2020-09/2020%20Rethinking%20Database%20Rights%20and%20Data%20Ownership%20in%20an%20AI%20World_ebook_0_1.pdf) recommended that s9(3), UK Copyright Designs and Patents Act 1988 on computer generated works be considered.

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?

Non-applicable (see facts in response at preceding sub-para).

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?

Non-applicable (as above).

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?

Non-applicable (as above).

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)?

Non-applicable (as above).

** In the event of a possible legislative change:*

Are there any concrete proposals in your country related to the items listed below? If so, answer questions 5.6 and following.

If not :

> *i) the national rapporteurs can give their personal opinion while making it clear that these are mere proposals of secondary authorities (e.g., academics) and not positive law;*
>
> *ii) or they can go directly to the questions numbered 6 and following.*

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

We cannot look at copyright protection for AI outputs without examining other issues relevant to ownership and their assertion. This is especially important as copyright is an intangible asset.

Ownership carries with it certain decision making responsibilities to maintain the value. An owner has to make decisions on protection e.g. simultaneous worldwide release, and enforcement e.g. whether to sue for infringement given certain circumstances which can include long delays before a case is heard.

Authorship focuses on claims to the creation. Whilst AI may be good at certain jobs, it may not be able to make the decisions required of an owner.

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

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

5.9 **-** Can there still be a moral right ?

No.

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

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

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

5.13 **-** What would be its characteristics?

5.14 **-** The rights covered?

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

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

- AI and violation of rights: the choice of remedy

6.1 - Can an AI output infringe, and to what extent? Who would be liable?

Yes, it can. However, if we are not able to link the infringing work to an author or owner, there will be nobody to sue.

In order to succeed, not only must the plaintiff/s prove that there is substantial reproduction in material form of their work, but they must also prove a causal connection between the original and the alleged infringing work. Ultimately, copyright protection is dependent on the copying (we shall not examine other forms of infringement or uses e.g., public performance here). If the defendant/s have never heard or seen the original work, there cannot be copying.

Therefore, where a work is infringed by a generative AI's output/product, we should consider giving the owner of original work some presumptive advantage in the onus of proof. Since AI's output/product is dependent on the material fed upstream during training, it should be a presumption on copying where the threshold on substantiality is passed. It will have to be proven that the original work was not included in the AI training data.

Finally, the ability to attribute authorship and/or ownership to an AI output/product in copyright law could assist in the attribution of duties and liabilities in other areas where AI has been used.

6.2 - Are there other legal means (e.g., unfair competition, parasitism) to engage the liability of the person responsible for the AI output? (Who would that person be?)

Other intellectual property and related areas of law which could be engaged are:

1. breach of confidential information; and
2. passing-off.

Linked to passing-off are the law of defamation, malicious falsehood and unfair competition. We will only comment on the tort of passing-off and unfair competition.

(A) <u>Passing-Off</u>

In order for a plaintiff to succeed in the tort of passing-off, the following ingredients need to be proven:

a. there is goodwill attached to the Plaintiff's goods or services;
b. the Defendant has misrepresented to the public leading it to be confused; and
c. resulting in damage to the Plaintiff.

Recently, we have seen voice cloning by AI. In fact, there are AI which brands its services as one for voice cloning. Examples are:

i. Overdub (https://www.descript.com/overdub?utm_source=google&utm_medium=paid_search&utm_campaign=16482720932&utm_content=&utm_device=c&utm_term=performance_max&gclid=CjwKCAjwjYKjBhB5EiwAiFdSfiWAJTNiBRzo_lpcx-A9_3dZOttwxxJmcarHyiEMTved4ohxhEXeaxoCIj4QAvD_BwE); and

ii. Udemy (https://www.udemy.com/course/digital-voice-cloning-using-artificial-intelligence-ai/?utm_source=adwords&utm_medium=udemyads&utm_campaign=DSA_Catchall_la.EN_cc.ROW&utm_content=deal4584&utm_term=_._ag_88010211481_._ad_535397282061_._kw__._de_c_._dm__._pl__._ti_dsa-392284169515_._li_9062519_._pd__._&matchtype=&gclid=CjwKCAjwjYKjBhB5EiwAiFdSfpKjYXk5OPy1DBEWtypGghA9ryrcE-lAtJyGFeZUX69b_4NodCCP1hoCChIQAvD_BwE).

We have also heard of the song, "Heart on My Sleeve", using AI to simulate the work of Drake and the Weeknd, garnering millions of plays on Apple, TikTok, Spotify, YouTube etc. before being taken down (https://www.nytimes.com/2023/04/19/arts/music/ai-drake-the-weeknd-fake.html). Such cloning could be protected by passing-off, since the required conditions are fulfilled. However, where they are not, it may be difficult to pursue under other laws by the person who has the voice. Once the fact that the voice is not the original but cloned by AI, singers such as Drake and the Weeknd may not be able to win in cases of passing-off, since there is sufficient differentiation, and the consuming public would not be confused.

(B) Unfair Competition

Singapore is a common law country. Common law has generally resisted the introduction of a general tort of unfair competition.

The privy council in an appeal from Australia has commented that there is no law of unfair trading or unfair competition (Cadbury Schweppes v Pub Squash, [1981] 1 WLR 193). This has been applied in England (see Hodgkinson & Corby v Wards Mobility, [1994] WLR 1564 and L'Oreal SA v Bellure NV, [2008] ETMR 1 (CA).

The Court of Appeal, Singapore's apex court, in Lifestyle 1.99 Pte Ltd v S$1.99 Pte Ltd applied the privy council's decision of Cadbury Schweppes v Pub Squash. It held that there was no tort of unfair competition. It was unwilling to decide against the Defendant even though it was riding on favourable publicity generated by the Plaintiff's. The Defendant was merely using the same business concept of retailing goods at a fixed price of $1.99. To do so would be to grant the Plaintiff a monopoly on this concept ([2000] SGCA 19). The case was later followed by the High Court in McDonald's Corp v Future Enterprises Pte Ltd ([2004] SGHC 81).

In these cases, the courts have found that the confusion caused among the consumers was not adequate to hold the Defendant liable in passing-off.

6.3 **-** Beyond copyright, can personality rights prevent the realization by an AI of a production using the voice or physical aspect of another person?

Singapore does not have personality rights like that in the US (which is a sub-set of the privacy rights). What could be used will be the theory or principle of endorsements in passing-off. The generative AI's product clearly states that it is not a genuine recording of a person, there will be no confusion. Therefore, the owner of the voice may have a weak case. (see preceding sub-section).

- Question of transparency and remuneration

7.1 **-** In your country, is there a requirement (legal, administrative, jurisprudential, arising from practice) that AI-generated content in general be declared as such (see for example in Europe, the AI Act of April 21, 2021[2] and the more nuanced position of the Council of the European Union of November 2022[3])?

No.

(Optional) If not, do you think that such a solution should be adopted?

Yes, it would be preferable in the long run.

7.2 **-** If applicable, how is the sharing and payment of remuneration carried out when AI is involved in the creative process?

Non-applicable.

(Optional) If there is no existing solution, what solution do you think should be adopted?

7.3 **-** If applicable, how is the sum linked to the AI allocated (cultural action? payment to other rights holders...)

Non-applicable.

(Optional) If there is no existing solution, what solution do you think should be adopted?

George Hwang
Singapore

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[2] https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX%3A52021PC0206
[3] https://www.consilium.europa.eu/fr/press/press-releases/2022/12/06/artificial-intelligence-act-council-calls-for-promoting-safe-ai-that-respects-fundamental-rights/