



“Generative AI and its Complexity from the Lens of Copyright Law”

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If you work in business, law, science, technology, or even if you don't, you have probably heard of ChatGPT. This well-known AI is a generative AI chatbot created by OpenAI, a company founded by Elon Musk (the CEO of Tesla and Twitter), Sam Altman, Greg Brockman, and others¹. The company's aim is to create safe and beneficial AI that can benefit all of humanity².

It's remarkable how ChatGPT will benefit people from all walks of life, while at the same time disrupting certain industries. A prime example is that generative AI chatbots like ChatGPT can generate and provide information and reduce the workload on human agents, such as call center representatives. Even at the management level, ChatGPT can also be a big help. For instance, executives no longer need to spend a lot of time brainstorming or researching for project ideas because ChatGPT can spark wonderful ideas in just a few seconds. In the academic sector, scholars can spend much less time reading and analyzing various papers, as ChatGPT can provide summaries and help curate materials. Finally, in the creative sector, ChatGPT has shocked many as it can compose or create many creative works from poems to stories within a short period of time.

If you find text-based generative AI like ChatGPT to be not fascinating enough, you may be interested in Midjourney, a company specializing in image generative AI. Midjourney was

¹ Kay, G. (๒๐๒๓, February ๑). The history of ChatGPT creator OpenAI, which Elon Musk helped found before parting ways and criticizing. Business Insider. <https://www.businessinsider.com/history-of-openai-company-chatgpt-elon-musk-founded-๒๐๒๓-๑๒#over-the-following-year-openai-released-two-products-๔>

² OpenAI. (n.d.). About OpenAI. Retrieved April ๒๐, ๒๐๒๓, from <https://openai.com/about/>

founded by David Holz, a former NASA fluid mechanics specialist³. The AI was based on the well-known community and gaming platform called Discord. This platform is easy to use and already familiar to gamers and those digital surfers. Midjourney's AI allows you to create various styles of images, including the styles of famous artists, using just a few "inputs", which are technically called "prompts."

Despite the infinite possibilities brought about by generative AIs, there are also many legal issue which can cause disputes and debates among lawyers and anyone who own or maybe impacted by generative AIs. One of the controversial issues being discussed is the ownership of works generated by AI. Who owns the copyrights? Is it the company that owns the AI technology, or the person who "prompts" the AI? Determining ownership and right to copyright of AI's creative works is crucial for allocating the benefit of from such works.

The Thai Copyright Act B.E.๒๕๓๗ Section ๔⁴ paragraph ๒ defines "copyrights" as the exclusive right to perform any action with respect to the work created by the author, as defined by this Act. However, copyrights do not protect every type of work, but rather only certain types that are referred to as "subject matters⁵". Typically, the outputs of AI's creative works fall under these subject matters, including literary, dramatic, artistic, musical, audiovisual, cinematographic, sound recording, sound and video broadcasting work, or any other works in the literary, scientific, or artistic domain.

³ Vincent, J. (๒๐๒๒, August ๒). 'An engine for the imagination': the rise of AI image generators: An interview with Midjourney founder David Holz. The Verge. Retrieved from <https://www.theverge.com/๒๐๒๒/๘/๒/๒๒๒๒๒๒๒๒/ai-image-generation-art-midjourney-multiverse-interview-david-holz>

⁴ Department of Intellectual Property (DIP). (๒๐๑๘). (Section ๔). Copyright Act B.E. ๒๕๓๗ (๑๙๙๔) (As Amended B.E. ๒๕๖๑ (๒๐๑๘)). Retrieved from https://www.ipthailand.go.th/images/๒๕๓๗/๒๕๖๑/Copyright/Copyright_Act_ENG.pdf

⁵ Department of Intellectual Property (DIP). (๒๐๑๘). (Section ๒). Copyright Act B.E. ๒๕๓๗ (๑๙๙๔) (As Amended B.E. ๒๕๖๑ (๒๐๑๘)). Retrieved from https://www.ipthailand.go.th/images/๒๕๓๗/๒๕๖๑/Copyright/Copyright_Act_ENG.pdf

In addition to being considered subject matter for copyright, a work must also meet certain criteria to qualify for copyright protection under Section ๖⁶. Specifically, the work must be originally created by the author and expressed in any form of expression. Furthermore, the Thai Supreme Court has ruled that works protected by copyright must show a certain level of effort⁷ and creativity⁸ in their creation.

Like other countries in the world, the Thai Copyright Act is the main law that governs how we own and control creative works, include the case where creative works are generated by AI because specific regulation on AI or AI's ownership has yet enacted. However, there has been similar effort from government agency around the world on regulating AI and AI's ownership. For instance, the U.S. Copyright Office (USCO) recently published guidance on AI-generated creative works titled "Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence"⁹. Some people have misunderstood the guidance to mean that the USCO banned works created by generative AI. However, the guidelines actually emphasize the importance of the criteria required to qualify for copyright protection, as mentioned earlier. Importantly, the term "author" used in the Copyright Act does not include non-humans¹⁰. In particular, a work must be both original and created by a human author to be eligible for copyright protection. If a work is solely generated by an AI algorithm or process, it cannot be copyrighted, even if a human prompts it. However, if a human author adds some

⁶ Department of Intellectual Property (DIP). (๒๐๑๘). (Section ๖). Copyright Act B.E. ๒๕๓๗ (๑๙๙๔) (As Amended B.E. ๒๕๖๑ (๒๐๑๘)). Retrieved from https://www.ipthailand.go.th/images/๓๕๓๗๔/Copyright/Copyright_Act_ENG.pdf

⁷ Supreme Court of Thailand. (๒๕๕๒). Case No. ๑๕๕๘๐/๒๕๕๒. Retrieved from <https://deka.in.th/view-๕๗๙๖๒๗.html>

⁸ Supreme Court of Thailand. (๒๕๕๒). Case No. ๕๒๐๒/๒๕๕๒. Retrieved from <https://deka.in.th/view-๕๐๘๒๕๖.html>

⁹ U.S. Copyright Office. (๒๐๒๓). Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence. ๑๖๑๙๐ Federal Register, Vol. ๘๘, No. ๕๑, Rules and Regulations, ๓๗ CFR Part ๒๐๒. Retrieved April ๒๑, ๒๐๒๓, from https://www.copyright.gov/ai/ai_policy_guidance.pdf

¹⁰ U.S. Copyright Office. (๒๐๒๓, March ๑๖). Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence (p. ๒). Federal Register, ๘๘(๕๑), ๑๖๑๙๐. Retrieved from https://www.copyright.gov/ai/ai_policy_guidance.pdf

degree of original expression to the work, then the work may be eligible for copyright protection.

The same logic might also be used to interpret the Thai Copyright Act, as it is stated in section ๔, paragraph one: “Author means a person who makes or creates any work, which is a copyright work by virtue of this Act.”¹¹ And, The Thai Civil Code only recognizes a natural person or a juristic persons as a person¹². Moreover, Juristic persons can only be considered authors in limited circumstances, such as in the case of work for hire^{13,14}.

As AI-generated creative works become more widespread, copyright law will play a significant role in determining their ownership. However, given the complexities surrounding AI-generated works, the entire story of ownership might not necessarily rely solely on traditional copyright law to resolve these issues.

Contracts and terms of use are becoming increasingly important in relation to AI. For example, both ChatGPT and Midjourney have terms of use that outline the rights and responsibilities of users and creators. These agreements may specify who owns the copyright to the AI-generated works and provide clear guidelines for users to follow.

For example, ChatGPT’s Term of Use¹⁵ specifies that "you can use Content for any purpose, including commercial purposes such as sale or publication, but you are responsible for Content, including ensuring that it does not violate any applicable law or these Terms." Midjourney's Terms of Use¹⁶ state that if you pay for their Services, they may have the right to

¹¹ Department of Intellectual Property (DIP). (๒๐๑๘) (Section ๔). Copyright Act B.E. ๒๕๓๗ (๑๙๙๔) (As Amended B.E. ๒๕๖๑ (๒๐๑๘)). Retrieved from https://www.ipthailand.go.th/images/๓๕๓๗/๒๕๖๑/Copyright/Copyright_Act_ENG.pdf

¹² Thai Civil and Commercial Code. Sections ๑๕ and ๖๕.

¹³ Department of Intellectual Property (DIP). (๒๐๑๘) (Section ๑๐). Copyright Act B.E. ๒๕๓๗ (๑๙๙๔) (As Amended B.E. ๒๕๖๑ (๒๐๑๘)). Retrieved from https://www.ipthailand.go.th/images/๓๕๓๗/๒๕๖๑/Copyright/Copyright_Act_ENG.pdf

¹⁴ U.S. Copyright Office. (๒๐๒๑). Works Made for Hire (Circular ๓๐). Retrieved from <https://www.copyright.gov/circs/circ๓๐.pdf>

¹⁵ OpenAI. (๒๐๒๑). Terms of use. Retrieved from <https://openai.com/policies/terms-of-use/>

¹⁶ Midjourney. (n.d.). Terms of service. Retrieved from <https://docs.midjourney.com/docs/terms-of-service>

use and distribute the text and images you create, unless you are not allowed in certain conditions, but you still own them. If you are not a paid member, Midjourney only allows you to use your creations under certain conditions. These terms can help avoid controversies about who owns the output of AI work in relation to copyright law.

In conclusion, ownership of output generated by AI remains a controversial topic that raises legal questions. While the scope or nature of many creative works generated by AI can undoubtedly be considered as subject matter of copyright. Copyright laws in various jurisdictions seem to suggest that the work must be original and created by a human author to be eligible for copyright protection. Nevertheless, to avoid the complexity of copyright law altogether, most AI service providers usually employ contracts and terms of use to specify who owns the copyright to the AI-generated works and to provide clear guidelines for users. Hence, users of generative AI should be critically aware of the contracts or terms of use they agreed to at the first place.
