

ChatGPT from the perspective of copyright law

OpenAI, co-founded by Elon Musk, has been developing artificial intelligence capable of generating text and answering user queries for several years now. The latest version of ChatGPT (Generative Pre-trained Transformer) is a language model for automatically generating text based on user input. This chatbot has been available on the company's servers since 30 November 2022, and can be accessed by creating an account on the OpenAI website.

The chatbot utilises a huge amount of information and can generate long and, most importantly, meaningful outputs to the questions asked or instructions given, which are often hardly distinguishable from the outputs of real people. However, the information available to the chatbot is only up-to-date until 2021, and it should therefore be kept in mind that at the moment the ChatGPT cannot find a current traffic connection or truthfully answer who the winner of the last presidential election in the Czech Republic was. However, it can, for example, write technical articles, term papers, whole chapters of books or even poetry according to given criteria. Thus, ChatGPT puts together information drawn from publicly available sources and creates unique outputs based on various combinations of sources and data. Here lies the core of the issue under study – who is the author of the texts generated through AI? Is it its developer, the user who provided the input, or the AI itself? A similar question arises with another OpenAI product, the DALL-E system, which is capable of generating digital images based on descriptions.

According to Article 5(1) of Act No. 121/2000 Coll., on Copyright, on Rights Related to Copyright and on Amendments to Certain Acts (hereinafter referred to as the "Copyright Act"), the author of a work is the natural person who created the work to which the copyright arises. Artificial intelligence by its very nature is not a person in the legal sense, but a mere algorithm, and therefore cannot be the author of its output. As for the developers, they are not the authors of the chatbot's outputs either. In its general terms and conditions, OpenAI states that it assigns all rights to the chatbot output to the user who provided the input that led to its generation.

However, the situation with respect to the persons providing the input is more complicated than it may appear at first glance. The question of authorship is not yet clearly settled in law, although for the time being it appears that those using AI to support their creative process may be entitled to ownership of the work if it reflects their choice and creativity. This requirement to reflect the creativity and choice of a particular person to obtain copyright can be tricky. As one article on the issue notes, merely instructing ¹ a chatbox to "write a love poem" would likely not be sufficient to allow a person to subsequently acquire copyright to the generated poem. The boundary of when the requirement is met is not yet sharply defined. Moreover, in its general terms and conditions, OpenAI adds that it should be borne in mind that the output of the AI need not be unique, and thus two users may obtain output that is completely identical. This is in contradiction with the perception of a work of authorship under Czech law, which bases authorship on the results of the creative activity of a particular author,

¹https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/intellectual-property-chatgpt-2023-02-20_en

and it is thus impossible for two completely identical works of authorship to be created – according to this concept, the first work created is a work of authorship, the second is plagiarised.

If two persons receive the same output from a chatbot, this may indicate a lack of creative expression by those persons with respect to the input, and the output should not be protected by copyright in this context. Moreover, any output of an AI is derived from freely available information from which the algorithm draws. This can cause the generated output to bear a dangerous resemblance to an existing work from which the AI has drawn and which it has not cited as a source according to normal citation standards.

A recent amendment to the Copyright Act, reflecting the DSM Directive, enshrines a statutory licence to reproduce a work for the purposes of automated text or data analysis. This licence is essential for the ability of AI to analyse texts and incorporate them into its output, the purpose of which is to extract information including, but not limited to, patterns, trends and correlations. However, it no longer implies the user's right to use such text, which is not sufficiently different from the original work, as their own work, which makes it a double-edged sword, as the chatbot may incorporate a copyrighted part of the work into its output, but the user may not be aware of this fact. Thus, if the user wants to be extremely careful, they should both state that the text was generated by the AI and then state what sources the AI relied on to create the output, which can be asked directly. As the question of copyright in such AI output and the possibility of its use is not yet clear, it is not possible to say with certainty how it will be resolved in practice in any future copyright disputes. Yet there are already cases of people profiting from books written by AI on their behalf. ²

Overall, the issue of artificial intelligence and copyright in its outputs is very complex and still evolving. While some countries are already trying to address this issue through legislation, in others there is still confusion as to who should have the right to the results of AI work. It is important that legislation seeks to strike a balance between protecting the rights of creators and encouraging innovation in the field of AI. Given the rapid progress in this field, the issue is expected to continue to develop and change, and it is therefore necessary to keep abreast of current developments and to adapt legislation to new challenges and needs.

To illustrate the topicality of this issue, the above paragraph was generated by artificial intelligence and not changed.

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² <https://www.reuters.com/technology/chatgpt-launches-boom-ai-written-e-books-amazon-2023-02-21/>