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Authors and AIthors: Copyright Issues to Consider

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Abstract

Human-author(s) is the center around which a centuries-old, stable legal framework has been built. This legal framework promotes and protects as work any intellectual creation that is a direct result of the use of human intelligence. And while copyright is recently facing one of its greatest challenges: AI-contributions, state administrative bodies and courts continue to fanatically preserve the traditional copyright doctrine, avoiding providing protection for machine creations. The central inquiry explored in this paper concerns a more nuanced scenario: the treatment of creative works resulting from collaborative efforts between human creators and AI systems. Specifically, can such hybrid creations qualify for legal recognition under co-authorship doctrine? The paper's analytical framework proceeds through three distinct sections. Initially, it examines foundational copyright principles, specifically the presumption of authorship and the free-formality principle. The subsequent section addresses the legal framework governing co-authorship relationships and explores certain ethical considerations arising in this context. The last section tackles the critical question of establishing authorship status for works produced through human-AI collaboration.

Keywords: *co-authorship, human-AI contributions, neighboring rights, artificial intelligence, copyright*
Jelcodes: K00, K10, K15

1. Introduction

1.1 Background and Context

The notion of the author in the Copyright law appears to be central, in determining who is the owner of which work and who can claim infringement of copyright over it (Bently, 1994). The author is the creator of a work, i.e., the person who, using his capacity and talent, realizes a new creation over which he first acquires copyrights. The copyright author is a communicator, who directly or indirectly by communicating it to another, fixes his original expression in a tangible medium (Versteeg, 1996). Albanian Law on Authors' Right (hereinafter ALAR) Art. 13 provides a definition for the "author", considering him to be: *"any natural person or group of natural persons, who creates a literary, artistic, scientific work, original intellectual product, materialized, regardless of the form and way of expressing it".* The intellectual creative process belongs to humanity. Since the Berne Convention (hereinafter BC) it has been made clear that the status of the author belongs to a natural person. BC refers to "nationality" of the authors as a determinative criterion of eligibility for protection (Art. 3 and Art. 6), at the same time a term that defines the origin or the national affiliation of people.

It also regulates the transfer of moral rights to heirs or determines the term of protection by linking it to the concept of "death" which refers only to natural persons (Art. 6bis and Art. 7). However, *persona iuridica* may be the copyright holder, especially when creating collective works. Natural persons or *persona iuridica*, private or public, on whose initiative or direction a collective work has been created, or under whose name it has been published, are holders of the economic rights of the author and enjoy these rights as if they were the authors of the summary.

ALAR recognizes the human creator as an author, individually or in groups, excluding animals, nature, computer programs, or *persona iuridica*. There are many reasons not to create alone. Probably the work's complexity and the skills especially needed to realize it and the necessity to share responsibility are the main causes that lead the authors to join in a creative process. That work(s) as an intellectual product enjoys the same copyrightability as any other original work.

1.2 Research Problem

Established copyright frameworks—both at international and national levels—provide clear mechanisms for recognizing collaborative creative endeavors involving multiple human contributors and governing the administration of their collective rights. However, the emergence of AI as a participant in the creative process has disrupted this established paradigm, considering it as the beginning of the Fourth Industrial Revolution (INTA, 2023). Copyright authorities and judicial institutions have consistently maintained that purely AI-generated outputs fall outside the scope of copyright protection, refusing to recognize AI systems (or their operators/developers) as legitimate authors.

1.3 Research Question and Objectives

The central inquiry explored in this paper concerns a more nuanced scenario: the treatment of creative works resulting from collaborative efforts between human creators and AI systems. Specifically, can such hybrid creations qualify for legal recognition under co-authorship doctrine?

The paper's analytical framework proceeds through three distinct sections. Initially, it examines foundational copyright principles, specifically the presumption of authorship and the free-formality principle. The subsequent section addresses the legal framework governing co-authorship relationships and explores certain ethical considerations arising in this context. The last section tackles the critical question of establishing authorship status for works produced through human-AI collaboration.

2. Literature review and legal framework

2.1 Foundational Copyright Principles: Determining Authorship

The author is the pivot, the heart of copyright (Ginsburg, 2003). It is because of his desire, talent, skills, need, and hard work, the pouring out of his inner self that we enjoy those human miracles called works. Authorship is a status that originates from the intellectual creative process. Practically, for most visual artworks, we get information only by watching them closely, by reading a name, pseudonym, or sign that helps us understand or identify the creator. The same goes for books and other written works, musical, theatrical, and cinematographic works. The immediate idea that is created in this way regarding authorship of the work is known as the presumption of authorship.

BC art. 15 established the presumption of authorship deeming it sufficient for the author's name or a generally recognized pseudonym to appear on the work in the usual manner. Exceptionally from the common BC approach to the human author, it also accepts the body corporate's name on cinematographic works to be the maker of it or the publisher's work on an anonymous work to be the representant of the author. This is due to the identification of who is entitled to bring an action to assert copyright in the work (WIPO, 1978).

The principle of automatic protection or the free-formality principle represents an important development of copyright. Unlike industrial property objects which benefit from protection only after registration, BC currently recognizes that legally no registration formalities should be imposed on works which impede their protection or in case of failure to comply with the formalities, the work loses its protection. BC prohibits registration formalities from being turned into even de facto prohibitions when protection of the work from infringement is sought in court (WIPO, 2003). By adhering to this stance, ALAR also recognizes and respects the principle of avoiding any obligation for registration, filing or notification to benefit from protection, as well as by providing for the registration of the work as a voluntary and optional act for the author (Art. 17 & Art. 18).

When a natural person creates a work, a relationship of authorship is created between him and the work. Authorship is the quality of being the author of the work (WIPO, 2003). The author and the work. On the one hand, the autonomous creator and on the other hand, the distinct, unified, connected and entrenched literary

object in the relationship of ownership (Rose, 1993). The author does not necessarily have to be the person who performs the physical act of putting pen to paper, as he can give instructions or dictate and someone else performs the fixation of the work (Nwabachili and Nwabachili, 2015). The person who follows the creator's instructions to fix the idea according to the author's way of expression can be considered a contributor, but depending on the type of work, he can even benefit from the status of co-author.

Determining the author or authors of a work is of particular importance, as it identifies the affiliation of the work and enables the emergence of all rights of a property nature or not. Co-authorship, of course, requires a different arrangement from authorship, where the sole author is generally the original holder of any rights in the work. The rights in a work created by the joint creative efforts of two or more authors belong to and will be administered by all the co-authors, regardless of whether: *"the work constitutes an indivisible whole or is an assembly of independent parts."* (ALAR, Art.14)

2.2 Co-Authorship Doctrine, Administration and Ethical Issues

Creative output may emerge from the collaborative efforts of multiple individuals, establishing a co-authorship relationship among them. Such collaboration manifests in various forms: contributors may work concurrently on all aspects of the creation, integrating their efforts throughout the entire work, or they may develop distinct, separable components that subsequently merge into a unified whole. The essence of co-authorship lies in each participant providing a differentiated contribution toward producing a singular creative work. A musical composition exemplifies this concept—the lyricist and composer qualify as co-authors, whereas the vocalist functions as an interpreter or performer. Given that we address artistic or scholarly creations, the contribution warranting co-authorship recognition must possess substantive value, distinctive character, and potentially indispensable quality. This meaningful contribution, though often difficult to delineate when multiple parties collaborate, constitutes the determining factor for co-authorship status.

It is important to explain the difference between the independent existence of two authorships, which coexist in a work, and co-authorship. The first case includes collective or derivative works, where the copyright for the original work(s) initially exists and then, through the process of its transformation into a derivative work, the copyright for the author of the derivative work arises. The author of the original work and the author of the derivative work are not co-authors. Likewise, collective works "contain" copyright for all authors of the works included in the collective work, as well as copyright for the author of the collective work. The authors whose works are included in the collective work are not co-authors with each other since they have each created their works independently and without intending to be part of the same work. On the other hand, the author of a collective work cannot claim co-authorship with all the authors whose works he has included in the collective work.

The co-authorship when claimed in court must be proven according to some criteria, of which the most important is the *animus cooperandi* or the demonstrated intention, rather than a mere thought of the parties to create together (Brady, 1989). Of course, the intended purpose of the parties must be accompanied by a common intellectual product, where the contribution of each of the parties does not have to be equal, although it must be substantial and there must be joint work in carrying out a common creation, even if one contribution may be qualitatively and quantitatively inferior to the other (Levy v Rutley).

ALAR preferentially lists the situations in which the rights of co-authors can be administered: first by an agreement between the parties and in their absence, according to the provisions of the Civil Code. The lack of an agreement makes the administration of rights difficult, but since the law itself addresses the Civil Code for solutions, it is appropriate to use the provisions related to co-ownership (III Title).

The joint exercise of rights over the work as co-authors does not prevent each of them from using his contribution, if it is easily identifiable, such as a chapter of a book. However, if the independent use of the constituent parts of the work in co-authorship impairs the use of the work as a whole or when it is prohibited by agreement between the co-authors, there can be no independent use. The same treatment is also offered to the authors of those works, contributions or other materials that are included in the compilation, who retain exclusive rights over their works to use them independently of the use of the whole compilation, unless otherwise provided for by an agreement.

The joint administration of copyrights in the case of co-authorship differs from individual administration of such rights. The sole author is the exclusive owner of copyright. He has personal control over moral and economic rights. The sole author is not influenced or imposed in making decisions regarding licensing or exploitation of the work. He has every right to make decisions and to act against the violation of his work or rights. The sole author also fully benefits from the exploitation of economic rights over the work. On the other hand, the joint administration of the rights is based on the principle of unanimous consent, unless any agreement provides

otherwise. Thus, the co-authors have the right to designate common representative for administration. The financial benefits from properly exploiting the work are proportionally shared, unless it is agreed otherwise. Still, each author has the right to individually protect his moral and economic rights and to seek judicial redress for their infringement. The issue of copyright infringement in the case of a work of co-authorship becomes more interesting, since in most court cases co-authors claim infringement of rights by each other rather than by third parties.

Co-authorship, among other things, has a positive effect on the duration of copyright. Where there is co-authorship, the law "offers" longer protection in time than in works with a single author. The term of protection of works begins at the time they are created, but the calculation of their duration begins with the death of the author. The term of protection plus 70 years *post mortem auctoris*, in the case of co-authorship, will be calculated from the death of the last author, usually enabling longer protection in time of the rights arising from the work and extending protection beyond individual contributions

Usually, co-authorship can also be accompanied by doubts about the authenticity of the contributions and their real existence, which in the academic world are known through the concepts of donated authorship or ghost authorship. These two ethical tricks which constitute false or inappropriate authorship, resulting in a lack of transparency and accountability, is a significant issue for the academic and research community and a threat to the integrity of scientific publications (Wislar, 2011).

2.3 Current Judicial Approaches to AI-Generated Works

If a work is the result of only AI contribution, otherwise known as AI-generated work, the answer to copyrightability is a strong "No". The CJEU has made it clear since the famous *Infopaq* case that the work must be *"author's own intellectual creation"* (Case C-5/08). USCO (Bakhariev, 2025) and the U.S. court in the Naruto monkey case have established that there is no copyrightability for other than human intelligence-generated material. Later, U.S. Copyright Office (hereinafter USCO) granted and then revoked partially the copyrightability of the work "Zarya of the Dawn" for the part that was generated by Midjourney-AI (USCO, 2023). Also, the U.S court (Naruto v Slater) stated that *"Human creativity is the sine qua non at the core of copyrightability"* in the case that sought registration and copyright protection for the work "A recent entrance to Paradise", entirely created by AI (Thaler v Perlmutter). In Europe, a similar approach and message was given by the Prague Municipal Court that did not recognize an image created by AI as a work nor the AI user as an author (Chloupek and Taimr, 2024).

3. Methodology

3.1 Research Approach

This paper employs doctrinal legal analysis to examine the compatibility of human-AI collaborative works with existing copyright frameworks. The methodology combines:

- Normative analysis of international copyright instruments (Berne Convention) and national legislation (Albanian Law on Authors' Right).
- Comparative legal analysis of jurisdictional approaches to AI-generated content (EU, US, Albania)
- Case law examination of recent judicial decisions concerning AI contributions to creative works.
- Theoretical framework analysis comparing personality-based copyright theory with investment-based neighboring rights theory.

3.2 Analytical Framework

The analysis proceeds through three stages:

1. Establishing foundational copyright principles (authorship presumption, free-formality principle)
2. Examining co-authorship requirements and their application limitations
3. Evaluating alternative legal frameworks (neighboring rights, investment theory) for protecting human-AI collaborative outputs

4. Analysis and Discussion

4.1 The Evolution of Creative Tools

Creators have used tools to realize their works. These tools were originally primitive, but they improved over time to help authors create their works. Neither the type of tools nor how they were used determined the work's success. The author's intelligence has been crucial in creating the masterpieces we enjoy. The natural, logical, and legal approach has always been that the person who creates acquires the author's status and enjoys the derived copyrights. It was simple, fair, and indisputable.

The tools' improvement increased their use and contribution to creating new works. Thus, the creative process was facilitated, while it was expanded. Nevertheless, the tools used to create were not considered more than that. The digital era brought complications and legal debate over copyright. A lot of software was created and used to perfect intellectual products. Recently, AI is gaining ground on human intelligence. This is not because humans have stopped creating. AI is an on-demand creator, so low-cost and easily used, always ready to realize a creation on a keyword basis.

4.2 AI as Tool vs. AI as Contributor

AI when used as a tool by humans, it is believed that its intervention in the output can be evaluated as help rather than contribution. Consequently, humans could(not) create the work without AI's help, but AI facilitates the creation process or helps in reducing the time needed to realize the work. The work created is the product of human intelligence. That is crucial in determining its authorship. The human is the author and the copyright over the work *ab initio* belongs to him. The human-authored materials in which AI has a low level of involvement can be considered a work. Thus, it can be registered as such.

4.3 The Challenge of Human-AI Collaborative Works

To return to the main question of this paper, there is the necessity to clarify the level of use of AI and its concrete contribution. The co-authorship legally means the combination of two or more human intelligence, not necessarily to the same extent. The contribution of each author is relevant enough that if it were missing the work would not exist as such. Suppose the material is a combination of AI and human intelligence and AI's contribution exceeds the *de minimis* required to be a co-author. In that case, it raises the question about the status of joint output. This scenario is more complicated than when the "work" is only an AI-generated material. The human input cannot be dismissed as uncopyrightable, yet the AI-generated elements remain ineligible for independent copyright registration.

4.4 Unresolved Legal Questions

While one might accept a hybrid protection model, whereby only human-generated components receive copyright protection, the indivisible nature of creative works during utilization and commercial exploitation generates significant unresolved legal questions:

- Should the resulting work receive recognition as a single-author creation or qualify for co-authorship status?
- Does the human contributor possess sole authority to grant usage permissions to third parties, or does the AI element necessitate additional considerations?
- Will revenue generated from exploiting the complete work accrue exclusively to the human author, and if not, how should royalty allocation be determined and to whom should the remaining portion be distributed?
- When infringement or misappropriation occurs—particularly concerning AI-generated components—does the human author retain standing to demand cessation and seek compensation?

5. Findings and Proposed Solution

5.1 Limitations of Traditional Copyright Framework

The answer to these questions is not easy and certainly cannot be found within the actual Copyright framework. Whilst creators and users of AI systems struggle to obtain authorship and copyright privileges, legislators and courts cling tightly to current legislation that focuses on the human author and affiliates creativity only with human intelligence. It is not appropriate to overturn the foundations of copyright by forcing AI contributions into protected categories of work it cannot basically satisfy. I believe the copyright co-authorship doctrine needs to be "extended" to welcome a new kind of work: the hybrid work. As the AI contribution does not qualify itself as a human co-contribution, the work that generates from the joint contribution of a human and an AI does not

benefit the status of co-authorship work. Thus, it must be included as a different kind of work that justifies a new "copyright" protection.

5.2 Neighboring Rights as an Alternative Framework

The legal solution recently proposed by authors (INTA, 2023; EU Parliament, 2025) is to introduce neighboring rights to AI intellectual contributions. It is considered a fair copyright regulation based on the theory of investment which currently support producers and broadcasters for their investments. The investment theory that supports human and financial investments and contributions versus the personality (or originality-based) theory that supports human intelligence products benefiting from copyright has created a new kind of protection already consolidated that neither interferes nor disturbs copyright. Deploying, developing, curating, training and using AI for intellectual productions constitutes an enormous substantial investment that legitimizes proper consideration from the actual copyright doctrine to introduce neighboring rights for these subjects. Under this perspective, the joint contribution of human and AI must benefit a dual protection copyright for the human creation part and neighboring rights for AI-generated material.

5.3 Practical Implications of Hybrid Protection

This legal solution also addresses the administration of rights, the lack of moral rights, the shorter term of protection and the percentage of profits from the exploitation of the work. Offering for the first time neighboring rights for the protection of AI-generated contributions it would be reasonable for the term of protection not to exceed the "short" protection currently offered for databases. The administration of neighboring rights or the right holder of these rights may belong to the developer or owner of the AI system or its user as a matter that must be expressly and in advance provided for by an agreement between them.

6. Conclusions

The creative process is changing rapidly, steadily incorporating AI contributions. Copyright claims to AI-generated creations present not only one of copyright's most significant contemporary challenges, but it tends to distort copyright's theoretical foundations.

Whilst extending copyright protection to AI contributions would necessitate to abandon the several centuries old copyright doctrine where the human-author was at its center, offering neighboring rights instead would be not only theoretically correct, but also practical. Thus, the *animus cooperandi* between human and machine could benefit hybrid copyright protection, which maintains the clear distinction between human creativity and AI-generated elements, regarding them as investment rather than intelligence or creativity.

This solution, which follows the logic behind neighboring rights, does not require a revolution in the established copyright legal system, but rather a willingness to adapt the same framework to bring clarity and protect investments in AI. The hybrid protection for the joint contributions of authors and AIthors, which combines copyright and neighboring rights, does not conflict copyright foundation. It is also based on a stable framework and offers both economic efficiency regarding the shorter and not excessive term of protection while rewarding the investment and has practical advantages in licensing rights.

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Berne Convention for the Protection of Literary and Artistic Works

Albanian Civil Code

Albanian Law 35/2016 on Author's Rights and other Related Rights