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# **THE INTERSECTION OF ARTIFICIAL INTELLIGENCE, INTELLECTUAL PROPERTY RIGHTS, AND HUMAN RIGHTS: CHALLENGES AND FRAMEWORKS**

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## **Abstract**

This article explores the transformative impact of Artificial Intelligence (AI) on the creative process, particularly in content creation, design, and the generation of music and art. As AI evolves, questions arise about the originality of AI-generated works and the attribution of credit to human creators, necessitating a nuanced examination of the relationship between AI and human creativity. The global nature of AI technologies requires collaboration and the establishment of standards, emphasizing transparency, accountability, and fairness in their application. The article reviews comprehensive recommendations by the Council of Europe in 2019 and the European Commission's initiatives, highlighting the intersection of AI development with human rights<sup>1</sup>.

Concerns persist regarding privacy, freedom of expression, and access to information, especially in content moderation algorithms and AI-based decision-making processes. The article underscores the need for a comprehensive understanding of the legal and ethical dimensions, emphasizing responsible AI practices that protect intellectual property and uphold fundamental human rights. By critically examining international recommendations, the aim is to strike a balance between technological innovation and the preservation of a just and equitable society.

**Keywords :** Artificial Intelligence (AI), Copyright, Patent, [Brain-Computer Interface](#).

Human rights, Freedom of Expression, Universal Declaration of Human Rights,

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<sup>1</sup> Council of Europe - Highlights 2019 (2020), [Council of Europe - Highlights 2019 \(coe.int\)](#), (last visited Jan. 23, 2024).



AI algorithms in content moderation, where inadvertent restrictions on freedom of expression may occur through the censorship of certain types of speech. Additionally, the deployment of AI in surveillance and decision-making processes raises ethical concerns related to privacy and the potential for discrimination<sup>3</sup>.

In this intricate landscape where AI, intellectual property, and human rights converge, a comprehensive understanding of the legal and ethical dimensions is essential. Critical examination of recommendations and initiatives put forth by international organizations and regulatory bodies is necessary to contribute to the development of responsible AI practices that prioritize ethical considerations, protect intellectual property, and uphold fundamental human rights. The aim is to strike a balance between technological innovation and the preservation of principles that underpin a just and equitable society. The integration of artificial intelligence (AI) systems into the creative process introduces a host of complex challenges that reverberate within the legal frameworks of Copyright, Trademark, and Patent law. These challenges are particularly pronounced in the realms of justice, trustworthiness, and authorship, where traditional legal concepts are being tested and reshaped by the involvement of AI.

## **Shifting Dynamics: AI's Impact on Copyright Law and Creative Ownership**

In the field of Copyright Law, the traditional assignment of authorship to human creators is undergoing a significant transformation due to the introduction of AI. Determining the primary author becomes intricate as AI systems play a substantial role in the creative process, prompting a reevaluation of creative ownership that transcends human origin. Addressing these complexities requires a thorough reconsideration of existing legal frameworks and the potential development of new laws tailored to accommodate the unique nature of AI-generated creative works. This comprehensive process must consider ethical implications, discern the intentions of human users, and foster innovation while upholding a fair and just legal landscape.

A recent article in the International Review of Intellectual Property and Competition Law suggests that current copyright regulations within the European Union can generally adapt to the

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<sup>3</sup> Tiple, Vasile, Recommendations on the European Commission's WHITE PAPER on Artificial Intelligence - A European approach to excellence and trust, COM (2020) 65 final (the 'AI White Paper') (June 7, 2020). Available at SSRN: <https://ssrn.com/abstract=3706099> or <http://dx.doi.org/10.2139/ssrn.3706099>

challenges posed by AI-assisted creative output. The article introduces a four-step evaluation process for determining the originality of AI-assisted output under EU law, presenting a potential framework for navigating these complexities. Despite advancements, uncertainties persist, particularly regarding copyright infringement, ownership of AI-generated works, and the inclusion of unlicensed content in training data. In response, the European Parliament advocates for the protection of technical creations generated by AI within the intellectual property rights (IPR) legal framework. This recommendation aims to encourage investment in AI-driven creation and enhance legal certainty for citizens, businesses, and inventors. Challenges arise in recognizing AI as the creator, especially when the subject matter of a creative work reflects the personality of the author. This becomes particularly relevant when humans with ICT implants produce original creative works, making their output indistinguishable from content generated by humans without such enhancements. It is crucial to acknowledge the significant gap in intellectual capabilities between AI and humans.

In the context of digital artwork, eligibility for copyright protection depends on meeting specific criteria. As outlined by the European Innovation Council and SMEs Executive Agency, the art must be an original creation demonstrating at least a minimal degree of creativity by the author. Additionally, it must be fixed in a tangible form, whether on paper, canvas, or in a digital format. It is important to note, however, that copyright protection does not extend to the concept or idea behind a piece of art.

In a case of European Union, the ruling in a case that questioned the copyrightability of digital artwork. The Court of Appeal observed that “the work is creative when it expresses an original idea, coming only from the inspiration of its author and confirmed the assessment expressed by the judge of first instance, arguing that the image it was not a mere reproduction of a flower, but it entailed one a real reworking, therefore worthy of protection authorial for its creative character. The extent to which the software tool used in the creation of the artwork absorbed the artist's creative input”<sup>4</sup>.

This ruling widens the scope of AI influenced work. On other hand the interpretation is that the authorship of the work or the subject matter of the creative work is human. Here the court applied

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<sup>4</sup> Stein, A.M, Digital art protectable under copyright? Yes, says the Italian Supreme Court, The IPKat, February 3, 2023, URL: <https://ipkitten.blogspot.com/2023/02/digital-art-protectable-under-copyright.html>

the principle that AI applications always require human input. Under the copyright law if the subject matter is to be capable regarded as original, it is both necessary and sufficient that subject matter reflects the personality of its author, as an expression of his free and creative choices. By considering these aspects and the present foundation of law, when AI is highly influenced, i.e., ICT like methods for the “input” to the tools (that itself is AI), the question arises for the trust worthiness and discrimination towards true man creativity. The critical evaluation and classification of the legal foundation become imperative to establish an ideal system. This entails categorizing intellectual property (IP) rights into three distinct classifications: human creative works, partially influenced AI creative works, and fully AI-generated creative works<sup>5</sup>.

By implementing this classification system, we can ensure a comprehensive evaluation of the origins and contributions behind different creative works. Human creative works would encompass those that are solely the product of human ingenuity and expression. Partially influenced AI creative works would include those where AI has played a role in the creative process, but human input and creativity remain significant. Lastly, AI creative works would refer to those that are entirely generated by AI algorithms, with minimal or no human intervention.

Through such a classification system, we can better understand and distinguish between different types of creative outputs. This approach recognizes the distinct contributions made by both true man contribution, AI influenced human contribution like [BCI implanted humans] and AI, thereby providing a clearer framework for IP rights allocation and protection. If AI that is free from human intervention even in the decision-making process. Or human intervention is so minimal or subsidiary that the essence of the decision is made by AI and man is merely an announcer of the decision. This phenomenon is observed in the most recent AI (and most certainly upcoming AI) with far more advanced technologies and machines than those that existed previously. In fact, some AI technologies, AI machines, and AI systems have advanced remarkably and reached the level of full automation with self-judgement and self-decision-making function. The fundamental difference between the above-mentioned AI as a tool and this self-thinking and self-judging AI is that the final decision-maker is not a human being, but a non-human object called AI <sup>6</sup>.

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<sup>5</sup> Vessia, Francesca and Muciaccia, Nicolò, ICT Implants and Brain-Computer Interfaces: Legal Issues in the EU Framework ,pp.305336., (2018), Available at SSRN: <https://ssrn.com/abstract=3400039>

<sup>6</sup> Lee, J. Artificial Intelligence and International Law. Singapore: Springer Nature, (2022), <https://doi.org/10.1007/978-981-19-1496-6>.

## AI in Patents: Revolutionizing Innovation, Challenging Legal Norms

AI has emerged as a powerful tool in revolutionizing patent research and development. From automating prior art searches to aiding inventors in ideation, AI technologies contribute to expediting the innovation process. This subheading explores how AI-driven algorithms analyze vast datasets, identify potential patent infringements, and enhance the efficiency of inventors and researchers, ultimately fostering a more dynamic and accelerated innovation landscape. As AI systems contribute to the generation of inventive ideas, legal challenges emerge in determining patent ownership and inventorship. This section delves into the complex legal implications surrounding AI-generated inventions, addressing questions of attribution, inventorship rights, and the evolving nature of intellectual property law. We explore how legal frameworks are adapting to accommodate the unique challenges posed by AI in the realm of patents. The incorporation of AI in patent examination processes brings forth advancements in efficiency and accuracy. This subheading explores how AI-powered tools assist patent examiners in evaluating patent applications, conducting prior art searches, and streamlining the examination workflow. The integration of AI as an author in the patent landscape necessitates a reevaluation of existing legal frameworks. This section examines how patent laws are adapting to recognize and accommodate AI-generated inventions, addressing issues of ownership, inventorship, and the assignment of rights. We explore the evolving legal landscape surrounding AI-authored patents.

Recognizing AI as an author poses challenges, particularly in determining the extent of AI's contribution to inventive processes. This subheading delves into the complexities of identifying AI's role in patentable inventions, exploring the nuances of distinguishing between human and AI contributions and the potential legal implications of such distinctions.

The EPO has published its decision setting out the reasons for its recent refusal of two European patent applications in which an AI system was designated as the inventor. Filed by an individual in autumn 2018, the applications [EP 18 275 163](#) and [EP 18 275 174](#) were refused by the EPO following oral proceedings with the applicant in November 2019, on the grounds that they do not meet the legal requirement of the European Patent Convention (EPC) that an inventor designated in the application has to be a human being, and not a machine. This supported The EPO concluded that for the mandatory designation of an inventor for a European patent application the inventor

must have a legal personality<sup>7</sup>.

This decision transcends the immediate context of the refused patent applications. It initiates a broader conversation that resonates in legal, technological, and ethical spheres, shaping the trajectory of AI-generated inventions within the patent system.

## **AI's Ethical Quandary: Human Rights, Bias, and Freedom of Expression Challenges**

At the same time human right violation are reflected causing freedom of expression and biasing when AI influenced creative are introduced. As mentioned, AI is trained based on the previous data. Where it can be affected by interest of private propagandas. For an instance AI has and will continue to have even more impact on how consumers view different products, brands, and the market. Sophisticated AI products capable of human interaction.

The integration of AI into creative processes and its influence on human perception also raises critical concerns about human rights, freedom of expression, and potential biases. The very data upon which AI systems are trained may carry the imprints of societal biases, inequalities, and even human rights violations. As AI algorithms learn from historical data, they risk perpetuating and amplifying existing biases present in that data.

When it comes to creative works influenced by AI, the concern extends to the potential reinforcement of certain narratives or perspectives that may align with the interests of specific entities or ideologies. The risk of AI-generated content being manipulated for propaganda or other nefarious purposes underscores the need for ethical guidelines, transparency, and accountability in the development and deployment of AI systems. Moreover, the impact of AI on consumer perceptions is substantial. AI-driven technologies play a pivotal role in shaping how products and brands are presented and marketed to the public. The personalization and optimization of content delivery based on individual preferences can create filter bubbles, limiting exposure to diverse perspectives and potentially reinforcing pre-existing biases.

Sophisticated AI products capable of human interaction raise ethical questions about user privacy,

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<sup>7</sup> The EPO at a glance, <https://www.epo.org/news-events/news/2020/20200128.html>. (last visited Jan. 23, 2024).

consent, and the potential for manipulation. Deepfake technology, for example, allows for the creation of hyper-realistic content, including videos and audio recordings, which can be used to deceive or manipulate individuals. This poses risks to both personal and collective freedoms, as misinformation and manipulation become more sophisticated and harder to discern.

To address these challenges, there is a growing need for robust ethical frameworks, regulations, and oversight in the development and deployment of AI. Transparency in AI systems, addressing bias in training data, and involving diverse voices in the creation and evaluation of algorithms are essential steps toward mitigating the potential negative impact of AI on human rights and freedom of expression. As the influence of AI continues to grow in creative domains and beyond, striking a balance between technological advancement and ethical considerations becomes crucial to ensure that these innovations contribute positively to society without compromising fundamental human rights and values. It is a complex and evolving landscape that requires ongoing collaboration among technologists, ethicists, policymakers, and the broader public.

Ethical reviews and oversight mechanisms should be established to assess the implications and potential consequences before implementing a legal framework for AI. This ensures that the development and use of AI are conducted in an ethical manner that respects human rights and aligns with societal values. While considering a solution, it is crucial to establish a new legal framework for artificial intelligence (AI) that aligns with internationally recognized human rights standards. These standards include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights. Additionally, the European legal background, encompassing the EU Charter of Fundamental Rights, the European Convention on Human Rights (ECHR), and global documents like the UNESCO Universal Declaration on Bioethics and Human Rights, should be considered<sup>8</sup>. The EU Charter of Fundamental Rights encompasses key rights, including human dignity (Article 1), privacy and personal data protection (Articles 7 and 8), non-discrimination (Article 21), and gender equality (Article 23). It also aims to safeguard freedom of expression (Article 11), freedom of assembly (Article 12), fair trial and defense rights (Articles 47 and 48), and the principle of good administration. Additionally, the proposed law would positively impact specific groups such as workers' rights (Article 31), consumer protection (Article 28), child rights (Article 24),

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<sup>8</sup> Unboxing artificial intelligence: 10 steps to protect human rights, (May. 24, 2019), <https://www.theioi.org/loi-news/current-news/unboxing-artificial-intelligence-10-steps-to-protect-human-rights>

and the integration of persons with disabilities (Article 26). Environmental protection (Article 37) is also emphasized, particularly concerning the health and safety of individuals. By enforcing obligations for ex ante testing, risk management, and human oversight, the law would promote respect for other fundamental rights and mitigate the risk of biased AI-assisted decisions in critical domains like education, employment, services, law enforcement, and the judiciary. In the event of fundamental rights violations, transparency, traceability, and robust ex post controls would ensure effective remedies for affected individuals<sup>9</sup>.

In developing and implementing AI regulations, international collaboration is key. Given the global nature of AI technologies, a harmonized approach that respects diverse legal traditions and cultural contexts is necessary. Furthermore, mechanisms for ongoing evaluation and adaptation of these regulations should be in place to keep pace with the rapidly evolving landscape of AI technologies. Ultimately, a human-centric approach to AI regulation, rooted in internationally recognized human rights standards, provides a solid foundation for balancing technological innovation with ethical considerations, fostering trust in AI systems, and safeguarding the well-being of individuals and societies.

## Recommendations

To address the challenges surrounding the aesthetic decision-making function of AI in shaping future selves, I propose, the implementation of a novel legal framework built upon an AI platform specifically designed for the legal domain. This platform would possess the ability to govern, monitor, and safeguard existing AI systems. Furthermore, it would incorporate an evaluated, scrutinized, and justified dataset for training AI algorithms. This approach could also offer benefits in terms of intellectual property (IP) protection. For instance, this AI platform could play a pivotal role in distinguishing between creative works and inventions, thereby facilitating the identification of true inventors. Through careful analysis and assessment, the platform could categorize and grant IP rights to individuals based on their genuine achievements. This would ensure that proper credit is attributed and that inventors receive the appropriate recognition they deserve.

The incorporation of an AI platform in discerning between creative works and inventions holds

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<sup>9</sup> An official website of the European Union, [EUR-Lex - 52021PC0206 - EN - EUR-Lex \(europa.eu\)](#) (last visited Jan. 23, 2024).

the potential to revolutionize the identification and acknowledgment of genuine inventors. By harnessing advanced analytical capabilities, the platform can offer a more objective and thorough assessment, addressing challenges inherent in the existing system of intellectual property (IP) recognition. This AI platform can play a pivotal role in objectively analyzing extensive data related to creative works and inventions. Its ability to identify patterns, timelines, and connections provides a more impartial evaluation compared to human assessors, contributing to a fairer recognition process. Moreover, the cross-disciplinary nature of the AI platform enables it to seamlessly analyze diverse fields of innovation. This broader perspective proves valuable in identifying inventors whose work spans multiple domains or involves unconventional combinations of ideas.

Efficiency is a key advantage of the AI platform, ensuring that inventors receive timely acknowledgment for their contributions. In fast-paced technological fields, the platform's rapid analysis can prevent delays in granting IP rights, supporting timely recognition. The AI platform's objectivity extends to minimizing biases in decision-making processes. Carefully designed algorithms can promote fairness and equity, ensuring that inventors from diverse backgrounds and regions receive due recognition. Additionally, the platform can assist patent offices in reviewing submissions more efficiently. By cross-referencing existing patents, scientific literature, and other sources, the AI can identify prior art and assess the novelty and inventiveness of new applications. Integrating fraud detection algorithms is another valuable aspect. The platform can identify cases where false claims of invention or authorship are made, enhancing the integrity of the intellectual property system by preventing undeserved recognition.

Ultimately, the AI platform contributes to a climate that encourages innovation. Streamlining the recognition process reassures inventors and creators that their contributions will be accurately acknowledged, motivating them to push the boundaries of knowledge. While recognizing the potential benefits, it is crucial to implement safeguards and ethical considerations in the development and deployment of such a platform. Transparency, accountability, and ongoing evaluation are essential to ensure that the AI system operates ethically, aligning with the principles of fairness and justice. By accelerating this new legal foundation, we can solve the challenges associated with the aesthetic decision-making capabilities of AI. The platform's ability to control and track AI systems, combined with its capacity to assess, and validate data, would enhance the overall integrity and reliability of AI-generated outcomes.

## Conclusion

The intricate intersection of Artificial Intelligence (AI), intellectual property, and human rights unfolds a complex terrain. This examination reveals challenges and prospects spanning creative processes, copyright, patents, and ethical dimensions. The transformative impact of AI necessitates a reassessment of authorship. The European Union's proposed four-step evaluation process aims to address uncertainties in ownership and ethical considerations. Despite a recent EU ruling recognizing AI's creative character in digital artwork, persistent challenges arise in defining AI as a creator, particularly amid human augmentation.

While AI propels innovation, it concurrently introduces legal intricacies. The European Patent Office's rejection of an AI system as an inventor underscores the insistence on human inventors with legal personality, prompting discussions on delineating human-AI contribution boundaries. Ethical concerns loom large as AI influences human rights, freedom of expression, and biases. The EU Charter of Fundamental Rights lays the groundwork for ethical AI regulation, emphasizing transparency and accountability. Sustained collaboration is imperative for shaping ethical frameworks.

To confront these challenges, a thorough assessment of AI's profound impact on intellectual property and human rights is essential. Updating the legal framework is imperative to safeguard the rights of all stakeholders in the dynamic technological landscape. A nuanced approach is indispensable to ensure that the legal system not only adapts to technological advancements but also protects the rights and interests of individuals and entities engaged in the creative process.

Recommendations advocate for a pioneering legal framework featuring an AI platform tailored for the legal domain. This platform aims to oversee existing AI systems, promoting transparent and equitable recognition of intellectual property rights and fostering innovation. An AI platform dedicated to discerning between creative works and inventions holds the potential to significantly enhance the accuracy and efficiency of intellectual property recognition, ensuring due credit for inventors' valuable contributions to innovation and progress.

As legal frameworks evolve and ethical guidelines take shape, global collaboration remains pivotal. Embracing AI in creative and innovative processes requires a deliberate and cooperative approach, harmonizing technological progress with ethical principles to navigate the path forward.