

THE INTERSECTION OF AI AND COPYRIGHT

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Preparing to write my column on this topic, I had a preconceived idea of how copyright principles would bear on artificial intelligence (AI). The issues would be like the flip sides to the same coin, and the legal tender would be questions of infringement. Discussing the assignment with an associate lawyer at our office, he suggested we submit an essay request to ChatGPT, the infamous AI writer dubbed “the world’s most voracious reader.”

ChatGPT is owned by Open AI, the current leader in the field of generative technology. Up-and-comers in the field include Google (Bard) and Microsoft (which uses a variant of ChatGPT with its Bing and Edge). The GPT acronym stands for “Generative Pre-trained Transformer,” a large language model trained on a vast dataset of material to generate human-like text. The word “chat” alludes to its existence as a chatbot. A chatbot is a computer program that uses artificial intelligence to address human enquiries. It is fed a massive amount of data—much of it copyright-protected—to predict responses.

On the page opposite, you will read the query crafted by we two lawyers and the response we received. Although it’s 75 words shorter than the requested word length, it does accurately recognize the two issues I had expected:

- (1) Who owns the copyright in AI-generated works, and therefore who would have the right to sue for copyright infringement of such works?
- (2) Does AI infringe copyright, because it is generated from works in which copyright subsists and that are used without permission?

Despite correctly identifying the main copyright concerns, the discussion in the

ChatGPT-generated essay is disorganized and facile. It could also well be fallible, flawed and outdated. Fallible, because the same query submitted on different dates could yield different results. Open AI itself admits ChatGPT’s responses “may be inaccurate, untruthful, and otherwise misleading at times” and the chatbot is “incredibly limited.”

Source: ChatGPT explained: Everything you need to know about the AI chatbot | TechRadar

Flawed, since they trained ChatGPT on datasets scraped from the internet, which is notorious for containing unethical and false information; and yet, since the system has a strong command of grammar, it may spew written responses in which canards are hard to spot.

And outdated, because “ChatGPT is not constantly training,” according to a tech advisor. “ChatGPT is not up to date on current events. [In February 2023], the dataset of the current version of ChatGPT only goes up to 2021.”

Source: What Is ChatGPT, and Why Is It Important? howtogeek.com

These reliability, ethical and obsolescence defects may be the reason the AI essay omits reference to current events related to AI in the world of words. Here are a few:

- AI writing tools raise questions about compensation to news organizations and others whose written works were used to “train” AI models. Open AI and Associated Press signed a deal in July 2023 addressing those concerns.
Source: OpenAI signs deal with AP to license news stories for ChatGPT | CTV News
- Among the many issues in the Hollywood writers’ strike is whether AI writers will threaten human writers’ jobs. One actor

and writer said, “We are like the canary in the coal mine in this tech discussion.”

Source: Hollywood strike: Why AI is the wild card | CTV News

- Prominent writers note generative AI is tutored by accessing their literary works. Copyright subsists in those works, and their authors did not grant permission to the tech giants to use their words as training grounds. The U.S.-based Authors Guild wrote an open letter to the tech giants asking them to obtain consent, credit and properly compensate them.

Source: 8,000 Authors, Including Nora Roberts, Margaret Atwood, and Jodi Picoult Are Fighting Back Against Generative AI | *Metaverse Post* (mpost.io)

And now, as I pen the conclusion to this column, I consider the copyright law issues. Who owns the copyright in the adjacent essay? It couldn’t be Open AI, because it isn’t a natural person. Is it the two lawyers who penned the query? To admit I authored the piece would damage my reputation, because of its many weaknesses. So, I would be unlikely to sue if someone copied it without my permission. Those same weaknesses bear on the second question, whether the essay infringes copyright owned by others: any infringement claim would be remote, because no one else would wish to claim ownership, either. During the 2017–2019 process of mandatory review of the *Copyright Act*, the federal government was directed to create legislation that provides “clarity around the ownership of a computer-generated work.” Such legislation has not yet been proposed or passed, which is unsurprising since technology advances far more quickly than the law. However, it’s not too late. Creator communities urge the government to pass new law in this digital realm to protect the work of human creators.

COPYRIGHT LAW AND AI ChatGPT-Generated Article

Editor's Note: The following was not edited or copyedited by *WestWord*.

Prompt: You are an expert on copyright law and artificial intelligence in Canada. Write me a 700-word article on the topic.

Output: Artificial intelligence (AI) has become increasingly prevalent in modern society and has raised a number of legal and ethical concerns, including those related to copyright law in Canada. The intersection of AI and copyright law is complex and multifaceted, as AI systems can be used to create, manipulate, and distribute copyrighted works. This article will explore some of the key issues and challenges facing copyright law in Canada in the age of AI.

One of the main challenges facing copyright law in Canada is the issue of AI-generated works. As AI systems become more sophisticated, they are increasingly capable of creating original works that are similar to those created by human authors, such as music, literature, and visual art. The question arises as to who owns the copyright in these works—is it the AI system that created them, the person who programmed the AI system, or the person who provided the data and input that the AI system used to create the work?

In Canada, the *Copyright Act* states that copyright can only be owned by a “natural

person,” which means that AI systems cannot be considered copyright owners. This means that, in most cases, the copyright in an AI-generated work would belong to the person or organization that owns or controls the AI system, such as the programmer or the company that developed the AI technology. However, this issue is still largely untested in Canadian courts, and it remains to be seen how this issue will be resolved in practice.

Another issue related to AI and copyright law in Canada is the use of AI to infringe on copyrighted works. AI systems can be used to create or distribute infringing content, such as pirated movies or music, or to scrape and re-use copyrighted material without permission. This raises questions about the liability of the parties involved — for example, is the AI system itself liable for copyright infringement, or is it the person who programmed or used the system who is responsible?

Under Canadian law, liability for copyright infringement generally rests with the person who has directly infringed the copyright, rather than the technology or tool used to commit the infringement. This means that if an AI system is used to infringe on copyrighted material, the liability would likely rest with the person who programmed or used the system to commit the infringement. However, there are still many unanswered questions about how liability will be determined in cases involving AI-generated or AI-assisted infringement, and these issues will likely be the subject of future legal challenges.

A related issue is the use of AI to detect and enforce copyright infringement. Many companies and organizations are using AI systems to monitor and identify infringing content online, such as pirated movies or music. While these systems can be effective in detecting infringement, they can also lead to false positives or over-enforcement of copyright, which can have a chilling effect on free expression and innovation.

To address these concerns, it is important to ensure that AI-based copyright enforcement is transparent, accountable, and subject to appropriate oversight. This includes ensuring that AI-based enforcement is accurate and reliable, and that any decisions made by AI systems are subject to human review and appeal.

Overall, the intersection of AI and copyright law in Canada is a complex and evolving area of law. As AI technology continues to advance and become more prevalent, it is likely that we will see more legal challenges and debates about the role of AI in copyright creation, infringement, and enforcement. It is important for policymakers and legal experts to consider these issues carefully and develop appropriate legal frameworks that balance the interests of creators, users, and technology developers in a rapidly changing digital landscape. ■

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WITH GRATITUDE

ELLEN KARTZ

Producing a magazine is a labour of love. It has to be. You have to believe in it. You have to care about how it looks, how it reads, how it fits together as a cohesive whole. I've had the privilege of working on *WestWord* for the past eight and a half years. Each issue I've helped produce

holds a small piece of me on every page. And each issue has, in turn, taught me something about the craft of writing.

I've approved more than 40 printer proofs, copy edited and proofread countless articles (I've read every piece that we've published since 2015 at least twice), secured or designed hundreds of advertisements.

I've learned from and championed this community by reading your stories, revealing your names in the awards, listing your book announcements, thanking you for your donations, and welcoming you as new members to the WGA.

And while I am moving on to focus on my own writing, what I've learned from working on *WestWord* will be coming with me as lessons applied to every page I've yet to write.

I offer my deepest gratitude to the WGA membership, *WestWord* contributors, and to the incredible *WestWord* team—our editor Raymond Gariepy, designer Jason Scheibelhofer, executive director Giorgia Severini, and printer NexGen Grafix.

It has been an honour and a pleasure working with you and for this community.