Artificial intelligence and copyright

This fact sheet considers copyright and its relationship with artificial intelligence (AI) and works generated by computer in New Zealand. Our other factsheets and knowledge bases contain additional information on copyright law—visit copyright.co.nz for further information. For advice on how the law applies in a specific situation please seek advice from a lawyer.

Key points

- AI is a set of computer technologies that can perform tasks that typically require human intelligence. This fact sheet applies to generative AI, that are designed to create or generate new data similar to the data they were trained on, using machine learning techniques to understand patterns in training data and produce new content that accords with those patterns.

- There is no standard international approach to copyright ownership in AI generated material.

- By default, in New Zealand the copyright owner for a computer-generated work is the person who input the parameters to create the work.

Copyright protection

Copyright law in New Zealand is articulated in the Copyright Act 1994, which describes the rights of copyright owners and the limitations on those rights.

Like most other countries, copyright in New Zealand applies freely and automatically upon creation of a work included within the Act's scope, and copyright need not—and cannot—be registered for copyright protection to apply. It is also unnecessary to include a copyright notice on a work although it is nevertheless highly recommended to do so.

Where it applies, copyright protects the expression of ideas. It does not protect ideas themselves, nor does it protect facts or information. The types of materials included in copyright are jointly called "works". They include "literary, dramatic, musical, or artistic works" provided that the work original. The threshold for originality is not high: it must not be a copy of another work or an infringement of the copyright in another work.

In *University of Waikato v Benchmarking Services Ltd* (2004) 8 NZBLC 101,561 (CA) it was stated that sufficient time, skill, labour, or judgement must have been expended in producing the work but "the work [need not] be novel in

form but that it should originate from the author and not copied from another work." (*Wham-O MFG Co v Lincoln Industries Ltd* [1984] 1 NLR 641 (CA) at 664)

Human "author"

The original owner of the work immediately following its creation is usually also the author of the work, unless they have been commissioned or the work is done in the course of their employment. The author can be either a person or an entity, but they must have been responsible for reducing the work to a material form; people who suggest ideas or directors of a company not personally involved in a works creation are not regarded as authors: *Kenrick & Co v Lawrence & Co* (1890) 25 QBD 99 and *Hansen v Humes-Maclon Plastics Ltd* (1984) 1 NZIPR 557 (HC).

Unlike some other countries' legislation, section 5(2)(a) the Copyright Act 1994 contemplates the creation of works purely by computer; here the person who undertook understood the arrangements to create the computer-generated work is deemed to be its "author". So, a work created using a generative AI tool could potentially be protected by copyright on this basis, provided that the other requirements in the Act are met.

Software, databases, and copyright

In addition to the output of AI potentially being subject to copyright protection, the underlying software and coding will likely be protected as a literary work under section 2(1) of the Act.

Similarly, compilations are included in the definition of a literary work in section 2(1), and since databases and directories comprise compilations of data, they will qualify for copyright protection provided they are original. Although copyright is unlikely to subsist in individual facts or information contained in a database, it will subsist in a database or directory if the creator has applied sufficient effort in the collection and presentation of the data, such that it constitutes a literary work of sufficient originality.

In the context of AIs that use algorithms to provide a response to a query written by its user, the application of copyright to databases is primarily concerned with the copyright status of the underlying material used to train the AI algorithm. Generally, there is little transparency from generative AI providers about the nature of the underlying material, but the unauthorised use of copyright material is a matter of significant concern.