

WHY AI-GENERATED PAINTINGS ARE NOT PROTECTED BY COPYRIGHT LAW

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ABSTRACT

This paper explores the reasons why AI paintings are currently excluded from such protection under copyright law in contemporary society. Artificial intelligence (AI) has emerged as an influential instrument in various fields, including the creation of paintings. With advancements in technology, AI-generated paintings have gained attention and popularity worldwide. However, this raises significant concerns regarding copyright protection. To address this issue, the article will first discuss the legal framework surrounding AI paintings and copyright laws. Subsequently, it will analyze the current challenges artists and creators face in this context. Finally, it will provide potential solutions to these challenges.

Keywords: AI paintings, Artificial intelligence, Copyright law

INTRODUCTION

A new paradigm is emerging at the intersection of art and technology; artificial intelligence (AI) has taken up the artist's palette, challenging our preconceptions about creativity and authorship. This paper ventures into the heart of this revolution, examining how AI-generated paintings disrupt traditional artistic norms and raise pivotal questions within copyright law. As AI advances, it not only redefines what it means to create but also tests the fabric of legal frameworks designed for a world where human hands wielded brushes and chisels. The advent of AI in art has been celebrated for its innovation and scrutinized for its implications on copyright protection—a system historically rooted in human ingenuity. The rise of algorithmically produced artworks presents an unprecedented scenario: creations that may lack conventional authorship yet captivate audiences and command market value. This dichotomy places us at a critical juncture where legal doctrine must be reassessed in light of technological capabilities that were once deemed science fiction. As AI-generated artworks garner acclaim and provoke global discourse, they simultaneously expose a legal conundrum within copyright protection systems not

designed to contemplate non-human creators. This article critically examines these quandaries, dissecting how current legal frameworks engage with AI paintings and identifying gaps that leave such works in limbo—unshielded by laws meant to protect intellectual creations. Through this lens, we will scrutinize the challenges confronting artists and creators navigating uncharted waters where their rights may be diluted or disregarded. In response to these challenges, we will venture beyond mere analysis to propose actionable solutions to harmonize technological progress with equitable legal recognition. By charting this course through unexplored territory, our objective is twofold: first, to illuminate the intricacies surrounding copyright eligibility for AI-generated paintings; second, to advocate for adaptive measures that ensure artists—human and digital—are afforded their rightful place within our cultural lexicon. As we stand at this pivotal juncture between tradition and transformation in artistry catalyzed by artificial intelligence, it is incumbent upon us to forge pathways that uphold creative integrity while embracing future possibilities.

OBJECTIVES OF STUDY

1. To dissect and clarify the legal ambiguities surrounding copyright protection for AI-generated artwork.
2. To analyze the challenges that artists, creators, and stakeholders face in a landscape where AI is increasingly capable of producing works that resemble or even surpass those created by humans.
3. To propose potential solutions that could provide adequate protection for AI-generated artworks while ensuring fair recognition and compensation for human artists.

THE LEGAL FRAMEWORK SURROUNDING AI PAINTINGS AND COPYRIGHT LAWS

The Thai Copyright Act, initially enacted in 1994 (B.E. 2537), is Thailand's primary legislation governing copyright protection. This Act provides a legal framework to protect the rights of creators and authors over their original works, including literary, artistic, dramatic, musical compositions, and other intellectual properties fixed in tangible forms. The Act stipulates that copyright protection arises automatically upon creating an eligible work without the need for registration or formalities. It grants exclusive rights to copyright holders to authorize or prohibit reproduction, adaptation, public performance, distribution, and communication of their works to the public [1]. The duration of copyright protection under Thai law typically extends for the author's life plus fifty years after death for most types of works. However, like many international counterparts based on Berne Convention principles, it also includes exceptions and limitations, such as fair use provisions for educational purposes or criticism, which are subject to interpretation by courts within Thailand's legal system. As technology evolves rapidly, presenting new challenges such as those posed by AI-generated content, current discussions around potential amendments reflect a global trend towards reexamining how traditional copyright frameworks can adapt effectively in this digital age.

The fair use doctrine is a critical aspect of U.S. copyright law, codified in Section 107 of the Copyright Act of 1976, which allows for limited use of copyrighted material without requiring

permission from the copyright holder. This legal principle aims to balance the interests of copyright owners with broader public interests, facilitating freedom of expression and enabling activities such as criticism, comment, news reporting, teaching, and research. The doctrine evaluates potential fair uses based on a four-factor test: (1) the purpose and character of the use—including whether such use is commercial or for nonprofit educational purposes and its transformative nature; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used concerning the whole work; and (4) the effect on market value or potential market for copyrighted material [2]. Fair use determinations are highly context-specific and often require judicial interpretation to assess whether a particular instance falls within this exception's scope—making it one of copyright law's most nuanced yet indispensable components.

Copyright protection grants legal rights to creators by safeguarding their original works from unauthorized use or reproduction without permission. In Thailand, this protection is primarily governed by the Copyright Act B.E. 2537 (1994), which outlines rights conferred to authors and limitations on those rights [3]. AI paintings refer to artwork created by machines or algorithms using artificial intelligence technology. Deep learning algorithms often generate these creations that analyze vast data to replicate artistic styles or produce novel compositions [4]. Although AI plays a significant role in their creation, questions arise as to whether copyright protection should be extended to these works, given that they lack human authorship as the rapid advancement of technology has brought about various challenges in the realm of intellectual property rights, particularly in the context of artistic creations. With the emergence of Artificial Intelligence (AI) paintings, questions regarding copyright ownership, legal framework, and the principle of fair use have become more pertinent than ever before. This section examines the implications of AI-generated paintings for intellectual property rights, considers existing legislation governing copyright protection in Thailand, evaluates potential gaps in the current legal framework, and suggests recommendations to address emerging issues.

Under the Copyright Act B.E. 2537 (1994), the primary legislation governing copyright in Thailand, protection is granted to original works of authorship fixed in any tangible medium of expression. However, the Act does not explicitly define, or mention AI-generated artwork or address ownership rights related to such creations, as traditional copyright laws typically require human authorship and creative input as prerequisites for protection. Although AI paintings should fall under the definition of artistic works, the rise of AI-generated paintings presents unique challenges that test the boundaries of traditional concepts such as authorship, creative input, and originality. Originality is a fundamental requirement for any work to qualify for copyright protection. Determining whether an AI-generated artwork meets this criterion poses significant difficulties since algorithms learn from existing data sets. Thus, a scenario where people use copyrighted materials to train an artificial intelligence algorithm considers whether doing so exposes one to culpability for infringement.

Fair use principles play a pivotal role when evaluating the legality of utilizing copyrighted material for training algorithms or generating AI-generated artwork. The fair use doctrine allows for the limited exploitation of copyrighted works for specific purposes such as criticism, commentary, news reporting, education, research, or parody. It becomes essential to ascertain whether an artist's use of copyrighted material to train an algorithm—without obtaining consent from the copyright owner—qualifies as a fair use exception. Gillette (2020) posits that employing copyrighted works to educate AI software is generally deemed acceptable under fair use [5]. In contrast, Zhou and Ling (2023) argue that AI painting

programs are predominantly exploited for commercial gains; therefore, training these programs with copyrighted artworks without authorization from copyright holders does not align with fair use principles [6]. Therefore, Thailand should consider updating legislation or creating new forms of protection to adapt to the evolving landscape of AI-generated paintings and copyright law. Hence, to ensure a harmonious balance between incentivizing creativity while addressing intellectual property concerns, policymakers must proactively address emerging issues by updating existing legislation or introducing new forms of protection specific to machine-generated art.

THE IMPACT OF AI ON THE ART WORLD

The advent of artificial intelligence (AI) has brought about significant changes across numerous sectors, with the art industry experiencing its share of transformation [7]. As AI-generated artwork becomes more prevalent, artists are confronted with a new reality where their traditional roles and the value of human creativity are being questioned. This section delves into three critical areas affected by this technological shift: financial losses for traditional artists due to devaluation and job displacement, copyright violation concerns stemming from data used to train AI, and potential reputation risks for stakeholders within the artistic community.

One of the most pressing concerns is the financial impact on artists. AI's capability to produce artwork rapidly and at reduced costs poses a threat to traditional creators whose livelihoods depend on selling their unique creations. The ease with which AI can generate works may lead to a devaluation in art as it becomes more accessible and less distinctive than human-made pieces [8]. Furthermore, emerging trends such as subscription-based platforms utilizing machine learning models could prioritize cost-effective content generation over individual artistic talent. This shift not only undermines the economic stability of professional artists but also threatens job security within an industry historically reliant on human skill and expression.

The development of art-centric AI technologies hinges upon access to extensive datasets—comprising photos, paintings, videos, and other artworks—that serve as material for machine learning processes [9]. However, these datasets could contain copyrighted materials that require authorization for use or reproduction. When AI systems use such data without proper licensing or permissions from copyright holders, they risk creating derivative works that infringe upon existing copyrights. This legal grey area presents challenges in ensuring that training methods for AI do not violate intellectual property rights while advancing technological capabilities within artistic creation.

AI-generated artwork also raises questions about reputational implications for various stakeholders in the art world—from creators to curators—and challenges our understanding of creativity's origins. While some praise AI artwork for its innovative patterns beyond typical human conception, there is concern over eroding trust in original work due to rampant replication capabilities offered by these technologies. Artists may find their styles mimicked or diluted by algorithms capable of mass-producing similar aesthetics at scale—a phenomenon that could tarnish individual reputations built on distinctiveness and authenticity.

As we stand at this intersection between technology and tradition in artistry, artists are contending with significant financial challenges as market tendencies increasingly favor automated production;

meanwhile, copyright laws are struggling to ensure that intellectual property rights are safeguarded from illicit data exploitation. Additionally, the integrity of creativity is under scrutiny as discussions arise regarding what truly defines authentic artistry as opposed to creations born from algorithmic imitation. Thus, navigating this ever-changing terrain effectively requires deliberate and thoughtful action from all stakeholders. It demands a unity of effort to devise sustainable strategies to protect our cultural heritage and embrace and nurture innovation within the arts community. Prioritizing such collaborative approaches is essential for achieving a balanced coexistence between tradition and technological advancement in today's artistic landscape.

POTENTIAL SOLUTIONS

The Thai legal system is currently grappling with the complexities of copyright protection in the face of rapidly evolving technologies, such as AI-generated art. There is a crucial necessity to strike a delicate balance that encourages creative endeavors and addresses intellectual property rights issues. In order to achieve this, policymakers must actively engage with these new developments by revising current laws or devising novel protections tailored to art produced by artificial intelligence. Such proactive measures would nurture an environment that supports innovation while safeguarding artists' rights in this dynamic digital era. In order to keep pace with the changing dynamics of AI-generated artwork and associated copyright concerns, Thailand should consider overhauling its legislation or introducing new protective measures. One approach could be to amend the Copyright Act to encompass artworks produced by artificial intelligence, ensuring clear ownership attribution for these works. It is also important to explore alternative intellectual property rights that provide coverage for art created by AI, like establishing *sui generis* rights specifically designed for machine-driven creative processes. Moreover, Thailand should seek cooperation with international bodies and other nations confronting similar dilemmas to develop consistent frameworks for protecting and managing AI-produced artistic works. This collaborative effort will be essential as we move towards a global consensus on how best to navigate the intricate interface between technology and copyright law in the arts.

CONCLUSION

In conclusion, this paper has delved into the intricate relationship between AI-generated paintings and copyright law, revealing a landscape fraught with complexities and legal ambiguities. Despite the growing prevalence of AI as a tool for creating art, such works remain largely unprotected under current copyright frameworks in contemporary society. Our exploration of the legal backdrop has highlighted that existing statutes must be equipped to accommodate the non-human agency inherent in AI creations. The challenges artists and creators face in this evolving domain are multifaceted, ranging from questions of authorship and ownership to concerns over economic impact and artistic integrity. As we have seen, these issues affect individual creators and have broader implications for cultural heritage and innovation. Solutions to effectively navigate these challenges may include revising copyright laws to reflect technological advancements or creating new forms of protection tailored to AI-generated works. Additionally, fostering dialogue among stakeholders—artists, technologists, legal experts—and encouraging collaborative approaches can lead to more nuanced policies that balance creative incentives with accessibility and fair use considerations.

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