

Bloom, Sivinski in Law360: Are Works Generated By AI Subject to IP Protection'

March 13, 2018 Jason Bloom, Stephanie Sivinski

PRACTICES AI and Deep Learning, Patents, Copyright, Intellectual Property

When Philip Dick wrote the 1968 novel “Do Androids Dream of Electric Sheep?,” the inspiration for the 1982 film “Blade Runner,” artificial intelligence was more fiction than science. Fifty years later, the *Harvard Business Review* predicts that AI will be the single biggest technological development of our era, as transformative as the steam engine or electricity. AI’s hallmark is machine learning, a machine’s ability to improve its performance on a given task without additional human instruction. While businesses have yet to harness AI’s full potential, many have incorporated AI capabilities in customer service chat bots and online ad optimization. Cutting-edge uses include analysis of medical images to improve diagnostics and financial data to prevent money laundering. AI has also crept into our daily lives. Everything from digital assistants like Amazon’s Alexa to Facebook’s facial recognition technology to Google Translate use AI. And, it is not hard to imagine computers being programmed to generate all forms of copyrightable content with no direct human interaction, from software code to movie scripts, to photographs. Much of this is already happening.

As businesses invest more heavily in AI, they will increasingly turn to intellectual property law to protect their investment. Copyright and patent law are currently equipped to protect the AI itself — the software and sensors used to perform machine learning. But there are many questions about whether intellectual property protections are available for AI’s output. Take for example The Next Rembrandt project, a machine-generated 3D print in the style of the Dutch artist Rembrandt, created after AI analyzed Rembrandt’s real body of work. The result is remarkable — but is it copyrightable? And if so, who owns the copyright? Businesses will also look to limit their liability for AI’s infringement of others’ intellectual property rights. For example, if AI optimizes software code by copying someone else’s protected material, who is liable for that infringement? These are important questions that courts and Congress will have to address as AI becomes more prolific.

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