

We are living in very interesting times with spectacular innovations in technology. The law is hardly keeping up with all these changes. Companies and authors of intellectual property works are also challenged and need to adjust to the new evolving environment.

Romanian copyright law has been significantly amended recently to implement important EU directives. However, it does not yet have specific provisions adjusted to artificial intelligence (AI) systems to ensure copyright protection of works generated by AI.

The impact of AI is major and brings unique innovation opportunities but also challenges for companies (who face the risk of intellectual property rights infringement) and for creators (on the way their creative content is created, distributed, and used). In the current legislative context, it is difficult to find solutions for companies' and creators' rights to be protected in a balanced way.

The Concepts of Copyright Works and Subjects under Romanian Law

The national copyright regime is still dominated by a traditionalist approach by the legislator with respect to the object and subject of copyright. This has implications for the possibility of protecting work generated by AI as intellectual property.

It is important to distinguish between autonomous AI creations and AI-assisted human creations. In the former, a command given by the user is an idea that AI recognizes and generates work autonomously. In the latter, AI is used only as a tool, with significant human contribution to the creative process and the author facilitates the process of creation. Although the materialization of expression is aided by AI, the creation expresses the author's personality through the author's deliberate decisions.

In terms of the object of protection under Romanian law, copyright covers original works of intellectual creation in the literary, artistic, or scientific domain, whatever the mode of creation, form of expression, and value or intended purpose.

In terms of subjects of protection under Romanian law, the author is the natural person or persons who created the work. In cases expressly provided, legal entities and natural persons other than the author may benefit from the protection granted to the author as well. Moreover, it is specifically mentioned that copyright is linked to the person of the author and involves moral and patrimonial attributes. Importantly, ideas, theories, concepts, scientific discoveries, processes, methods of operation or mathematical concepts, and inventions contained in a work are not eligible for legal copyright protection in Romania.

Can AI-Generated Content Enjoy Legal Protection as Copyright in Romania?

Given the way the Romanian legislator defines the concepts of author and copyright works, it is hard to argue that Romanian law offers the protection enjoyed by works in the context of copyright to creations generated autonomously by AI. Human input is deemed imperative in the creative process, and the personality and the conscience of a human being play an important role. Thus, autonomous AI creations, as complex computer algorithms, could not legally be attributed personhood and could not be qualified as copyright works. On the other hand, AI-assisted works could be considered, in our opinion, as ones through which the author expresses their personality, the subject of protection being the one who uses generative technology.

What Measures Should Companies Take?

In the context of revolutionary AI systems, companies should take appropriate measures to protect their interests in both the short and long run.

In the legislative void regarding AI creations in Romania, AI-generated content is used freely. A significant number of artistic creations are reproduced, transformed, or modified using AI, with generated works used in advertising campaigns, marketing, etc. without legal constraints. However, this may prove to be dangerous since the intellectual property rights of authors may be infringed.

But how should companies behave to minimize the risk of infringing the copyright of lawful holders? And how can initial authors be compensated?

One way is for the users of AI systems to obtain from the suppliers thereof representations and guarantees that the AI models do not infringe the copyright of third parties and to find out if they are protected as intellectual property rights. In the latter case, when copyright-protected content is being used, companies should check if the copyright holder has given their authorization and if compensation was paid in this respect. Moreover, contractual clauses and company terms and conditions should be revised accordingly.

Companies should pay attention to the source of data that they use and evaluate the risks relating to intellectual property protection.

This article was originally published in Issue 11.11 of the CEE Legal Matters Magazine.