2019 Study Question

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Copyright in artificially generated works

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I. Current law and practice

Please answer all questions in Part I on the basis of your Group's current law and practice.

To answer questions 1 to 11, please base your answers on the Working Example in the full text of the Study Guidelines. If you believe that reference to other scenarios/examples is useful, please raise such scenarios/examples and their relevance to the questions presented.

1 **Does your current law / practice contain laws, rules, regulations or case law decisions specifically relating to Copyright and/or Related Rights in artificially-generated works?**

No

Please Explain

A. Application of general Copyright criteria to artificially-generated works

Authorship

2 **Does your current law / practice require that a work has to be created by an *identified author* (natural or legal person) to be protected by Copyright?**
*** By answering this question, don't take into consideration anonymous works and pseudonym works. Please also note that this question is independent from the question of the rights holder.**

Yes

Please Explain

The person, who created the work as his/her intellectual creation shall be the author (Art. 4(1) of the Hungarian Copyright Act, hereafter: CA, „The person who creates a work (author) is entitled to copyright".)

In the event of a collective work, where the rights pertaining to the **intellectual creations may not be separately attributed to the participating individual authors**, the authors will be the participating authors but the derivative rightsholder of the economic rights of the collective work shall be the legal entity that initiated and organized the creation thereof.

(Art. 6 CA: "(1) A natural or legal person who publishes a work that has been created upon his initiative and under his direction and published in his own name is, as the **authors' legal successor**, entitled to copyright in the jointly created work (i.e. national standards).

(2) Jointly created works are those works in which the contributions of the cooperating authors **are united in the resulting uniform work in such a manner that the rights of the individual authors cannot be separately determined."**)

Should the members of the authors' collective being all employees of the legal entity that initiates the generation of works by the AI entity, the employer shall acquire as a derivative rightowner the economic rights of the employees' works.

(Art. 30(1) CA:"In the absence of any agreement to the contrary, the employer, as the legal successor to the author, obtains economic rights once a work is handed over if the preparation of the work was the author's obligation within the scope of his/her employment.")

3 **Does your current law / practice require that a work has to be created by a *human* to be protected by Copyright?**
*** Please note that this question is independent from the question of the rights holder.**

Yes

Please Explain

Art. 4(1) CA shall be interpreted that only humans can be regarded as authors. This principle is corroborated in all commentaries and by the prevailing practice of the Hungarian courts and especially that of the ECJ being mandatory to Hungarian courts (see the Painer decision, C?145/10, „… such photograph is an intellectual creation of the author reflecting **his personality** and expressing his free and creative choices in the production of that photograph.")

4 **Could one or more of the natural persons involved in the process of the following Working Examples be qualified as authors of the resulting work in your jurisdiction?**

4.a **The authors of the program or code that defines the AI entities?**
*** As noted in Paragraph 2 of the Discussion developed in the full text of the Study Guidelines, "AI entities" refers to the system(s) that creates the AI-created work and does not refer to a legal or juridical entity.**

Yes

Please Explain

Answer to Question 4

This group considers AI works as collective works of all participating humans that give an individual and original contribution to the „end result".

Thus:

Yes, in Case 2a, if the data or data selection criteria are selected by a human, such human will qualify as the editor=author of a compilation of the selected data, if the selection is individual and original.

(Art. 7 CA „(1) Compilations are protected by copyright if the collection, arrangement, or editing of their content is individual and original (collection of works). Collections of works are protected by copyright even if their parts or components are not or cannot be protected by copyright.

(2) Editors are entitled to copyright in the entire collection of works. This, however, does not concern the independent rights of the authors of the individual works and the owners of related rights that have been included in the compilation.

(3) The copyright protection of collections of works does not cover the components that constitute their contents.")

This person might qualify as a participating author in a collective.

The same applies to Case 3a, if a human makes a qualitative or aesthetic selection of one work from the new works.

Answer to Question 4.a

Yes, such authors will also be regarded as authors of the resulting work. It follows from the court practice of the ECJ. Please see C?393/09, „such a graphic user interface can be protected by copyright as a work if that interface is its author's own intellectual creation". (It means that the software author - in case of a collective all authors belonging to the collective - will be regarded as the author(s) of the visual art work incorporated by the graphic user interface.)

The same shall apply by way of a certain, but not too far extrapolation to the works generated by the AI entity. (In our view - please see the previous answer - such an AI entity work would be regarded as a collective work under Art. 6 CA).

4.b **A human who defines the particular goal or objective to be achieved by the AI entities?**

No

Please Explain

The definition of the functionality of a future work does not give rise to authorship. The Hungarian court practice relating to software developing contracts is uniform. Even if the client intervenes deeply in the creation of a software by defining the functionality in details and giving instructions to the developer, such a client does not become an author.

4.c **A human who selects the data or the data selection criteria (inputs)?**

Yes

Please Explain

Yes, as an editor, if he/she deploys original and individual selection criteria. In this case this human will be regarded as the editor of the data compilation, and at the same time a member of the authors' collective (Art. 6 CA).

4.d **A human who selects a particular artificially-generated work from multiple works generated by the AI entities?**

Yes

Please Explain

If this person selects from among the works generated by the AI entities, and the selection is individual and original (there is a certain playing field to select), this person will also become member of the authors' collective.

4.e **Someone else?**

No

Please Explain

Originality

5 **If, in your jurisdiction, originality is a requirement for a work to be protected by Copyright, could an artificially-generated work qualify as an original work in your jurisdiction?**

Yes

Please Explain

Yes, originality means under Art. 1(3) CA that the originality shall derive from the intellectual activity of the author („Art. 1(3) CA: A work or creation is entitled to copyright protection on the basis of its individualistic and original nature deriving from the intellectual activity of the author. Copyright protection does not depend on quantitative, qualitative, or aesthetic characteristics or any judgment of the quality of the work.").

Supplementary criteria

6 **If there are supplementary or other requirements for a work to be protected by Copyright in your current law / practice, can an artificially-generated work in accordance with the Working Example fulfill them?**

Original ownership

7 **Assuming that, under your current law / practice, an artificially-generated work is protectable by Copyright, who would be the "first owner" of the Copyright, *i.e.* the person defined by the law as the *original owner* ?**

a) **Economic rights.** Please see our answers to Q-s 2-6.
In sum: the original holders of all economic and moral rights will be the humans who give a creative (individual and original) contribution to the work. If such humans constitute a collective of authors as a result of a legal entity's initiation to have AI entities to generate works, and the separate economic and moral rights cannot be exercised by the authors due to the amalgamation of their contributions into the AI work, **the economic rights shall be regarded as assigned (derivative rightownership)** to the legal entity that initiated the generation of works by the AI entity. **The same applies (derivative ownership of economic rights by the employer) if the authors are employees.**

b) **Moral rights** shall pertain to and remain with the individual authors, the humans being either participants of the authors' collective, or being the employees of the legal entity initiating the generation of AI works.

Moral rights are inalienable under Art. 9(2) CA „Authors cannot assign or waive their moral rights or have these rights assigned to another person in any other manner."

The moral rights consist of the right of attribution, the right to the indication/non-indication of the name of the author and the right of integrity.

Art. 10-13 CA:
"

Art. 10

(1) Authors decide whether their works can be published.
(2) Before a work is published, the public may only be informed of the basic content of the work with the author's consent.
(3) Unless otherwise stipulated, the author's approval must be considered as granted on the basis of the copyright licencing agreement for the user to provide the public with information concerning the contents of the work in a manner that is appropriate for the purpose of use.
(4) Works that are found after the author is dead must be considered as if the author had intended them for publication - unless the author or his/her legal successor made a statement to the contrary or if the opposite is proved otherwise.

Art. 11

Authors are entitled to withdraw their permission for the publication of works; the withdrawal must be in writing and for a well-founded reason. They are also entitled to prohibit the further use of those of their works that have already been published. They are obliged, however, to compensate for any damage that has been incurred prior to the statement. **This does not concern the employer's right to further use of the works; nor can this, in the case of the assignment of economic rights, obstruct the person that has acquired the economic rights in his/her use of the work on the basis of the assigned economic rights.**

Art. 12

(1) Authors have the right to be designated as the author on their works or in publications pertaining to their works - depending on the size and nature of the publication. Authors must be designated when a part of a work is adopted, quoted, or presented. **Authors are entitled to exercise their right to designate their name in an appropriate manner and depending on the nature of use.**
(2) The name of the author of the original work has to be designated on reworkings, adaptations, and translations.
(3) **Authors are also entitled to publish their works anonymously** or under pseudonyms. In the case of a new, legitimate use of a work that has already been published under the author's name, the author is entitled to request that the work be used in the future without designating his/her name.
(4) Authors are entitled to request that their authorship is not called into question.

Art.13 The moral rights of an author shall be considered violated by every kind of distortion and mutilation or alteration in any manner or any form of misuse of his/her work which prejudices the integrity or reputation of the author.

Art.15 CA

Licensees shall be entitled to take action in defense of an author's specific moral rights **if the author has given his/her express consent to such in the copyright licensing agreement.**

Art. 55(1) CA

The provisions on copyright licensing agreements shall also apply to the assignment of the authors' economic rights."

In sum (please see the citations from the CA printed in bold): the original owners of the moral rights – the authors being either employees or members of an authors' collective

– shall be deemed to have given their consent to the making public of their works if the „hand over" such works to the employer / the legal entity initiating the generating of the AI works under Art. 10(1) CA occurs, since there is no formal requirement for giving such a consent,
– may not exercise their right of withdrawal of their consent to the making public of the AI generated works under Art. 11(3) CA due to the assignment of the economic rights,
– may **agree to the non-indication of their names** under the assignment agreement by applying Art. 12(3) CA,
– may appoint the assignee on an exclusive basis to bring in action against the infringement of their moral rights , in particular against the alleged infringement of the right of integrity under Art. 15CA, that applies to assignment via Art. 55(1) CA.

8 **Under your current law / practice, could an AI system or machine be qualified as a juridical entity capable of holding Copyright or Related Rights?**

No

Please Explain

9 **Does your current law / practice allow non-humans and/or non-juridical entities to hold Copyright?**

No

Please Explain

Term of protection

10 **Assuming that, under your current law / practice, an artificially-generated work is protectable by Copyright, what is the term of protection?**

Under Art. 31(5) CA the duration of copyright protection of a collective work is seventy years calculated from the first day of the year following the first publication of the work.

B. Application of Related Rights criteria to artificially-generated works

11 **Could a work created with the process of the Working Example be protected by any type of Related Rights?**

If YES, please answer the following sub-questions:

Yes

Please Explain

If what is generated is a non-creation film, then related rights do apply to such a film. Even if the artificially generated film qualifies as an audiovisual creation (audiovisual work), the related rights apply in addition to the authors' right (cumulation).

11.a **What type(s) of Related Rights would be applicable?**

Related rights pertaining to all films, including non-creation films.

11.b **What would be the requirements for protection by Related Rights?**

Under Art. 82(1) CA there are no special requirements. It is sufficient if the subject matter of protection is a film = series of moving images with or without sound. Such a film should not qualify as an individual–original work.

11.c **Who would be the original owner of the Related Rights?**

The producer of the film. (Art. 82(1) CA: „The authorization of the film producer is required for the motion picture to be reproduced, distributed, inclusive of lending to the public, made available to the public by cable or any other means or in any other manner so that members of the public may access the motion picture from a place and at a time individually chosen by them.")

11.d **What would be the term of the protection?**

Under Art. 84(1)(f) CA the term of protection shall be „fifty years from the first day of the following year in which the film was released for distribution or, if the film was not released during that time, fifty years from the first day of the following year in which production of the film was completed."

II. Policy considerations and proposals for improvements of your Group's current law

12 **Could any of the following aspects of your Group's current law or practice relating to artificially-generated works be improved?**

12.a **Requirements for artificially-generated works to be protected by Copyright and/or Related Rights?**

No

Please Explain

12.b **Ownership of artificially-generated works?**

No

Please Explain

12.c **Term of protection of artificially-generated works?**

No

Please Explain

13 **Are there any other policy considerations and/or proposals for improvement to your Group's current law falling within the scope of this Study Question?**

No

Please Explain

III. Proposals for harmonisation

Please consult with relevant in-house / industry members of your Group in responding to Part III.

To answer questions 14 to 32, please base your answers on the Working Example in the full text of the Study Guidelines. If you believe that reference to other scenarios/examples is useful, please explain such scenarios/examples and their relevance to the questions presented.

14 **In your opinion, should Copyright protection and/or Related Rights protection for artificially-generated works be harmonized? For what reasons?**

Yes

For what reasons?
please respond to the following questions without regard to your Group

Yes, but with certain limitations. It is a mission impossible to harmonize moral rights due to the different approaches of copyright (authors' right). The harmonization is impossible even within the EU.

The purpose of harmonisation should be to have a legal solution at hand which allows the legal entity initiating the generating of AI works to freely exercise economic rights pertaining to the AI works.

The reason behind harmonisation is the same as the reason of the „harmonisation" of the economic rights and possible exceptions with regards to trans-border uses of the AI works.

15 **In your opinion, should artificially-generated works be protected by Copyright and/or Related Rights?**

Yes

For what reasons?

Those should be protected by copyright (authors' right) since those can meet the requirement of expression /idea dichotomy, and can be individual and original due to human creative interventions.

A. Copyright protection of artificially-generated works

16 **Should intervention by a human be a condition for Copyright protection of an artificially-generated work?**

Yes

at which step or steps in the Working Example would human intervention be required?

One must go further back than the Working Examples. The development of the software(s) that can have the function of deep learning is an essential precondition of the copyright protection. If the content of the database which is again a precondition of the operation of the AI is a compilation of data, the copyright protection must comprise this achievement as well. If any human being intervenes with creative selection of the AI generated works to be generated/published, here again there is a creative contribution. Case 2a and Case 3a involve the authorship of selecting humans, while those examples without human selection involve the right ownership of the authors of the „preparatory" software and database /compilation creators.

17 **Should originality be a condition for Copyright protection of an artificially-generated work?**

Yes

Please Explain

Yes, together with individuality, it goes without saying. This is the basis of all copyright protection under the Berne Convention and the TRIPs Agreement. If one considers the international harmonisation, it shall be built on the existing network of international instruments.

18 **What other requirements, if any, should be conditions for Copyright protection of an artificially-generated work?**

No other requirements are necessary.

19 **Who should be the original owner of the Copyright on an artificially-generated work?**

The authors participating in the creation, including the creation of 'preparatory' software and data compilation as well as all other humans who provide a creative (individual and original) contribution.

20 **What should be the term of Copyright protection for an artificially-generated work?**

70 years from the date of the first publication of the AI generated works.

21 **Should Economic Rights differ between artificially-generated works and regular works?**

No

Please Explain

It would be very unwise to define new economic rights or limit the existing list thereof, the AI generated works may belong to any work category therefore the exercise of all existing economic rights might be necessary for the smooth circulation of such works.

22 **Considering existing exceptions to Copyright, should any exceptions apply differently to artificially-generated works versus other works?**

No

Please Explain

It would be seriously detrimental to the logic and dogmatic architecture of the copyright laws if exceptions to various work categories were different on the basis of the way of creation. This opinion depends on the general introduction of the exception of text and data mining into the EU copyright framework. This exception should be applicable to all works, including AI generated works.

23 **Should there be any new exceptions to Copyright specifically applicable to artificially-generated works?**

No

Please Explain

24 **Moral Rights**

24.a **Should moral rights be recognized in artificially-generated works?**

Yes

Please Explain

24.b **If yes, what prerogatives should the moral rights include (for example, the right to claim authorship of the work, the right to object to any distortion, mutilation or other modification of the work)?**

All moral rights under the Berne Convention, including the moral rights listed in the question.

24.c **If yes, who should exercise the prerogatives of moral rights?**

The legal entity that initiated the generation of the AI works, but not by way of waiver, but by way of appropriate contractual stipulations with guarantees for the individual authors to authorize the initiating legal entity to enforce moral rights against infringers.

B. Related Rights protection of artificially-generated works

25 **Considering existing Related Rights, should any Related Rights apply to artificially-generated works?**

No

Please Explain

The related rights of film producers with regards to non-creation films is a European legal institution not accepted in other regions. Therefore, it is not advisable to propose the introduction of such a right.

26 **Should there be any new Related Rights specifically applicable to artificially-generated works?**

No

27 **If an existing or new Related Right is applicable to artificially-generated works, what requirements should be conditions for protection?**

–

28 **Which Related Rights' economic rights and moral rights should apply to artificially-generated works?**

–

29 **Who should be the original owner of the Related Right?**

–

30 **What should be the term of protection of the Related Right?**

–

31 **Please comment on any additional issues concerning any aspect of Copyright protection and Related Rights protection for artificially-generated works you consider relevant to this Study Question.**

–

32 **Please indicate which industry sector views provided by in-house counsel are included in your Group's answers to Part III.**

Music industry, tech industry, aviation industry.