Responses for Greece

Paris Congress

ALAI 2023

Artificial intelligence, copyright and related rights

June 22-23, 2023

To National Reporters:

The questionnaire uses the neutral term AI "production" to refer to content generated by an artificial intelligence system. As opposed to the term "work (of the mind)" which is the one that describes the classical object of copyright protection. This means that the content we are interested in is content produced by the artificial intelligence machine (or "system"), itself fed upstream by works of the mind, reproduced in a training data base. The margin of intervention of the final user is thus a priori very limited, but not always non-existent. The hypothesis concerned by this Congress is thus closer to what the ALAI once studied as "computer-generated creations" than to "computer-assisted creations" (see the 1989 Quebec City Congress).

In the mind of the editors of this questionnaire, an "artificial intelligence system" is defined as a computer system that allows, with a certain autonomy, automated decision making or predictions influencing real or virtual environments[1].

The questions raised are numerous because of the disruptive nature of the phenomenon, the multitude of issues and the theoretical, economic and social importance of the stakes.

Some of the questions will undoubtedly be accompanied by brief negative answers, which is already a useful answer for the General Reporters. Simply indicate these ("no", "none").

In other cases, the answers may be uncertain. In these cases, it is easiest to follow the classic pattern: "1) What do statutes and regulations say? 2) What does the caselaw say? 3) What does the national group think? To questions 1 and 2 above, the answer will often be "Nothing specific about AI but the relevant reference text/principle might be ...". Regarding 3), the national group is not obliged to have taken a position.

It is of this uncertainty and diversity that we will try to draw together, in June, a clear picture.

The team of the Scientific Committee (Alexandra Bensamoun, Jane Ginsburg, Silke von Lewinski, Pierre Sirinelli) is of course at your disposal to explain a question that might not seem, because of the particular context, immediately clear.

Thank you all and we look forward to seeing you in Paris.

Note: the questionnaires must be returned by the national groups no later than May 8, 2023. They will be sent to Pierre Sirinelli (pierre.sirinelli@univ-paris1.fr) and Sarah Dormont (sarah.dormont@u-pec.fr).

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[1] *This definition is comparable to the one retained by the European Union in the discussion on the AI Act (proposed regulation COM(2021) 206 final, March 2023 position), itself inspired by the 2019 OECD Recommendation on AI.*

Artificial intelligence, copyright and related rights

The contours of the relationship

Evangelia Vagena, Lawyer, PhD, Adjunct lecturer of IT & IP law, Head of Compliance Orfium

1. Understanding

1.1 - Has your national or regional law adopted a legal definition of AI?

No, there is no legal definition in national legislation.

1.2 - Can you provide some examples of current uses of AI and its productions in the cultural sector of your country?

Some of the initiatives of AI use in the cultural sector are the following:

-"Artifac"t for Artificial Intelligence for Culture: it is a group of the laboratory for AI SKEL as part of the Institute of Informatics & Telecommunications at NCSR Demokritos. The Artifact team connects AI with culture through projects that combine digitization technology with cultural practices

-The Hellenic Ministry of Culture and Sport and Microsoft Corp. have started since the end of 2021 the collaboration 'Ancient Olympia: Common Grounds' to digitally preserve and restore ancient Olympia, the original home of the Olympic games, using AI

- Ithaca, the first deep neural network for the textual restoration, geographical attribution, and chronological attribution of ancient Greek inscriptions, has been developed by Deep Mind, a subsidiary of Alphabet, with the participation of researchers affiliated with Greek universities.

1.3 - (Optional) What are the issues that have been exposed in your country on this subject: stakes, difficulties, orientations, proposals...?

There has been a horizontal regulatory approach in AI development in Greek legislation by law 4961/2022 on "*Emerging information and communication technologies, strengthening digital governance and other provisions*".

The issues that this congress focuses on have also been exposed by national academia, media, and public speaking, but no concrete regulatory proposals regarding AI & copyright have yet been stipulated.

***1.4* - Are there any initiatives in your country or region aimed at regulating the use of AI in the cultural sectors?**

A coordination committee about AI has been established by Article 11 of Law 4961/2022. Its main mission is the coordination of the implementation of the National Strategy for the development of AI, but it is not specific to the cultural sector.

2. Understanding the upstream

2.1 - Are the AI system or its components likely to be protected by intellectual property rights (copyright and/or industrial property – patents, trade secrets . . .)?

The issue is still under scientific consideration, but in principle, nothing may, by default, exclude IPR protection of AI systems or components.

Contractual limitations may further be used to decide whether the use of such components is legal or not.

2.2 - *Can rights under copyright be enforced against the use of protected contents by AI training?*

Yes, in principle, if no exception provided in applicable legislation applies and the content is subject to protection. The exception that would be expected to apply under the specific conditions prescribed by law is the one about Text and data Mining as provided by ar. 3-4 of directive 790/2019 as implemented in national law (see below).

> ***Does the insertion of a pre-existing work into the computer system implicate rights under copyright?***

Yes, since there must be a legal estimation of its lawful use: if a license exists, a contractual arrangement has taken place, or if an exception may be applied. The insertion of a work into the computer system presupposes its reproduction which is an act covered by the exclusive economic right of an author.

It may be of practical importance to remind the possible application of rights management information protection as provided by the copyright Infosoc EU directive 29/2001, especially regarding the metadata of works used to train AI systems in case that data is altered or removed during this process. The same directive provisions would apply regarding technological measures of protection if they were circumvented to allow uses not permitted by rightsholders in order to insert the protected works in an AI training system.

> ***If so, in order to avoid a finding of infringement, are the copying or storage covered by an exception?***

There is no specific exception for copying or storage in similar systems. The well-known exception of “transient copies” was adopted especially for software and transition of copies of works in the internet landscape as known at the time of adoption of the copyright Infosoc directive 29/2001 EU.

The only applicable exception would be on a case-by-case basis, the one about Text and Data Mining provided in the copyright DSM directive (790/219 EU) as implemented by national copyright legislation (ar.21 and 21 A of law 2121/1993 as amended, see here).

In any case, we should keep in mind that the application of the *three-step test* is very important for judging whether or not an exception may be applied in similar cases.

2.3 - In your country, are there any proposals to change the law, and in which direction?

There are no specific proposals aiming to meet AI challenges to copyright, although there is a relevant academic discussion.

> ***For example, by deeming that the incorporation of preexisting works into AI systems does not create an actionable "reproduction" of the works? Or by creating a new exception? Or by implementing a compulsory licensing system? Other solutions?***

Similar discussions have been traced in Greek academic writings, but none has reached up to now a more institutional forum.

As it is known, based on the recently published version of the draft EU AI Act, providers of generative AI foundation models must also comply with transparency obligations, ensure

safeguards against the content generation in breach of EU law, and document and make publicly available a detailed summary of the use of copyright-protected training data. If that provision is finally adopted when the AI Act is approved, Greece will be subject to it.

2.4 - Do the "terms of service" of the platforms available in your country authorize the copying and storage for the purpose of constituting "training data" and the creation of "AI outputs" of the works posted by the users of the platform? If so, give examples of the relevant Terms of Service.

There are no similar explicit provisions known specifically for Greek territory.

The issue should be addressed in the original agreement between the original right holder/content provider and the platform.

Regarding end user-generated content, general terms of use of large platforms such as Google can be traced, and translated into Greek, based on which the user grants inter alia *"license is for the limited purpose of operating the service […] This includes using automated systems and algorithms to analyze your content […] to recognize patterns in data […]".*

2.5 - Are you aware of the conclusion of individual or collective licenses on this point? If yes, in which fields of creation? Under what conditions? If so, give examples.

We are not aware of any similar licenses publicly available.

3. Using AI as a tool for rights management and administration

3.1 - To what extent is AI used to locate or identify protected content, moderate it, or even to fight against infringement?

There is no relative country-based data available.

Still, it is known that private entities such as Orfium, with offices also in Athens, Pex, Utopia, Bmat, Blokur etc, are using AI/ML to identify copyright-protected content on behalf of their clients all over the world.

3.2 - If computer tools are used for this identification, are there rules to allow the evaluation of the tools used in order to verify the relevance of the results produced by the AI system? (For example, in the framework of the European Digital Services Act, platforms have an obligation of transparency, notably on the tools used and the results they produce - art. 15).

Apart from the obligations deriving from EU regulations and especially DSA Act (mainly ar. 14-15 for transparency) that will also apply in Greece, there are information obligations of platforms towards users such as deriving from ar.66 F of national copyright law 2121/1993 as amended in order to implement ar. 17 of copyright DSM directive. According to them, the online content-sharing service providers shall provide rightsholders, at their request, with sufficient information on the functioning of their practices with regard to the cooperation with users to prevent unauthorized uses of works and, where licensing agreements are concluded between service providers and rightsholders, information on the use of content covered by the agreements between online content-sharing service providers and rightsholders.

It is worth mentioning that there is also an obligation for public bodies to conduct an "*Algorithmic Impact Assessment*" according to law 4961/2022. More specifically, before using an AI system, public bodies must execute an algorithmic impact assessment to assess the risks that may arise to the rights, freedoms, and legitimate interests of the persons affected by such an AI system. So, if any public enforcement agency should use corresponding systems for the

identification of copyright infringement, it should beforehand have proceeded to such an algorithmic assessment.

> ***If the answer is yes, are these rules derived from practice (usages, contracts, softlaw...) or imposed by legislation or regulation, or by case law?***

The only rules which may apply, as mentioned above, would be based on legislation as currently in force and on any specific contractual obligation.

3.3 - To what extent is AI used as a tool to recommend protected content? For example, the proposal of "playlists" by Pandora or any other online communication service making recommendations of works.

No available data.

3.4 - Should we fear, through this recommendation, a risk of dilution of contents and revenues due to a possible opacity of the system?

To the extent the question is well understood, the general fear will be that if there is mainly specific content available, especially in terms of digital documentation permitting its clearance or reference by AI systems, this content will prevail in revenues allocation, and that would harm not only investments and development of the less documented content but also cultural diversity.

3.5 - Does your national or regional law contain transparency obligations on the use of an AI system for rights management in your national or regional law (e.g. the European Digital Services Act)? What are they?

There are no specific obligations for AI systems for copyright management provided by the national legislation at the moment.

Still, there are strict transparency obligations in general for rights management in the legislation implementing Directive 2014/26/EU (CRM directive), which can be interpreted as also covering the use of AI for the same reason. For example, the obligation of users to provide extensive information about the works used by them to CMOs and rightsholders or obligations regarding the Information provided to rightsholders on the management of their rights or even concerning the multi-territorial licensing for online rights in musical works.

3.6 - In general, do these tools have to comply with rules in terms of product safety or conformity? Are there procedures for certification of these tools by an authority or by professional associations? Are suppliers subject to specific due diligence obligations?

There has been the first legislative effort to approach AI implications in national law 4961/2022 on "*Emerging information and communication technologies, strengthening digital governance and other provisions*". This law provides, as already stated, an Algorithmic Impact Assessment for public bodies (see above).

Moreover, according to the same law, any medium or large private sector entity within the meaning of Article 2 of Law 4308/2014, should adopt a policy for the ethical use of data, which includes information on the measures, actions, and procedures it applies to data ethics issues when using AI systems. In addition, any such company, which prepares a corporate governance statement in accordance with article 152 of Law 4548/2018 (A' 104), must include, in the relevant statement, information about its data ethics policy. A Joint Ministerial Decision shall

specify the content of such policies. Each medium or large private sector entity within the meaning of Article 2 of Law 4308/2014 shall also maintain a register of the AI systems it uses.

This law also establishes, on the one hand, a Coordinating Committee for AI with responsibilities for the drafting of the National Strategy for AI and, more generally, the formulation of policy around AI and, on the other hand, a Committee for the supervision of the strategy, which ensures the implementation, the coordination of the competent bodies and manages its enforcement.

Private certification standardization projects for general AI have also appeared, like ISO standards for AI etc).

More specific rules about product safety or certification of AI use referring explicitly to copyright are not known.

The status of AI Outputs

- **ANTHOULA PAPADOPOULOU, Professor of Law**

1. Access to protection

- ***Characterization of the AI output as a "Work" of authorship***

Note: If an AI output has all the external aspects of a work of authorship, is it possible to consider it as a work of authorship protected by copyright?

***4.1* - Does a "Work" always imply the presence of a physical person?**

4.1. A "work" always implies the presence of a physical/natural person who is the creator of work. Creativity and intellectual creation are exclusively connected to the human intellect.

***4.2* - From what threshold is it possible to consider that there is a human intervention giving rise to an original work in the realization of an AI output? What types of intervention would allow to know if this threshold has been crossed?**

4.2. The possibility of considering an AI output as an original work with human intervention arises only when a physical/natural person is capable of controlling and potentially intervening in the end result/output produced by the AI system. This approach may apply to works generated with the assistance of AI as long as there is the involvement of a physical person (AI-assisted works). It is not sufficient if the person merely triggers or initiates the process without having control over the output and the intended result.

***4.3* - How can we distinguish between AI-assisted outputs and outputs generated by an AI?**

4.3. The key factor is the presence of creative intent and control over the end result, whether it is a "work" or an "AI output". If a physical person is able to control the end result or make adaptions/changes in order to achieve the desired result, then this is considered an "AI-assisted output" and is regarded as a work of authorship. On the other hand, if all the elements are autonomously regulated by an AI system, without any possibility of human intervention, then it is about an "AI-generated output".

4.4 - In some countries, it is asserted that there can only be a work of authorship if the form obtained is the result of creative work by the author in the sense that the latter is aware of the result (work) he wants to achieve even if this result is a little different from his hope/expectations. This requirement, for example, would exclude the quality of author of a person deprived of discernment (for example, an insane person, a very young child, a

somnambulist...) or would entail the refusal of protection of a production which would be only the fruit of random forces.

Does this condition exist in your country?

If so, is it a statutory or administrative requirement? Does it derive from caselaw? From secondary authorities (e.g. academic writings)?

4.4. According to prevailing views in academic writing, a work of authorship is the intended result of a complex intellectual process. There are no special conditions or requirements specified in legislation regarding the process of creation. A creative process involves the conscious processing of ideas, images, sounds, emotions and senses, which are then composed through a conscious choice or conscious randomness. Thus, accidental or incidental forms that arise without the intention to create a work do not result in a "work of authorship". Furthermore, legal capacity is not necessary, so even a very young child could be considered an "author" legally represented for any necessary legal action.

4.5 **- Are the criteria traditionally considered to be irrelevant (such as merit, or purpose) taken into account in the framework of protecting an AI output?**

4.5. The criteria traditionally considered to be irrelevant such as merit or purpose must be reconsidered in the case of an "AI- generated output". The complete lack of human control over the end result must be balanced with the subsequent evaluation of the AI-generated output by a physical/natural person, with regards to the standards of quality or purpose for the benefit of society and the intended recipient of the AI output. This evaluation is necessary to ensure that the AI-generated output benefits society and is appropriate for its intended recipient.

- Characterization of a performer's performance

4.6 - In order to be vested with a neighboring right, does the performer necessarily have to be a natural person?

In other words, is an "interpretation" from an artificial intelligence protectable under neighboring rights?

4.6. According to Article 46 of Greek Copyright Law 2121/1993, only a physical/natural person may be a performer artist and, therefore, a right holder of property and moral neighboring rights. Although the aforementioned provision does not expressly reference a natural person, it is implied that only a natural person may hold such rights. This is further confirmed by the mention of specific categories of performers, such as actors, dancers, musicians, etc. While the aforementioned reference is indicative, it is currently not possible to recognize an AI system as performing artist in our existing legal system.

4.7 - In order to be vested with a neighboring right, must the performer necessarily interpret a work created by a natural person?

In other words, is the interpretation, by a human being, of a production of artificial intelligence protectable under neighboring rights? (Suppose an AI-generated musical composition: if performed by a human being, would the performance be protectable?)

4.7. In Greek intellectual property law, the author's right on the one hand and neighboring rights on the other, are two distinct and independent rights. Based on this principle, is possible

for a performing artist to perform an “AI-generated output” (such as musical composition) and even if the performed output/production may not be considered the author’s work, the performer artist may acquire neighboring rights due to their perform

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GALATEIA KAPELLAKOU, PhD, Lawyer, Adjunct Lecturer Univ. Patras

- If the AI output does not qualify for copyright protection

4.8 - Are the productions generated by AI, that are not covered by copyright, in the public domain?

Not necessarily. Such productions could be protected by other laws, such as IP Law (for example trademarks or sui generis right of the maker of database, under specific circumstances prescribed in Law) or Trade Secrets. Furthermore, we cannot exclude the possibility that their use or exploitation is contractually limited.

4.9 - In your country, could the productions generated by AI be qualified as "commons" (it being understood that, in some countries, the notion of "commons" has a different meaning than "public domain")? Under what conditions or according to what criteria?

The legislative texts use either the term ‘common goods’ or ‘goods of the public domain’ or ‘out of commerce goods’, depending on the object of protection.

According to art. 966 Civil Code (CC) things which are common to all, those of common use, and those dedicated to serve public, municipal, communal, or religious purposes, are things out of commerce (or out of the realm of transactions). Article 967 CC specifies that freely and perpetually running water, roads, public squares, the seashore, harbors and roadsteads, the banks of navigable rivers, large lakes and their shores, are things of common use. Things common to all belong to the public, as long as they do not belong to a municipality or community, or the law does not provide otherwise (art. 968 Civil Code); they are therefore the property of the State.

Cultural heritage law also defines which cultural goods are ‘out of commerce’.

In Copyright the term ‘public domain’ is used to describe the status of a work when its term of protection has passed, and therefore, the work may be used freely by anyone, for any purpose (subject to moral rights of paternity and integrity that persist) without asking for authorization and without payment of compensation. The protection of the economic and moral rights lasts for the lifetime of the author and seventy (70) years after their death, calculated from January 1 of the year following the death of the creator (art. 29, Law 2121/1993 Copyright, related rights and cultural issues); after this period, the work falls into the public domain, it becomes “common good”, a cultural good. Once the protected works fall into the public domain, the Code for the Protection of Antiquities and Cultural Heritage may apply. It is also to be noted that after the expiry of the period of copyright protection, the State, represented by the Minister of Culture, may exercise the rights relating to the paternity and integrity of the work deriving from the moral rights pursuant to article 4(1)(b) and (1)(c) of Law 2121/1993(article 29 par. 2 of L.aw 2121/1993).

Therefore, productions generated by AI could not be qualified as "commons"; they are not ‘out of the realm of transactions’ in the sense of art. 966 CC. In addition, as explained under answer 4.8, such productions could be protected by other laws (for example IP, trade secrets) or their use or exploitation could be contractually limited.

***4.**10 - How can we be sure that the creation presented as realized by an author is not an artificial production?*

For the time being it is not possible to conclude whether a creation presented as the work of an author is indeed their creation or an AI production. Technology could contribute to this point: blockchain technology, for example, could prove to be a useful tool when AI productions are created digitally, by inserting the generated output into a database and timestamping it.

4.11 - Usually, a collective management organization (CMO) manages a catalog attached to an author without making distinctions between "works" / "productions". How to manage the case of an author whose usual works belong to his repertoire but who would also use an AI system to generate other "productions"?

Supposing that an author is using an AI system to create an adaptation of their own (preexistent or initial) work which is protected by Copyright, if the preexistent (initial) work can still be perceived/identified in the final output, then it should be expected that remuneration is owed for the use (for example public performance) of the still perceivable work initially created by the author. If the preexistent (initial) work is not identifiable in the output, then the output should not be expected to give rise to remuneration for its use. Obviously, the upstream/input (the training of the system with preexistent protected works) is a form of exploitation for which authorization is needed, as well as remuneration (see answers 2.2-2.4).

2. The rights regime

- The choice of the right (nature, ownership, regime, limitations)

**** As your legislation currently stands:***

5.1 - Is the output generated by an artificial intelligence system likely to be protected by copyright in your country?

As explained under 4.2, only works created by physical/natural persons can be protected by Copyright; therefore, an output generated by AI system is excluded from protection.

It is an issue however, if the person who gave specific prompts to the machine could be considered as the author of the generated output. In principle, the answer will be negative as the simple triggering or initiating the process without having control over the output and the intended result is not sufficient for the protection of the generated output by Copyright (see answer 4.2). Nevertheless, if the output has been created on the basis of the specific prompts given by a physical person (i.e. the creation process has been controlled by a human) that led to the creation an original work, the person controlling the creation could be considered as an author of the work.

Another issue is whether the alteration of the output by a physical person could lead to attribution of copyright to this person; in the same line as above, if the physical person's contribution is substantial and presents originality, copyright could be attributed, at least for the specific contribution. In this sense we also refer to answer 4.3 above.

5.2 - If applicable, does the production generated by an artificial intelligence system benefit from a full copyright, in particular as regards the duration and scope of the rights, or from a modified or special right?

The production generated by an AI system does not benefit from Copyright either full or modified or special right of said legislation. For more details, see answers under 4.1, 4.2 and 5.1.

5.3 - If there is a protection by an adapted or special copyright (as it exists sometimes for certain works, as for example, in Europe, concerning computer programs), what are the modifications or adaptations? *4*

Not applicable.

5.4 - Who is the author? Who would be the owner of the rights? Could the output be considered a joint work? If so, between whom and in what cases?

Following art. 3 (1) of Law 2121/1993, Copyright, Related Rights and Cultural Matters: "The initial holder of the economic right and the moral right in a work shall be the author of that work" (usually mentioned in Greek doctrine as the 'Principle of Truth'). Therefore, the initial rightholder/owner of the rights is the author of the work, and as a consequence of the principle of truth, only a physical person can be an author. A legal person cannot create a work; it can only acquire the rights on the specific work and become secondary rightholder/owner of the rights. As explained under 4.2 and 5.1, in principle, an output generated by AI system cannot be protected by Copyright, therefore there is no Copyright to be owned.

The following opinion could under consideration:

- An AI system is trained by preexisting works which are protected by Copyright Law, for which authorization is needed unless an exception applies.
- It is possible that the selection or arrangement of the content used for the training of the system has been made in an original way: in this case rights should be attributed to the author(s) of the database. It is also possible that a qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents has been made during the training process: in this case the sui generis right of the maker of a database is applicable.
- If the output generated by the AI system is produced only based on the specific prompts given by a physical person (a user), or a physical person controls the end result, then this creation (see also answer 4.3 "AI-assisted output") if it is original is protected by Copyright; its author and owner of the rights on this work is the physical person who created it.
- If the outcome includes several preexistent protected works and these works (or original parts of these works) can be perceived/identified in the final output, then the authors of the output remain the authors of the preexisting works; therefore, these authors remain authors of the parts of the output that reproduces identifiable parts of their works. These authors are co-owners of the output, for their contribution.
- If the outcome of the AI system is altered by one or more physical person(s) in a way that the alteration renders the output into an original work, the author(s) of such work is the physical person(s) who proceeded with the alterations. If, albeit the alteration(s), preexisting work(s) protected by Copyright is still identified in this altered version of the AI system output, then the authors of the work will be the physical person(s) who altered the AI system output and the author(s) of the preexisting work(s) on which the AI system was based to generate the output. These authors are the initial rightholders of Copyright; the economic rights can be transferred or licensed to third parties, physical or legal persons.

5.5 - Is there a special ownership rule (presumption, or even fiction, as it exists in some countries for computer-generated creations; see for example, art. 9 (3) Copyright, Designs and Patents Act (CDPA) in England)?

No such special ownership rule exists under national legislation.

**** In the event of a possible legislative change:***

Are there any concrete proposals in your country related to the items listed below? If so, answer questions 5.6 and following.

No concrete proposals in Greece related to the items listed below.

If not :

> ***i) the national rapporteurs can give their personal opinion while making it clear that these are mere proposals of secondary authorities (e.g., academics) and not positive law;***
>
> ***ii) or they <u>can go directly to the questions numbered 6 and following</u>.***

5.6 - What would be the criteria to be retained to allow access to copyright protection for AI outputs?

5.7 - Should a specific copyright be created for these productions?

5.8 - With what particularities (e.g., duration and content of the rights)?

5.9 - Can there still be a moral right?

5.10 - Should there be a special ownership rule (presumption, or even fiction, as it exists in some countries for computer-generated creations)?

5.11 - Should a deposit be required? / A declaration of "origin"?

5.12 - Should a kind of neighbouring right or a sui generis right be created?

5.13 - What would be its characteristics?

5.14 - The rights covered?

5.15 - Generally speaking, what would be the limitations on or exceptions to this new right?

5.16 - How should this protection be articulated with other existing protections?

5.17 - In the absence of protection by a property right, are there any compromise solutions? For example, a kind of paying public domain for them: collection of royalties paid to a

collective management organization for distribution among authors continuing to create works in the traditional way? What else?

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- **SOTIRIS PAPADOPOULOS, Lawyer PhD – Post Doc Researcher**
  - AI and violation of rights: the choice of remedy

6.1 **- Can an AI output infringe, and to what extent? Who would be liable?**

The main issue that arises with intellectual property rights in AI systems is the concept of originality of the work, which reflects the personality of its creator, i.e. whether it is considered a human work. The problem concerns the results produced by a particular program, which cannot be considered to have been produced by a human creator, as is the case, for example, when a program 'creates' a musical composition or a painting with the help of artificial intelligence. The production of AI can only infringe intellectual property rights in the sense that the user of the AI program is the creator of the output, which infringes a potential intellectual property right. In this case, the user who sought the particular result that infringes intellectual property rights would be liable.

6.2 - Are there other legal means (e.g. unfair competition, parasitism) to engage the liability of the person responsible for the AI output? (Who would that person be?)

It depends on the resulting AI output whether it may infringe other types of rights or whether it creates problems in other areas of law. Here too, the problems remain who is the creator or, better, who is responsible for the result produced. Under certain conditions AI may infringe other rights and this will always depend, at least at this early stage, on the data that is input to produce the result.

6.3 - Beyond copyright, can personality rights prevent the realization by an AI of a production using the voice or physical aspect of another person?

The recent example of the false photograph of the Pope wearing a jacket of a well-known cloth company is a striking example of how the photorealism of artificial intelligence can infringe on the rights to individual's personality. Victims of deepfakes, especially women who have been targeted in nonconsensual pornography, have warned about the risks of the technology for years. In a few years image generating tools will become much more accessible and powerful, producing better quality fabricated images of any kind. It is certain that this technology could be used for the sole purpose of violating the personality of a person. As the power of AI rapidly advances, it will only get harder to discern whether an image or video is real or fake. That could have a significant impact on the public's susceptibility to foreign influence operations, the targeted harassment of individuals.