INSTITUTO DE ESTUDIOS
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ARTIFICIAL INTELLIGENCE:
A NEW FRONTIER FOR INTELLECTUAL PROPERTY POLICYMAKING

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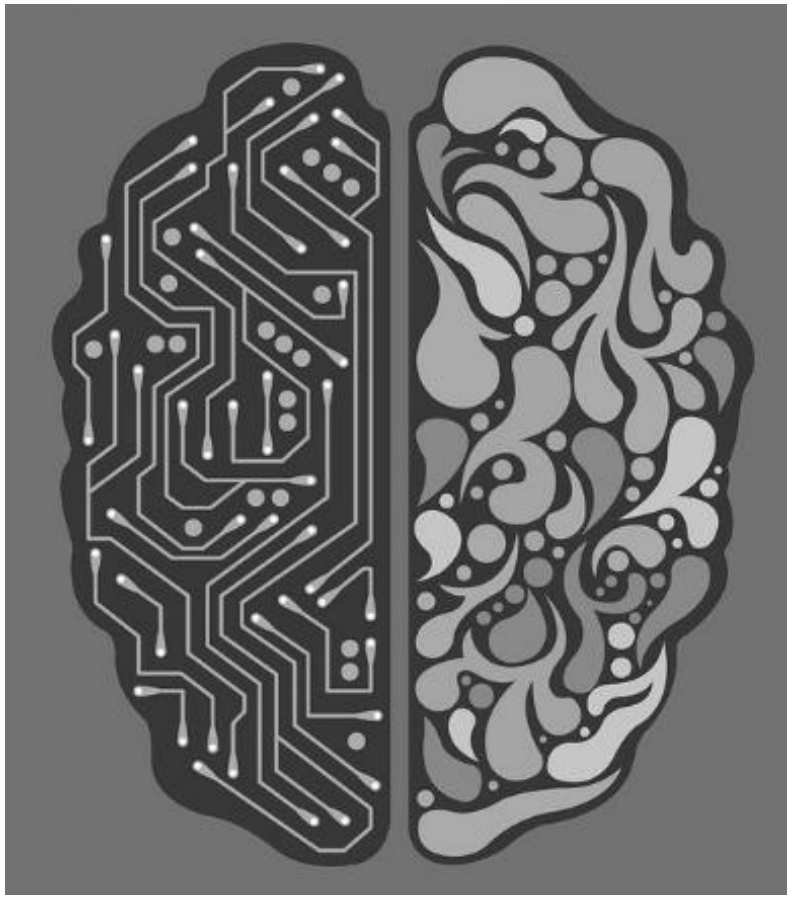


Introduction

Next Rembrandt

Gathering the Data

Determining the subject

Generating the features

Bringing to life

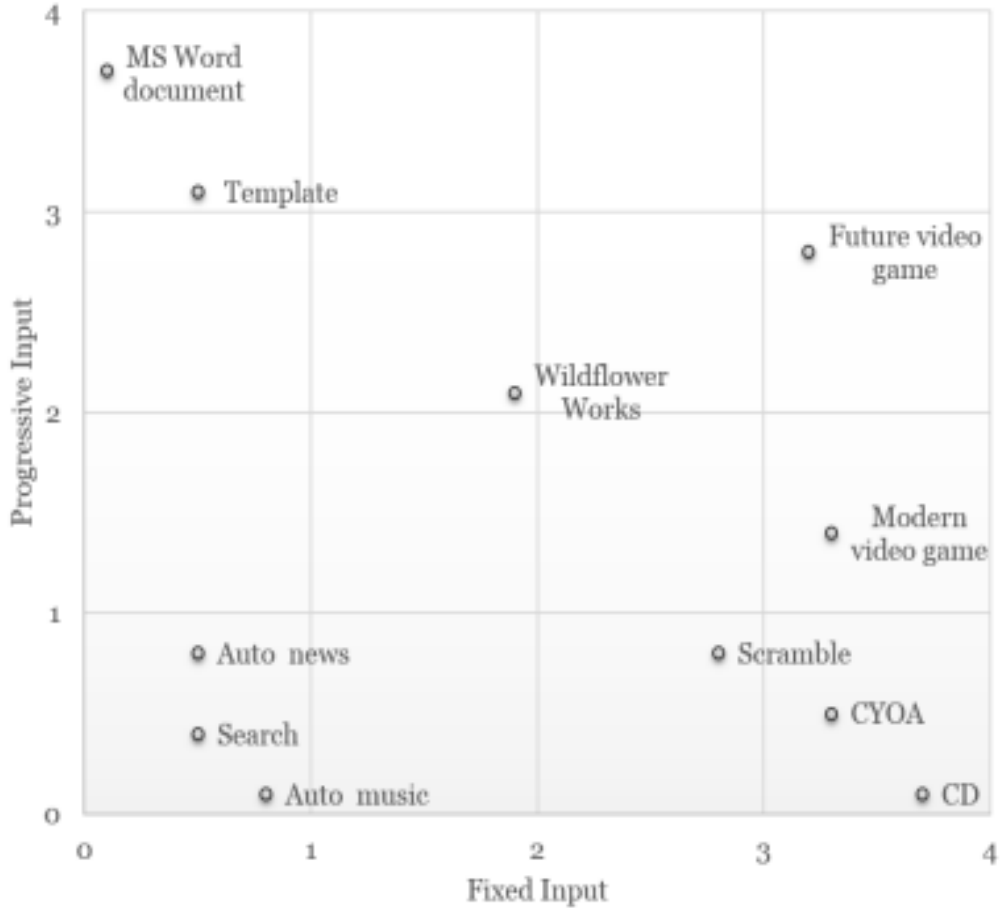
Next Rembrandt

Who is the author of the Next Rembrandt?

To whom could we attribute this work?

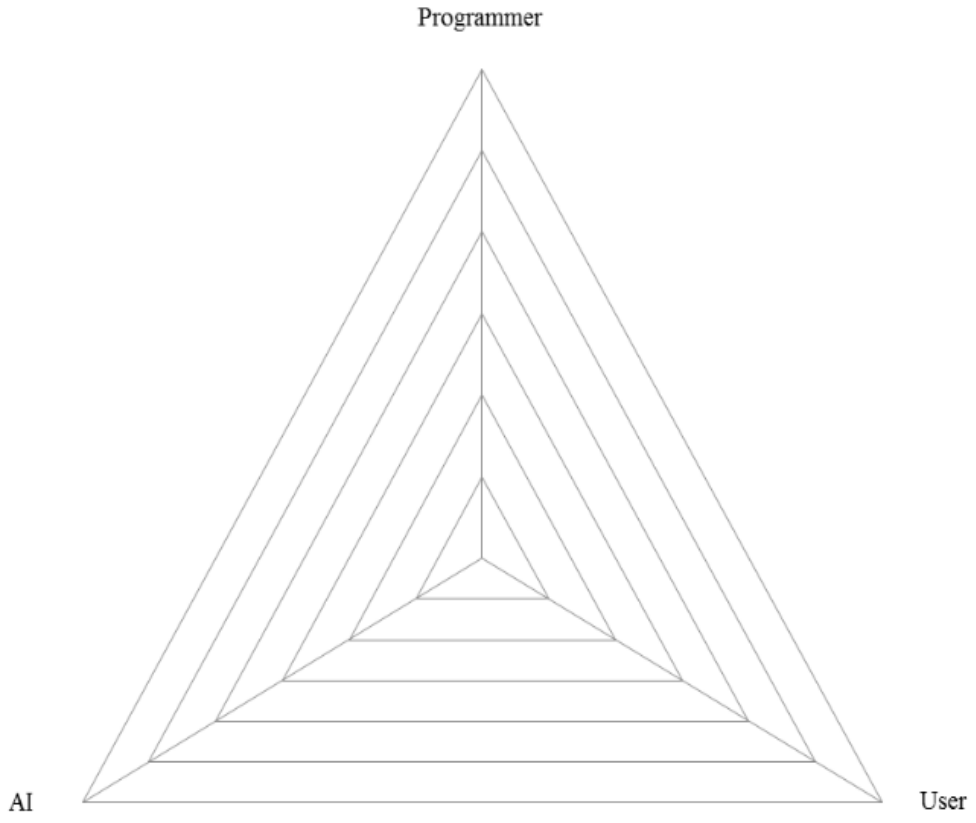
May an AI be an author?

The traditional paradigm: User vs programmer



Source: Boyden (2015, p. 386)

Multi-actor approach



Source: Authors´elaboration

How to determine the authorship?

Wu (1997) 5 step approach

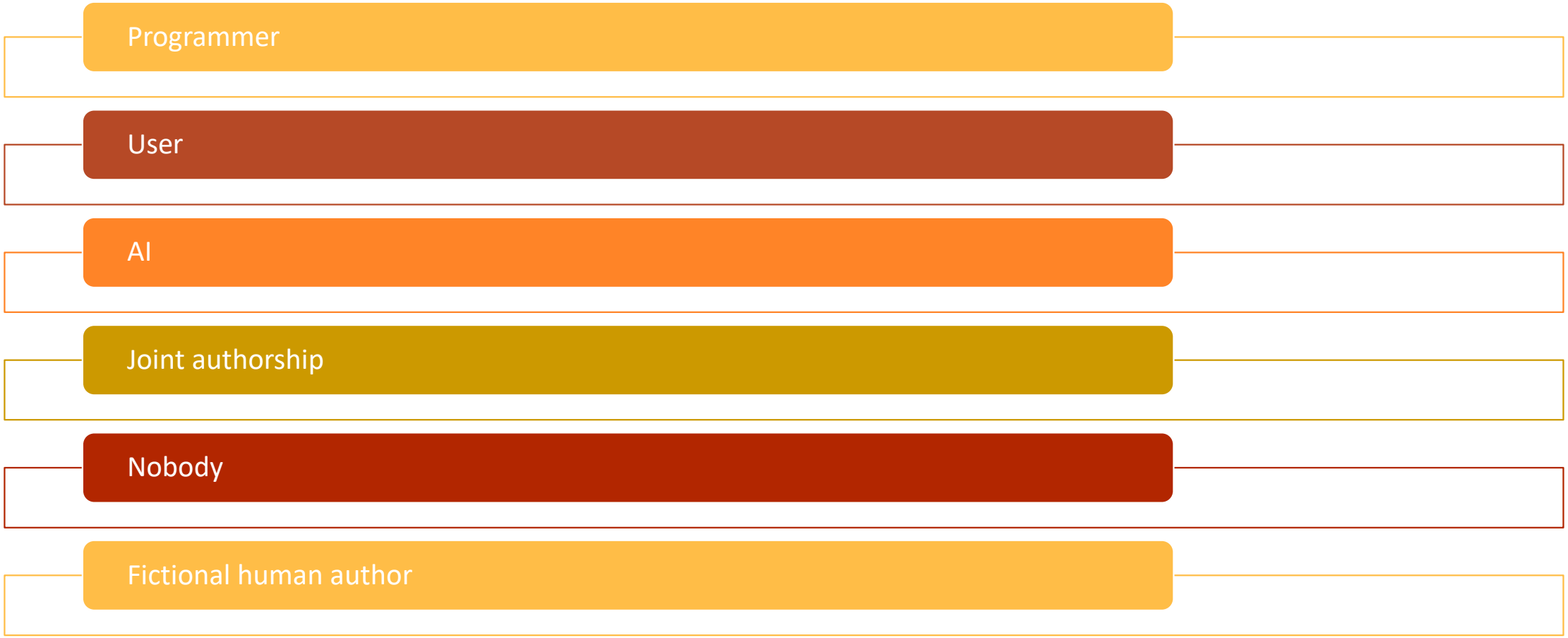
- determine whether the output of the program is repetitive and predictable
- whether the user's input meet the minimum standards of creativity
- examine whether the programmer and user intended to be joint authors
- determine whether the computer-generated work contains blocks of expression attributable neither to the programmer not the user
- examine whether the AI has the sophistication to decide whether it will generate future works

Yanisky-Ravid (2017) 10 features

- Creativity
- Autonomous and independent
- Unpredictable and new results
- Capable of data collection and communication with outside data
- Learning capability
- Evolving
- Rational-intelligent system

Who owns the works created using AI?

Who owns the works created using AI?



Programmers

His/her idea being expressed

Sufficient contribution

Provides an incentive

Users

Give the initial instructions

Machines as a tool to express the user's creativity

Sometimes the user's contribution is minimal

AI

Giving legal rights and obligations to an entity without legal personality.

- AI produces original works (not predictable)
- AI operates independently (no user)

"it achieves similar capabilities to natural persons, completely ignoring analogous legal personhood as is found in corporations and government entities"

- Discretion over whether to produce future works

Joint authorship

Both user and programmer can be the owners

It is used when the contribution of the authors is impossible to distinguish from one another

Who should also be rewarded?

Nobody

CGW in public domain

It is hard to allocate copyright ownership

Fictional human author

Timothy Butler's theory: Product "authored" by a machine

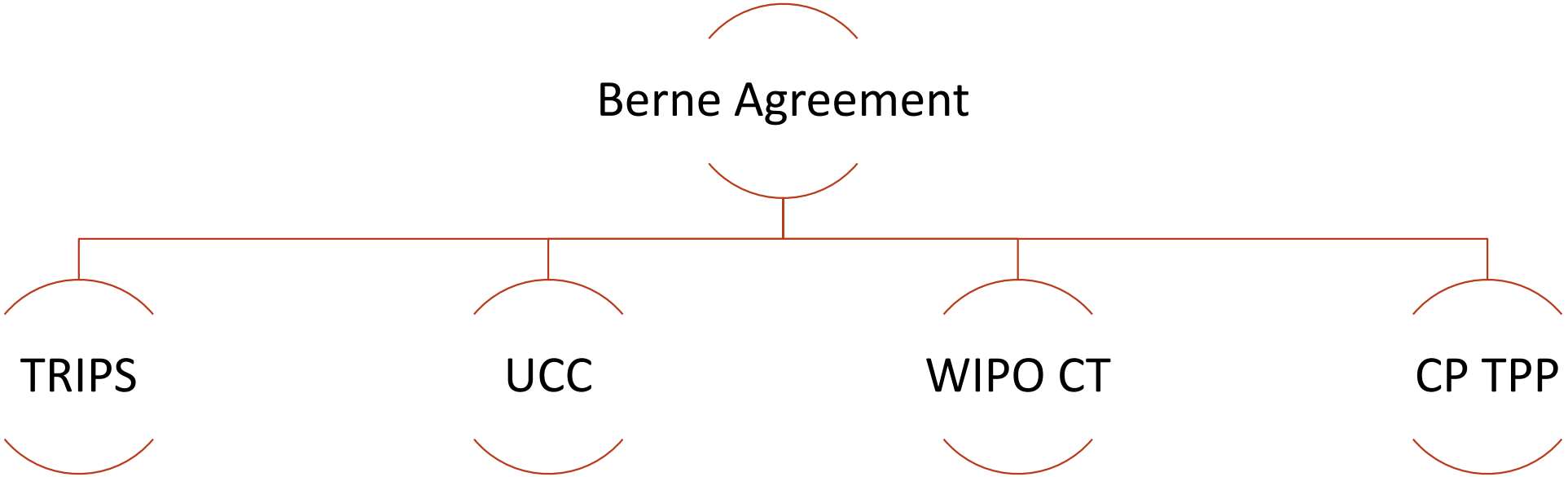
Litigation for each individual work

Andrew J. Wu: copyright of the work to whoever owns the AI

No statutory justification for creating this "fictional author"

Current regulations

International Agreements



Domestic Regulations

European Union

- Eleven Directives and two regulations

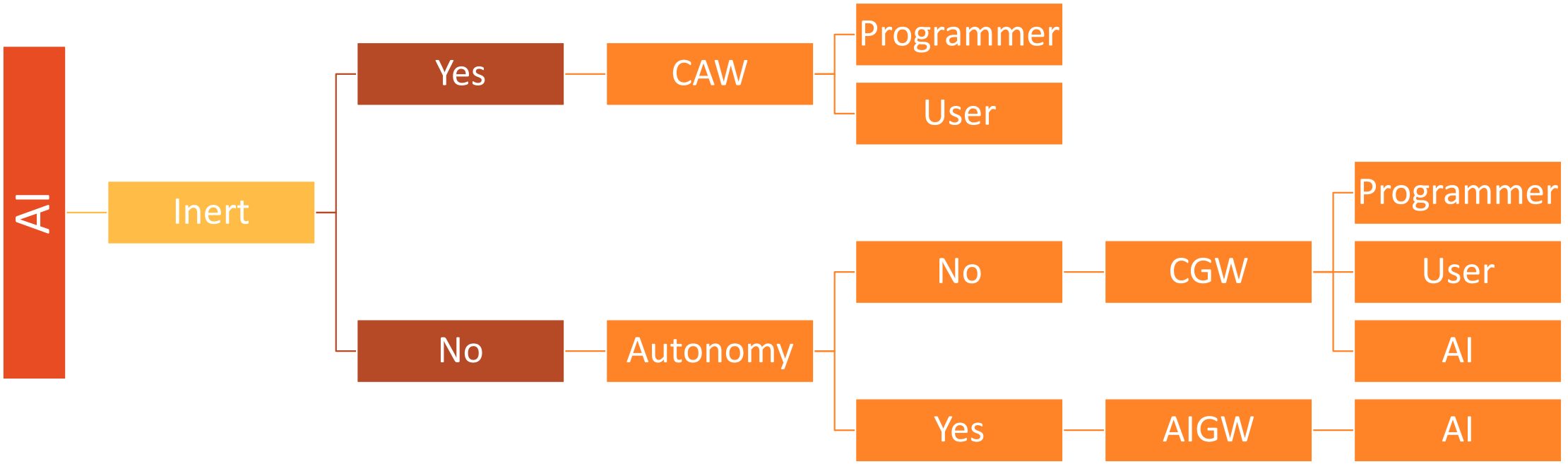
United States

- US Copyright Act of 1976 and future amendments

United Kingdom

- Copyright, Designs and Patents Act 1988

Towards a new proposal


AI
Inert
Yes
CAW
Programmer
User
No
Autonomy
No
CGW
Programmer
User
AI
Yes
AIGW
AI

Artificial Intelligence Generated Works

Under current legislations, AIGW would drop into public domain immediately after release.

AIGW distinguished from other computer-related works, as it is based on the autonomy that AI has in the creative process.

Sui generis system

Recognize the contribution of the AI as author and of protecting its investment, ensuring protection against unauthorized use.

Proper definition and scope of protection.

This proposal is similar to the sui generis database right, with a protection that will expire fifteen years after the work is made available to the public..

Economic rights derived from the AI protection should be conferred to the employer, investor or other person for whom the work was prepared.

Recover investment and maintain the incentive for AI technology development, while recognizing AI as the author.

Conclusions

The inexistence of an international consensus over the forms to regulate AI outcomes has led to tackle these issues through domestic regulations, particularly in developed economies.

Gap: the definition of “author” and whether IP may be grated to the owners of machines.

The recognition of AI as author may open the space for harmonization of domestic regulations.

OCDE and APEC: may be functional towards debating and achieving common definitions, identifying best-practice, and creating model that may be used by member (and non-member) economies.

Close attention should be put on regulations derived from new preferential trade agreements such as CPTPP or USMCA.

Chapters on digital trade are ruling on data flows, which are vital for AI growth.

They are focused on promoting technological innovation and the dissemination of technology to encourage social and economic welfare.

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THANK YOU
MUCHAS GRACIAS

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