Future of Artificial Intelligence and Copyright Law in Nigeria

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ABSTRACT

The Rise of artificial intelligence (AI) is transforming industries worldwide, including Nigeria's creative and intellectual property landscape. As AI-generated content becomes more common, it raises important questions: who owns the rights to these works? Can they be protected under existing copyright law in Nigeria, exploring current legal reforms and the urgent need for clearer policies to support innovation and copyright protection? Ultimately, this piece sheds light on the future and offers practical solutions to ensure Nigeria's Legal System keeps pace with technological advancements.

Keywords: *AI, Copyright Law, Intellectual Property Rights, Ownership and Originality, AI-Generated Content*

INTRODUCTION

The 21st century has witnessed many features of technological advancement, that have radically reshaped the world, altering the status quo in unimaginable ways. At the forefront of the influx of these innovations lies artificial intelligence (AI), a rapidly evolving disruptive technology. From work to everyday conversations, AI with its myriad applications, largely impact how we live, work and interact. As a result, the technology affects the extant legal rules and principles, by which humans live.

The rise, development, adoption and investment in AI technologies across industries is on the increase in Nigeria, as well as other countries of the world.[1] As the technology expands, certain of its applications affect the parlance of copyright in Nigeria. As a result of this, coupled with the fact that the extant copyright rules in the country were not designed with Artificial Intelligence in view, questions are emerging regarding their relationship(s). For instance, under the Nigerian Copy Right Act, one of the criteria for the protection of works is authorship,[2] which semantically connotes the presence of a human author,[3] leaving questions unanswered around AI generated works.

It is in light of this problem, that this work sets out to explore the intersections between AI and Copyright, offering insights into how the Nigerian Copyright Law can reflect the possible realities of AI, without jettisoning the critical roles of IP in protecting the copyright of individuals. The rationale for this work is etched on the need to reconcile the role of IP in not stifling innovations and its role in ensuring the protection of the creations of human minds, specifically as AI automations can develop to the extent where human inputs may not be required.

THE INTERSECTION BETWEEN AI AND COPYRIGHT IN AN INCREASINGLY DIGITALIZED WORLD: NIGERIA AS A CASE STUDY

Amidst the myriad applications/uses of Artificial Intelligence, is its usage for the creation of copyrightable works, including texts, images, music, software, videos, audios, among others.[4] This opens up lots of questions within the parlance of the rules guiding the protection of copyright in Nigeria. The relevant Copyright law in Nigeria grants exclusive rights to the authors of artistic works, musical works, audiovisual works, literary works, sound recordings and broadcast, so far, they are original in character and have been fixed in a medium of expression.[5]

Per the provisions of the Nigerian Copyright Act 2022, copyrightable works generated with the use of AI, leaves open, questions regarding authorship, originality and infringements. Under the interpretation section of the 2022 Act, natural persons are strictly recognized as authors.[6] While the Act is not designed without taking into cognizance, the use of technology,[7] in the production of copyrightable works, these technological tools are however understood by the Act to be assistive tools for humans. With the advent and development of AI systems, copyrightable works can be created with minimal to zero intervention of humans. For instance, Deep Mind, a google owned AI software, also accessible in Nigeria, can on its own make music.[8]

This phenomenon gives rise to questions surrounding authorship – a cardinal element in copyright protection. In some jurisdictions, AI inventors are instituting legal actions, seeking to establish copyright status and authorship recognition for AI.[9] The outcome of these decisions may have a lasting impact on the Nigerian legal sphere, given the borderless nature of artificial intelligence. It is in light of this, that relevant laws in the country must take a proactive approach, making ready a regulatory framework that can oversee the use of AI, especially as its usage intersects with IP.

Aside authorship, the use of AI affects another important threshold under the Nigerian copyright Act, which is originality.[10] Originality under copyright speaks volume to creativity in the production of a copyrightable work. Works protected under copyright in Nigeria must retain an original nature, reflecting the creativity of the author. AI can autonomously create works via analyzing a vast amount of data, in the form of existing similar works belonging to humans.[11] The reliance on this dataset raises questions around the originality of creations autonomously generated by AI.

Foremost among these questions, is the legality surrounding the obtainment of works that form the dataset through which the AI algorithm is trained. This question has formed the basis of certain legal proceedings in other jurisdictions.[12] Authors protected under the copyright law of these jurisdictions alleged that their works were unauthorizedly used to train AI algorithms. Nevertheless, often times, works generated by AI are rearranged and restructured in unique ways, and as a result may meet the requirement of copyrightable derivative works under the Berne convention for the Protection of Literary and Artistic Works, which Nigeria is a party to.[13] Hence, there is a need for the extant legal framework to reflect this development, defining and ensuring the IP protection of human authors without stifling innovations.

The use of AI also affects copyright in terms of infringements, especially as it reflects determining whom to hold responsible, where a work generated by AI autonomously, infringes on the extant copyright of a human author. Flowing from the foregoing, these questions necessitate the development of an updated legal framework to meet the current day needs of ensuring copyright protection, especially as it intersects with new technologies, like AI.

THE EXTANT LEGAL FRAMEWORK REGULATING ARTIFICIAL INTELLIGENCE IN NIGERIA.

There is no exact legislation in Nigeria, directly regulating the use of Artificial Intelligence. Nevertheless, relevant government agencies are taking giant steps towards developing robust regulatory frameworks, to ensure the ethical and responsible use of AI in the country.

A key agency at the center of this development is the National Information Technology Development Agency (NITDA). In 2020, the agency released guidelines to ensure the protection of personal data in the country.[14] The guidelines in some way regulate certain uses of AI, which heavily relies on large datasets. The agency is also taking active roles in developing the National Artificial Intelligence Policy (NAIP) and the National Artificial Intelligence Strategy (NAIS), both of which are geared towards providing a robust regulatory framework for the use of AI in the country.[15]

The National Centre for Artificial Intelligence and Robotics (NCAIR) is another key agency at the center of developing a regulatory framework for the use of Artificial Intelligence in Nigeria. This body is charged with promoting research, policy recommendations and innovations on AI that will serve as the basis for subsequent regulations on its usages.[16]

The foregoing is also without prejudice to the extant regulations/legislations in Nigeria that indirectly impact the use of AI. Foremost examples are the Nigeria Data Protection Act (NDPA) 2023 and the Nigeria Data Protection Regulation (NDPR) of 2019, which ensure the rights of Nigerians to the protection of their personal data. The NDPA and NDPR apply to AI, which heavily relies on a large dataset, when used to process personal data. Through these existing laws, issues relating to AI usages or adoption, depending on the nature of such usage/adoption, may be regulated.[17] However, there is no clear law regulating the use of Artificial Intelligence in generating copyrightable works.

Also, in the international space, Nigeria is signatory to the Bletchley Declaration on AI, as a show of commitment towards fostering international partnerships for the development of risk mitigation strategies and necessary ethical standards.[18]

Consequently, as far as Nigeria is concerned, the development of a comprehensive AI policy in the country is still at its infancy stage, impeded by certain challenges, which becomes the focus of the next subhead.

CHALLENGES AFFECTING REGULATING THE USE OF ARTIFICIAL INTELLIGENCE IN PRODUCING COPYRIGHTABLE WORKS IN NIGERIA

The dearth of a comprehensive artificial intelligence regulation in Nigeria, especially as it affects copyright, is caused by many pushbacks, that may be subsumed into the following:

I. Lack of Education: there is a gap in understanding the impact of AI on IP rights, specifically, as it affects copyright. This gap ultimately stems from the general lack of education on artificial intelligence. The educational framework in Nigeria lags in evolving with the knowledge about disruptive technologies, as they ensue and evolve.[19] Due to this lag, knowledge on the intersection between AI and IP, is not easily accessed and/or understood, among students/youths, which form a large chunk of innovators in the country.

II. Lack of Funding and Infrastructure: most of the efforts of the Government towards engineering a viable regulatory framework that will cater for the use of AI in producing copyrightable works, are impeded by limited funding and inadequate infrastructures. These particular challenges pose risks for effective research.[20] They will also debar implementation and enforcement, even when laws are made. In essence, the absence of data centers and cloud services in the country among other infrastructures,[21] will make it either impossible or difficult to enforce copyright where AI is involved. As a matter of fact, long existing challenges, such as counterfeiting, militating against the enforcement of copyright still largely remains unaddressed, due to inadequate infrastructure, among other factors.

III.   The Novelty and Rapid Development of AI: the novelty and rapid development of AI, largely affects regulatory capabilities.[22] Due to its novelty, regulators are not even aware of its impacts on copyright and IP protection. Its evolving nature similarly necessitates consistent training programs for regulators to understand the complex nature of AI systems, to aid effective regulation.[23]

FUTURE POLICY RECOMMENDATIONS

To foster and develop a legal framework in Nigeria that will regulate the use of AI in the production of copyrightable works, the following are the action plans that may be implemented:

I.   A sui generis IP category for AI generated works, that will consider the different levels of human involvements in a copyrightable work. This necessitates understanding the difference between AI-generated works and AI-assisted works. AI generated works involve the creation of works by artificial intelligence, without human intervention, whereas AI-assisted works include works created by AI with the intervention or direction of humans.[24] Flowing from this, the copyright of works generated by AI may be protected under a sui-generis system, where the AI's right to the work is protected. However, such AI system must recognize as sources, where necessary, the copyrighted works belonging to human authors, that form the datasets, through which the systems were trained. AI-assisted works on the other hand, can be viewed as the use of software by humans to create works, as such the use of AI in this regard should not affect the copyrights of the humans behind the systems.

II.   The regulation must also define what constitutes as the fair use of copyrighted works, as datasets, by AI models. The regulation must equally provide clarity to the questions regarding authorship, originality and infringement, where the use of AI intersects with copyright.

III.   The policy must integrate necessary and viable infrastructures to ensure its enforcement. The regulation must recognize the use of Digital rights management tools, to ensure copyright protection.

IV.   Public-private partnerships to foster education, training, public awareness and funding for a viable AI regulation in the country.

V.   The regulation must provide ethical guidelines for the deployment of AI tools, putting into consideration factors such as data protection, transparency and accountability

CONCLUSION

In conclusion, this work has considered the multivariate applications of the evolving artificial intelligence systems, narrowing it down to how its usages affect copyright and copyrightable works. As a result of these intersections, the use of AI specifically raises questions as to authorship, originality and copyright infringements of copyrightable works generated either by or with the aid of AI. These questions necessitate the development of an AI regulation in Nigeria, which is currently nonexistent. This work has offered action points that may be taken to develop this regulation, equally recommending the requisite scope the regulation must cover to address identified challenges.

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