

Abstract

**An Examination of Copyrightability and Creativity
in AI-generated Works**
- Focusing on the Instrumentality of Generative AI -*

Kang, Hyeonho**, Han, Euitae***, Jeong, Jaeseok****

With burgeoning interest in generative artificial intelligence (AI), the legal status of outputs generated by such technologies, henceforth referred to as AI-generated works, has become a pivotal issue. This manuscript examines the characteristics of prevalent generative AI systems and the intricate process behind AI-generated works. It underscores the imperative for a copyright discourse surrounding AI-generated works, in light of the aims and perspectives of extant copyright laws, and the policy objectives that underpin industrial advancement. The discourse posits the necessity to view generative AI as an innovative instrument for human creativity, substantiating the ‘instrumentality’ of generative AI with a multitude of evidences. Additionally, considering the uniqueness of AI-generated works compared to traditional creative works, the manuscript proposes criteria for acknowledging the copyrightability of AI-generated works, focusing on ‘Predictability of Generative Works’ to demonstrate the instrumentality of generative AI and ‘Specificity of Prompts’ to assess the creativity of AI-generated

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** B.S. candidate, College of Engineering, Seoul National University, Patent Attorney

*** B.S. candidate, College of Engineering, Seoul National University, Patent Attorney

**** B.S. candidate, College of Natural Sciences, Seoul National University, Patent Attorney

works. By presenting these new perspectives on AI-generated works, the paper aims to promote the development of culture, related industries, and the generative AI industry.

Keywords

Generative Artificial Intelligence, AI-Generated Works, Copyrightability, Instrumentality, Human Authorship, Prompt, Predictability of Generated Works, Originality, Specificity of Prompts