Abstract

Should the Copyright Paradigm Shift in the Era of Generative AI?
- A Critical Review of AI-Copyright Debates -

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The evolution of copyright law has been inextricably linked to technological advancements, with each era presenting unique challenges to the established legal framework. The advent of generative artificial intelligence (AI) represents yet another chapter in the ongoing dialogue between law and technology. Historically, copyright regimes and technological innovations have maintained a symbiotic relationship with new technologies often reinforcing copyright protections. However, the unprecedented impact of generative AI has ignited a contentious debate regarding the justification and legalization of the large-scale utilization of copyrighted works and the subject matters of related rights for AI development.

This study critically examines the multifaceted discourse surrounding AI and copyright, situating it within the broader context of the fundamental structure and principles of copyright. It analyzes the emerging trend of advocating for limitations/exceptions to exclusive rights, such as text and data mining exceptions, and evaluates the adequacy of existing legal doctrines, such as fair use, in addressing AI-related copyright issues. This study encompasses a comparative analysis of international perspectives, with a particular focus on the Korean legal landscape and its fair use provision under Article 35-5(1) of the Copyright Act.

Central to my analysis is the contentious issue of whether AI

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model training can be justified under the fair use doctrine. This study posits that interpretations of fair use are significantly influenced by stakeholders' perspectives on AI's broader implications. This observation underscores the ambiguity of the doctrine. However, fair use-both in its country of origin, the United States, and in Korea-should serve as a safeguard for the fundamental values and interests of copyright, including its ecosystem. To balance technological development with these fundamental values, a careful approach to technology evaluation and the application of fair use to that technology is needed.

Furthermore, this study critically assesses the compatibility of AI model training with international copyright norms, particularly the Three-Step Test enshrined in the Berne Convention, the WCT, the WPPT, and the TRIPS Agreement. The potential of generative AI to disrupt the creative ecosystem challenges both the compatibility of model training with the test, and the notion that innovation and convenience alone warrant institutional changes in the copyright landscape.

This research reveals a growing inclination within certain academic and professional circles to advocate for a shift away from a rights-holder-centric approach to copyright law to one that prioritizes AI development. While acknowledging AI's potential as a driver of innovation and national competitiveness, this study however argues that any fundamental transformation of copyright law requires compelling justification and empirical evidence. I caution against hastily reorienting copyright regimes based solely on notions of innovation and convenience, emphasizing the need to safeguard the interests of creators and supporting industries.

In conclusion, this study advocates that a comprehensive and diachronic evaluation of AI's impact on the creative ecosystem be undertaken before implementing sweeping changes to copyright frameworks. I argue that the true innovative value of a technology can only be assessed retrospectively, and that current discussions

must balance the benefits of AI with the imperative of maintaining a robust and equitable copyright system.