AI Licensing and Contracts

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Two Issues

Licensing: some aspects of copyright – no patents!

Contracting: an old approach to a new problem

Copyright and AI

- AI-generated works

- Infopaq: "Author's own intellectual creation"

- Incentivisation: creating the AI software in the first place will produce a copyright work. What are we incentivising if we grant protection to its output?

The EU Study (2016)

"Can an autonomous robot be deemed the author of an intellectual work, entitling it to copyright protection?"

http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571379/IPOL_STU(2016)571379_EN.pdf

The Four Modes

AI Co-production

Human selection of pre-generated works

Brute force

Independent machine creation and selection

https://bora.uib.no/browse?type=author&value=Bøhler,%20Helene%20Margrethe

But in the United Kingdom…

Copyright Designs and Patents Act 1988 (as amended):

s9(3): In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken

s173: "Computer-generated", in relation to a work, means that the work is generated by computer in circumstances such that there is no human author of the work.

Nova Productions v. Mazooma

"…the arrangements necessary for the creation of the work were undertaken by Mr Jones because he…wrote the relevant computer program… [he] therefore is deemed to be the author by virtue of s9(3).

Kitchin J http://www.bailii.org/ew/cases/EWHC/Ch/2006/24.html

Not so simple…

If the work is computer-generated …copyright expires at the end of the period of 50 years from the end of the calendar year in which the work was made. (CDPA s. 12(7))

What if someone plays a game of "Pocket Money" in 150 years time? Does Mr Jones's estate own the copyright in the images?

Not so simple…

What if the writer of the code was a contractor who failed to assign future copyright in works generated by the code they wrote (as opposed to the code itself)?

The Clean-Room Rewrite Problem

Art 1.2 Software Directive:

Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected by copyright under this Directive

What if we use AI to do a clean-room rewrite of a piece of software by distilling it to 'ideas and principles' and re-creating it?

Commerce and Machines

Contracting with a machine

Vending machine – a unilateral contract or standing offer

Smart contracts – a concept coined by Nick Szabo

    Minimises the human interaction

    Automates the execution and performance of the contract by translating contractual obligations into computer code

In this scenario, the machine is simply a tool used by the human agent

Contracting with an autonomous intelligent agent

No longer just a mere tool

Autonomous intelligent agents may form apparently binding contracts in ways their human owners did not anticipate or welcome

Contract formation: meeting of 'minds'?

Autonomous intelligent agent

Autonomous and intelligent = capable of interacting with other software services, and initiating and completing certain tasks, without any direct input or supervision

Agent = anything that can be viewed as perceiving its environment through sensors and acting on that environment through actuators

a variety of entities (from web bots or software to programmed humanoid robots)

Single- and multiple-target agents

Single-target agents are designed to operate against a single platform

eBay sniping applications – through the user's account, they can enter a bid on behalf of the sniper at the last minute

Multiple-target agents are designed to interact with more than one platform or site

The application may scan all online auction platforms in order to purchase an item for the best possible price

The 'Walled Garden' effect

The user would have to had already formed a pre-existing contractual relationship with each of the websites concerned, and had conveyed those credentials to the agent

Solution – multiple sites allow AIAs to transact with them and present a general API to each agent to facilitate access

Already used from energy markets (Engerati) to financial trading (SWIFT network)

Leaving the Walled Garden

In the absence of such an underlying legal framework allocating rights and responsibilities to parties transacting through AIAs

➔ AIAs as agents coupled with a strict liability for any damage caused

With increasing complexity, the strict liability principle may produce undue risk for the owner of the agent

Who is the owner? On whom does the liability arise?

Roman Law

In Ancient Rome, commercial practices relied on slaves – intermediaries that are not legally people, but things.

Slaves lacked legal personality and therefore had no corresponding rights or responsibilities, could not own property, sue or be sued

Yet, acting on his master's behalf, a slave could enter into a contract and thereby bind a third party

Peculium = a bundle of assets allocated to slaves to carry out specific activities on behalf of their master

The value ebbed and flowed in accordance with the slave's business and the size of a peculium was only determined when a claim was brought against it

'Electronic Slave' metaphor

A parallel between AIAs and Roman slaves – both possess valuable skills and can independently perform various important commercial tasks upon command

AIAs do not have legal personality, complete with rights and responsibilities (yet), nor are they simply just sophisticated tools

Reducing friction in commerce is seen as a good thing.

Digital peculium

Digital peculium as a special set of rules defining the parameters of liability for AIAs in the context of commercial transactions

Authenticated identity, backed by an insurance scheme

Strikes a balance between the uncertain risk of technology and the protection of human interests by legal accountability

Plug

Future Law Series - Edinburgh University Press
 Chapter on the Digital Peculium
Thanks to Dr Michaela MacDonald QMUL.
Due to be published imminently…

Thank you

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