

FIVE QUESTIONS

ON CHATGPT AND COPYRIGHT

FOR DARIA KIM



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Who owns the rights to texts if they are written by a machine and not a human? Daria Kim, a legal scholar at the Max Planck Institute for Innovation and Competition in Munich, deals with questions like these. In this interview, she tells us what rules apply to AI-generated works and discusses the protection of intellectual property in this context.

Ms. Kim, if ChatGPT writes a text, can I simply use it?

DARIA KIM That depends on whether such texts are protected by intellectual property rights. This varies from one country to the next. In Germany, a convention known as the continental European copyright tradition applies. A certain level of human creativity is always necessary to justify copyright protection. This applies to texts as well as to images and musical compositions. In Germany, the raw output generated by AI cannot be regarded as a work of authorship of the person who merely presses the button to create it.

If the raw output is not protected, what if it is modified?

It depends on how the text is modified. A human must be sufficiently creative in mod-

ifying the raw AI data in order to be entitled to copyright protection. It is interesting to note that in its terms of use, OpenAI, the company behind ChatGPT, prohibits the presentation of output as “human-generated” if this is not the case – something which would be unethical anyway.

Nevertheless, the discussion about the protection of intellectual property in connection with AI products is far from over.

This is due to international differences in copyright law. Harmonization of the protectability of AI products would definitely be desirable, especially in terms of legal certainty. However, the key question remains: which legal norms should be used as a basis for this? The World Intellectual Property Organization is currently in the process of identifying problems that AI poses for intellectual property rights. However, legislative harmonization measures cannot keep up with the pace at which artificial intelligence is taking hold.

There is also the question of the rights of the authors of those works that are used as training data – are they protected from text and data mining, i.e., automated analysis by software?

If data used as input for machine learning is protected by copyright, the question arises whether the existing exceptions in copyright law are applicable to the development of AI systems. Such exceptions should in principle balance the interests of authors and users – in this case, of AI developers as well. In order to circumvent these possibilities, authors can use technical barriers to protect their works.

Is the use of works for machine learning actually regarded as text and data mining?

The EU legislator defines text and data mining broadly enough that machine learning can certainly be regarded as text and data mining. Another question, however, is whether the use of protected works for machine learning falls within the scope of the applicable exceptions in copyright law for text and data mining. This question has not yet been conclusively clarified.

Interview: Emma Lehmkuhl

Daria Kim is a senior research fellow at the Max Planck Institute for Innovation and Competition.