



CK Lung
Partner
IP & TMT
T: +603 6208 5948
E: ckl@lh-ag.com

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The Price of Artificial Intelligence

What happens when our intelligence is surpassed by artificial intelligence? The evolution of technology and disruptive innovation has seen artificial intelligence morph from merely being an aid in performing tasks, to producing works independently without human intervention. For instance, the new artificial intelligence known as “GPT-3” has been reported to be able to answer questions, write essays, and even create computer codes.¹

There is however more to this than meets the eye — at least from the perspective of copyright law. When works produced by artificial intelligence involve little or no human contribution, affording copyright protection becomes a challenge.

Such challenge was explored by the Australian Federal Court in *Telstra*.² The key question posed was whether compilation of telephone directories by a computer could be afforded copyright protection. The Court answered in the negative and held the compilation was generated by automated processes of the computer rather than intellectual effort deployed by individuals.³ The fact that the computer process was overseen by the individuals or that the individuals provided data input into the computer’s database were insufficient to move the Court to a different conclusion.⁴

In Singapore, the Court of Appeal in *Asia Pacific Publishing*⁵ held there is no originality in works which involve a high degree of automation, for the simple reason there is no identifiable human authors.⁶ Similarly in Malaysia, there is no express provision in the

¹ Bernard Marr, “What Is GPT-3 And Why Is It Revolutionizing Artificial Intelligence?” *Forbes* (5 October 2020) <https://www.forbes.com/sites/bernardmarr/2020/10/05/what-is-gpt-3-and-why-is-it-revolutionizing-artificial-intelligence/#322fe8e5481a>

² *Telstra Corporation Ltd & Anor v Phone Directories Company Ptd Ltd & Ors* [2010] FCAFC 149 (FC)

³ *Ibid*, at para [89] – [90]

⁴ *Ibid*, at para [101]

⁵ *Asia Pacific Publishing Pte Ltd v Pioneers & Leaders (Publishers) Pte Ltd* [2011] SGCA 37

⁶ *Ibid*, at para [81]

Copyright Act 1987 which caters to artificial intelligence. Copyright protection is afforded to certain works⁷ which are original⁸ and made by an author who is a “qualified person”.⁹ A “qualified person” is confined to an individual or a body corporate.¹⁰

We can perhaps seek inspiration from the UK, which has recognised artificial intelligence since the 80’s. When the UK Copyright, Designs and Patents Act 1988 (**1988 Act**) was first proposed, it was said to be “the first copyright legislation anywhere in the world which attempts to deal specifically with the advent of artificial intelligence”.¹¹ The 1988 Act recognises “computer-generated” works which involve no human author.¹² In *Nova Productions*,¹³ the UK Court held composite frames generated by a computer program using bitmap files which created the impression of movement fell within the meaning of “computer generated” under the 1988 Act.¹⁴

To conclude, there remain conflicting views on whether copyright protection should be afforded to works produced by artificial intelligence. Whichever direction is taken in Malaysia, sufficient attention should be devoted to ensuring such direction is reflected in the laws clearly and promptly — and that is the price of artificial intelligence.

CK Lung and Esther Koh Tsi Jing

If you have any queries, please contact team partner [CK Lung \(ckl@lh-ag.com\)](#).

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia

T +603 6208 5888
F +603 6201 0122/0136
E enquiry@lh-ag.com
W www.lh-ag.com

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⁷ Copyright Act 1987, s 7

⁸ Ibid, s 7(3)(a)

⁹ Ibid, s 10

¹⁰ Ibid, s 3

¹¹ Lord Young, cited in “Open Consultation: Artificial Intelligence Calls for Views: Copyright and Related Rights”, accessible from <https://www.gov.uk/government/consultations/artificial-intelligence-and-intellectual-property-call-for-views/artificial-intelligence-call-for-views-copyright-and-related-rights>

¹² Copyright, Designs and Patents Act 1988, s 178

¹³ *Nova Productions Ltd v Mazooma Games Ltd and others*[2006] EWHC 24 (Ch)

¹⁴ Ibid, at para [105]