

# EUROPEAN COPYRIGHT SOCIETY

European Copyright, quo vadis?

**Impact of Artificial Intelligence on copyright issues:**

**Criteria for protection**

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# 1. What are we talking about?

## human intelligence

**input**  
(information,  
knowledge,  
experience, ...)

**human brain**  
(including technical help,  
e.g. computer-aided)

**output ...** ... **under control  
of human**  
(creation,  
innovation, ...)

## artificial intelligence

**input**

**software**  
(algorithms)

**output ...** ... **unpredictable  
for humans**

step 1

step 2 et seq.

algorithms = **human** built

algorithms = **machine** built

## 2. Why legal protection?



### Justifications for protection (= legal exclusivity):

- **personality-related rationale**
  - mainly copyright law
  - protection of **creator**
    - **“AI” step 1** (human built algorithms):
      - **software** = **human** created → **“work”**
      - **output** = **machine** built → **no “work”**
    - **“AI” step 2 et seq.** (machine built algorithms):
      - **software** = **machine** built → **no “work”**
      - **output** = **machine** built → **no “work”**
- **economic rationale** (investment protection)

## 2. Why legal protection?



### Justifications for protection (= legal exclusivity):

- **personality-related rationale**
- **economic rationale** (investment of protection – avoiding “market failure”)
  - mainly industrial property
  - in principle protection of **investor**
    - **“AI” step 1** (human built algorithms):
      - **software** = **human** created (“work”) → **protection of investor** (e.g. work made for hire)
      - **output** = **machine** built → **investment?** – “market failure” without legal exclusivity?
    - **“AI” step 2 et seq.** (machine built algorithms):
      - **software** = **machine** built → **investment?** – “market failure” without legal exclusivity?
      - **output** = **machine** built → **investment?** – “market failure” without legal exclusivity?

### 3. Protection: what kind, of whom, of what?

human intelligence

**input**  
(information,  
knowledge,  
experience, ...)

human brain  
(including technical help,  
e.g. computer-aided)

copyright → author

output ...  
(creation,  
innovation, ...)



artificial intelligence **input**

software  
(algorithms)

output ...



? copyright ? → ? right holder ?

# 4. Alternative approach for protection (if ever)?

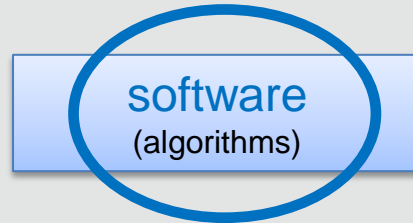
**Article 28 TRIPS - Rights Conferred**

1. A patent shall confer on its owner the following exclusive rights:

- (a) ...
- (b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of **using the process**, and from the acts of: **using, offering for sale, selling, or importing** for these purposes at least **the product obtained directly by that process**.

2. ...

**artificial intelligence**    **input**

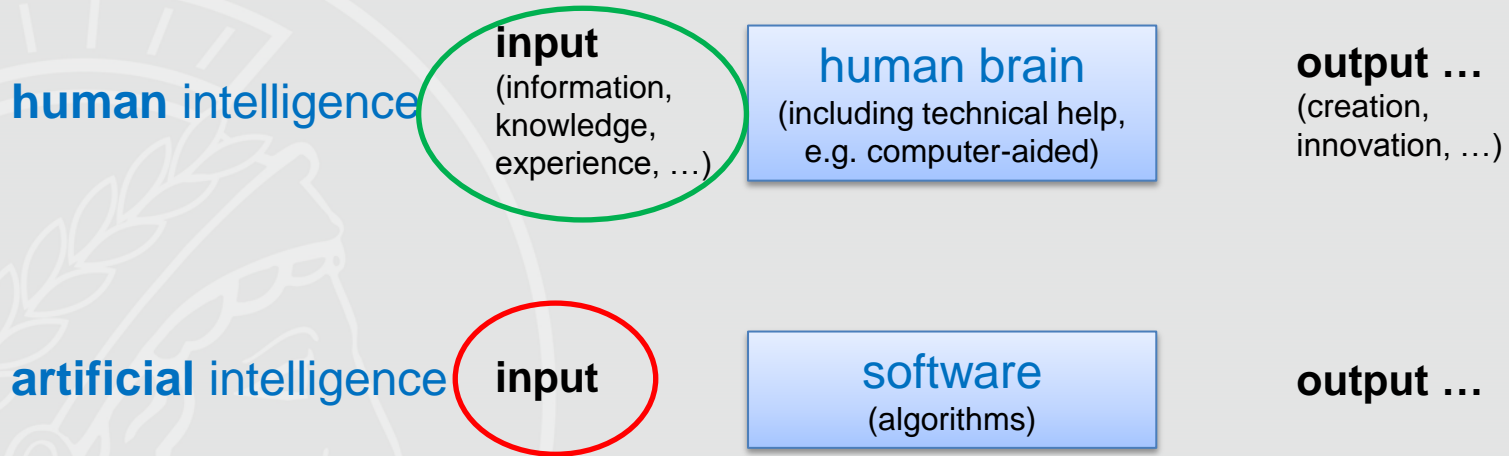


= process



= “product obtained directly”

# 5. Consequences – more relevant questions?



→ legal permission to use  
for purposes of “AI”