



# AI generated works: private international law issues

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# Outline

- What is AI?
- Which legal issues does it raise:
  - IP;
  - Non-IP;
- The International Private Law angle of IP issues

# What are we talking about when we talk about AI?

- What AI is not, even though it is linked to it:
  - Algorithms;
  - Big Data;
  - IoT;
  - Machine Learning; and
  - Robots
    - With a distinction between disembodied or embodied cyberphysical systems
- A definition (Calo17, 4): “a set of techniques aimed at approximating some aspects of human or animal cognition using machines”

# What are we talking about when we talk about AI?

- A few examples:
  - AI Generated works;
  - Drug compound or method for diagnosing pre-cancerous moles;
  - Sentencing guidelines;
  - Automated decision making (e.g. in credit; but also in traffic lights, etc.)
  - Self-driving vehicles

# Legal Issues: starting with IP

- Subject matter or access to protection:
- for works «author's own personal creation» (Ramalho17; Mady Delvaux17, 14)
- For inventions PHOSITA (and genetic programming: Samore13, 2);
- Ownership (Yanisky-Ravid & Liu Xiaoquiong17, 20 ff.: the «multiplayer model»);
- Infringement;
- Fair uses (including access: e.g. to trade secret source code, for political control purposes: J Powles 17)

# Legal Issues: non-IP

- Tort (Balkin17; Pagallo13);
  - Including links to justice and equity (Calo17);  
Discrimination;
  - Criminal liability (Pagallo13); including crimes against  
humanity (the Maven debate);
  - Safety;
- Privacy and Data Protection;
- While these issues are thorny on the merits, the  
conflict of law rules are pretty straightforward:  
lex loci commissi delicti + public policy (think  
about driverless vehicles);

# How about the interface of IP and IPL?

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- The traditional approaches: rule-bound territoriality principles in the EU; interest analysis in the US; but whichever we apply, what is the outcome?
- It seems possible that we do have diverging rules on protectability, scope, ownership;
- Since many of the works will be available over the net, is fragmentation the necessary outcome?

# How about the interface of IP and IPL?

## II

- So may be we should look not at current rules but at the processes which lead to global lawmaking in a digital era (Dinowoodie01; Dinwoodie&Dreysfuss&Kur09);
- The basic modes are three (with variations):
  - Consensus;
  - Regulatory competition;
  - Coercion;

# How about the interface of IP and IPL?

## II

- However, what is the role of optimality and the role of power? GIs in Ramello-Marciano18;
- The impact of military origin; US, China, Israel; is the EU cut off the big game?
- And then, is it a matter of IP or of *de facto control* ?

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