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 Leaning; 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 precancerous 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?

• 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?
Bibliography


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