



University
of Cyprus

ecs EUROPEAN COPYRIGHT SOCIETY

Tatiana Eleni Synodinou

Associate Professor, Department of Law,
University of Cyprus

AI Intelligence: Criteria for protection



Autonomy

- autonomous agents are able to generate new ideas and to produce new forms of expression through the use of software which mimics the configuration of human neural networks
- 

Plan of the presentation

A/ The human author as a criterion for protection

B/ Is originality a suitable criterion for the protection of AI generated works by copyright law?

C/ Are there any other criteria of protection, implicit until today?

D/ What criteria of protection for a sui generis legal framework?

▶ A/ The human author as a criterion for protection

- “This protection shall operate for the benefit of the **author** and his successors in title”.
 - Berne Convention, article 2 (6)

Works which were missing a significant human creative input cannot be protected by copyright law

- psychographic (automatic) writing cases
- Naruto case

▶ B/ Is originality a suitable criterion for the protection of AI generated works by copyright law?



- the work is the expression of the **free creative choices** of the human being who created it

Where to find the creative choices?

AI

- The machine will be considered as a simple processor, as an executor, whose technical or artistic skills cannot be a basis of authorship.

Programmer

- The link of the work with the software programmer is weak since he/she does not define the final form of the work.

“Creation by proxy”

- This presupposes to consider the act of creation as a **complex and multilayered** act

▶ C/ Are there any other criteria of protection, implicit until today?

- Is there an implicit requirement that creativity must be intentional?

▶ The concept of will / “partum mentis” (“creative mind”)

- *“So parturition (birth) by the mind is preceded by a kind of appetite which prompts us to inquire and find out about what we want to know, and as a result knowledge itself is brought forth as offspring;”* (St Augustine)
- NBA v. Motorola 105 F.3d 841 (2d Cir. 1997)
 - *“The preparation is as much an expression of hope or faith as a determination of what will actually happen”*
- FWS Joint Sports Claimants v Canada(The Copyright Board) [1991] 22 IPR 429

D/ What criteria of protection for a sui generis legal framework?

- Similarly, to the database maker's sui generis right, the core element of the protection will be the **investment**



Conclusion

- Thank you for your attention !
- 