AI Intelligence: Criteria for protection

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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 originality defines the protected work

- 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.
Thank you for your attention!