
From: David Branca (RIT Alumni) <dlb3510@rit.edu>
Sent: Monday, December 16, 2019 10:59 PM
To: aipartnership
Subject: Re: [Docket No. PTO-C-2019-0038] Request for Comments on Intellectual Property Protection for Artificial Intelligence Innovation

To Whom It May Concern,

Thank you for the opportunity to comment on the Request for Comments on Intellectual Property Protection for Artificial Intelligence Innovation. I am David Branca and serve as the director of research and development at a technology engineering firm. Amongst my many responsibilities, I am responsible for the growth and protection of my company's intellectual property while also being responsible for supporting the company's artificial intelligence (AI) team's efforts for developing new AI products.

I would like to provide my personal responses to the questions presented in the Request for Comments on Intellectual Property Protection for Artificial Intelligence Innovation. My responses are as follows:

1. A work produced by an AI algorithm or process, without the involvement of a natural person contributing expression to the resulting work should not qualify as a work of authorship protectable under U.S. Copyright law. The reason is evident in the question itself – there is no human contribution. Further, algorithms are statistical analysis with a result absent of human intervention.
2. Assuming involvement by a natural person is or should be required, the kind of involvement described in use case i-v in the request for comments is insufficient for the work to qualify for copyright protection.

Assuming involvement by a natural person is or should be required, the involvement should be sufficient enough for the resulting output be considered unique and different, even if the same algorithm and data input set are used. For example, in the art world, an artist can reproduce other forms of art under their own expression. If the art is novel enough from the original, it is considered new, not copyright infringement. The output of AI should be considered in a similar manner – until an AI algorithm is considered sentient and then it would own its own output.

3. Whether or not existing statutory language and related case law adequately address the legality of such use depends on the volume of fair use material used. If training an AI algorithm with copyrightable material is compared to a human learning, humans continuously, throughout their natural existence, use volumes of copyrighted material to learn all the time. At no point are humans required to recognize the authors of such work from which they learned and inherently hold their learnings as knowledge. Therefore, it would not make sense to hold an AI algorithm to a different standard if the comparison is made.
4. Yes, current laws for assigning liability for copyright infringement are adequate to address a situation in which an AI process creates a work that infringes a copyrighted work.
5. This question assumes that the work produced by AI is copyrightable in the first place. If work produced by an AI algorithm is deemed copyrightable, then this becomes a property issue.
6. Other copyright issues that need to be addressed include: egregious copyright durations, determination of what happens to work when the human creator dies, and fair use of the AI product.

7. If AI is used in Trademark searches to provide input to the Trademark Office in the evaluation of a Trademark application, the inherent biases of the algorithm(s) should be well known and accounted for, and addressed prior to the trademark granting decision-making process.
8. I do not have the proper legal experience to respond to this question.
9. The need to protect databases and data sets is a separate issue from AI. Current Federal law and policy continues to horrifically fail to address data privacy and protection.
10. The Defend Trade Secrets Act (DTSA), 18 U.S.C. 1836 *et seq.*, is not adequate to address the use of AI in the marketplace. Again, the US fails to adequately address data protection. There is no incentive for companies to protect private data as current laws are weak and provide no measurable repercussions to change company policies and behaviors.
11. I do not have input for this question.
12. Trade dress - an AI produced trade dress concept would be ownable for a couple of reasons. 1) People use statistics all the time to determine what people like and will sell better, that's akin to AI in that they are both algorithms; 2) 90% of trade dress is implementation – it takes human effort and endeavor to create the same imagery and feel of a product/location, and that is beyond what an AI can do. That in itself is the human contribution necessary to qualify for IP protection.
13. Other country policies or practices to consider for intellectual property include Europe, New Zealand, Philippines, and the Russian Federation, all which have limited/banned software processes and/or mathematical methods as patentable. New Zealand and Europe have the groundwork to consider the non-patentability/non-patentability of AI.

Sincerely,

David Branca