

# Can you copyright creations of a generative AI?

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# EU AI Regulation framework

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- European Parliament resolution with recommendations to the Commission on civil law rules on robotics (2017).
- Ethical guidelines for trustworthy AI" of the European Commission's High Level Expert Group on AI (2019)
- **Regulation of the European Parliament and of the Council laying down harmonised rules in the field of AI (2021)**
- Proposal for a Regulation of the European Parliament and of the Council on machinery products (2021)
- **Proposal for a Directive of the European Parliament and of the Council on the adaptation of the rules on non-contractual civil liability to artificial intelligence (AI Liability Directive) (2022)**
- **Proposal for an amendment of the Product Liability Directive (2022)**

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# EU IP approach on generative AI creations

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“works autonomously produced by artificial agents and robots might not be eligible for copyright protection, in order to observe the principle of **originality**, which is linked to a **natural person**, and since the concept of ‘intellectual creation’ addresses the **author’s personality**”

*EU Parliament resolution on IP rights for the development of AI technologies (October 2020)*

The concept of ‘work’ requires two cumulative conditions to be satisfied:

- **Original** subject matter, in the sense of being the **author’s own intellectual creation**.
- Classification as a work is reserved to the elements that are the **expression of such creation**.

*(Judgments of 12 September 2019 (C-683/17), citing Judgements of 16 July 2009, Infopaq International, C-5/08, EU:C:2009:465, and of 13 November 2018, Levola Hengelo, C-310/17, EU:C:2018:899).*

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# Jurisdictions based IP approach

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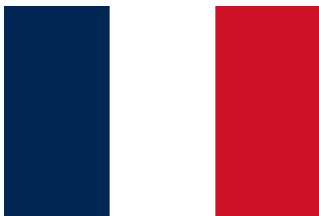
**Spain:** The natural person who creates a literary, artistic or scientific work is considered to be the author.

- Originality is a must (despite expressed by tangible or intangible means)
- No Copyright: Ideas and principles embodied in programmed elements + logic, algorithms and programming languages embodying those ideas



**Germany:** German law only recognizes physical persons as authors.

However, other type of protection? The "Lichtbilder" case.



**France:** Authorship is reserved for physical persons.

However, could AI creations be protected as "collective works"? (*AI being a tool in the hands of a group of humans*).

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# The Common law countries approach

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**UK:** “computer-generated works”: *author = who makes the “necessary arrangements” for the computer to create the work.* [If AI is a tool, then its developer or owner could claim ownership?].

Plan for **code of practice on copyright and AI** (ensure protection for AI creations).



**Ireland:** “computer-generated works”: *author = who made the ‘necessary arrangements’ for the generation of those works.*



**US:** “to qualify as a work of ‘authorship’ a work must be created by a human being”.

- Works produced by AI without any creative input or intervention from a human author?
- Works containing AI-generated material but containing sufficient human input authorship?

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Can the use of copyright works as input to train generative AI infringe copyright?

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# Copyright works used as input to train generative AI

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If the datasets used to train AI/Generative AI consist on copyright works, with no consent/compensation, **is that IPR infringement?**

- **Lost tapes of the 27 club:** Songs by Kurt Cobain with Nirvana, Jim Morrison with the Doors, Amy Winehouse and Jimi Hendrix were (re)composed with the Google AI Magenta.
- **Heart on my sleeve:** Song created using AI by TikTok user Ghostwriter977, who had trained AI on Drake and The Weeknd's works and generated the new song, which impeccably mimicked the artists' voices, lyrics, and musical styles.
- **ChatGPT:** Copyright-infringement class action filed on the bases of use of copyright work for AI training.