

If an AI creates a work of art, who owns the rights to it?

Q qz.com/1054039/google-deepdream-art-if-an-ai-creates-a-work-of-art-who-owns-the-rights-to-it/

Artificial intelligence is already capable of creating a staggering array of content. It can [paint](#), [write music](#), and [put together a musical](#). It can write [movies](#), [angsty poems](#), and [truly awful stand-up comedy](#). But does it have ownership over what it produces?

For example, an AI at Google has managed to [create sounds that humans have not heard before](#), merging characteristics of two different instruments and opening up a whole new toolbox for musicians to play around with. The company's DeepDream is also capable of generating psychedelic pieces of art with high price tags; last year [two sold for \\$8,000](#)—with the money going to the artists who claimed ownership over the images.



An example of the work Google's DeepDream algorithms can create. (Google Deep Dream)

As it stands, AIs in the US cannot be awarded copyright for something they have created. The current policy of the US Copyright Office is to reject claims made for works not authored by humans, but the policy is poorly codified. According to Annemarie Bridy, a professor of law at the University of Idaho and an affiliate scholar at Stanford University's Center for Internet and Society, there's no actual requirement for human authorship in the US Copyright Act. Nevertheless, the "courts have always assumed that authorship is a human phenomenon," she says.

Eran Kahana, an intellectual-property lawyer at Maslon LLP and a fellow at Stanford Law School, doesn't believe we should award authorship to AIs. He explains that the reason IP laws exist is to "prevent others from using it and enabling the owner to generate a benefit. An AI doesn't have any of those needs. AI is a tool to generate those kinds of content." He likens the idea to a computer word processor using spell check. If you make a spelling mistake in something you're writing and the computer corrects it, who owns the copyright to the final product? "Obviously not the computer", Kahana quips. "The computer has no ownership of your writing."

AI also raises some thorny issues by potentially impinging on the IP rights of others. This is especially true if a creative work is based on [machine learning](#), a technique that allows an AI to learn for itself from data it is provided. If the input on which a creation is based—the data—is made by someone else, shouldn't then be the owner of

whatever work is created from it? And even if work is produced by an AI independently, can it really be classed as original?

A good case of this is the AI designed to imitate the works of the Dutch artist Rembrandt. “ [The Next Rembrandt](#)” project asks “can the great master be brought back?” The AI creates original pieces in the style of the Dutch master, which it has been trained to make via data input from hundreds of paintings—but does that mean that Rembrandt should own the work, the person who gathered the data, or the AI itself?

Bridy says another important legal question here would be who is liable for copyright infringement. “Obviously, you can’t sue software,” she says, concluding that existing legislation means there would likely be a liability on the part of the programmer or owner of the infringing code. Kahana concurs, saying “You’d be accused, as the owner, of using a tool that caused infringement on others.”

In order to glean insight as to how AI IP may be regarded in the future, we can look to court case currently unfolding in California—but instead of it involving AIs, it involves animals.

[Naruto](#), a rare macaque monkey, shot to fame in 2011 when it picked up a British photographer’s camera and seemingly took a selfie. David Slater, the photographer in question, claims he owns the copyright to the stunning images, despite him not being the one who held the camera or clicked the shutter. Instead, he says the images belong to him because of the work he did in setting up the shot.

A court in San Francisco agreed with the US Copyright Office, determining that human authorship is a requirement for copyright protection, and therefore Naruto cannot own the photographs it took. The case is now being appealed, with the People for the Ethical Treatment of Animals (PETA) arguing that the copyright belongs to Naruto. They [insist](#) that “in every practical (and definitional) sense, he [Naruto] is the ‘author’ of the works.” The case is ongoing.

Without developing some form of framework recognizing AIs as legal persons, just as monkeys are not, we cannot award an AI copyright. “And we’re a long way from that moment, if we’ll ever get there,” Bridy says. The most likely near-term solution would be to award copyright to the owners of the AI itself, which would be similar to how employers automatically own the work their employees produce.

As the sophistication and complexity of AI continues to grow, so will the work it produces. This promises great benefits in the fields of science, technology, and medicine—but it does in the creative realms, too. If we don’t resolve these thorny issues of ownership now, we risk delaying the delivery of these benefits across all industries. Our laws need to adapt to the reality of the modern world, and they need to do so quickly.

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Date

Ms. _____
Address
Phone

By Email to: _____

Dear _____:

I accept with pleasure your engagement of me as counsel to provide legal services regarding your music business career.

My fees are based upon the reasonable value of my services. You will be billed at the following hourly rates:

Suzette Toledano, Principal Counsel	\$ _____
_____, Associate	\$ _____
Legal Assistants	\$ _____ (copyright registration work)

My hourly rates will be subject to increase from time to time, however you shall be notified in writing prior to being charged any increase in my hourly rate. My statements will be payable upon receipt.

The above charges for my services do not include expense items such as travel, transportation, lodging, meals, telephone calls, telex messages, courier or messenger services of outside vendors. All photocopies will be charged at a rate of \$.20 per page. Outgoing faxes will be charged at a rate of \$.50 per page. Long distance telephone may be charged at a rate of \$15.00 per month that I am actively making such calls. Any such expenses which I may incur on your behalf will be itemized in my invoices and will be your responsibility.

You may be billed periodically. Although I shall attempt to capture all time charged and disbursements made in your behalf through the closing date set forth on each statement, there may be charges for a particular time period which will not get into certain statements. Any such charges will appear on subsequent statements.

I shall expect the statements to be paid within fifteen (15) days of presentation. If an invoice is not paid promptly, interest will accrue thereon at 1% per month and I will have no further duty to represent you regardless of the status of any matter at the time of non-payment. You further agree that in the event of a dispute between us over collection of an invoice, in addition to any other legal rights and remedies that may be available to me, such dispute may be submitted for mediation in the

City of New Orleans before a mutually agreeable certified mediator knowledgeable in the entertainment business. You further agree to participate in good faith in such mediation process, if any.

It is my policy to require an initial cash retainer in the amount of _____ (\$_____) Dollars for new representations, [however for this matter the initial cash retainer has been reduced to \$_____] Such retainer shall be applied against my fees (but not against any expenses incurred by me on your behalf).

Either of us is free to terminate this agreement at any time upon thirty (30) days written notice. In such an event, you are responsible for all fees due to me, together with any expenses incurred through the date of termination and I shall work with you to effect an orderly transition of matters. Any termination on my part will be consistent with the then applicable standards for such actions set forth in the Louisiana Code of Professional Responsibility. If my representation of you should terminate at any time prior to the time the reasonable value of my services equals the amount of your retainer, I will refund the excess promptly.

At the conclusion of this matter, I will retain your legal files for a period of five (5) years after we close our file. At the expiration of the five-year period, I will destroy these files unless you pre-notify me in writing that you wish to take possession of them. I reserve the right to charge administrative fees and costs associated with researching, retrieving, copying and delivering such files.

I contemplate rendering my services to you on the foregoing basis. Please call me if you have any objections to any of the foregoing or any questions prior to signing this Agreement. I highly regard your business and feel all aspects of my representation are appropriate subjects of discussion.

You hereby acknowledge that we have discussed the fee arrangements provided herein and that you fully understand them. Notwithstanding, I strongly urge you have this agreement examined by an independent attorney of your choice.

This Agreement may be signed in multiple counterparts. I would appreciate it if you would print out two originals of this letter; sign at the place indicated and thereafter return both originals to me together with your initial payment to me in the sum of \$_____. I once again thank you for selecting me to represent you and I look forward to serving you.

Sincerely,

Suzette Toledano

Accepted and agreed to on the _____
day of _____.

By: _____

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Sample Billing Procedure

Legal billing is processed through Clio, an online service.

Each lawyer tracks her hours with a description of work performed, as well as expenses per Client and either enters it into Clio herself or emails this information to an assistant. All time tracking entries or emails, as applicable, are created just after the work is performed. Putting it off until later is a mistake to avoid because the time may either be over or underestimated depending on the lawyer's good or bad memory of doing the work.

The lawyer, or assistant if you are lucky enough to have one, logs the time and expenses received from the lawyer with the appropriate Client within Clio. If the assistant is handling, a copy of the lawyer's email to the assistant is attached to the draft bill and later filed.

At the end of each calendar month, the lawyer, or assistant, creates a draft invoice for each Client, prints it out, attaches the printouts of the time tracking and expense emails, and if the assistant is creating the drafts, he submits the drafts and documentation to the lawyer for approval. The lawyer corrects any description or time errors on the draft bill and approves them before submitting them back to the assistant.

Once completed and/or approved, each invoice is marked as approved in Clio and printed out to be submitted to the client via mail or the invoice is emailed to the Client.

If the Client has a current trust balance it will be applied to the outstanding amount on the bill and submitted to the accountant, if you are lucky enough to have one, as part of a monthly trust payout.

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Statement

Invoice # 12345
Date: 08/01/2017

Client Name
1234 Client Address
New Orleans, LA 70130

Type	Date	Attorney	Description	Quantity	Rate	Total
Service	07/04/2017	ST	Emails to client; Draft of Recording Artist Agreement	4.00	\$250.00	\$1000.00
Total						\$1000.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
12345	08/01/2017	\$1000.00	\$0.00	\$1000.00
Outstanding Balance				\$1000.00
Amount in Trust				\$2500.00
Balance in Trust				\$1500.00

Please make all amounts payable to: SUZETTE TOLEDANO

Payment is due upon receipt.