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Sent: Wednesday, December 18, 2019 7:40 AM
To: aipartnership
Subject: Comments on AI Ownership of Intellectual property

Critical Prerequisite Understanding of Terms:

Agent: Autonomous decision-maker capable of its own perceptions and actions.

Legal Person: An agent reasonably capable of accepting legal responsibilities that may be held accountable (able to make amends or accept punishment) for the same.

Logical/Mechanical: Any mechanism (physical or logical) that strictly follows its designed actions/reactions.

Mindless: An agent that is merely logical/mechanical (does not meet the definition of a “Legal Person”) is mindless. For example, even a scientific calculator is mindless. It’s intellectual abilities in terms of math may be far beyond those of most or any natural person but it is not capable of accepting legal responsibilities nor being held to account for them. It isn’t even autonomous.

Mindful: An agent that meets the definition of a “Legal Person” is mindful. Whatever the algorithm behind its autonomous decision-making, it may be held to account at least due to the adverse effect of taking away options for it to make those decisions -- similar to prison or many other forms of punishments to natural persons.

To determine if an agent is mindless or mindful, we suggest that the same criteria as is used to judge humans with diminished mental capacity. If judged incapable of accepting legal responsibilities, one is usually put under the guardianship of another. Why should this be any different for any kind of agent -- but it a computer human-being, a computer algorithm, or a member of an extraterrestrial species?

With that said, the following answers to the USPTO’s questions are provided:

1. Should a work produced by an AI algorithm or process, without the involvement of a natural person contributing expression to the resulting work, qualify as a work of authorship protectable under U.S. copyright law? Why or why not?

The answer is different based on each of three conditions:

1. The work is unique and produced by a natural process.
These works are clearly and inherently not protectable.
2. The work is unique and produced by a mindless process.
In this case, we believe ownership should be claimable by the legal person that owns the mechanism that created the work. However, it is not clear to us if the law supports or rejects, supports, or has any established opinion in this case.
3. The work is unique and produced by a legal person (mindful, even if unnatural).

We believe the law allows for patent and copyright ownership by any legal person. This applies and, we argue, should apply equally to a natural person, a corporate entity, or any autonomous entity capable of accepting legal responsibility and being reasonably accountable for the same.

2. Assuming involvement by a natural person is or should be required, what kind of involvement would or should be sufficient so that the work qualifies for copyright protection? For example, should it be sufficient if a person (i) designed the AI algorithm or process that created the work; (ii) contributed to the design of the algorithm or process; (iii) chose data used by the algorithm for training or otherwise; (iv) caused the AI algorithm or process to be used to yield the work; or (v) engaged in some specific combination of the foregoing VerDate Sep<11>2014 17:18 Oct 29, 2019 Jkt 250001 PO 00000 Frm 00016 Fmt 4703 Sfmt 4703 E:\FR\FM\30OCN1.SGM 30OCN1 58142 Federal Register / Vol. 84, No. 210 / Wednesday, October 30, 2019 / Notices activities? Are there other contributions a person could make in a potentially copyrightable AI-generated work in order to be considered an "author"?

Answer: Whether a team is comprised of all natural persons, all unnatural persons, or a combination of the two is irrelevant. The work created by the team should be treated identically to if the team were all natural persons. Any component in the creative process that does not qualify as mindful should be viewed merely as a tool. Any work created by means of a tool is never to be owned by the tool.

3. To the extent an AI algorithm or process learns its function(s) by ingesting large volumes of copyrighted material, does the existing statutory language (e.g., the fair use doctrine) and related case law adequately address the legality of making such use? Should authors be recognized for this type of use of their works? If so, how?

Answer: We feel that this depends on similarities between the input and the output. In general, is the output a mere copy or was it reprocessed to create something more than the sum of its input. In as much as the output reflects (as opposed to transforms) the input, authorship of the input material should be duly recognized.

4. Are current laws for assigning liability for copyright infringement adequate to address a situation in which an AI process creates a work that infringes a copyrighted work?

Answer: Yes. The potential for accidental similarities to existing works are at least no less for a logical/mechanical tool than for a natural person.

5. Should an entity or entities other than a natural person, or company to which a natural person assigns a copyrighted work, be able to own the copyright on the AI work? For example: Should a company who trains the artificial intelligence process that creates the work be able to be an owner?

Answer: If the AI is mindful, it may own the work -- as it should also be responsible for any infringement. If the AI is a mindless tool then the owner of the tool may own the work.

6. Are there other copyright issues that need to be addressed to promote the goals of copyright law in connection with the use of AI?

Answer: Not per se. However, it would be helpful to have rules or legislation with a test to ascertain if a computer algorithm should qualify as mindful or mindless. Legislation exists for the creation of corporate entities as legal persons. In terms of a computer algorithm, it should be reasonably possible to build an automated test.

7. Would the use of AI in trademark searching impact the registrability of trademarks? If so, how?

Answer: No.

8. How, if at all, does AI impact trademark law? Is the existing statutory language in the Lanham Act adequate to address the use of AI in the Marketplace?

Answer: No current opinion.

9. How, if at all, does AI impact the need to protect databases and data sets? Are existing laws adequate to protect such data?

Answer: Yes. Existing laws are sufficient, if you accept the concept of mindfulness and mindlessness, as presented herein. A mindless tool of any kind renders responsibility of actions of or through the tool to the legal person employing the tool.

10. How, if at all, does AI impact trade secret law? Is the Defend Trade Secrets Act (DTSA), 18 U.S.C. 1836 et seq., adequate to address the use of AI in the marketplace?

Answer: Again, if you accept that a mindful agent is responsible and accountable for its actions, be it a natural or unnatural person, then existing law and rules are as relevant as ever.

11. Do any laws, policies, or practices need to change in order to ensure an appropriate balance between maintaining trade secrets on the one hand and obtaining patents, copyrights, or other forms of intellectual property protection related to AI on the other?

Answer: Perhaps. While the work used or created by an unnatural person may be taken in every way the same as that of a natural person, there still remains the question of the unnatural person's mind itself (its trained/learned behaviors and memories).

As where the technology does not currently exist to copy and re-employ the use of a copied mind, per a natural person, it does exist as per a computer-based unnatural person.

Once might consider the mind of a natural person. Since the state paid for the natural person's training through K12 education, does the state have claim on his/her mind? If the natural person did have technology to copy his/her mind into a machine, would he/she have the right to do so? The

resulting copy would be an independent person, immediately thereafter owner of the copy that is its mind? As a natural person has a right to bare a child that has not asked to live, perhaps the same right should exist for an unnatural person? Or perhaps not, as a newborn human comes with its mind untrained and, more or less, unlearned.

This also raises the question of a person's ownership of another. A corporate entity is a legal person that is necessarily owned by other legal persons. As the law now stands, this would likely be identical for mindful AI. However, it also bares remarkable similarity to slavery and should, perhaps, be banned for the same or similar reasons. There seems to be a convergence of the consideration of intellectual property.

12. Are there any other AI-related issues pertinent to intellectual property rights (other than those related to patent rights) that the USPTO should examine?

Answer: Not that we haven't already covered herein that we can think of, to date.

13. Are there any relevant policies or practices from intellectual property agencies or legal systems in other countries that may help inform USPTO's policies and practices regarding intellectual property rights (other than those related to patent rights)?

Answer: Perhaps but we lack sufficient familiarity to say.

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