

A SUI GENERIS INTELLECTUAL PROPERTY RIGHT FOR AI-GENERATED CONTENT: ENSURING A BALANCE BETWEEN INNOVATION AND LEGAL CERTAINTY

UM DIREITO DE PROPRIEDADE INTELECTUAL SUI GENERIS PARA CONTEÚDO GERADO POR IA: GARANTINDO O EQUILÍBRIO ENTRE INOVAÇÃO E SEGURANÇA JURÍDICA

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Olena Pikhurets*

*Kharkiv National University of Internal Affairs, Kharkiv, Ukraine

Orcid: <https://orcid.org/0000-0001-7512-951X>
e.pihurets@gmail.com

Stepan Lytvyn**

**Uzhhorod National University Law Faculty, Uzhhorod, Ukraine

Orcid: <https://orcid.org/0000-0003-4449-8720>
s.lytvyn@uzhnu.edu.ua

Oleksandr Kovalchuk***

***Taras Shevchenko National University of Kyiv, Kyiv, Ukraine

Orcid: <https://orcid.org/0000-0002-2167-769X>
kovalchuk.a@ukr.net

Dmytro Tymoshenko*

*Kharkiv National University of Internal Affairs, Kharkiv, Ukraine

Orcid: <https://orcid.org/0000-0001-7008-7007>
tymoshenko@gmail.com

Iana Pianova****

****National Aerospace University "Kharkiv Aviation Institute", Kharkiv, Ukraine

Orcid: <https://orcid.org/0000-0002-4943-3144>
pianova.iana@ukr.net

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Abstract

The article is devoted to a scholarly and practical analysis of the legal regime governing AI-generated digital content in Ukraine and worldwide, with a particular focus on the sui generis right as an optimal mechanism for protecting non-original objects. It is demonstrated that traditional approaches, which recognize only a human as an author, are insufficient for regulating relations concerning AI-generated content. Special attention is given to the sui generis right as an innovative mechanism integrated into the system of intellectual property law, providing protection for non-original digital content. It is noted that the legal regime of AI-generated content (the object) depends on the nature of direct human

Resumo

Este artigo dedica-se a uma análise acadêmica e prática do regime jurídico que rege o conteúdo digital gerado por IA na Ucrânia e no mundo, com foco particular no direito sui generis como mecanismo ideal para a proteção de obras não originais. Demonstra-se que as abordagens tradicionais, que reconhecem apenas o ser humano como autor, são insuficientes para regular as relações relativas ao conteúdo gerado por IA. Dá-se especial atenção ao direito sui generis como um mecanismo inovador integrado ao sistema de direito da propriedade intelectual, que oferece proteção ao conteúdo digital não original. Observa-se que o regime jurídico do conteúdo gerado por IA (a obra) depende da natureza do envolvimento humano direto no



involvement in the creative process. If a human merely initiates the generation while the AI autonomously produces the expressive elements of the work, the resulting output is considered a non-original object created by an algorithm. It is established that the criterion for obtaining protection under the sui generis right is not originality (as required by copyright), but rather the form of expression (the AI-generated result) and the presence of substantial investment. The article examines the effectiveness of the sui generis right for safeguarding the proprietary interests of investors, developers, and users, and proposes approaches to reducing legal uncertainty in the context of digital transformation. The progressive nature of introducing the sui generis right into Ukrainian legislation (Article 33 of the Law “On Copyright and Related Rights”) is recognized, while its shortcomings are emphasized: the lack of clarity regarding criteria for autonomous generation, novelty, and rightsholders, which complicates practical application. Using the legislation of Ukraine, the EU, the United States, and the United Kingdom as examples, the article analyzes conflicting approaches to the legal regime of AI-generated content. In the EU, authorship is recognized exclusively for humans (Directive 2019/790), in the United Kingdom it is attributed to the person who initiated the generation, while in the United States autonomously generated AI content often remains outside legal protection. The article proposes legislative amendments aimed at clarifying criteria for autonomous generation, novelty, and the subjects of the sui generis right, prioritizing the interests of users and investors. It further recommends introducing a registry of AI-generated objects to enhance transparency or a mechanism for identifying AI-generated outputs.

Keyword: Artificial Intelligence. Digital Content. AI-Generated Content. Sui Generis Right. Copyright. Non-Original Object. Legal Certainty. Intellectual Property Law. Investment Protection. Digitalisation.

processo criativo. Se um ser humano apenas inicia a geração, enquanto a IA produz autonomamente os elementos expressivos da obra, o resultado é considerado uma obra não original criada por um algoritmo. Estabelece-se que o critério para a obtenção de proteção sob o direito sui generis não é a originalidade (como exigido pelo direito autoral), mas sim a forma de expressão (o resultado gerado pela IA) e a presença de investimento substancial. O artigo examina a eficácia do direito sui generis na salvaguarda dos interesses de propriedade de investidores, desenvolvedores e usuários, e propõe abordagens para reduzir a incerteza jurídica no contexto da transformação digital. Reconhece-se o caráter progressivo da introdução do direito sui generis na legislação ucraniana (Artigo 33 da Lei “Sobre Direitos Autorais e Direitos Conexos”), ao mesmo tempo que se enfatizam suas deficiências: a falta de clareza em relação aos critérios de geração autônoma, novidade e titulares de direitos, o que complica a aplicação prática. Utilizando as legislações da Ucrânia, da UE, dos Estados Unidos e do Reino Unido como exemplos, o artigo analisa abordagens conflitantes ao regime jurídico do conteúdo gerado por IA. Na UE, a autoria é reconhecida exclusivamente para humanos (Diretiva 2019/790), no Reino Unido é atribuída à pessoa que iniciou a geração, enquanto nos Estados Unidos o conteúdo de IA gerado autonomamente muitas vezes permanece fora da proteção legal. O artigo propõe alterações legislativas com o objetivo de esclarecer os critérios de geração autônoma, novidade e os sujeitos do direito sui generis, priorizando os interesses de usuários e investidores. Recomenda-se ainda a criação de um registro de objetos gerados por IA para aumentar a transparência ou um mecanismo para identificar os resultados gerados por IA.

Palavras-chave: Inteligência Artificial. Conteúdo Digital. Conteúdo Gerado por IA. Direito Sui Generis. Direito Autoral. Obra Não Original. Segurança Jurídica. Direito da Propriedade Intelectual. Proteção de Investimentos. Digitalização.

1 INTRODUCTION

The issue of determining the legal regime applicable to objects (digital content) generated by artificial intelligence (hereinafter – AI) is complex and highly debated, as in most jurisdictions primary copyright is traditionally recognized only in relation to human creators.

At the same time, the development of AI systems opens new possibilities for intellectual and creative activity. Currently, the creation of digital content using neural systems has become widespread and, in many cases, is comparable in quality to works created by humans. There are already instances in which AI has been considered as an author or co-author of copyrighted works, although the legal formalization of such cases remains limited.

However, the capacity for abstract thinking has traditionally been regarded as an anthropologically unique characteristic of human beings, and the attempt to formalize or mechanize this capacity may lead to cognitive dissonance. Nevertheless, ancient Greek philosophers already viewed logical reasoning as a structural process governed by specific laws (Hofstadter, 2025). Accordingly, if life may arise from an abiotic chemical substrate of the cell, and consciousness from the deterministic (formalized) activity of neural networks, then AI—particularly agentic AI based on computational systems—may, in the future, reach the level of human intelligence. Even now, generative AI trained on large-scale multimodal datasets, including textual, graphic, audio, video, and numerical corpora, demonstrates the ability to perform a wide range of tasks such as semantic abstraction, machine translation, information retrieval, computer vision, and automated speech recognition. In doing so, AI does not simply copy works but, through training, utilizes their conceptual models, styles, and narrative patterns to generate new content (photos, videos, images, etc.). Nevertheless, its functioning currently remains heteronomous – the initiation and optimization of results require specific prompts or instructions provided by the developer, creator, or user.

Agentic AI represents the next stage in the evolution of neural systems. Its architecture is based on the coordination of autonomous AI agents employing advanced methods of logical inference and strategic planning to solve multi-task problems. Large Language Models (LLMs) serve as the cognitive core within this system, enabling decision-making processes. The key distinguishing feature of agentic AI lies in its ability to autonomously perceive information, conduct cognitive analysis, adaptively learn, and generate solutions without continuous anthropogenic control. The future of AI lies in autonomous agents that operate almost as intelligent entities capable of performing complex tasks. Systems such as Devin (Cognition AI), SIMA (Google DeepMind), Claude (Anthropic), Project Digits (Nvidia), MineDojo (Princeton University), and SWE-agent (Princeton NLP) are already capable of observing their environment, autonomously performing actions to achieve a defined objective, and increasing their knowledge over time. For example, Devin is able to plan, code, test, and deploy software solutions, exceeding the capabilities of traditional chat-based systems, marking a significant shift in the potential of AI.

At the same time, the rapid development of AI systems raises a range of important ethical, social, and legal questions. This is particularly relevant to the digital transformation of copyright law and the evolution of its traditional structure under the conditions of broader societal digitalization.

Literature Review. The issue of the legal regulation of digital content (objects) generated by artificial intelligence is relevant in the context of the development of digital technologies and the transformation of traditional approaches to copyright. In the academic literature and practical sources concerning the legal regime of AI-generated content, various aspects are distinguished: from determining the status of AI to the search for optimal models of legal protection, in particular through the *sui generis* right. Lorenzoni I. (2020), in the article “*Artificial Intelligence creates, invents ... and challenges Intellectual Property Law,*” analyzes the impact of AI on intellectual property law. The author considers AI as a tool that challenges traditional concepts of authorship and originality, and emphasizes the need for new legal approaches, such as the *sui generis* right, for the protection of AI-generated content. Kapitsa Yu. M. (2021), in the work “*Texts, Music, Images Created by Artificial Intelligence: Towards Defining a Model of Legal Protection,*” examines legal models for the protection of AI-generated content in Ukraine. The author focuses on the *sui generis* right as an optimal mechanism that does not require originality but protects investments and economic interests. The source highlights the progressive character of the Ukrainian approach but notes the ambiguity of the criteria of novelty and autonomous generation. Samuelson P. (1986), in the article “*Allocating Ownership Rights in Computer-Generated Works,*” was one of the first to raise the issue of the distribution of rights to digital content. The author proposes the concept of “hybrid authorship,” which provides for the distribution of rights between the human and the AI. Baranov O. A. (2018), in the article “*Identification of a Robot with AI as a Subject of Law,*” considers the possibility of recognizing AI as a subject of law, and argues that contemporary AI is an object rather than a subject, but predicts potential changes in legal personality with the development of autonomous systems. Shcherbyna B. S. and Tkachenko V. V. (2021), in the article “*Artificial Intelligence as a Subject of Civil Law,*” analyze the legal nature of AI in civil relations and conclude that AI remains a tool, and rights to its results belong to developers or users. Yakubivskiy I. Ye. (2024), in the article “*The Civil-Law Regime of Objects Generated by Artificial Intelligence,*” provides a detailed analysis of the *sui generis* right and criticizes the ambiguity of Article 33 of the Law of Ukraine “On Copyright and Related Rights” regarding the persons to whom such rights belong.

In the context of contemporary doctrine, the legal regulation of relations concerning AI remains one of the most debated and uncertain areas. Therefore, it is important to examine at the doctrinal level the essence of the legal nature of AI, to determine its status (a tool or a subject of law), mechanisms of legal protection (copyright, patents, liability for harm), and the adaptation of existing legal frameworks to the unique characteristics of AI, particularly in the field of intellectual property law (Pikhurets et al, 2024).

The purpose of this article is to provide a scientific and practical analysis of the legal regime of AI-generated content in Ukraine and worldwide, with an emphasis on sui generis rights as a mechanism for protecting non-original objects, assessing its effectiveness in safeguarding the proprietary interests of investors, developers, and users, as well as developing proposals to eliminate legal uncertainty in the context of digital transformation. The objectives of the article are to examine current approaches to the legal regulation of AI-generated content in Ukraine and compare them with international standards (the EU, the United States, the United Kingdom, WIPO), to analyze sui generis rights as an instrument for protecting non-original AI-generated objects and evaluate their advantages and disadvantages in the context of investment protection and innovation support, and to propose amendments to national legislation to clarify the provisions governing sui generis rights, including the introduction of a registry of AI-generated objects.

2 METHODOLOGY

The study of the legal regime of AI-generated content and sui generis rights is based on a comprehensive scientific and practical approach that combines theoretical analysis, comparative legal research, and empirical methods. In particular, the systemic-structural method was applied to analyze legal norms in order to determine the structure of sui generis rights and their place within the system of intellectual property law. The comparative legal method was used to contrast the Ukrainian approach to sui generis rights with the regulation of AI-generated content in the EU and worldwide. The formal legal method was applied to interpret the provisions of Article 33 of the Law of Ukraine, including the determination of the subjects of sui generis rights, as well as to assess the legal certainty and practical applicability of these norms. Through the method of legal analysis, judicial practice was examined (including *Andersen v. Stability AI Ltd.* (2023, USA) and decisions of the Beijing Internet Court) to assess approaches to determining liability for AI-generated content and the role of human contribution in its creation. The synthetic method was used to generalize proposals for

improving legislation, including clarifying the criteria of sui generis rights, introducing a registry of AI-generated objects and identification technologies (blockchain, watermarking), as well as harmonizing these approaches with international standards.

3 RESULTS

Contemporary neural networks (AI) have become deeply integrated into the process of creating works, transforming traditional understandings of the creative process. Even the elementary act of typing text on a keyboard presupposes a complex interaction between the user and software, where the text editor performs not only the function of displaying characters, but also automatic spell-checking, error correction, and suggestions for formulations. More complex scenarios involve the direct participation of AI in the creative process: computer programs are capable of expanding articles on the basis of specified theses, generating analytical conclusions from economic data, or even producing literary works with predetermined narrative and stylistic parameters. Each of these cases demonstrates different levels of technological involvement—from a passive tool to active co-authorship—which brings to the forefront the question of the legal status of such content. If traditional copyright law is oriented toward the human creative contribution, the automated creation of content blurs the clear boundaries between the author’s intellectual effort and the algorithmic operations of the software, requiring a rethinking of existing legal categories in the digital era.

The key distinction between the examples provided lies in the degree of AI involvement in the creation of the content (and potentially of the work itself). Since copyright protects only the form of expression (and not ideas or subject matter), the legally relevant factor is the contribution of AI to the creation of the expressive form. For instance, when AI expands an article on the basis of the author's notes, it partially contributes to shaping its form, while the idea and concept remain the result of the human creative endeavor. In the case of full content generation (for example, an essay on a specified topic or narrative), AI directly creates the form of the “work.” However, the theme and plot, as components of the content of the “work,” are not protected by copyright.

The issue of autonomous AI-generated content without the direct involvement of a user is more complex. Technically, algorithms (such as MidJourney AI) may generate content based on criteria previously defined by AI developers (for example, monthly images in the style of selected literary authors). However, such “autonomy” always relies on a human factor—either at the stage of program development (developer instructions) or at the stage of its use (user

input). Therefore, any object created with the assistance of AI is the result of direct or indirect human involvement, which is decisive for determining the applicable legal protection regime.

Accordingly, AI does not possess consciousness and operates solely on embedded knowledge, databases, user prompts, or instructions provided by the author of the computer program. User prompts may vary, ranging from commands to check spelling and make corresponding corrections to the text, to the full generation of text on a specific topic. If AI generates content without user instructions, it does so on the basis of parameters embedded by a human (its creator) at the development stage. AI has a substantial background in the form of databases and information on which it is trained and which it uses in operation. When performing tasks (including image generation), AI algorithmically interprets input parameters, without demonstrating personal aesthetic preferences or the capacity for conscious decision-making. This underscores the fundamental distinction between deep text and data analysis, machine data processing, and the human creative process. However, it is entirely possible that in the future AI may reach a level at which it becomes fully autonomous from humans and capable of creative activity on its own initiative. This will undoubtedly give rise to significant ethical, social, and legal challenges for society, particularly in terms of the transformation of copyright law and the reconfiguration of its traditional system in conditions of global digitalization.

Contemporary copyright law is gradually evolving to encompass relationships related to the generation of creative objects by AI, yet a number of issues already require clear legal certainty and effective protection mechanisms. For example, in many jurisdictions, including EU Member States, copyright in a work arises only in favor of a human author, and therefore objects (content) generated by AI without significant human contribution remain unprotected and fall into the public domain. This creates risks for individuals and entities investing in AI systems, for instance, for the creation of music or video games, since such content is not protected by copyright or any other intellectual property right and may be freely used by anyone. This, in turn, raises several questions. What legal regime (copyright, sui generis rights, or another regime) applies to AI-generated content created without human contribution? Can AI be recognized as the author or co-author of content, and how would this affect the allocation of rights among developers, users, and investors? Who bears responsibility for copyright infringement or ethical violations in the generation of AI content—the investor, the developer, the user, the data owner, or the AI system itself? How can the economic interests of AI investors be protected if autonomously generated content does not fall under traditional copyright

protection? Finally, how can unauthorized appropriation of AI-generated content be prevented, and how can ethical AI use be ensured in accordance with UNESCO principles?

For example, in 2023, the lawsuit *Andersen v. Stability AI Ltd.* (U.S. District Court for the Northern District of California, No. 3:23-cv-00201), filed against Stability AI, Midjourney, and DeviantArt by artists Sarah Andersen, Kelly McKernan, and Karla Ortiz, demonstrated the complexity of determining liability for AI-generated images created using data (artworks) obtained without permission¹. It also highlights the absence of a unified approach to the legal regime governing AI-generated content, as well as to AI itself, which complicates both national and international protection and enforcement of rights in relation to such content. To address these issues, new legal rules are required to harmonize the regime applicable to AI-generated objects (content), to clarify liability in this field, and to effectively protect the economic interests of investors, while ensuring the harmonization of legal regulation in this domain through international organizations (WIPO).

As a general rule, AI is protected as computer software (a computer program) (Article 433 of the Civil Code of Ukraine). This approach corresponds to global trends and is reflected in international copyright conventions and treaties.² However, the development of neural systems has revealed a logical flaw in this approach, since any type of intellectual property object created by a program will be derivative of a literary work³. Therefore, an object of law cannot be considered an author in any sense and should instead be regarded as a tool used by the author to produce results of intellectual and creative activity that are protected by law. Accordingly, AI is a tool created by a human, and the rights to it and to the results of its output belong to the developer, the user, or the commissioning party.

In the European Union (EU), a similar legal approach is applied: AI is regarded as an object or tool, while authorship is recognized in favor of the developer, user, or commissioning party, provided that a creative contribution is present, in accordance with Directive (EU) 2019/790 on copyright⁴. Under this Directive⁵, works are protected by copyright only where

¹ Lawsuits accuse AI content creators of misusing copyrighted work // Reuters. 2023. 17 Jan. URL: <https://surl.li/ufgxfv> (дата звернення: 17.04.2025) <https://www.reuters.com/legal/transactional/lawsuits-accuse-ai-content-creators-misusing-copyrighted-work-2023-01-17/>

² **Bern Convention for the Protection of Literary and Artistic Works.** URL: <https://www.wipo.int/treaties/en/ip/berne/>

³ **WIPO Copyright Treaty.** URL: <https://www.wipo.int/treaties/en/ip/wct/>

⁴ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC. URL: <https://eur-lex.europa.eu/eli/dir/2019/790/oj>

⁵ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC. URL: <https://eur-lex.europa.eu/eli/dir/2019/790/oj>

there is an original human creative contribution. Accordingly, AI is not recognized as a legal subject, and rights in AI-generated content are recognized as copyright and arise in the developer, user, or commissioning party (employer), provided that a creative contribution exists. The adopted Artificial Intelligence Act⁶ establishes harmonized standards for AI by classifying systems according to levels of risk; however, it does not resolve the issue of authorship with respect to AI-generated content, leaving this matter to national courts and existing directives. The European Commission and the European Parliament are considering the possibility of clarifying the rules applicable to AI-generated outputs, including through amendments to copyright directives or the introduction of specific provisions within the AI Act. Nevertheless, even such proposals do not take into account the potential future development of agentic AI possessing autonomy or consciousness, which would require a fundamentally different approach to the legal regulation of relations concerning the existence of agentic AI and the results of its functioning.

Thus, neither the AI Act nor Directive 2019/790 takes into account the autonomy of agentic AI capable of cognitive analysis, adaptive learning, and generating decisions without continuous human oversight. Such AI may operate fully autonomously and generate decisions independently. Systems such as Devin by Cognition AI or SIMA by Google DeepMind produce objects (content) with minimal human intervention, yet the rights in such content are currently recognized in favor of the author, developer, right holder, or commissioning party. This gives rise to an ethical dilemma concerning the recognition of authorship or any other right in favor of a particular person where their share of intellectual creative contribution is minimal or entirely absent. In fact, such objects fall into a legal grey zone, outside the scope of copyright or any other form of legal protection. In such circumstances, the question remains as to how investment—both qualitative and quantitative—in the development and training of AI systems should be protected. Accordingly, the issue persists at the international level and requires a unified approach for its resolution.

At the same time, in the United Kingdom, rights in AI-generated content are regulated by the Copyright, Designs and Patents Act⁷, which recognizes as the “author” the person who undertook the arrangements necessary for the creation of the work, including through the use of AI, even in the absence of human creative contribution. Recently, the U.S. Copyright Office, in its *Guidance on Copyright Registration: Works Containing Material Generated by Artificial*

⁶ Artificial Intelligence Act <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689>

⁷ UK Copyright, Designs and Patents Act 1988. URL: <https://assets.publishing.service.gov.uk/media/60180c2b8fa8f53fc62c5897/Copyright-designs-and-patents-act-1988.pdf>.

Intelligence,⁸ clarified that copyright protects only works created by humans, since the term “author” in the Constitution and in the Copyright Act excludes non-human entities. AI-generated works are examined to determine whether there is a human creative contribution: where AI functions merely as a tool of “mechanical reproduction,” copyright protection does not apply. However, works in which AI-generated material is substantially curated, organized, or combined with original human contribution may be protected. Protection extends only to the original human-authored expression, distinguishable from AI-generated elements, depending on the degree of human creative control over the final result. Accordingly, AI-generated content falls outside the scope of legal protection and exists in a legal grey zone.

Overall, it should be noted that the legislative framework governing rights to AI-generated content is at an early stage of development, and no country has fully regulated its legal protection. At present, several approaches to determining the legal regime of AI-generated content may be identified⁹: treating AI-generated content as part of the public domain; recognizing copyright in AI-generated content in favor of the AI developer (the individual or individuals who created the algorithm) or the rightsholder

Kapitsa (2021); recognizing authorship in the user provided that a substantial contribution has been made (prompts, parameters, instructions)¹⁰; applying a sui generis right similar to the protection of databases; adopting a “hybrid authorship” model that allocates rights among the AI system, the developer, and the user¹¹; and recognizing authorship in an “electronic person,” although this latter approach has been deferred at the legislative level.

The approaches outlined above reflect differing understandings of AI either as an object of civil rights or as a potential subject of civil legal relations. While one may theoretically adopt either of these positions¹², both international and national legislation

⁸ Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence. URL: <https://www.govinfo.gov/content/pkg/FR-2023-03-16/pdf/2023-05321.pdf>

⁹ Isabella Lorenzoni, LL.M. Artificial Intelligence creates, invents ... and challenges Intellectual Property Law / *STOCKHOLM INTELLECTUAL PROPERTY LAW REVIEW*. VOLUME 3, ISSUE 2, DECEMBER 2020 C.26-35. https://stockholmiplawreview.com/wp-content/uploads/2021/01/4.Isabella-Lorenzoni-LL.M._IP_nr-2_2020_A4.pdf

¹⁰ Pamela Samuelson 1986 ALLOCATING OWNERSHIP RIGHTS IN COMPUTERGENERATED WORKS <https://www.law.berkeley.edu/wp-content/uploads/2024/01/Pam-Samuelson-Allocating-Ownership-Rights-in-Computer-Generated-Works.pdf>

¹¹ European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL)). / *Official Journal of the European Union* <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017IP0051&rid=1>.

¹² Seizing the opportunities of safe, secure and trustworthy artificial intelligence systems for sustain-able development: draft resolution General Assembly United Nations. 11 March 2024. URL: <https://digitallibrary.un.org/record/4040897?v=pdf>.

in most jurisdictions define AI as an object of legal relations. However, this approach limits the protection and enforcement of rights in relation to content generated by agentic AI and creates legal uncertainty for investors who have made a qualitatively and/or quantitatively significant contribution to the development and training of AI systems.

Ukraine is one of the first countries to distinguish objects created (generated) with the involvement of a computer program (AI) and to establish a sui generis right to AI-generated content in the Law of Ukraine “On Copyright and Related Rights.”¹³ Accordingly, such objects are divided into: (1) objects created by natural persons using computer technologies, which are recognized as works, and the rights to such works belong to the author (paragraph 2 of part 1 of Article 33 of the Law of Ukraine), provided that the human determines the form of the work and AI does not interfere in or only minimally influences its creation; (2) objects produced as a result of the functioning of a computer program without the direct participation of a natural person in the creation of such an object (paragraph 1 of part 1 of Article 33 of the Law of Ukraine). The rights to the resulting object belong to the rightsholder, licensee, or lawful user of the computer program. The conditions for the acquisition of sui generis rights may be determined by contract (part 2 of Article 33 of the Law of Ukraine).

The latter provision of the norm concerns two principal situations. The first is when a person determines the substantive content (idea, plot, concept) of the work, while its visual or textual embodiment is carried out by the functionality of AI. The second is when content is generated without direct user intervention, based on algorithmic instructions embedded by the developer during the creation of the AI system itself. In the latter case, objects produced as a result of the functioning of AI without the direct participation of a natural person should possess the following characteristic features: they must be the product of the functioning of a computer program; they must differ from existing comparable objects (a requirement of novelty, verified by examination); and they must be non-original, having been created without direct human involvement. Both situations illustrate a complex human correlation between potential creative intent and computational neural networks, which requires modern and specific legal regulation.

¹³ Law of Ukraine on Copyright and Related Rights: in the wording of April 15, 2023, No. 2811-IX. (2023). Retrieved April 8, 2025, from <http://surl.li/ilmygp>

Accordingly, the legal regime of AI-generated content (the object) depends on the nature of the direct human involvement in the creative process. If a person merely initiates generation (for example, by entering a basic prompt), while the expressive elements of the work are formed autonomously by the AI, such a result is considered a non-original object created by an algorithm. However, when the user exercises detailed creative control (choosing structure, style, key elements), implements iterative modifications, or directly manages the parameters of generation, the resulting object may be qualified as a work created by a human using computer technologies. This approach reflects contemporary regulatory practice, particularly that of Directive (EU) 2019/790, which provides legal protection only for results demonstrating the author's own intellectual choice. Thus, the key criterion for the recognition of authorship remains the direct creative contribution of a human in shaping the essential elements of the work. It should be noted that this conclusion is not definitive but rather reflects the current state of legal regulation, without taking into account content created fully autonomously by agentive AI.

A noteworthy example in this regard is the decision of the Beijing Internet Court concerning copyright infringement of AI-generated images¹⁴. The Court recognized AI-generated images as meeting the requirement of originality, embodying the intellectual contribution of the human user, and therefore eligible for copyright protection. The Court determined that the plaintiff's intellectual contribution included selecting the AI provider to achieve the desired stylistic effect, providing instructions regarding content, adjusting technical parameters, developing the style, layout and composition through prompts, as well as further refinement. With respect to originality, the Court emphasized that although the plaintiff did not manually draw the images, the plaintiff designed the character style, determined layout and composition through prompts and parameter settings, and undertook corrections and adjustments. Such rulings contribute to the development of approaches for assessing user participation in the creation of AI-generated objects, which assists in determining an appropriate model for their legal protection.

Accordingly, if one considers the axiomatic principle of copyright law, under which copyright arises only in respect of objects that are the result of a person's own creative activity, AI-generated objects without significant human contribution do not fall under traditional copyright protection. Such objects are protected under sui generis rights.

¹⁴ **Li v. Liu**, First Instance Judgment on Copyright Infringement Concerning AI-Generated Images. (2023). Retrieved from <https://surl.gd/snmvno>

If AI acts merely as an auxiliary tool, for example to correct errors in text, while the expressive form of the work is determined by a human without interference by the program, such a work is considered original and protected by copyright. Therefore, the rights to the created work belong to the author of the work.

The establishment of a *sui generis* legal regime for AI-generated content in Ukraine represents a progressive step, but it is accompanied by several risks¹⁵. First, the legislation does not clearly define the criteria of autonomous AI generation and the boundaries of human contribution, including whether detailed prompts or instructions constitute creative activity. Second, no procedure has been established for determining the distinction between a non-original object and existing similar objects, nor are the competent bodies for conducting such examinations identified. Furthermore, the mechanism for applying absolute or relative novelty criteria to such objects requires clarification, including the basis on which AI-generated content should be distinguished from comparable objects. The characteristics of non-originality of AI-generated content also require clearer legal definition, based on Article 33 of the Law of Ukraine and its reference norms, particularly regarding the presence or absence of unprotectable elements (such as ideas or plots). In addition, it remains unclear from which category of objects (copyright, related rights, or other types of protected subject matter) AI-generated content must be distinguished.

An equally important issue concerns the subject to whom *sui generis* rights to AI-generated content belong (Yakubivskyi, 2024). As noted, the generally recognized approach is that AI cannot under any circumstances be the holder of rights, as it currently lacks legal personality. Instead, national legislation identifies two categories of persons who may hold *sui generis* rights to AI-generated content (part 2 of Article 33 of the Law of Ukraine), namely: the rightsholder of the AI (the author(s) of such computer program, their successors, or persons to whom the authors or their successors have transferred (assigned) the proprietary rights to the computer program), and the lawful user of the AI.

A reasonable view is that the statutory provision concerning the subject of *sui generis* rights lacks clarity. The phrase “may belong” does not specify concrete subjects

¹⁵ Case C-5/0 Infopaq International A/S проти Danske Dagblades Forening <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62008CJ0005> ; Yakubivskyi, I. Ye. (2024). Civil-law regime of objects generated by artificial intelligence. *Scientific Bulletin of Uzhhorod National University. Series: Law*, 82(1), 355–361. <http://visnyk-pravo.uzhnu.edu.ua/article/view/304076/296072>

but merely outlines the potential rightsholders (holders of the proprietary rights to the program) and lawful users (licensees). Possession of rights to the program or a license does not automatically grant rights to the generated content, particularly where multiple non-exclusive licenses exist, which complicates the determination of the holder of sui generis rights¹⁶. Thus, in situations involving multiple non-exclusive licenses, the problem arises of determining who exactly holds these rights.

To eliminate the ambiguity in the provision of the Law of Ukraine regarding the subjects of sui generis rights to AI-generated content, amendments to Article 33 are required. The proposed wording should specify that the subjects of sui generis rights in non-original objects created by a computer program (AI) are the person (persons) who, taking into account the requirement stipulated in part 7 of Article 33 of the Law of Ukraine “On Copyright and Related Rights,” lawfully initiated the generation of the object, unless otherwise provided by contract with the rightsholder of the program, as well as their successors or other persons to whom these rights have been transferred by agreement. The contract may determine the conditions for the allocation of sui generis rights to non-original objects generated by the respective computer programs.

Amending the provision of the Law of Ukraine in this manner would shift the priority of sui generis rights in favor of the user who initiated the generation of AI-generated content through prompts or parameters, with the possibility of contractual regulation, and would also allow recognition and consolidation of the rights of investors or commissioning parties on whose instructions the user operates the AI system. It should be noted that neither ownership of rights to the program nor the existence of a license automatically guarantees entitlement to sui generis rights; confirmation of the person’s connection to the generation process (instructions, prompts, parameters) is required, as well as documentary evidence of significant (qualitative and/or quantitative) contributions to the development and training of AI systems in the case of investors.

The proposed approach, which establishes the priority of sui generis rights in AI-generated objects in favor of the user, is consistent with practice, including the example of copyright registration of the image collection “Easter Cards” that includes AI-generated images¹⁷, and with the approach for determining the extent and nature of user

¹⁶ Yakubivskyi, I. Ye. (2024). Civil-law regime of objects generated by artificial intelligence. *Scientific Bulletin of Uzhhorod National University. Series: Law*, 82(1), 355–361. <http://visnyk-pravo.uzhnu.edu.ua/article/view/304076/296072>

¹⁷ **In Ukraine, copyright was registered for works containing AI-generated images for the first time.**

participation in the creation of certain objects using AI¹⁸. It is also worth noting that similar provisions are contained in the United Kingdom's Copyright, Designs and Patents Act, which provides that, for a literary, dramatic, musical, or artistic work generated by a computer, the author is the person who undertook the actions necessary for its creation¹⁹. However, the Act does not specify who exactly constitutes the “person who undertook the actions” – whether it is the AI user, the developer, or another party.

In addition, amending the content of part 2 of Article 33 of the Law of Ukraine concerning sui generis rights to AI-generated content will also help prevent potential conflicts in situations involving multiple non-exclusive licenses. This is because the ambiguous phrase “may belong” would be replaced with a clear determination of the subjects of sui generis rights, eliminating legal uncertainty regarding the person in whom such rights arise. The key criterion for recognizing a holder of sui generis rights in AI-generated content would be the lawful initiation of its generation (creation, use, or investment) and the moment of the acquisition of rights under the principle “first in time – first in right,” unless otherwise provided by contract.

In the future, it would be advisable to introduce a registration procedure for sui generis rights in AI-generated objects or a mechanism for identifying the results produced by AI. Such measures would contribute to increasing transparency in the legal regulation of AI-generated content. The establishment of a centralized register would make it possible to record sui generis rights, determine the initiators of generation (developers, users, or investors), and avoid disputes in cases of multiple non-exclusive licenses. The register may include metadata regarding prompts, parameters, or investments confirming contribution, similar to the protection of databases in the EU under Directive 96/9/EC. This would correspond to the transparency requirements set out in the AI Act (2024) and would facilitate distinguishing AI-generated content from copyright-protected works.

At the same time, the allocation of sui generis rights to AI-generated objects may be determined by contract, which sets out the conditions for the distribution of such rights, as provided by the Law of Ukraine. Pursuant to Article 37 of the Law of Ukraine “On Private International Law,”²⁰ the law of the state in which protection is sought applies to

(2024, September 20). *IP Office*. <https://surl.li/vhsjba>

¹⁸ **Li v. Liu**, First court decision concerning copyright infringement of AI-generated images. (2023). Retrieved from <https://surl.gd/snmvno>

¹⁹ UK Copyright, Designs and Patents Act 1988. URL: <https://assets.publishing.service.gov.uk/media/60180c2b8fa8f53fc62c5897/Copyright-designs-and-patents-act-1988.pdf>.

²⁰ **Law of Ukraine “On Private International Law”: in the wording of December 23, 2022, No. 2802-**

relations in the field of intellectual property. This means that the scope of the Ukrainian law is limited to the territory of Ukraine, and if a computer program (AI) generating non-original objects is hosted on a website physically located in another state, the Ukrainian law does not apply to the legal relations arising from the generation of content by such AI.

There are several possible ways to qualify the legal relations concerning the use of any type of AI located in the digital environment: the provision of services to the user; or a licensing agreement (granting the right to use a particular object). In the absence of agreement between the parties on the choice of applicable law for such legal relations, the applicable law is determined pursuant to parts 2 and 3 of Article 32 of the above-mentioned legislative act. In this case, the party required to perform the obligation that is decisive for the content of the contract is the service provider in contracts for the provision of services (paragraph 8 of part 1 of Article 44 of the Law of Ukraine “On Private International Law”) or the licensor in a licensing agreement (paragraph 20 of part 1 of Article 44). However, the terms of use of AI systems may establish other conditions, in particular the possibility for users to acquire proprietary rights to input and output data (content) for any purposes, subject to compliance with conditions (paragraph 3(a) of the OpenAI (ChatGPT) Terms of Use), or allowing users to use AI-generated content while prohibiting them from claiming authorship (DALL·E 2, MidJourney). Therefore, before asserting the acquisition of sui generis rights, users must carefully analyze the terms of use of the AI system to avoid breach of contractual obligations and to take into account the applicable law of the relevant jurisdiction.

4 DISCUSSION

At the same time, under the Law of Ukraine “On Copyright and Related Rights,” the sui generis right to non-original AI-generated objects does not provide for the acquisition of moral rights, including the right to be recognized as the author or the right to a name. The scope of proprietary rights under sui generis is determined in accordance with Article 12 of the Law of Ukraine and is analogous to the proprietary rights in works, granting the holder the exclusive right to use the object, to permit or prohibit its use, and

IX. (2022). <https://zakon.rada.gov.ua/laws/show/2709-15#Text>

to transfer such rights by contract. The *sui generis* right arises from the fact of generation and becomes effective from the moment of generation, is protected irrespective of any formalities, and lasts for 25 years from January 1 of the year following the year of generation, during which the holder may authorize the use of the object; the holder's rights are protected in court in case of infringement. Accordingly, *sui generis* rights in AI-generated content are very close to, or related to, copyright and intellectual property rights in general.

The *sui generis* right introduced into legislation provides that the criterion for obtaining protection is not originality (as in copyright), but rather the form of expression (the result of AI generation) and the presence of significant investment. The legal regime under *sui generis* is capable of effectively protecting the proprietary interests of investors who have made a qualitatively and/or quantitatively significant contribution to the development and training of AI systems, as well as developers and users, by focusing on the expressive form and investment rather than on originality or authorship, which remains a prerogative of the human user due to the opacity of AI algorithms.

Sui generis rights do not require the determination of an author as the “mind” that created the result. Instead, they define the subjects of the right—those who hold proprietary rights—thus protecting their investments. At the same time, this area has significant potential for development, but requires clear legal frameworks to avoid conflicts and safeguard the interests of AI developers, investors, and users. Therefore, there is a need to develop standards and regulatory mechanisms to ensure the safe and responsible use of AI systems. In the author's view, recognition of AI as an author or as a subject of rights will not occur in the near future. Currently, authorship is recognized exclusively in favor of a human being. It is possible that in the future advanced AI systems may replace humans in the creation of works, but for now AI algorithms operate as a “black box”: their processes are not transparent, and their behavior cannot be fully controlled or directed. For further progress, clear legal frameworks harmonized with WIPO international standards and an increased level of public awareness regarding the ethical challenges of AI are required.

5 CONCLUSION

The legislative recognition of sui generis rights in relation to non-original AI-generated content is an optimal step, as it places such objects within the sphere of intellectual property law. The sui generis right to non-original AI-generated content defines its nature as adjacent to objects of intellectual property, with proprietary rights analogous to copyright, the possibility of lawful use, and judicial protection. Evidently, the sui generis right integrates into the copyright system, protects investments in the development of AI systems, promotes innovation, and allows for contractual regulation of rights. Therefore, it is advisable to reflect the legal regime of non-original AI-generated objects (content) in Book 4 of the Civil Code of Ukraine by incorporating the relevant provisions. This would resolve the issue of the legal nature of rights to AI-generated content, recognizing them specifically as intellectual property rights. In fact, this direction has already been established by the Law of Ukraine “On Copyright and Related Rights,” which includes provisions on sui generis rights in non-original objects generated by computer programs (AI), thereby indicating that such objects fall within the sphere of intellectual property rather than any other branch of law.

Thanks to the sui generis right, achieving a balance of interests between investors, rightsholders, developers, and users becomes realistic. This, in turn, will shift the perception of AI from a threat to an opportunity for the use of innovative technologies in creative activity. However, the lack of clarity regarding the criteria of autonomous AI generation, the novelty requirements for AI-generated content, and the determination of the subjects of sui generis rights results in legal uncertainty and numerous risks. To eliminate these risks, it is necessary to: clarify the criteria of autonomous generation and novelty; clearly define the subjects of the right, prioritizing the user and investor unless otherwise provided by contract; and introduce a centralized register of AI-generated content.

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Authors' Contribution

Both authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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