

AIPPI: No copyright protection for AI works without human input, but related rights remain

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Rembrandt has been dead for 350 years. He is still admired as one of the greatest painters of all time. No wonder then, that it would be a charming idea to revive Rembrandt. "Can the great Master be brought back to create one more painting?" The answer is yes, at least for a team of experts, who created a painting called "The next Rembrandt". They relied heavily on artificial intelligence (AI). But can AI generated works receive copyright protection? The International Association for the Protection of Intellectual Property, generally known under the abbreviated name AIPPI, considered this at the 2019 World Congress in London and has now published a Resolution.



"Copyright in artificially generated works" was the so-called Study Question for the 2019 AIPPI World Congress. To prepare for the discussions, Study Guidelines were published and more than 30 AIPPI National Groups from all over the world answered this questionnaire. Their Study Reports came from all continents. They were summarized in an excellent Summary Report by the AIPPI Reporters Jonathan P. Osha, Anne Marie Verschuur, Ari Laakkonen, Guillaume Henry, Ralph Nack and Lena Shen.

After in-depth discussions at the AIPPI World Congress London in September 2019, a Resolution was adopted. In summary, the Resolution says the following:

- AI generated works should only be eligible for protection by copyright if there is human intervention in the creation of the work, and provided that the other conditions for protection are met. AI generated works should not be protected by copyright without human intervention.
- In the case of genuine copyright protection for a work generated by AI the protection regime should be identical to other works protected by copyright. This is true in particular for economic rights, moral rights, term of protection, exceptions and limitations, and initial ownership.
- AI generated works may be eligible for protection through a related right, even where there is no human intervention. AI generated works should not be precluded from obtaining protection by existing related rights on the basis they are AI generated, and should obtain that protection as long as they meet the required criteria for obtaining protection.
- As AI is still developing, it is too early for AIPPI to take a position on the question of whether AI generated works not covered by such existing protection should be eligible for exclusive rights protection as a related right.

For the painting "The next Rembrandt", this means that it will only be protected by (genuine) copyright if the experts involved in the process of creating the painting had sufficient human input. If not, related right protection for works of visual art does not exist e.g. in EU countries. In this case, "The next Rembrandt" would remain without protection. This seems to be in contrast to e.g. films or musical recordings created without any human intervention, which should qualify for related rights protection in most EU countries, as was shown by the AIPPI National Reports.

In the discussions at the AIPPI World Congress in London, one interesting issue was not addressed, which arises from the current concept of protection for AI generated works (exclusion of genuine copyright protection for solely AI created works, but related right protection to a limited extent): As pointed out already by the German National report, due to the longer (term) and more extensive (for example moral rights) protection of genuine copyright in comparison to the related right, there is an incentive for the AI producer to incorrectly state that there was human input into the AI produced work in order to attain copyright protection. In practice, it will be very difficult to prove that there was no human input. Against this background, it may be useful to think about a stricter regulation against lying about the (human) author of a work. The German National Group suggested that, for example, wrongly claiming a human author could be made a criminal offence in copyright law or could result in other legal consequences.

Jan Bernd Nordemann is the Chair of the AIPPI Standing Committee Copyright and was the Chair of the AIPPI Study Committee for the Study Question "Copyright in AI generated works". His co-chairs were Dale Nelson (USA), Edouard Treppoz (France), Secretary Christian Thomaé (Mexico) and the Responsible AIPPI Reporter Guillaume Henry (France).