TECHNISCHE UNIVERSITÄT DRESDEN

Faculty of Law ■ TU Dresden

Institute of Intellectual Property, Technology Law and Media Law (IGETeM)

Abstract for the "International Conference on Robotics and Artificial Intelligence" (Robotics and AI 2020), Prague, Czech Republic, June 20-21, 2020

Copyright protection of "AI" and "AI"-generated works

(Copyright-)Law and technology have always interacted with each other, which presents the law with new challenges to which it must respond. After the disruption of photography or the use of computers and databases, this now also applies to "Artificial Intelligence", or "AI" for short.

In copyright law, "AI" currently creates creative products which would probably be protectable if they had been created by a *human* being. An example is about "*the next rembrandt*"[1] which was created in 2016. The brushstroke, application of paint and light presentation seemed as if the master himself had created it. However, *Rembrandt* never saw the man with beard, black hat and white collar. More than 340 years after his death, the product was created by an "AI" and materialized by 3D printing. A similar situation applies to the painting "*Edmond de Belamy*",[2] which was auctioned two years later in October 2018 for USD 432,500 at *Christie's*. The blurred portrait of the name-giver once again shows a man in a dark robe and white collar. The signature of the "painter": "*min G max D Ex[log(D(x))]+Ez[log(1-D(G(z)))*" already points out the peculiarity of the painting, which refers to the algorithm that was implemented in the network.

While copyright law, which traditionally covers only *human* creations, was still able to defend itself against the challenges of the Internet and digitization, it is questionable whether this will succeed again in the course of the disruption by robotics and "AI". From a copyright perspective, two fundamental questions arise in relation to the examples:

(1) Firstly, whether the underlying "AI" can be protected under copyright law as a computer program according Sec. 69a of the German Copyright Act (based on the computer programs directive 2009/24/EC). In order to answer this question in a legally satisfactory manner, a basic definition of what "AI" is from a technical perspective is required.

(2) Secondly, it is extremely controversial whether the "AI"-generated products itself are protectable. The starting point for this can be, on the one hand, the "personal intellectual creation" according to Sec. 2 (2) German Copyright Act (respectively the "own intellectual crea-

[1] https://www.nextrembrandt.com/.
[2] https://obvious-art.com/edmond-de-belamy.html.

Postadresse (Briefe) TU Dresden 01062 Dresden
Postadresse (Pakete u.ä.) TU Dresden Helmholtzstraße 10 01069 Dresden
Besucheradresse Bergstraße 53 Von-Gerber-Bau Raum 377
Zufahrt Haeckelstraße, Parkplatz, Nordeingang, Aufzug
Internet http://www.llm-ip.de

Kein Zugang für elektronisch signierte sowie verschlüsselte elektronische Dokumente.

DRESDEN concept Exzellenz aus Wissenschaft und Kultur

tion" as demanded by the European Court of Justice (ECJ) in its autonomous European concept of work). If this is the case, the "AI"-generated products would be works within the meaning of copyright law and would therefore be protected 70 years *post mortem auctoris*. In addition, the author would be entitled to moral rights. On the other hand, protection is possible via the so-called related rights according to Sec. 70 ff. German Copyright Act, which grant protection for organisational performance respectively investment protection and provide therefore a lower level of protection. If no protection is possible, the products thus generated would be in the public domain and could be used by anyone.

David Linke

Ass. iur. David Linke, Wirtschaftsjurist (Univ. Bayreuth)
Wissenschaftlicher Mitarbeiter am Institut für Geistiges Eigentum, Technikrecht und Medienrecht (IGETeM), TU Dresden
david.linke@tu-dresden.de