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Leyla Mobil Khankishiyeva
Baku State University
master
Leilakhankishieva@gmail.com

THE CONCEPT OF "CREATOR" IN ACCORDANCE WITH THE LEGISLATION OF THE REPUBLIC OF AZERBAIJAN

Summary

One of the realities of modern times is the evolution of new technologies around the world, as well as the use of artificial intelligence (AI) and robotics in different spheres of society. Artificial intelligence, which was founded in the middle of the last century, has been one of the most invested in and interesting fields in recent times. Recently one of the most discussed and important issues is the relationship between artificial intelligence (AI) and intellectual property rights (IPR). Thus, the ownership of works created by artificial intelligence is one of the most discussed issues. In recent years, on the initiative of President Ilham Aliyev, modern achievements of world science have been applied in the life of society in the Republic of Azerbaijan. Considering all of this, the significance and urgency of the situation are clear. In other words, this is an issue that is high on both our national and international agendas.

Key words: *Artificial intelligence technology, creative activity, concept of "author", "work made for hire" doctrine, computer-generated works*

Introduction

Relationship between AI and intellectual property rights, let's look at a brief analysis of the AI situation in terms of industrial property rights. From the industrial property law point of view, the use of computer programs by people in the process of the invention does not prevent people from being perceived as inventors. However, according to Article 8 of the Patent Law of AR, computer algorithms and programs are not considered inventions. (1. art.8) However, given that a program does not work separately from the device to which it belongs, it may be possible to patent an invention. An example is David Cope, a professor of musicology at the University of California Santa Cruz, who has patented music composition algorithms used in experiments to compose machines. In artificial intelligence technology, it can be said that artificial intelligence technology can be patented as an invention because a computer program works depending on a particular device. However, the subject of research is not the invention of a particular artificial intelligence technology by anyone or the use of it by any person to create a work or invention. Thus, the topic is related to the solution of the problem of whether the product created by artificial intelligence technology is accepted as a work in accordance with the intellectual property rights and to whom the copyright belongs. For this reason, the subsequent sections will examine the artificial production of artificial intelligence and the legal rules that apply to this situation. The conditions specified in the legislation of the Republic of Azerbaijan are a problem in works created by artificial intelligence. The idea that intellectual products that can be considered works in the sense of normative legal acts on intellectual property rights can only be produced by humans is a rigorous test with artificial intelligence technology. According to Article 1.0.2 of the law of the Republic of Azerbaijan on Enforcement of the Intellectual Property Rights and Fight Against Piracy, a holder of intellectual property rights (holder of right) is a physical person or legal entity, who holds intellectual property rights, also Azerbaijan Republic with regard to folklore models (traditional cultural expressions). (2, art.1.0.2) Naturally, determining who owns the copyrights to works produced by artificial intelligence, as well as the fact that the concept of "creator" is not regulated by law, presents significant difficulties in this field. Because as a result of the breakthrough technological developments that have taken place in recent years, it is now possible for artificial intelligence to produce a product by acting on its own. An example of this type of artificial intelligence can be given an artificial intelligence named Annie, developed by David Cope, who is a Professor of Musicology at the University of Santa Cruz, California. Annie, an artificial intelligence, is constantly developing and changing her musical taste according to the reactions she receives using her machine learning. In addition, Annie went one step further, although she was not intended to write a text, she not only composed compositions but also wrote "Haiku" poems, a type of poetry written in Japan. Moreover, these poems are indistinguishable from those created by humans. The mixed album of poems created by Annie and by people is available for purchase on the online shopping site "Amazon.Com".

If a computer program or software a certain product within a certain limit without collecting and processing information using machine learning and deep learning, it can be argued that this product comes out as a result of just mechanical processes and is not considered a work in the sense of legislation on intellectual property law. Because in such a situation, no work is created as a result of the author's creative activity. Therefore, accepting any product as work and granting exclusive rights to the work, protecting the property (economic) and non-property (moral) rights of the owner of the work, promoting creative activity, increasing the number of usable works will not fully comply with the concepts of work and copyright. For example, a translation product produced by a program whose sole purpose is translation will not be considered a work in the sense of legislation on intellectual property law. Indeed, it cannot be said that creative activity has taken place here without outside intervention or without acting accidentally. However, it is also possible for an AI to create a product of its own, using machine learning and deep learning and acting outside a certain boundary. In such a situation, it can be argued that artificial intelligence is engaged in creative activities within its own system, using the information obtained as a result of machine learning and deep learning to create a work of its own. If this opinion is accepted, it can be thought that this product should be considered as work. (3)

The fact that the concepts of work and copyright, which serve the purposes of protecting, developing, and promoting creative activity, are valid under certain conditions in terms of products created by artificial intelligence will also be compatible with the nature of the concepts of work and copyright. Indeed, if these concepts are accepted under certain conditions in terms of artificial intelligence, and for products that are produced outside of purely mechanical processes and coincidences, the possibility of developing such artificial intelligence, investing in them, and thus introducing useful products to society by this artificial intelligence will increase. Thus, the idea of protecting products that increase the cultural level of the society and increasing the number of these products will realize their real meaning in this field. According to the requirements of Article 51 of the Constitution of the Republic of Azerbaijan, Everyone has the freedom of creative work and The State ensures the realization of belles-lettres, scientific-technical and other forms of creative work. According to Article 30 of the Constitution, everyone has the right to intellectual property. Copyright, the right of invention and other forms of intellectual property shall be guaranteed by the law. Copyright, the right of invention and other forms of intellectual property shall be guaranteed by the law. Thus, it can be said that the protection and promotion of artistic activities is a duty of the state. Because the importance of exclusive rights on intellectual and artistic works arises at this stage. The development of a country in terms of industrial and intellectual research is possible only with the effective protection provided by this research. If the industrial and intellectual products are not protected effectively, the enthusiasm and ability of the people who produce these products will be extinguished and the development of the country in this field is prevented. With the adoption of useful products created by artificial intelligence as a work under certain conditions, the number of cases of investment and development of artificial intelligence, which is the creator of these products, will increase. As a result, this situation will lead to an increase in products that are useful for humanity. This will mean that the purpose of protecting, promoting, and developing creative and useful works is fulfilled in the field of artificial intelligence. (4)

As a result, if artificial intelligence creates a product on their own, with the functions of learning and concluding using machine learning and deep learning, collecting, and processing information, choosing between different alternatives, without acting entirely within mechanical processes and coincidences, these products are the system of artificial intelligence itself. The product can be considered a work if the artificial intelligence creates a work using its creative activity within its own system. Indeed, if Annie's poems are not considered to write texts, the view that they do not have their own characteristics within the framework of Annie's own system or that Annie produces these products without any effort and creative activity will not be accepted. Because Annie constantly improves and changes her musical taste by using machine learning, and as a result of this learning, she has created these poems. It is possible that we will encounter more such products in the near future. However, it is difficult to determine exactly where the creative element takes place here. If the basis of the element of creativity is an aesthetic sensitivity that is inherent in human beings and difficult to define, it is expected that in such a work the realities underlying the concepts that form the subject of the activity will also be understood. In this context, it can be defended that the products produced by artificial intelligence can never be the subject of protection under the law on copyright and related rights, the law of the Republic of Azerbaijan on Enforcement of the Intellectual Property Rights and Fight Against Piracy and etc., which provides protection for works which created by humans. If this approach is adopted, for the reasons mentioned above, in order to protect such products, it is necessary to distinguish between products produced by humans and products produced by artificial intelligence and to make appropriate

changes in our legislation to protect works created by artificial intelligence. (5, p.6) If, for the reasons I have explained, the idea that such products can be accepted as works in the sense of existing legislation in the field of intellectual property law is defended, then amending the legislation to fill the gap in this area and subject these products to effective protection under appropriate conditions will accelerate the work on artificial intelligence in our country. The importance of this issue was emphasized in the American doctrine, and it was stated that the acceptance of these products as works is of vital importance for the artificial intelligence studies to be carried out in the country. In the light of all these explanations and especially within the scope of the previous explanations about the concept of work and the conditions of being considered a work, despite the new approaches to interpretation, the ability to carry out a creative intellectual activity and reflect the character of its owner is unique to humans and in the terms of Azerbaijan's positive law, it can be argued that the products produced by artificial intelligence cannot be accepted as works in the sense of the different law acts on intellectual property. (6, p.61)

Let's look at the concept of "author" enshrined in the Law of the Republic of Azerbaijan on Copyright and Related Rights. Thus, Article 4 of the law states that an author is a physical person. In accordance with Article 1.0.2 of the law of the Republic of Azerbaijan on Enforcement of the Intellectual Property Rights and Fight Against Piracy a holder of intellectual property rights (holder of right) can be - a physical person or legal entity, who holds intellectual property rights, also the Azerbaijan Republic with regard to folklore models (traditional cultural expressions). Meaning the term "physical person" is stated in Article 24 of the Civil Code of the Republic of Azerbaijan as follows. A physical person is a legally capable person, an individual who participates in legal relations on his own behalf. Legal capacity refers to a person's ability to hold relevant rights and responsibilities, as well as legal liability. (7, art24) In this respect, it is clear that artificial intelligence cannot have the title of ownership for the products it produces, cannot be considered as the owner of the work, or can not have the authority to use the rights arising from the ownership of the work. Because artificial intelligence is not accepted as a person in legal terms. In this context, it can be said that the creation of works in accordance with their decisions after the creation of artificial intelligence is not sufficient in terms of determining the ownership of the copyright of these works in accordance with the existing legislation. As a matter of fact, if the rule that the owner of the work is the person who created it is applied directly, it can be thought that the creator of the work is artificial intelligence and the ownership of the work should belong to him. However, artificial intelligence is not a real person and is not legally accepted as a person, so it cannot have the title of ownership.

Apart from the current situation, it is suggested that different approaches to this issue may also be valid. It is suggested here that the person who enabled the creation of the product introduced by artificial intelligence could own this product, regardless of whether this person is a licensee or a company. Regarding this situation, reference can be made to the 9th article of the Copyright, Designs and Patents Law dated 1988, which was accepted in England, which we mentioned earlier. According to this rule, in the case of computer-generated literary, dramatic, musical, or artistic works, the author of the work will be referred to as the person who made the necessary arrangements for the creation of the work. If this regulation is also accepted in terms of artificial intelligence, it will be necessary to accept that the person who performs the necessary studies and adjustments for the artificial intelligence to reveal the product in question will be the owner of these products. (8) It is also recognized that such an acceptance will be beneficial for the growth and development of artificial intelligence studies. Indeed, it can be said that the studies in this field will develop and grow by giving them ownership of these products to those who carry out the research and studies necessary for artificial intelligence to produce a product. However, it is not possible to transfer the copyright of works created by artificial intelligence to persons who are not creators or programmers of artificial intelligence and only users of artificial intelligence. Because users are the ones who make the least contribution to the creation of artificial intelligence or the creation of such products, and the confirmation of this idea can harm the development of the artificial intelligence sector. Another view put forward in American doctrine takes the aforementioned discussions to another dimension. According to this view, by interpreting the concepts of employer and employee in a broad way, it should be accepted that artificial intelligence should be accepted as an employee and employers should have artificial intelligence products within the scope of the "work made for hire" model. Here, it is argued that the concepts of employer and employee should be left open to interpretation in order to meet the emerging new needs and reflect contemporary social changes. Thus, although legally the worker is defined as the person who performs a service for a wage and is under the control of the employer, it is suggested that a more flexible definition can be considered. According to this view, the employer can also be considered, in a relative interpretation, as someone who uses the services of another organization to achieve a goal or to complete a task. It can be

argued that if an artificial intelligence programmer or owner uses artificial intelligence to produce creative and new products, it should be considered an employer under this definition. Likewise, with a relative interpretation, artificial intelligence can be regarded as a worker, as the productive services of artificial intelligence are operated by its programmer or owner. With new interpretations, it is stated that with the acceptance of the employee and programmer or owner of artificial intelligence as the employer, artificial intelligence products will be considered as worker products and at least legal protection will be provided to artificial intelligence products in accordance with the "work made for hire" model. Indeed, as we have mentioned before, in accordance with the "work made for hire" model in American law, it is accepted that under certain conditions, ownership of the work belongs not to the workers but to those who employ them. In order for this view put forward by the American doctrine to be accepted in our legislation, first of all, new interpretations should be made in the concepts of employer and employee. Even if artificial intelligence is accepted as workers by interpreting these concepts broadly, Article 4.2 of the Law of the Republic of Azerbaijan on Legal Protection of Compilations of Data accepts that the ownership of the work of the works produced by the workers belongs to the workers, but only the authority to exercise the financial rights can belong to the employer. (9, art4.2) In this context, it does not seem possible to apply this opinion in terms of the legislation of the Republic of Azerbaijan. Because artificial intelligence is not legally accepted as a person, so it cannot have the title of ownership. In addition, it can be said that in terms of the legislation of the Republic of Azerbaijan, it is necessary to have a real personality in order to be a worker, so it is not possible to accept artificial intelligence as workers. Finally, it seems possible that these problems can be solved to a large extent if the recent electronic personality view about artificial intelligence is accepted and put into practice. Because together with the electronic personality status that will be granted to artificial intelligence, artificial intelligence will now be deemed to be a legal person, so it can be accepted that the ownership and copyright of the products it produces belongs to the electronic personality. It can be said that electronic personality opinion has become more and more common with the published international reports and recommendations.

Conclusion

After the concept of artificial intelligence was first introduced by the American computer scientist John McCarthy, there is no doubt that artificial intelligence technology has undergone great developments and changes. Today, artificial intelligence is used in many areas, from driverless cars to machine learning used to improve healthcare services, to online shopping sites that give us advice about the products we need to buy from financial systems. However, along with new technological developments in the future, it is likely that the concept of artificial intelligence will play a greater role in our society. The need to evaluate the quality and ownership of these products from a legal point of view together with the existence of artificial intelligence that can produce literary and artistic products such as poetry, painting, music, and books, although their number is not very large, is a problem that needs to be solved today. I conclude that the literary and artistic products produced by artificial intelligence should be effectively protected within the scope of legislation on intellectual property law of the Republic of Azerbaijan or with a separate legal regulation to be accepted. Otherwise, the hopes of those who are expected to invest in the development of artificial intelligence, which produces such products, will be dashed. This situation will have a negative impact on the development of artificial intelligence. In this context, with the new approach and interpretations I brought, I made explanations about the scope of the protection of such products produced by artificial intelligence in terms of current legal regulations. As a result, I have observed that the current legal regulations are insufficient to provide effective protection for these products. Although it is conceivable that artificial intelligence could create any new product using machine learning and in-depth learning, and that those products could be considered works of intellectual property law, I came to the conclusion that it would be useful to fill the gap only by amending the legislation or to establish effective protection under certain conditions.

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