

Intellectual Property

Navigating the Intersection of AI and Art: Copyright Challenges and Commercial Implications

Introduction

The dawn of a new era in artificial intelligence ("AI") artwork is upon us. There is no doubt that AI technology has experienced a significant leap in recent years, with its growing integration into various sectors, including the art world and graphic design. Notably, there have been instances where AI-generated images have claimed top honors in art competitions, sparking debate about fairness to artists who rely on their human creativity.

AI's rising popularity in various sectors stems from its utility as a time-saving tool. Tasks that once demanded two to three days can now be accomplished in seconds, thanks to technologies that sift through vast datasets to generate new content. However, to take just one example, concerns have arisen among artists regarding the sourcing of data for AI-generated works, as these creations often lack entirely original foundations. While such practices may not directly breach copyright laws, ethical questions loom over the acquisition of data without the consent of copyright holders.

In this Update, we take a look at how AI-generated content interacts with intellectual property law in Thailand, as well as the upcoming legislative landscape relating to AI.

The Use of AI in Thailand

AI's use of data to generate content

Given the ease of using AI to generate content, disputes may arise as to the fair use of AI in producing finished products and materials. In the United States ("US"), copyright holders – be they writers, music publishers, or visual artists – have initiated class-action lawsuits against tech companies, alleging copyright infringement through the unauthorised use of their materials in AI training. Despite tech firms invoking the defense of "fair use," the outcomes of these legal battles will shape precedents that could potentially impact the AI industry's future.

In Thailand, the concept of "fair use" is encompassed in Part 6, Exceptions to Copyright Infringement, of the Copyright Act. Section 32 establishes the foundation of the fair use principle in Thailand, stipulating that research and study of copyrighted work for non-profit purposes are considered fair use as long as they do not conflict with the normal exploitation of the copyrighted work by the copyright owner and do not unreasonably prejudice the legitimate interests of the copyright owner.

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Can AI-generated content receive copyright protection in Thailand?

Currently, it's crucial to recognise that many jurisdictions, including the US, do not extend copyright protection to artworks created solely by AI. Last year, a decision of the US district court of the district of Columbia denied copyright claims for AI-generated works lacking human input. Similarly, Thailand's copyright laws stipulate that only persons are eligible for copyright ownership, leaving a gray area regarding the level of human involvement necessary to distinguish between human and AI creations. The relevant provisions of the Copyright Act are set out below.

Section 4:

"author" means a person who makes or creates any work, which is a copyright work by virtue of this Act;

"copyright" means the exclusive right to do any act by virtue of this Act with respect to the work created by the author;

Section 8:

The author is the owner of copyright in the work of authorship subject to the following conditions: (1) In the case of unpublished work, the author must be a Thai national or reside in Thailand or be a national of or reside in a country which is a member of the Convention for the copyright protection of which Thailand is a member, provided that the residence must be at all times or most of the time spent on the creation of the work; (2) In the case of published work, the first publication must be made in Thailand or in a country which is a member of the Convention for the copyright protection of which Thailand is a member, or in the case the first publication is made outside Thailand or in a country which is not a member of the Convention for the copyright protection of which Thailand is a member, if the publication of the said work is subsequently made in Thailand or in a country which is a member of the Convention for the copyright protection of which Thailand is a member within thirty days as from the first publication, or the author has the qualifications as prescribed in (1) at the time of the first publication. In the case where the author must be a Thai national, if the author is a juristic person, it must be established under the Thai law.

The lack of copyright protection for AI-generated works poses significant commercial implications, potentially allowing free usage without infringement repercussions. Therefore, understanding the balance between AI assistance and human input is essential for securing copyright protection and commercial viability.

Efforts to Bolster the AI Industry

In Thailand, efforts are underway to bolster the AI industry through a national strategy and action plan. These relate to AI-specific laws being proposed by the Government as well as changes to the Copyright Act.

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The State of AI-specific Laws in Thailand

In Thailand, efforts are underway to bolster the AI industry through a national strategy and action plan.

We set out below a summary of the pieces of draft legislation on AI currently proposed by the Office of the National Digital Economy and Society Commission (ONDE) and Electronic Transactions Development Agency ("ETDA")

(a) **Draft Royal Decree on Service Business Operations that Use Artificial Intelligence Systems ("Draft AI Decree")**

The Draft AI Decree will be issued pursuant to the Electronic Transaction Act B.E. 2544 (2001). It will introduce a risk-based approach to regulate the use of AI, classifying AI based on different risk levels. Each level of risk will result in different supervision measures, such as prohibitions on use, mandatory registration with the regulator, and transparency obligation. The Draft AI Decree is expected to apply to both AI service providers and AI users.

(b) **Draft Act on the Promotion and Support for National AI Innovations ("Draft AI Act")**

The Draft AI Act provides standards and mechanisms that aim to apply to AI service providers, such as AI sandbox program, algorithm standard, standard contractual terms, risk assessment, etc.

(c) **Draft ETDA Notification regarding AI Sandbox**

Pursuant to the Draft AI Act, this draft notification will further lay down provisions for AI entrepreneurs to join the AI sandbox, which serves as a centre for fostering the testing and development of quality and safe AI innovations.

(d) **The ETDA Draft Notification regarding AI Risk Assessment**

This draft notification to be issued pursuant to the Draft AI Act will set out criteria for conducting risk assessment by AI service providers and importers.

However, the drafts currently lack specific guidelines for protecting AI-generated works. Establishing clear parameters for human-AI collaboration and copyright ownership is imperative for fostering innovation while safeguarding creators' rights and commercial interests.

Amendment of Copyright Act

Thailand is currently in the process of amending its Copyright Act, with amendments expected to be enacted by year's end. Regrettably, the proposed amendments fail to address issues pertaining to AI systems, which is understandable given that the primary AI laws and regulations have yet to take effect. However, future revisions are anticipated to provide clarity on the criteria for protecting AI-generated works and the requisite level of human input to qualify for copyright. Such clarification and protection are essential for AI users to comprehend their rights regarding produced works. Overreliance on AI

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systems may jeopardise copyright protection, necessitating a balanced approach that ensures human involvement to safeguard ownership and commercial potential.

Further Information

Please feel free to reach out to our contact partner should you have queries on the above developments.

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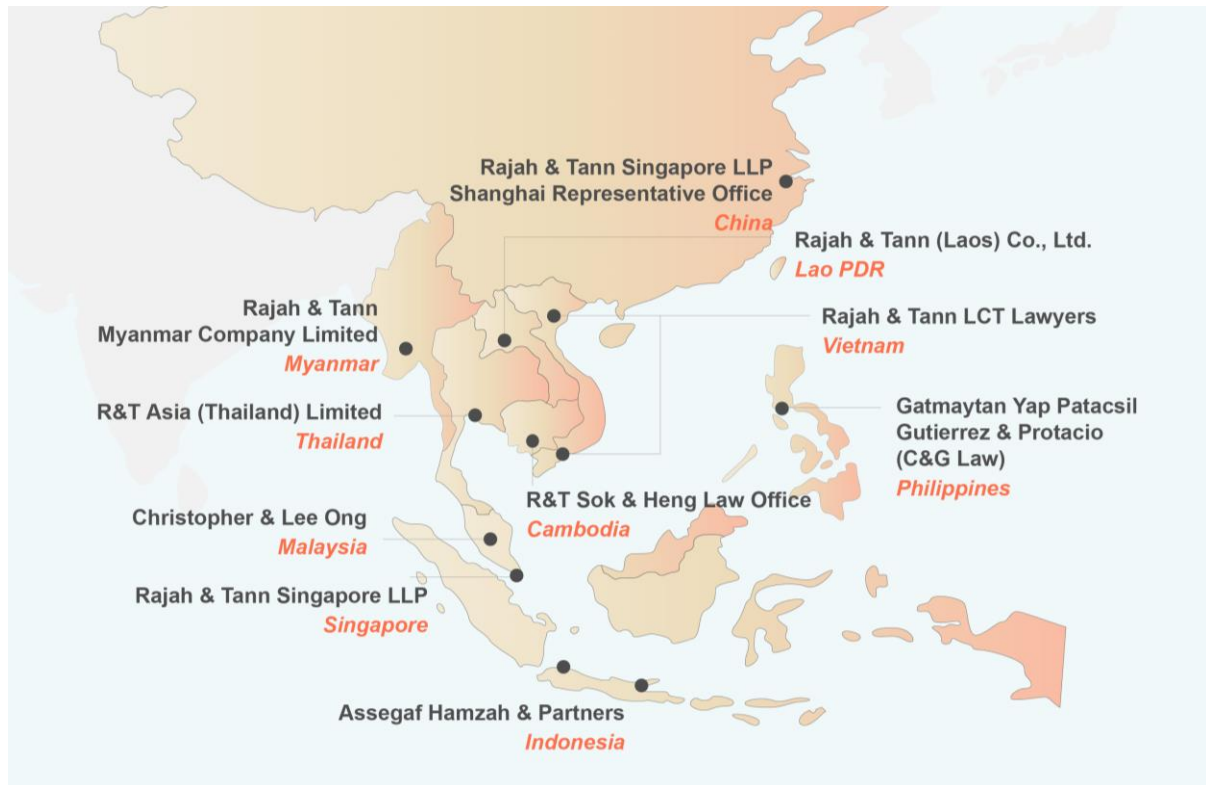
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