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Legal Protection for Digital Illustrators' Data and Copyright to Train Artificial Intelligence-Generated Images

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Abstract

Technological advancements have disrupted the creative industry with the rise of Artificial Intelligence, particularly in the field of visual art. A legal issue stemming from this development is that Artificial Intelligence companies utilize illustrators' data shared on the internet to train the technology without consent. Furthermore, Artificial Intelligence companies are quick to release their innovations to the public without proper legal consideration. This article aims to analyze the legal protection of digital illustrators' data and copyrights that are used to train image-generating Artificial Intelligence. The research employs a normative legal method, utilizing statutory and comparative approach. The findings indicate that the current law in Indonesia is still inadequate in addressing the challenges posed by Artificial Intelligence companies that scrape illustrators' data to train their products. There is also a lack of compensation in the form of royalties for digital illustrators, which can have a significant impact on their economic well-being. The article suggests that legal protection should be pursued for digital illustrators whose data is used without consent to train Artificial Intelligence, and a system of royalties should be established. This would require Artificial Intelligence companies that train their machines to create visual artworks to first obtain a license from the illustrators, and every time their data is used to generate a work of art, a royalty must be paid to the illustrators to preserve their copyright.

Keywords: *Artificial Intelligence; Copyright; Digital Illustrator; Legal Protection*

Introduction

Rapid technological advancement has led technology developers to discover more sophisticated methods in creating images that challenge our sense of sight due to their hyper-realistic image quality. This technological advancement has also challenged legal developments, which require us to harness its beneficial potential. However, it is also important to consider the risks involved (Amboro & Puspita,

2021). The capacity to create hyper-realistic visual works and textual information brings new ethical issues to the concepts of copyright, authenticity, and the potential for future political, economic, and social manipulation by using data, as data has proven to be a key ingredient in machine learning systems (Anggitafani, 2020). In particular, systems using deep-learning models require vast amounts of data to achieve high accuracy. The data clustering process is typically labor-intensive and time-consuming. On the other hand, one study found significant progress in Artificial Intelligence (AI)-generated images, creating hyper-realistic images, and other image models that have the potential to utilize unlimited AI-generated data, called synthetic data. Synthetic data refers to data generated by algorithms based on information collected and measured in the real world. However, the issue of data collection for training AI, particularly in the domain of art, remains a legal issue, particularly in terms of data protection and copyright. (Benuf et al., 2019).

The significant advancement of AI also brings new challenges in some aspects. In this research, we focus on legal issues in the visual arts sector related to the use of potentially copyrighted images as material for AI training models. Furthermore, questions arise about how the application of Large Language Models (LLMs) within Machine Learning (ML) should work and whether it should continue to evolve. LLM technology raises privacy concerns, particularly regarding the suitability of training this technology using personal data, its ability to distinguish between private and public information, and the potential for spreading misinformation. (Dewi, 2016).

Currently, AI has facilitated visual arts such as paintings, sculptures, and digital illustrations, by reducing resources in the form of time and energy for the creation process by using AI algorithms that have been trained to create certain artistic styles. The main problem, related to how AI is trained, is related to the ownership of the data used for the AI system to create a work that is the result of data collected from various sources including individuals, organizations, algorithms, and technological systems that have provided their data voluntarily or not through product and service agreements, or unknown through data scraping (extraction of data scattered on the internet). (Goeisepta et al., 2020). These data are influenced by technological, social, political, and disciplinary factors, which determine how the information is obtained and the framing that has been done. With sufficient data, internet users can use AI to produce text or images. This too-rapid technological development makes things difficult for artists, particularly illustrators, which also raises new legal issues regarding how the law should protect illustrators' data and how necessary it is to compensate illustrators for data that is used to train AI in the form of royalties in accordance with the basic concept of copyright. (Hidayat et al., 2023).

The use of illustrators' data for AI training has sparked controversy in various countries, even involving the courts. For example, in the United States, several artists have filed class-action lawsuits against companies offering automated commercial image-making tools, highlighting a dynamic between artists and large corporations that harvest data on their work, a practice that has not previously been addressed in US copyright law. This raises questions such as the extent to which artists' data is used in AI-generated images, what should be done about the proliferation of publicly accessible AI-generated image applications, and the extent to which these AI-generated images pose a risk of eliminating artists' jobs. Artists have filed class-action lawsuits in the United States against art platforms such as Midjourney, Stable Diffusion, and DeviantArt. They have also sparked protests, online boycotts of platforms like ArtStation that allow AI-generated content, and calls for awareness of the potential impact of this technology on the artist community. (Jiang, H., et al., 2023)

In Indonesia, discussions about regulations regarding AI, which collects people's data without consent, and the economic impact on artists, seem to be neglected, especially by the government. For example, in the 2023–2024 presidential campaign, the candidate, Prabowo-Gibran, used AI-generated images and animations in their campaign. (Desk, 2023). Indeed, AI images are a novelty that can provide interesting visual effects and can then be used as a tool to gain votes. However, this shows the government's indifference to the impact of disruptive technology on artists, as it can disrupt their

economy, and the development of this technology can devalue art itself, which in the future will likely lead to society becoming less appreciative of human-created art.

While it's true that technological advancements are unstoppable, it's also important to anticipate the societal impacts of rapid technological advancements. This concerns, in particular, legal issues related to data protection and copyright protection for AI-generated images derived from illustrators' data. (Kusnadi, 2021). Although most countries may not yet be able to create applicable laws regarding copyright and data protection issues on AI-generated images, it is still important to see what the current legal system can do, especially in Indonesia, to anticipate the phenomenon of copyright and data protection related to AI-generated images in this digital era by comparing several cases that have occurred, especially in the United States, to make a more in-depth analysis of this issue. This article will examine the development of AI in the field of visual arts and the role of law in regulating phenomenon related to data collection and copyright protection of illustrators' works circulating on the internet that are used as training materials for AI in creating visual works. Another important thing is to analyze how technological developments must be accompanied by legal developments, especially in the area of data protection and copyright of works of art.

Research Method

This article uses a normative legal research method that focuses on examining the system of norms related to legal events to provide legal arguments as a basis for determining an event. (Sihombing, et al., 2022). This normative method is used to examine and analyze the legal protection for artists whose data is used to train AI-generated Images, as well as their copyright. The approaches used are the statutory approach and the comparative legal approach.

Result and Discussion

1. Ineffectiveness of Regulations on Artists' Data Protection and Copyright

Under Indonesian law, regulations regarding personal data are outlined in Law No. 27 of 2022 concerning Personal Data Protection. Article 65 of the Personal Data Protection Law states that "Any person is prohibited from unlawfully obtaining or collecting personal data that does not belong to them for the purpose of benefiting themselves or others, which may result in harm to the personal data subject, and shall be subject to a maximum imprisonment of 5 years and/or a maximum fine of IDR 5 billion." (Pratama et al., 2016). It is clear that any person, whether an individual or a corporation, who scrapes data for their own gain is in violation of law because it can cause harm to the person whose data is unlawfully scraped. However, with the development of technology, especially Artificial Intelligence, the massive data scraping of artists has created a violation by AI corporations because they scrape artists' data without regard for their intellectual property rights. (Priscyllia, 2019). Even OpenAI CEO, Sam Altman, hasn't offered a solution to this problem, arguing only that in the future we will see collaboration between humans and machines, and that we need to rethink the concept of the creative economy. (Online, 2025). Certainly, with the introduction of the Personal Data Protection Law, the protection of people's personal data, including that of artists, must be ensured.

Data scraping violates not only data protection laws but also copyright. For example, Getty Images sued Stability AI for copyright infringement, alleging that Stability AI used as many as 12 million copyrighted photos to train its AI. However, due to legal gaps surrounding copyright and the use of data for AI training, the case has been temporarily suspended and is likely to remain in place for several years. (Growcoot, 2024). The practice of harvesting data images without the subjects' consent has become a

significant business model in the past eight years, since DuBois began scraping social media platforms to produce art. Some artists have expressed ambivalence about the boundaries surrounding the creative use of other people's personal data: "The fact that you see so many people giving away their data and information and not worrying about what that information means to private companies or to anyone, from criminals to government agencies, is also something new," said Italian conceptual artist Paolo Cirio. (Stark, et al., 2019).

In the context of copyright law in Indonesia, it is regulated in Law No. 28 of 2014, Article 1, No. 2, states that "a creator is a person or several people who individually or together produce a creation that is unique and independent." It is clear from this article that a creator, as referred to, is a human being, whether an individual or a group, excluding AI. Moreover, Article 80, No.3 states "... the obligation of the licensee to provide royalties to the copyright holder or owner of related rights during the license period." This article states that if there is a license for the use of an artwork, the copyright holder is obliged to receive royalties from the person or company that uses their work. In the context of machine learning for AI development, companies like OpenAI should establish a royalty payment system for illustrators' data, including those in Indonesia, which are utilized for AI development.

Related to copyright infringement cases, such as the Getty Images case with Stability AI above, it has violated the moral rights and economic rights of the original owners of these works. Moral rights, as written in Article 5 paragraph 1 letter (e) of the Copyright Law, state that "The Creator, as referred to in Article 4, has the moral right to: ... defend his rights in the case of distortion of creation, mutilation of creation, modification of creation, or other things that are detrimental to his honor or reputation." The AI company that carelessly collected data from illustrators without disclosing the specific illustrators used as AI training material has clearly violated the provisions of the article above. Then regarding violations of economic rights, it is explained in Article 113 paragraph 1 that "any person who without rights and/or without the permission of the Creator or Copyright Holder commits a violation of economic rights as referred to in Article 9 paragraph (1), shall be punished with imprisonment of up to 4 (four) years and/or a maximum fine of Rp. 1,000,000,000 (one billion rupiah)." Article 9 refers to duplicating, selling, renting, or distributing copyrighted works without permission. If an AI company commercializes artwork created by scraping artists' data without permission, it clearly violates the law.

Strict legal enforcement of the Personal Data Protection and Copyright Laws must be further strengthened and developed. Regulations governing personal data in Indonesia are stipulated in Law Number 27 of 2022 (Puspita, 2023). Collecting data without the consent of the data owner is an ethical violation, even if it is done for the purpose of developing technology. This is because we cannot know what data AI companies are collecting to train their creations, and some sensitive data may also be absorbed into machine learning systems. Therefore, strengthening the Personal Data Protection Law must also prepare for future ethical challenges regarding data use. (Putri, 2018).

The regulations contained in both laws should always keep pace with current developments, including the potential categorization of AI as a separate legal entity in the future. Competition between humans and Artificial Intelligence can essentially become unfair because AI can produce artworks much faster and more massively, potentially disrupting the economic well-being of artists working in the creative industry (Rahman, 2021). Therefore, it is necessary to make a new breakthrough regarding the use of personal data of artists, which is used as material for AI training, and the protection of the copyright of the works of the artists whose data is used.

2. Comparison of Data Protection and Copyright Laws with Other Countries

In March 2025, the social media trend emerged where people used the "Ghibli" filter to transform their faces into the style of Studio Ghibli, a Japanese animation studio, through the ChatGPT app.

However, this trend has raised questions regarding legal ethics in Japan, which the Japanese government has yet to address. Even Hayao Miyazaki, one of the founders of Studio Ghibli, expressed his opposition to AI in a 2016 documentary. “I will never use this kind of technology (AI) in any of my works. I feel that this is an insult to life itself,” Miyazaki said. (Growcoot, 2025).

However, technological progress cannot be prevented. In 2018, Japan relaxed regulations on AI training using copyrighted materials, as outlined in the following article:

1) Article 30-4: Allows all users to analyze and understand copyrighted works for machine learning. This means accessing data or information in a form in which the copyrighted expression of the work is not perceived by the user and therefore will not cause any harm to the rights holder. This includes raw data fed into computer programs to perform deep learning activities, which form the basis of Artificial Intelligence;

2) Article 47-5: Allows the use of copyrighted works for data verification during research, provided that such use is essential to the researcher and does not harm the rights holder. This article enables searchable databases, which are essential for verifying data and insights obtained through Text Data Mining (TDM). (Rahman, et al., 2020).

It's worth noting that Japan has indeed provided a more flexible path for the development of AI by opening wider opportunities for the use of copyrighted works as machine learning materials. However, it's also important to note that the use of data for machine learning must not harm copyright holders. Works that may be used for machine learning are only in their raw form, not for later use by public. It can be concluded that the Japanese government has adequately anticipated the development of AI without causing harm to copyright holders.

Besides copyright, there is another interesting patent case taking place in the US. In the case of Stephen Thaler v. Vidal, Ryan Abbott of the University of Surrey, UK, filed two applications on behalf of Stephen Thaler (CEO of Imagination Engines) for patents under the United States Patent and Trademark Office (USPTO), designating Thaler's AI system, DABUS (Device for Autonomous Bootstrapping of Unified Sentience), as a device created without human contribution. The patent was rejected on the grounds that DABUS lacked legal standing because the court focused on the legal interpretation of the term “inventor” under the Act. According to the United States Patent Act, an inventor is “the individual or, in the case of a joint invention, the individuals collectively who invented or discovered the subject matter of the invention.”

In the UK, the UK Patents Act provides that a patent for an invention may be granted primarily to the inventor or joint inventors. In interpreting this provision, the UK courts have clarified that an inventor is a natural person who “invents the inventive concept”. Patent applications relating to DABUS (discussed above) were filed with patent offices in seventeen (17) jurisdictions, among which were the UK and the European Patent Organisation (EPO). The UK and the European Patent Organisation rejected the DABUS applications on the grounds that only natural persons and legal entities could be granted/named inventors under the current framework. (Ogwuche, 2022).

From the comparative descriptions across various countries, it can be concluded that, like in the United States and European countries like the United Kingdom, the concept of creation still relies on the human element. Therefore, any creation, whether artistic or scientific, that lacks a human element in its creation cannot be copyrighted or patented. However, like in Japan, the law must always be progressive, in this case, providing flexibility for technology developers to use data for machine learning purposes, provided that the data used is raw and not for public consumption, as this could disrupt the market share of copyright owners. This comparison between several countries can serve as a learning material for the development of law, particularly copyright law, in Indonesia in the future.

3. International Convention of Data and Copyright of Artistic Works

One of the most important international conventions regarding copyright is the Berne Convention (1971). Indonesia has also ratified the Berne Convention through Presidential Decree No. 16 of 1997. This convention contains several basic provisions, one of which is related to the protection of copyrighted works. Artworks must be protected regardless of the expressive form of the work created by the artist. If a work is still an idea, it cannot be protected until the idea is expressed in a concrete work. Based on this convention, someone who only uses a prompt to create an artwork that is done by AI cannot be granted copyright for the work because the prompt is only a command that exists in a person's idea, but the process of creating the work is not carried out by that person (Sautunnida, 2018).

The concept of copyright originated in England and France in the 17th century. These two countries then developed the concept of copyright in the context of economic rights and moral rights, emphasizing that a creation is the intellectual product of a human being, allowing them to enjoy the fruits of their work. This concept serves as the reference for other international conventions related to copyright (Utomo et al., 2020).

Another international convention that addresses copyright is the Trade-Related Aspects of Intellectual Property Rights (TRIPs). TRIPs incorporates most of the substantive provisions of the Berne Convention. It contains important guidance on what constitutes an “original” work. Article 2, discussing the protection of “collections,” states that “collections of literary or artistic works such as encyclopedias and anthologies which, by their selection and arrangement of their contents, constitute intellectual creations shall be protected accordingly, without prejudice to the copyright in any other work forming part of such collections.” The selection and arrangement of works is an example of what copyright experts call a “creative choice.” Creative choices do not have to be artistic or aesthetic, but they must be made by human hand. (Gervais, 2021).

International conventions drafted in the 20th century are essentially based on the idea that works of art are the result of human intellect. With the development of technology such as AI, currently, works created by non-humans cannot be copyrighted because the term "creator" in international conventions is limited to humans. Ethical considerations related to collecting data from AI companies and then processing artists' data to create works of art are not discussed in any international convention because this technology is a new innovation in the 21st century. Therefore, countries that ratify international conventions such as TRIPs or the Berne Convention are indeed inspired by the 17th-century British and French copyright concepts, where the label "creator" can only be applied to humans, so that non-human creations cannot be granted copyright or patent rights. The author argues that in the future, another international convention is needed regarding how copyright laws keep up with the times by conducting a review of copyright and artistic works, as well as the ethics of AI, so that the law can catch up with technological developments.

4. Licenses and Royalties as Alternative Solutions

The issues related to AI art, which has become a phenomenon in the current era, are primarily related to data scraping from artists and violations of copyrighted works used to train the technology without the permission of the creators. Although technological progress is essentially unstoppable, it is important for legal science to provide solutions and anticipate future problems by examining a phenomenon that have occurred both in the author’s own country and in other parts of the world. Therefore, the author argues that licensing and royalties can be used as considerations in resolving issues related to AI art technology that has disrupted the creative industry.

A study suggests that using unlicensed data for Machine Learning training is currently quite risky due to the lack of clarity between the law and the immature technology for addressing the current

phenomenon, and this will likely remain the case for some time to come. It is possible that in the future, AI companies will have full licensing within the legal context of the European Union. However, the question of whether using copyrighted works as Machine Learning training materials without the permission of the work's owner can be justified in the public interest remains a major question for AI development companies. (Kretschmer, et al., 2024). While there are some difficulties regarding licensing works used for Machine Learning, the ethics of using works must still be considered to protect the rights of artists, including illustrators. The theory of absolute liability states that one party can be held responsible for the actions of another party under their supervision. Thus, the application of this theory is crucial because AI cannot be held legally responsible. Under this theory, liability for the actions of AI falls to the party that supervises or controls it, such as the AI developer company. They are responsible for the actions of AI that can be classified as an "electronic agent" (under the Information and Electronic Transaction Law) under their control. (Yuniarti, 2019).

It's also possible to develop AI art without a license if it's used under fair use. Fair use applies to works produced by AI art if they're intended for non-profit or educational purposes. However, if the AI-generated work is used for commercial purposes, such as selling the work, it could constitute a violation of fair use, although some AI platforms may provide a license specifically permitting commercial use of the work, subject to applicable terms and conditions. (Chen, 2023).

The issue of licensing, where AI companies must seek permission before using someone's work as material for Machine Learning, has actually been echoed by the Writers' Guild of America (WGA), which is demanding compensation and credit for the materials used by AI companies to train their machines. The main point of this protest is that AI companies are required to control their creations using the 3C principle: Consent, Credit, and Compensation for creative industry workers. This is also in line with John Locke's concept regarding the moral right of every individual to reap what one has worked for. This argument is certainly a voice for the ethics that should be adopted by technology developers to seek permission in advance for the data used to develop their technology. (Mahuli, et al., 2024). Therefore, having a license is one alternative solution to the problem, as it shows that AI companies have sought permission from the creators concerned to use their data as Machine Learning material.

In addition to licensing permission to use works for Machine Learning, compensation for the use of these artists' works in the form of royalties is also required. When an artist uploads their work to a platform, they should receive royalty payments as compensation for the use of their work by AI developers. These payments will be based on tier status, which will naturally evolve over time based on the number of users, content quality, artist growth, and revenue received from the AI platform. Platforms generate revenue through subscription fees, fees deducted from royalties, and ultimately, advertising and content enhancement fees. This will create a win-win situation for both artists and AI developers. (Smith, 2024).

Conclusion

The current Personal Data Protection regulation in Indonesia, Law No. 27 of 2022, is still inadequate in combating the issue of data scraping by AI companies. The provision of Article 65 regulates the prohibition and penalties for any legal person who scrapes data without permission from data owners for the sake of their own benefits. However, there is a gap within the regulation regarding the issue of whether AI companies should be able to take data, even publicly available data in Indonesia, to train AI within Machine Learning or not. This issue creates a disadvantageous position for illustrators, since it is evident that AI companies scrape their data without consent for the sake of developing more advanced AI-generated image tools. Thus, it is an urgency for the lawmaker to make clearer regulations related to the ethical ways for AI companies to take illustrators' data for the sake of technological development.

Within the current framework of Indonesia's Copyright Law, the provisions of Article 9, letter (d) and (e), state that creators or copyright holders have economic rights to adapt, arrange, or transform creations, as well as to distribute creations or copies thereof. This law has emphasized that artists in Indonesia already have protection of their economic rights in terms of their creations from arbitrary and unauthorized use. What AI companies have done in conducting Machine Learning by scraping data on artists has essentially violated this article. However, technological development cannot be hindered nor should it be hindered, especially if the technology aims to make it easier for humans to overcome various difficulties. Therefore, the need for ethics from AI companies in developing their technology that is supported by applicable law so as not to violate the rights of artists, including illustrators, by requesting a license for permission to use their data as Machine Learning material, and providing compensation in the form of royalties as an alternative to the issue of AI art that is currently occurring in society.

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