Balancing Bytes and Copyrights: AI's Impact on Intellectual Property

In recent times, the whole world has witnessed a surge in the utilization of generative AI systems. The widespread adoption of generative AI, as is typical with any emerging technology, brings forth numerous opportunities such as automation of processes, analysis of wide amount of data while simultaneously raising important legal and ethical questions.

The impact of AI on protection of intellectual property is widely discussed on these days. While lawyers and tech specialists get into debates as who shall be recognized as the author of the works generated by AI, another aspect of copyright protection has also been left uncertain and not regulated.

 Particularly, to generate an answer to questions, or in order to create a work of art, the AI uses different databases and gets trained on them. Another issue arises when it is necessary to determine whether usage of such databases by the AI can be considered legal.

Is it legal to use databases?

When we examine the copyright laws in Armenia related to use of databases, it becomes evident that extracting and using information (as long as it's not a substantial part) from a publicly accessible database is permitted. However, utilizing and analyzing a substantial portion of data from a database is generally only allowed in specific situations, like for educational purposes, legitimate scientific research, ensuring public safety, and similar exceptional cases.

The EU legislation has similar regulations-it allows EU nationals and/or residents to protect databases under siu generis right. To apply this right, there shall be made a substantial investment in the database (material/human). Siu generis right allows the database maker to prevent the extension and/or reuse of substantial part of the database or the whole for a period of 15 years, calculated from the moment of creation of the database or when the database has been made public.

Upon an examination of the relevant regulations, it becomes apparent that additional effort must be invested in determining whether or not a significant portion of the public use database has been exploited by the AI in order to determine whether the siu generis right is applicable for each case.

Are there any regulations in place allowing the AI to process the data received from such databases without copyright breach?

When we examine the practice in the European Union (EU) and other countries such as Japan, it becomes evident that in Japan, copyright exceptions allow for copying specifically for machine learning and data verification purposes, as well as to allow electronic incidental copies. In both legislations, Text and Data Mining (TDM, a technique for processing large amount of data) is allowed in particular extent. Particularly, in EU, TDM is allowed in cases of non-commercial processing of data and with specification of the source of data, and, most importantly, for users having lawful access to the databases. Japan is widely recognized for having the most favorable stance toward AI in this regard, applying none of the limitations listed above.

When speaking about Armenia, we shall state that there is no such regulations in place in Armenia and in order to involve copyrighted materials, the AI shall identify the source and licensing terms of the copyrighted data, seek appropriate consents and permissions from data providers.

Recently, EU has introduced the first comprehensive regulation on AI-EU AI act, which is still not in force but is expected to be finalized by the end of 2023. The act is aimed on analyzing the risks AI use can pose on the end users, determines the relevant regulative limitations as well as states transparency requirements for Generative AI, which are:

-disclosing that the content has been generated through AI,

-prevent the AI to generate illegal content,

-publish summaries of copyrightable data used for training the AI.

It is notable to understand that the Act shall apply also to AI system providers located outside of EU but providing the output of AI in EU, as well as to providers placing the AI system on the EU market. This means that local companies shall also make sure their operations correspond to the Act in case their service is provided also to the EU market.

How to mitigate risks of copyright breach?

AI companies may face difficulties and go under additional obligations and workload in order to skip copyright infringements. To avoid further issues, risks of getting involved in litigation cases, the AI companies may identify the databases the AI gets trained on, negotiate on getting permissions for such use.

It is also highly essential for the government to establish regulatory framework for AI, along with provisions allowing for the use of copyrighted materials in specific situations, to alleviate additional expenses and reduce administrative workloads for IT companies.

Sources:

1. https://www.europarl.europa.eu/news/en/headlines/society/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence
2. https://legal.pwc.de/en/news/articles/the-regulation-of-the-use-of-artificial-intelligence-in-the-european-union
3. https://europa.eu/youreurope/business/running-business/intellectual-property/database-protection/index_en.htm
4. https://onlinelibrary.wiley.com/doi/full/10.1111/jwip.12285

Contacts

Alla Hakhnazaryan
Head of PwC
Armenia Legal

+37493 38 39 56
alla.hakhnazaryan@pwc.com

Anzhela Abrahamyan
PwC Armenia
Senior Legal Associate

+37493 21 26 71
anzhela.abrahamyan@pwc.com

Thank you