

Monkeying around with AI

Copyright in the age of thinking technology

By Jonathan Hobbs

Naruto is perhaps the most famous macaque in the world. You’ve almost certainly seen his selfie—toothy grin and all—somewhere on the Internet. In 2008, British wildlife photographer David Slater set up his camera to take timed photos of Naruto and his friends on a nature shoot in Indonesia. Naruto, being a curious monkey, found the shutter button and took a selfie.

This harmless and bemusing photo eventually became the focus of a compelling intellectual property (IP) case, which also connects with artificial intelligence (AI). If Naruto took his own photo, can Slater claim a copyright to the resulting image? Or does the copyright belong to the monkey?

At that time, US copyright law didn’t clearly address the question. Copyrights are meant to protect “original” works of authorship. Judge William Orrick of the US District Court in San Francisco stated that there’s “no indication” that the Copyright Act of 1976 extends to animals.

In 2015, People for the Ethical Treatment of Animals (PETA) brought a case against Slater on behalf of Naruto. PETA asked the court to name Naruto the owner of the copyright, and



From left: Satoshi Fukuda, Cabinet Office counselor for industrial competitiveness; Setuo Iuchi, secretary-general of IPSH; Jonathan Hobbs; Cabinet Office Deputy Counselors Hideaki Ohte and Yoshiko Takahashi

to award damages to the monkey. But Judge Orrick issued a motion to dismiss on January 6, 2016, and Naruto lost his claim to his selfie.

Afterwards, the US copyright office issued a clarification to the law stating that non-humans cannot own property. Naruto is not entitled to ownership of this photo and—since he didn’t push the button—neither is Slater.

THE AI CONNECTION

So, what does Naruto have to do with AI? This case caught my attention as it appeals to both my work in the intellectual property field and my background in AI and machine learning software development.

AI algorithms can be programmed to learn from data sources and produce an output that is unique, not obvious, and often lies beyond the intuition of the programmer. The architecture is modeled after that of the human brain, which is why AI learns in a manner similar to that of humans: by observing, learning, executing, optimizing, and repeating. Can the AI programmer claim the output of the algorithm as a unique work of authorship? In Naruto’s case, is the AI triggering the shutter or is

the programmer of the AI triggering the shutter on a time delay through the algorithm they created?

AI was one of several important IP issues that I recently discussed with Setsuo Iuchi, secretary-general of the Intellectual Property Strategy Headquarters (IPSH), part of the Cabinet Office. The current view of IPSH is that works autonomously created by AI are not subject to rights under existing IP law. Essentially, a person needs to contribute to the work to obtain IP rights. The question, then, is what level of human contribution does the law require?

AI can be used as a tool, and Japan is even considering amending copyright laws pertaining to data sets to promote AI research and development. It is clear that IPSH considers the promotion of advancements in AI and machine learning to be a significant part of the future agenda, and is working in earnest to provide adequate protection for AI developers while giving careful consideration to data ownership. ■

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