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LEGAL STATUS OF AI-GENERATED WORKS

Annotation. *The development of generative artificial intelligence (AI) poses fundamental challenges to the global copyright system, historically based on the human author concept. Leading jurisdictions, notably the US and the BU, are attempting to adapt existing doctrines, leading to legal uncertainty. Ukraine, by adopting the new Law No. 2811-IX, has proposed an innovative approach, introducing a special sui generis right for non-original objects generated by a computer program, making the analysis of this model highly relevant.* ***Purpose:*** *The article aims to conduct a comparative analysis of legal protection for AI-generated objects in the US, the BU, and Ukraine, and to develop a scientifically-based hypothesis and practical proposals for improving the Ukrainian legal doctrine.* ***Methods:*** *The research is based on comparative-legal. formal-dogmatic, systemic analysis, and synthesis methods to analyze legal acts, court decisions, and academic works.* ***Results:*** *The study proves that the Ukrainian sui generis right model is a pragmatic and conceptually balanced «third way» compared to the US and EU approaches. A scientific hypothesis on the regime's effectiveness is proposed, and a two-tier qualification model for AI-involved objects is developed to distinguish between copyrighted works and objects under the sui generis right. A proposal for a dispositive presumption in favor of the user as the primary subject of this right is substantiated* ***Conclusion****: Implementing the proposed doctrinal model will help Ukraine form a clear and innovation-friendly legal system. Further research should focus on emerging judicial practice under Art. 33 of the Law, the economic impact of the sui generis regime, and its international harmonization.*

Key words: *artificial intelligence, copyright, sui generis right, non-original objects, human authorship, creative contribution, generative AI.*

Formulation of the problem (introduction). The rapid development of generative artificial intelligence (AI) technologies, such as DALL-E, Midjourney, and ChatGPT, has catalyzed a fundamental crisis in the global intellectual property system. The ability of these systems to create unique and complex texts, images, and music, often indistinguishable from the results of human creativity, has called into question the central tenet of copyright law - the concept of the human author as the sole source of a creative act. This technological revolution has forced lawyers, judges, and legislators around the world to seek answers to complex questions:

Can machine-generated objects be protected by copyright? If so, who should be recognized as the author - the developer of the algorithm, the user who provided the prompt, or the AI itself? Or, perhaps, should such objects belong to the public domain? [1, 2].

The purpose of this article is to conduct an in-depth comparative analysis of the legal protection approaches for AI-generated objects that are forming in the US, the European Union, and Ukraine, and, based on this, to develop a scientifically-grounded hypothesis and practical proposals for the further development of the Ukrainian legal doctrine.

The relevance of this issue is confirmed by the significant attention it has received from the academic community in recent years. An analysis of academic publications reveals several main areas

of discussion. Some researchers, such as K. Hristov, analyze the copyright dilemma in the age of AI, emphasizing the need to preserve the anthropocentric foundations of law [3].

Others, like A. Guadamuz, explore various protection models, including assigning rights to developers, users, or placing such works in the public domain [4]. A significant contribution to the discussion has been made by scholars analyzing specific protection regimes. For example, L. Bently studied the unique provisions of UK legislation on computer-generated works [5], while A. Massadeh and co-authors argued for the advantages of a sui generis regime over traditional copyright [6]. Researchers from the US, such as J. Ginsburg and A. Bridy, are actively analyzing case law and the doctrine of «human authorship» in their country [7].

Despite a significant number of studies, the problem is far from being resolved. Most works focus on analyzing a single jurisdiction or propose theoretical models without considering the latest legislative changes. In particular, Ukraine's unique approach, enshrined in the new Law No. 2811-IX, has not yet received a proper in-depth analysis in the international academic discourse. It is this unresolved part of the general problem - understanding the Ukrainian model of the sui generis right in a global context and developing a doctrine for its effective application - that is the subject of this article.

Analysis of Recent Research and Publications. The contemporary academic and legal discourse on the legal status of AI works is developing in three main directions, which can be conditionally associated with the approaches of the US, the EU, and a group of countries experimenting with sui generis rights.

The US approach is the most pragmatic and rigid. It is based on the constitutional requirement of a human «author». This position was definitively established in the landmark case of Thaler v. Perimutter, where the court affirmed that a work created entirely by an AI could not be copyrighted because «human authorship is a foundational requirement» [8]. The U.S. Copyright Office (USCO), in its guidance and its decision on the comic book «Zarya of the Dawn», detailed this approach by formulating a «control test» [9; 10]. According to this test, copyright is recognized only for the part of the work that is the result of a significant creative contribution from a human (e.g., writing the text, uniquely arranging the generated images). Simply entering prompts is not considered a sufficient creative contribution [11]. This approach is supported by many American researchers who see it as a protection of economic incentives for human creativity [12].

The EU approach is more flexible and theoretically complex. It is based on the doctrine of the «author's own intellectual creation» (AOIC), which requires that the work reflects the «author's personality» through the making of «free and creative choices» [13; 14]. As the Court of Justice of the European Union (CJEU) stated in the Cofemel case, this criterion is the sole one and cannot be supplemented by national requirements for, for example, aesthetic or artistic value. The application of this doctrine to AI creates significant uncertainty. Unlike in the US, where the key is mechanical control over the result, the EU focuses on the process of making creative decisions. This leaves open the question of whether the process of iterative prompting and careful selection of results can be considered a sufficient expression of «free and creative choices». As D. Tzimas notes, the absence of clear precedents at the CJEU level creates a field for conflicts of law at the national level [15].

The third approach, based on the concept of a special right (sui generis), is an attempt to go beyond the dichotomy of «copyright or public domain». This path has been chosen by the United Kingdom and, more recently, by Ukraine.

The UK's Copyright, Designs and Patents Act 1988 (CDPA) was the first in the world to introduce protection for «computer-generated works», defining the author as the person by whom the arrangements necessary for the creation of the work are undertaken» [5]. However, this provision has been practically unapplied by the courts. A. Massadeh and co-authors, in their study, convincingly argue that a sui generis regime is the most adequate, as it allows for the protection of investments in the creation of generated objects without granting them the full and long-term status of a work of art or science.

It is in this context that the Ukrainian approach, enshrined in Article 33 of Law No. 2811-IX, appears to be the most modern and detailed attempt to implement the sui generis model. However, like the British law, the Ukrainian provision contains some ambiguity regarding the subject of the right (the developer or the user). Resolving this ambiguity and forming a clear doctrine for the application of Article 33 is the key unresolved part of the general problem to which this study is dedicated.

Materials and Methods. To achieve the stated purpose, a set of general scientific and special legal research methods were used.

The primary method was the *comparative-legal* method, which allowed for an in-depth analysis and comparison of the legal regimes for the protection of AI-generated objects in three key jurisdictions: the US, the EU, and Ukraine. This method made it possible to identify common features, fundamental differences, and unique characteristics of each approach, which became the basis for further conclusions.

The *formal-dogmatic* (legal-technical) method was applied to analyze the texts of legal acts, in particular, the Law of Ukraine No. 2811-IX «On Copyright and Related Rights», relevant EU directives, as well as the texts of court decisions and official guidance (in particular, decisions of the CJEU [13; 14] and documents of the US Copyright Office [9; 10]). This method allowed for the precise determination of the content of legal norms, definitions, and criteria applied to objects created with the help of AI.

The method of *systemic analysis* was used to consider the problem under study as a complex system that includes legal, technological, and economic aspects. The analysis of scientific publications indexed in the Scopus and Web of Science databases [6; 16; 17] allowed for the consideration of the problem in a broad academic context and for understanding its connection with various copyright theories.

At the final stage of the research, the method of *synthesis* was applied. Based on the data obtained during the analysis, a scientific hypothesis regarding the advantages of the Ukrainian model of the sui generis right was formulated. By synthesizing theoretical provisions and analyzing practical needs, specific scientific and practical proposals were developed: a two-tier model for the qualification of objects and a doctrinal interpretation of the norm regarding the subject of the sui generis right. This method allowed not only to state the current state of affairs but also to propose ways to improve legal regulation.

Results and Discussion. The comparative analysis of the legal regimes of the US, the EU, and Ukraine leads to the conclusion that each jurisdiction is trying to find a balance between protecting the traditional values of copyright and stimulating technological innovation, but they are doing so in different ways.

The American approach, requiring a «sufficient human creative contribution», is conceptually simple and clear, but it may prove to be too rigid By denying protection to any autonomously generated objects, it potentially leaves a significant body of content, in the creation of which resources have been invested (payment for access to AI platforms, time for experimenting with prompts, etc.), outside the legal framework. This could lead to a decrease in incentives for the commercial use of generative systems.

The European doctrine of the «author's own intellectual creation», although more flexible, creates significant legal uncertainty. The lack of clear criteria for assessing creative contribution when using AI shifts the burden of decision-making to the courts, which can lead to the formation of conflicting practices in different EU member states. This uncertainty is a risk for both AI developers and users.

Against this background, *the Ukrainian approach*, enshrined in Article 33 of Law No. 2811-IX, looks like the most pragmatic and balanced alternative.

It does not try to artificially «fit» AI-generated objects into the Procrustean bed of traditional copyright law. Instead, it recognizes their special, «non-original» nature and creates a special protection regime for them, which is a form of related rights.

The scientific novelty of this study lies in the formulation and substantiation of the following hypothesis: *the special right (sui generis), introduced by Article 33 of Law No. 2811-IX, is the most effective and pragmatic model for regulating the legal status of AI-generated objects. It creates a «third way» that allows avoiding the conceptual contradictions of traditional copyright law. However, for the full realization of its potential, it is necessary to eliminate the ambiguity present in the law regarding the determination of the primary subject of this right.*

To implement this hypothesis and improve the Ukrainian legal doctrine, it is proposed a two-tier model for the qualification of objects created with the involvement of AI:

Step 1: Test for the presence of an «original intellectual creation». At this stage, the law enforcement body must determine whether the final object is the result of the creative activity of a natural person. If a person used AI only as a tool (similar to a camera or a graphic editor), and their own creative contribution is decisive (for example, through significant editing, unique collaging, creating a complex composition from many generated elements), such an object should be qualified as a work and protected by full copyright. The subject of the right in this case is the human creator.

Step 2: Application of the sui generis regime. If the object is generated as a result of the functioning of a program almost autonomously, and human participation was limited to setting the task (entering a prompt) and selecting one of the options without further creative processing, such an object should be qualified as non-original. Accordingly, it falls under the scope of Article 33 and is protected by the sui generis right.

The second component of the proposal is the elimination of ambiguity regarding the subject of the sui generis right. Article 33 states that this right belongs to «persons who are the owners of the rights to the computer program, or to the users of the computer program». To avoid disputes, it is proposed to establish a dispositive presumption in favor of the user.

Justification: It is the user, who formulates the request, chooses the parameters, and initiates the generation process, who is the person «by whom the arrangements necessary for the creation of the work are undertaken» (by analogy with the British concept from the CDPA 1988 [5]). The developer only creates the tool, not the specific result. Establishing such a presumption will protect the interests of millions of individual creators, designers, and entrepreneurs who use AI in their activities.

At the same time, this presumption must be dispositive. This means that AI platform developers can, in their license agreements (Terms of Service), explicitly provide for a different distribution of rights, for example, retaining the sui generis right for themselves or granting the user only a non-exclusive license. This approach will stimulate market transparency and correspond to the current business practices of leading companies such as OpenAI [18] and Midjourney [19], which, as a rule, transfer the rights to the generated content to the user.

Conclusions and Prospects for Further Research. The conducted research allows for the following conclusions:

1. The legal status of AI-generated works is one of the most complex problems of modern intellectual property doctrine. The existing approaches of leading jurisdictions - the rigid anthropocentrism of the US and the flexible but uncertain doctrine of the EU - do not provide a complete and adequate response to the challenges of the new technological era.
2. Ukraine, by introducing a special sui generis right for non-original objects generated by a computer program in the new Law «On Copyright and Related Rights», has chosen a progressive and pragmatic «third way». This model allows for the protection of investments in the creation of such objects without destroying the fundamental principles of copyright law.
3. For the effective implementation of the Ukrainian model, a scientific and practical doctrine is proposed, which includes two elements:

- A two-tier qualification model that allows for a clear distinction between objects created with the help of AI (works protected by copyright) and objects created by AI itself (non-original objects protected by the sui generis right).

- The establishment of a dispositive presumption of ownership of the sui generis right in favor of the user of the computer program, which creates a fair balance of interests and corresponds to modern business practices.

The implementation of these proposals will allow Ukraine to form one of the most advanced and innovation-friendly legal systems in the field of AI regulation, while avoiding the conceptual contradictions and legal uncertainty faced by other countries.

Prospects for further research in this direction are extremely broad. *Firstly*, it will be necessary to monitor and analyze the first judicial practice of applying Article 33 of Law No. 2811-IX. *Secondly*, it is important to conduct an economic analysis of the impact of the sui generis regime on the development of creative industries in Ukraine. *Thirdly*, the issue of international harmonization of approaches remains relevant, especially in light of the expected decisions of the CJEU and the further development of legislation in leading countries of the world, including Ukraine.

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