Information Technology and Law Series

Volume 41

Editor-in-Chief

Bart Custers, eLaw, Center for Law and Digital Technologies, Leiden University, Leiden, The Netherlands

Series Editors

Jef Ausloos, University of Amsterdam, Amsterdam, The Netherlands Stephan Dreyer, Leibniz-Institut für Medienforschung, Hamburg, Germany Gloria González Fuster, Law, Science, Technology & Society Studies (LSTS), Vrije Universiteit Brussel (VUB), Brussels, Belgium

Inge Graef, University of Tilburg, Tilburg, The Netherlands

Aleksandra Kuczerawy, Centre for IT and IP, KU Leuven, Leuven, Belgium

Eva Lievens, Faculty of Law, Law & Technology, Ghent University, Ghent, Belgium

Aurelia Tamò-Larrieux, Faculty of Law, Criminal Sciences and Public Administration, University of Lausanne, Lausanne, Switzerland

The *Information Technology and Law Series* was an initiative of ITeR, the national programme for information Technology and Law, which was a research programme set up by the Dutch government and The Netherlands Organisation for Scientific Research (NWO) in The Hague. Since 1995 ITeR has published all of its research results in its own book series. In 2002 ITeR launched the present internationally orientated and English language *Information Technology and Law Series*. This well-established series deals with the implications of information technology for legal systems and institutions. Manuscripts and related correspondence can be sent to the Series' Editorial Office, which will also gladly provide more information concerning editorial standards and procedures.

Laurensia Andrini

Protecting Artificial Intelligence-generated Works in Indonesia

Insights from the European Union Approach





Laurensia Andrini Faculty of Law, Business Law Department Universitas Gadjah Mada Yogyakarta, Indonesia

ISSN 1570-2782 ISSN 2215-1966 (electronic) Information Technology and Law Series ISBN 978-94-6265-702-1 ISBN 978-94-6265-703-8 (eBook) https://doi.org/10.1007/978-94-6265-703-8

This work was supported by the Australia Awards Scholarship/Faculty of Law, Universitas Gadjah Mada.

Published by T.M.C. ASSER PRESS, The Hague, The Netherlands www.asserpress.nl Produced and distributed for T.M.C. ASSER PRESS by Springer-Verlag Berlin Heidelberg

 $\ensuremath{\mathbb{O}}$ T.M.C. ASSER PRESS and the author 2025

No part of this work may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, microfilming, recording or otherwise, without written permission from the Publisher, with the exception of any material supplied specifically for the purpose of being entered and executed on a computer system, for exclusive use by the purchaser of the work.

This T.M.C. ASSER PRESS imprint is published by the registered company Springer-Verlag GmbH, DE, part of Springer Nature.

The registered company address is: Heidelberger Platz 3, 14197 Berlin, Germany

If disposing of this product, please recycle the paper.



Acknowledgements

The author would like to thank Dr. Allison Fish and Professor Brad Sherman from the University of Queensland, Australia, who have provided useful guidance in developing this manuscript. Dr. Fish and Professor Sherman also played pivotal roles in keeping this manuscript consistent and logical.

Contents

1	Comparative Approaches to Copyright Protection for AI-generated Works in the European Union and Indonesia						
	1.1	Challe	enges Posed by Artificial Intelligence-generated Works				
		to Cop	pyright Law	2			
	1.2	The E	uropean Union's Approach to AI-generated Works	7			
	1.3	Indone	esia's Approach to AI-generated Works	8			
	1.4		aring the European Union's Approach				
		to that	of Indonesia	10			
	1.5	Why a	Focus on the Indonesian Context?	11			
	Refe	erences		14			
2	Bac	Background Information on Indonesian Copyright Law					
			ative AI	17			
	2.1		uction	18			
	2.2						
			nce	18			
		2.2.1	Reconfiguring Indonesia: From Site of Tradition				
			and Piracy to Site of Creative Activity	19			
		2.2.2	The Imprint of Plural Legal Traditions on Indonesian				
			Copyright Law: Challenges and Opportunities				
			for Thinking Creatively About the Regulation				
			of AI-generated Works	21			
		2.2.3	Indonesia Today: National Reliance on Information				
			Technology	23			
	2.3 Background Information on Artificial Intelligence						
			I-generated Works	25			
			Artificial Intelligence and Generative AI	25			
		2.3.2		26			
	Refe	erences		30			

x Contents

Wh	y Protect AI-generated Works?	33
3.1	Introduction	33
3.2	Philosophical Justifications of Intellectual Property Rights	
	and Copyright	35
3.3		
		39
Refe	erences	4:
Moı	ral and Economic Rights in Artificial Intelligence-generated	
		49
4.1	Introduction	5
4.2	Overview of Indonesian and EU Copyright Law	5
	4.2.1 Copyright Protection Requirements	5
	4.2.2 Authorship	5
	4.2.3 Originality/Creativity	53
4.3	Economic Rights and Moral Rights	5
	4.3.1 Economic Rights	5
		5
4.4	Conclusion	6.
Refe	erences	6
AI-	generated Works and the Notion of Authorship	6
		6
5.2	The Creation of AI-generated Works and the Challenges This	
	Poses for Copyright Law	7
5.3	Development of the Concept of Authorship	7
	5.3.1 Authorship: From Guild System to Modern Copyright	
	System	7
	5.3.2 Romantic Authorship	7
	5.3.3 Criticism of Romantic Authorship	7
5.4	The Concept of Authorship in Indonesia and its Correlation	
	to AI-generated Works	7
5.5	Conclusion	8
Refe	erences	8
Sui	Generis Protection for AI-generated Works	8
		8
		8
		_
		8
	*	J
	<u> </u>	8
6.3	· · · · · · · · · · · · · · · · · · ·	9
	as a Model for Protecting AI-generated Works	9
	3.1 3.2 3.3 Refe Mon Wor 4.1 4.2 4.3 4.4 Refe 5.1 5.2 5.3 5.4 5.5 Refe Sui	3.2 Philosophical Justifications of Intellectual Property Rights and Copyright and Technological Change: Application to Computer-generated Works References Moral and Economic Rights in Artificial Intelligence-generated Works 4.1 Introduction 4.2 Overview of Indonesian and EU Copyright Law 4.2.1 Copyright Protection Requirements 4.2.2 Authorship 4.2.3 Originality/Creativity 4.3 Economic Rights and Moral Rights 4.3.1 Economic Rights 4.3.2 Moral Rights 4.4.4 Conclusion References AI-generated Works and the Notion of Authorship 5.1 Introduction 5.2 The Creation of AI-generated Works and the Challenges This Poses for Copyright Law 5.3 Development of the Concept of Authorship 5.3.1 Authorship: From Guild System to Modern Copyright System 5.3.2 Romantic Authorship 5.3.3 Criticism of Romantic Authorship 5.4 The Concept of Authorship in Indonesia and its Correlation to AI-generated Works 5.5 Conclusion References Sui Generis Protection for AI-generated Works 6.1 Introduction 6.2 Sui Generis Right for Traditional Cultural Expressions and AI-generated Works 6.2.1 Sui Generis Traditional Cultural Expressions Protection as a Model for AI-generated Works 6.2 Using Sui Generis Traditional Cultural Expressions Protection as a Model for AI-generated Works 6.3 Database Rights and AI-generated Works 6.3 Database Rights and AI-generated Works 6.3 The First Edge of the Sword: The Database Right

Contents xi

		6.3.2 Copyright Protection of Databases	92	
		6.3.3 The Second Edge of the Sword: Database Protection		
		vis-à-vis the Creation of AI-generated Works	99	
	6.4	Fair Use	00	
	6.5	Regulatory Exceptions Justifying Text and Data Mining	02	
	6.6 Lessons Learned for Indonesia			
	6.7	Conclusion	04	
	Refe	rences	05	
7	Neighbouring Rights Protection for AI-generated Works			
	7.1	Introduction	10	
	7.2	Key Features of Neighbouring Rights for Sound Recordings		
			11	
		7.2.1 Phonogram Producers' Rights	12	
			14	
	7.3	· · · · · · · · · · · · · · · · · · ·	16	
			17	
			18	
			19	
	7.4	Conclusion	20	
	Refe		22	
8	Reg	ulatory Options to Accommodate AI-generated Works 1	23	
	8.1	Examining Approaches within Copyright and Neighbouring		
		Rights 1	23	
	8.2		26	
	Refe		28	
T	dow.	•	29	
Ш	uex .		. 49	

Abbreviations and Symbols

AI Artificial Intelligence AUD Australian dollar

BBC British Broadcasting Company

BPPT Badan Pengkajian dan Penerapan Teknologi

CD Compact Disc

CEO Chief Executive Officer

CERN European Council for Nuclear Research
CMO Collective Management Organisation

COVID-19 Coronavirus Disease 2019 DSM Digital Single Market EU European Union

EUR Euro

GANs Generative Adversarial Networks

GATT General Agreement on Tariffs and Trade

GDP Gross Domestic Products

GSP Generalised System of Preferences

HBO Home Box Office IDR Indonesian Rupiah

IFPV International Federation of Phonogram and Videogram

IIPA International Intellectual Property Alliance

IP Intellectual Property
LLM Large Language Model

NCMO National Collective Management Organisation NRIA National Research and Innovation Agency

TCE Traditional Cultural Expressions

TKTCE Traditional Knowledge and Traditional Cultural Expressions

TRIPs Trade-Related Aspects of Intellectual Property Rights

TV Television

UK United Kingdom
US United States

USA United States of America

USD United States dollar

USTR United States Trade Representative

VCD Video Compact Disc VHS Video Home System

WIPO World Intellectual Property Organization

WTO World Trade Organization

List of Figures

Fig. 1.1	Copyright law's options in accommodating AI-generated	
	works <i>Source</i> The author	9
Fig. 2.1	Learning process of generative AI model <i>Source</i> The author	28
Fig. 5.1	The creation of computer-generated works <i>Source</i> The author	71