

## ***Can AI-generated content (AIGC), qualify as copyrightable work under the Nigerian copyright law?***

**By Omowunmi Oladipupo**

### **Background to the research:**

An AI-generated song titled "Heart on My Sleeve" by AI Drake and AI Weeknd has gained popularity on various streaming platforms. However, Universal Music, the record label of Drake and Weeknd, has claimed that the song infringes on its copyright and applied for it to be taken down from streaming platforms.

The following legal research questions has arising from the above situation:

- 1. Whether AI-generated content (AIGC), such as "Heart on My Sleeve," qualify as copyrightable work under copyright law?***

AI generated contents do not qualify as copyrightable content under Nigerian copyright law. The principal legislation which regulates and administers copyright in Nigeria is the Copyright Act, 2022. The Act does not make any provisions for protection of works made by computer. Section 2(2) a of the Act defines the conditions for copyright protection and it states that:

Notwithstanding the provision of subsection (1), literary, musical or artistic work shall not be eligible for copyright unless —

- (a) Some effort has been expended on making the work, to give it an original character..***

**Section 5** of the Act also states that Copyright shall be conferred on a work where the author or one of the authors is ***an individual*** who is a citizen of Nigeria or habitually resident in Nigeria. Section 8 also makes similar provisions.

The implication of these sections when read together is that, creative works qualify for copyright protection if they are original and created by a human author who is a citizen or resident in Nigeria. Artificial intelligence involves using neural networks and software, to process data and produce autonomous systems without being programmed by human. This mean that the musical works can actually be generated by the computer program in its

original form with or without Human intervention. Such works do not pass the test of individuality and originality under the Nigerian Copyright Act and could be deemed free of copyright because they are not created by a human author.

In other words, only works created by an individual who is a citizen or resident in Nigeria can be eligible for copyright.

***2. If it is copyrightable, does the AI-generated work infringe upon the copyright of the original work or copyright owner (such as Universal Music), and which category of copyright is at issue?***

Although AIGC work is not copyrightable, the legal issue will depend on the nature of musical content produced by the AI and the extent of infringement. If the AI used existing work of an author to produce AIGC, it will be an infringement of copyright of the original work and the Artist or record label can take a legal action against the offending content. (This is a novel point in Nigeria and there is no decided case to suggest that this will be upheld)

***3. Can AIGC work, like "Heart on My Sleeve," qualify as fair use?***

Fair use in Nigerian law is defined in Section 20(1) (a) of the Copyright Act. The section permits the use of a work by way of fair dealing for purpose of:

- (a) private use;
- (b) Parody, satire or caricature,
- (c) Non-commercial research and private study
- (d) Criticism , review or reporting of current events

Additionally, the Act lists the different factors a court is to consider in determining whether the use of a work in any particular case is fair dealing which includes the purpose and character of its usage; the nature of the work, the amount and substantiality of the portion used in relation to the work as a whole; and the effect of the use upon the potential market or value of the work.

The list of permitted uses does not include AI-generated works and unless the maker of the AGIC can prove that making of the work is for non-commercial research or for study. Therefore, where AI-generated works is

used for commercialization or for profit making as in the case of "*Heart on My Sleeve*," such use will not qualify as fair use.

***4. In addition to copyright infringement, are there any other legal risks associated with AI-generated works? From the perspective of a copyright owner, what legal strategies can be utilized to protect their works from being abused by AIGC?***

Copyright does not subsist in works created by AI, the risk then is that AI works cannot be legally protected under the Nigeria copyright legislation.

Due to the fact that legal issues from AIGC is still very novel and unregulated yet in Nigeria, there are no pre-emptive/preventive legal remedies for a copyright owner. There is also no case law or judicial pronouncement to indicate that Nigerian Law will be amenable to non-human copyright in the near future.

The most viable legal option to deal with AI copyright infringement is through DMCA notices to online streaming platforms.

The copyright owner or record label may also take legal action against the owner of the AI software to prevent commercialization or exploitation of the Artist's name, image or Goodwill.

In Conclusion, since copyright in works generated by artificial intelligence is not expressly prohibited under the Nigerian Copyright Act, 2022, a copyright owner can rely on persuasive judicial and statutory authority from other countries such as UK<sup>1</sup> and Ireland to protect their works from being abused by AIGC.

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<sup>1</sup>Section 9 (3) of the Copyright Designs and patents act of the UK provides that artistic works produced by a computer shall be taken to be owned by the person by whom the arrangements necessary for the creation of the works are undertaken.