

FAQ – AI and copyright

Provided by the Swiss Federal Institute of Intellectual Property

Is the output of AI systems such as ChatGPT protected by copyright?

In Switzerland, only works created by humans can be protected by copyright. If someone uses ChatGPT merely as a tool, but also performs a creative act, then the output can be protected by copyright. You could compare it to a photographer using a camera. However, if the creative act is performed by ChatGPT, based on an ordinary prompt, then it has not come from a human and therefore the output is not protected by copyright.

If the output is not protected by copyright, am I free to use it?

Caution is also advised here: AI systems have been found to have a ‘memory effect’. The output of an AI system may contain copyright-protected content. If this is the case, you need permission from the author or the law to use the output further. Anyone who uses copyright-infringing output is committing copyright infringement. The user is responsible even if they do not know that the AI output contains protected content. It is therefore advisable to check AI output for possible rights infringements before you use it, for example by conducting a text or image search in various search engines and by checking the content for rights information systems (watermarks), artists’ signatures and well-known people.

It is also important to read the terms of use or GTCs. These may prohibit the commercial use of the output.

Can I freely use AI-generated content ‘in the style’ of famous artists?

A style cannot be protected by copyright. However, if the output or parts of it are too similar to an original (protected work) by an artist, this could constitute unauthorised adaptation and therefore copyright infringement. This can happen due to the ‘memory effect’.

If the output imitates the artist’s style in such a way that it causes confusion and the output is attributed to the artist, this may also constitute an infringement of personality rights.

Is the use of protected content to train AI systems (machine learning) subject to copyright law?

This is still being debated.

Based on a grammatical interpretation of copyright law, some people argue that the right of reproduction covers the use of protected works for AI training. Others argue, however, that using protected content to train AI is not subject to copyright law because it does not ultimately lead to human perception of a work. There are ongoing legal proceedings on the matter in the US and in the UK. The outcome is still pending.

Swiss copyright law contains a provision that permits text and data mining for the purpose of scientific research (subject to certain conditions). This provision was not introduced with AI training in mind. Whether it can be applied to such cases can only be decided by the courts.