AI-GENERATED WORKS IN MALAYSIA: A LEGAL EXAMINATION OF COPYRIGHT OWNERSHIP

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Abstract

Artificial Intelligence (hereinafter referred to as 'AI') has rapidly transformed sectors including education, healthcare, and the creative industries. The rise of Generative AI (hereinafter referred to as 'GenAI') tools such as ChatGPT, DALL·E, and Google Gemini has introduced complex legal and ethical challenges under Malaysian copyright law. Central to these challenges is whether AI-generated works qualify for protection under the ***Copyright Act 1987***[2] *(hereinafter referred to as '****CA 1987****') and, if so, who is entitled to claim ownership. This paper analyses the relevant provisions of the* ***CA 1987****, particularly* ***sections 3, 7, 8, 10,*** *and* ***26****, and argues that the* ***CA 1987's*** *human-centred focus of authorship presents significant hurdles for recognizing AI-generated works. The discussion further considers hybrid authorship scenarios, comparative approaches from China, the United States and Singapore and concludes with proposals for legislative reform to balance the principles of human authorship with the realities of AI-assisted creativity.*

1.0 Introduction

Artificial intelligence (AI) has transformed various sectors in the twenty-first century, including healthcare, manufacturing, transportation, finance, creative industries and others.[3] AI has shifted from being a peripheral technology, edges of innovation to the center of everyday life. For instance, within the healthcare system, AI has been deployed to improve diagnostic accuracy and treatment efficiency. In ophthalmology, AI analyses and enhances

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[2] [Act 332].
[3] Md Shahril Mohamad Ambia, 'How AI Is Revolutionising the Industry' (*MIDA*, 30 October 2023) <https://www.mida.gov.my/how-ai-is-revolutionising-the-industry/> accessed 31 July 2025.

accessibility, accuracy, and consistency in detecting retinal diseases and conducting eye scans, thereby improving patient outcomes and preserving vision.[4]

In the Malaysian legal system, a landmark development happened in 2020 when the judiciary adopted AI to assist in sentencing decisions. In ***Public Prosecutor v Denis P. Modili*** [5], the Magistrates' Court used an AI system by inputting essential case information such as the weight of the drugs involved, the accused's age, and employment history pursuant to **section 12(2)** of the **Dangerous Drugs Act 1952** [6].The AI system then generated a recommended sentence to assist the court, with the objective of promoting consistency in sentencing outcomes. Importantly, the AI system served only as an advisory tool, leaving the ultimate discretion with the judge.[7]

Beyond such applications, recent debate has shifted towards GenAI. GenAI refers to a category of AI models capable of producing novel outputs such as text, images, and audio based on training data.[8] Unlike traditional AI systems designed merely to recognize patterns or make predictions, GenAI creates new content. In Malaysia, its usage has expanded rapidly. According to a report by the Centre for the Fourth Industrial Revolution, it is projected that up to 65% of Malaysian workers will employ GenAI in 5 to 20% of their work activities, while only a small minority (approximately 1%) will rely on it for more than 20% of their tasks.[9] This suggests that GenAI is more likely to reshape existing modes of work rather than replace human labour entirely.

Given this context, this article aims to examine the copyright protection and ownership of works produced by GenAI in Malaysia. As GenAI systems are trained on pre-existing data to generate novel outputs, the main issue arises as to whether such outputs qualify as "works" entitled to copyright protection under Malaysian law, and, if so, who ought to be recognized as the author or copyright owner. The discussion proceeds in four parts: (i) the concept and definition of AI and GenAI; (ii) an analysis of AI-generated works

[4] The Star Online, 'AI for Better Patient Outcomes and Enhanced Efficiency' (*The Star*, 29 May 2023) <https://www.thestar.com.my/news/nation/2023/05/27/ai-for-better-patient-outcomes-and-enhance-efficiency> accessed 31 March 2024.
[5] [2020] (Magistrates' Court, unreported).
[6] [Act 234].
[7] Mahyuddin Daud, 'View of Artificial Intelligence in the Malaysian Legal System: Issues, Challenges and Way Forward' (2022) Vol.39 No 1 INSAF <https://insaf.malaysianbar.org.my/ojs/index.php/jmr/article/view/13/1> accessed 30 March 2024.
[8] Nick Routley, 'What Is Generative AI? An AI Explains' (*World Economic Forum*, 6 February 2023) <https://www.weforum.org/stories/2023/02/generative-ai-explain-algorithms-work/> accessed 10 August 2025.
[9] Marcus Ng and others, 'The Economic Impact of Generative AI: The Future of Work in Malaysia' (*Malaysia Centre for the Fourth Industrial Revolution*, September 2023) <https://www.ai.gov.my/media/thought-leadership/Reports-06-EN-Economic-Impact-of-Generative-AI-MY-1.pdf> accessed 10 August 2025.

and copyright law; (iii) the determination of copyright ownership in AI-generated works; and (iv) comparative perspectives from other jurisdictions.

2.0 Definition of Artificial Intelligence (AI) and Generative Artificial Intelligence (GenAI)

Before examining the copyright issues of AI-generated works, it is essential to establish a preliminary understanding of AI. This is necessary because an AI system's nature and functions form the conceptual foundation for analyzing the copyrightability of works produced by GenAI. Accordingly, this article first outlines the general definition of AI before narrowing the discussion to GenAI, which constitutes the main focus of this study.

A legal definition of AI is provided under **Article 3(1)** of the **European Union Artificial Intelligence Act (EUAIA)**, which defines an AI system as:

> 'AI system' means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after development, and that, for explicit or implicit objectives, infer, from the input it receives, how to generate outputs such as predictions.[10]

GenAI is a subset of AI distinguished by its capacity to produce new and original content. This includes audio, code, images, text, simulations, and video.[11] Traditional AI is typically limited to analyzing data and generating predictions. GenAI, however, goes further by creating new data outputs that resemble but are not identical to the training data. Examples of prominent text-based GenAI tools include ChatGPT, Gemini, and ShortlyAI, while visual outputs are commonly generated using platforms such as Midjourney, Stable Diffusion, and Photoroom. These technologies are reshaping content creation and raising key questions for copyright law.

3.0 Can AI-Generated Works Be Protected under the Copyright Act 1987?

Copyright law is a branch of intellectual property law, which safeguards authors' rights over their creations. It provides creators with the exclusive authority to control the reproduction,

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[10] European Union Artificial Intelligence Act, COM (2021) 206 final, Art 3(1).
[11] Nick Routley, 'What Is Generative AI? An AI Explains' (*World Economic Forum*, 2 February 2023) <https://www.weforum.org/stories/2023/02/generative-ai-explain-algorithms-work/> accessed 10 August 2025.

distribution, adaptation, and performance of their works, thereby ensuring both economic benefits and protection of creative integrity.[12] In Malaysia, copyright protection is governed by the **CA 1987**. Unlike patents and trademarks, copyright protection in Malaysia arises automatically upon the creation of an original work; registration is not required.[13]

For a work to be eligible for copyright protection under the **CA 1987**, three main hurdles must be addressed. First, the work must fall within a recognized category of works under **sections 7 and 8**. Second, it must meet the three requirements set out in **section 10**. Lastly, the work must have an identifiable author, as required by **section 26**.

3.1 Type of Work under Sections 7 and 8 of the CA 1987

Section 7(1) of the **CA 1987** protects literary, musical, artistic works, films, sound recordings, and broadcasts. However, under **section 7(3)**, literary, musical, or artistic works are not eligible for copyright unless **(a)** sufficient effort has been expended to make them original in character, and **(b)** they have been written down, recorded, or otherwise reduced into material form. This reflects the difficulties for AI-generated works where a human merely provides minimal input, such as a short prompt which is arguable that insufficient human skill, labour, and judgment have been exercised to meet the originality threshold. However, where a human exercises substantial creative control over the process through detailed prompting, selection, refinement, or editing of the AI's output, there may be scope for recognising human authorship.[14]

Section 8(1) further extends protection to derivative works, including translations, adaptations, arrangements, and compilations that constitute intellectual creation by reason of their selection or arrangement. Accordingly, a person who significantly modifies an AI-generated output (e.g. editing or adapting it into a derivative work) may qualify for copyright protection. Nevertheless, it must be emphasized that these interpretations remain theoretical, as Malaysian courts have yet to decide on the copyright status of AI-generated works.

[12] Intellectual Property Office of the Philippines, 'Creative Expression and Copyright in the Philippines' (*World Intellectual Property Organization*, 2006) <https://www.wipo.int/export/sites/www/sme/en/documents/guides/customization/creative_expression_phil.pdf> accessed 10 August 2025.

[13] Intellectual Property Corporation of Malaysia (MyIPO), 'Frequently Asked Questions' (*MyIPO Official Portal*) <https://www.myipo.gov.my/faq/> accessed 10 August 2025.

[14] Lim Yong Lin, 'Who Owns the Copyright Work in AI-Generated Art? - Copyright - Malaysia' (*Mondaq*, 12 February 2024) <https://www.mondaq.com/copyright/1422586/who-owns-the-copyright-work-in-ai-generated-art> accessed 10 August 2024.

3.2 Requirements for Copyright Protection under Section 10

Section 10 of the CA 1987 sets out the conditions under which copyright subsists. Under **section 10(1)**, the author must be a 'qualified person' defined in **section 3** as a Malaysian citizen, permanent resident, or body corporate incorporated in Malaysia. Under **section 10(2)**, copyright subsists if the work was first published or made available in Malaysia (for literary, musical, artistic, and other works) or transmitted from Malaysia (in the case of broadcasts). Under **section 10(3)**, copyright subsists in every eligible work made in Malaysia.The High Court case of ***Chuah Aik King v Keydonesoft Sdn Bhd*** held that these three conditions operate as alternatives, such that satisfying any one of them is sufficient.[15]

In the case of AI-generated works, the problem lies with **section 10(1)**: AI, not being a natural or legal person, cannot qualify as an 'author'. Nevertheless, works generated by AI could still potentially qualify under **sections 10(2) or (3)** if they are first published or made in Malaysia. Thus, while the authorship requirement presents difficulties, **sections 10(2) and (3)** provide a limited pathway for protection.

3.3 Copyright Ownership under *Section 26*

Even if an AI-generated work were to meet the requirements of **sections 7 and 10**, ownership presents a further challenge under **section 26**. **Section 26(1)** states that copyright vests initially in the author. **Section 3** defines 'author' as the 'person' responsible for creating the work (e.g. a writer, composer, artist, or filmmaker). The consistent statutory use of the term 'person' implies that only natural persons, thus excluding AI systems from qualifying as authors.

Exceptions are provided under **section 26(2)**, where copyright ownership vests in the commissioner of a work[16], or the employer in cases where works are created under a contract of employment, subject to contrary agreement.[17] While these provisions appear to presuppose that the underlying author is a human being, this presupposition may be challenged. If an AI system autonomously produces a work, can the commissioner or employer still claim ownership despite the absence of a human author? It has been argued that such

[15] [2019] 8 MLJ 515 (HC).
[16] Copyright Act 1987 [Act 332], s 26(2)(a).
[17] Copyright Act 1987 [Act 332], s 26(2)(b).

human-authorship law becomes incoherent in the AI context, as they attempt to assign ownership of rights that may not have arisen in the first place.[18] This highlights a doctrinal gap: if copyright subsistence itself is uncertain in AI-generated works, then provisions on ownership risk becoming redundant.

Accordingly, even if AI-generated works satisfy the originality and territorial requirements under **sections 7 and 10**, they are unlikely to satisfy **section 26** because authorship is reserved for natural persons. This highlights a significant gap in Malaysian copyright law with respect to AI-generated works.

4.0 Who is Eligible to Own the Copyright in an AI-Generated Work?

The central question is whether copyright ownership should vest in (i) the developer of the AI system, (ii) the person who makes the necessary arrangements to generate the work, or (iii) both. Based on the above discussion, fully AI-generated works are unlikely to attract copyright protection under **section 26** of the **CA 1987**, as the provision requires an identifiable human author.

However, a more nuanced issue arises in the context of hybrid authorship, where a human uses GenAI as a creative tool. For example, a photographer might use AI to enhance images, or a designer might generate visuals for a portfolio with AI assistance. This resembles how artists and designers employ software such as Photoshop. The key difference lies in the degree of human involvement. Where AI is used merely as a tool guided by human creativity, the human retains creative control. Conversely, in works produced entirely by AI without meaningful human input, authorship is more difficult to establish.

In hybrid scenarios, copyright ownership depends on the extent of human contribution. If a person exercises sufficient creative input through prompts, feedback, instruction, or editing, they may qualify as the "author." In such cases, provided the requirements of **sections 7, 10,** and **26** of the **CA 1987** are satisfied, copyright protection may apply. Crucially, there must be a clear line of authorship traced to a human. At present, however, Malaysian courts have not addressed this issue, leaving the law uncertain. Comparative analysis with other jurisdictions offers useful guidance.

[18] Sin Zhi Ying and others, 'AI Dilemma: Copyrighting Creativity in the Age of Artificial Intelligence' (2024) 18(2) IJCC <https://cybercrimejournal.com/menuscript/index.php/cybercrimejournal/article/view/407> accessed 29 August 2025.

4.1 Comparative Perspectives from Other Jurisdictions

(a) **China**

China's position has evolved from initial scepticism to a more flexible recognition of AI-assisted works. In ***Feilin Law Firm v Baidu Corporation***, protection for AI-generated works was denied due to the absence of human authorship.[19] However, subsequent cases including ***Tencent v Yingxun***[20] and ***Li Yunkai v Liu Yuanchun***[21] have indicated that minimal human involvement, such as crafting prompts or making creative choices, may suffice for copyright protection.

In ***Li Yunkai v Liu Yuanchun***, the Beijing Internet Court considered whether images produced using an open-source image generator were copyrightable. The plaintiff entered approximately 150 prompts to generate images, which were later used by the defendant without permission or attribution.[22] The court identified four requirements under Chinese copyright law for a work to be protected: (i) the work must belong to the fields of literature, art, or science; (ii) the work must exhibit originality; (iii) the work must possess a particular mode of expression; and (iv) the work must constitute a human intellectual creation.[23]

The court held that the plaintiff's extensive use of prompts, selection of character styles, and arrangement of layout demonstrated sufficient intellectual input and originality. Accordingly, the images qualified as copyrightable works. On authorship, the court rejected the possibility that AI systems or their developers could be regarded as authors, holding instead that the plaintiff, whose creative choices were reflected in the final outputs, was the rightful author. The defendant was consequently found liable for copyright infringement.

This case reflects a significant development in Chinese copyright jurisprudence, suggesting that AI-assisted works may be protected where there is meaningful human contribution. Yet, some scholars argue, China's adoption of an open-ended classification system under the 2020 Copyright Law risks extending protection too broadly to AI-generated outputs.[24] While courts have begun to recognize AI-assisted works, uncertainties over the threshold of originality and inconsistent judicial interpretations persist.[25] They therefore

[19] [2019] Jing 0491 Min Chu No 239 (Beijing Internet Court).
[20] [2019] No Y0305MC No 14010 (Nanshan District Court).
[21] [2023] Jing 0491 Min Chu No 11279 (Beijing Internet Court).
[22] *Ibid*.
[23] Song S, 'China's First Case on Copyrightability of AI-Generated Picture' (Lexology, 7 December 2023) https://www.lexology.com/library/detail.aspx?g=7f4daa90-093c-44be-a344-4fbd8c6db773 accessed 15 June 2025.
[24] Xinhang He and Pingji Shan, 'China's regulations on the attribution of AI-generated content: an exploration based on the open-ended approach' (2025) 20(5) Journal of Intellectual Property Law & Practice <https://doi.org/10.1093/jiplp/jpae109> accessed 30 August 2025.
[25] *Ibid*.

propose clarifying AI's instrumental role through judicial guidance and prioritizing traditional work categories, thereby preventing an undue expansion of copyright protection.[26]

(b) United States

On the other hand, the United States (hereinafter referred to as 'US') adopts a strict human authorship requirement. The US Copyright Office has consistently maintained that works generated without human creativity are ineligible for protection. In ***Zarya of the Dawn***, the Office concluded that images generated by AI lacked human authorship and therefore could not be copyrighted.[27] Similarly, in ***Thaler v Perlmutter***, the court affirmed that copyright subsists only where there is human intellectual creation.[28] The court emphasized that prompts provided to an AI system, no matter how elaborate, do not constitute authorship.

Thus, in the US, AI may be used as a tool, but it cannot itself be the creator. Without sufficient human control over the final output, no copyright protection arises. The US Copyright Office has further emphasized in its policy reflections that human creativity remains the cornerstone of copyright law, and the law does not protect works that are produced by a machine without human involvement.[29] This position underscores the U.S Copyright Office's consistent rejection of AI as an author and reaffirms that copyright is established only where human intellectual input is evident.

(c) Singapore

Although Singapore has yet to decide a case directly involving AI-generated content, its courts emphasise the need for human intellectual effort. In ***Asia Pacific Publishing v Pioneers & Leaders***, the Court of Appeal in 2011 held that originality requires human creativity.[30] The Court of Appeal later in the 2017 decision of ***Global Yellow Pages Ltd v Promedia Directories Pte Ltd*** affirmed its earlier stance, holding that for copyright to subsist in any literary work, authorial creation must be causally connected with the engagement of the human intellect.[31] The Court defined human intellect as the application of intellectual

[26] *Ibid*.
[27] [2022] VAu001480196 (United States Copyright Office).
[28] [2023] 1:22-cv-01564 (United States District Court).
[29] Miriam Lord, 'US Copyright Office on AI: Human Creativity Still Matters, Legally' (*WIPO Magazine*, 24 April 2025) <https://www.wipo.int/web/wipo-magazine/articles/us-copyright-office-on-ai-human-creativity-still-matters-legally-73696> accessed 30 August 2025.
[30] [2011] 4 SLR 381 (CA, Singapore).
[31] [2017] 2 SLR 185, (24) (CA, Singapore).

effort or the exercise of mental labour, which a non-human author is deemed unable to provide.[32] While AI-generated works are not expressly excluded under Singaporean law, any claim to copyright must demonstrate meaningful human authorship. Scholars have similarly observed that Singapore's current framework is ill-suited to accommodate AI authorship.[33] The rapid advancement of generative AI challenges this human-centred framework, raising questions about whether copyright law can continue to rely solely on traditional notions of authorship without reform.

(d) United Kingdom

In the United Kingdom, AI-generated works may receive copyright protection under **section 9(3)** and **section 178** of the **Copyright, Designs and Patents Act 1988** (hereinafter referred to as '**CDPA**') where no human author can be identified. **Section 9(3)** of the **CDPA** provides that, in the case of a literary, dramatic, musical, or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.**Section 178** of the **CDPA** further defines a 'computer-generated work' as one that is generated by a computer in circumstances such that there is no human author.

Read together, these provisions suggest that authorship of AI-generated works is attributed to the human who undertook the arrangements necessary for the creation of the output normally the programmer or operator. This means that even if a work is produced without substantive human creativity, for example in response to a simple prompt, it may still be protected as a computer-generated work under UK law, with authorship vested in the person who facilitated its production.

While **section 9(3)** and **section 178** demonstrate that UK copyright law provides some flexibility to accommodate AI-generated works, they do not recognize AI itself as an author. This insistence on locating a human behind the creation is arguably both the strength and weakness of the provision.[34] It is sound because it aligns with the human-centric foundation of copyright law, which traditionally rewards human creativity.[35] Yet, it is also problematic

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[32] *Ibid*.

[33] Professor David Tan, 'AI and Copyright: The Death of Author?' (*Law Gazette*, November 2022) <https://lawgazette.com.sg/feature/ai-and-copyright-the-death-of-author/> accessed 30 August 2025.

[34] Söğüt Atilla, '*Dealing with AI-generated Works: Lessons from the CDPA Section 9(3)*' (2024) 19(1) Journal of Intellectual Property Law & Practice 43 <https://doi.org/10.1093/jiplp/jpad102> accessed 30 August 2025.

[35] *Ibid*.

because the standard of the person who made the arrangements necessary is drafted broadly, leaving uncertainty as to whether it should be the programmer, the user, or another party involved in the process.[36] By assigning authorship to a human intermediary, the UK copyright law reflects an attempt to reconcile the encouragement of innovation with the need to safeguard the coherence of intellectual property rights.[37]

While the level of accepted human involvement varies, China, the United States, and Singapore share a common principle: copyright protection requires human creativity. This principle also aligns with Malaysia's current position under the **CA 1987**. In contrast, the UK adopts a nuanced approach by statutorily recognizing computer-generated works, granting copyright to the person who undertakes the necessary arrangements for their creation.

5.0 Navigating Malaysia's Path Ahead

From the analysis in Section 4.1, it is evident that the United States strictly requires human authorship, ensuring originality and human inputs, but potentially excluding AI outputs. This strict approach may be problematic given the rapid growth of technology, as AI has become an integral part of daily life. China adopts a more open-ended approach, allowing room for AI-related claims; however, this flexibility risks over-expansion of copyright protection. Singapore firmly grounds originality in human intellect, as reflected in the Court of Appeal decisions, yet there is neither clear legislation nor precedent directly addressing the copyright of AI-generated works, creating uncertainty as AI capabilities continue to evolve. The United Kingdom presents a more nuanced statutory recognition of computer-generated works, which can cover AI-generated works, but this approach carries the risk of diluting human creativity as the central organising principle of copyright law due to the phrasing of **Section 9(3)** of the **CDPA**.

As discussed, Malaysia's current framework is inadequate to accommodate the challenges posed by AI-generated works. Malaysian copyright law requires human authorship, similar to Singapore, the United States, and China, and lacks provisions for computer-generated works, unlike the UK. This lacuna creates uncertainty for creators, investors, and industries increasingly reliant on GenAI, particularly in the creative media sector. Courts would be forced to fit AI outputs into traditional originality tests, an approach

[36] *Ibid*.
[37] Nasihah Naimat and others, 'Copyright Protection in Malaysia amid Legal Challenges of AI-Generated Content' (2025) IJRISS <https://dx.doi.org/10.47772/IJRISS.2025.906000127> accessed 29 August 2025.

that is no longer suitable and may potentially undermine confidence in Malaysia's creative and innovation sectors.

To address this, a balanced reform is recommended. Malaysia could recognize copyright in AI-assisted works where substantial human input such as prompting, selection, or editing is evident, while rejecting protection for fully autonomous AI-generated outputs. The originality test should be clarified to define the threshold for copyright protection. This balanced approach would prevent the risks of over-expansion seen in China and under-protection observed in the United States, providing greater legal certainty for creators, users, and investors, while ensuring Malaysia's copyright law evolves in line with technological innovation.

6.0 Conclusion

Malaysia's copyright framework is currently inadequate to address the challenges posed by AI-generated works. The **CA 1987** does not recognize non-human authorship, and there is no case law clarifying whether hybrid AI-human creations qualify for protection. This leaves the legal position unclear for those engaging with AI-assisted creation.

To close this legal gap, Malaysia should consider legislative reform. Two possible approaches are first amending the **CA 1987** to explicitly address AI-generated works; Second, introducing new legislation specifically governing intellectual property rights in the AI context, including clear standards for originality and human contribution.

As seen in comparative analysis, the debate often revolves around authorship: whether copyright should vest in the programmer, the user, or should such works remain unprotected altogether? The global trend treats AI as a tool rather than a creator. Malaysia can draw lessons from China's flexible approach, the U.S.'s strict human-authorship standard, Singapore's emphasis on human intellect, and the UK's nuanced recognition of computer-generated works.

A balanced approach for Malaysia would recognize copyright in AI-assisted works where substantial human input such as prompting, selection, or editing is evident, while withholding protection for fully autonomous AI-generated outputs. Such reform would preserve human creativity, provide clarity for stakeholders, and ensure that Malaysia's copyright law evolves in step with technological innovation.