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Copyright protection in the artificial intelligence era: A study of EU and U.S. law and recommendations for improving Vietnamese law under the CPTPP and EVFTA

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Abstract
The rapid development of artificial intelligence (AI) since 2020 has posed significant challenges to traditional copyright law, which is grounded in the principle of the "human creative imprint." In a context where AI can autonomously generate content, major legal systems such as the European Union (EU) and the United States continue to maintain the position that copyright protection applies only to works created by human authors. The EU requires a work to reflect an "individual intellectual contribution," and has issued the CDSM Directive and the AI Act to regulate the use of data for AI training, establishing transparency and accountability standards for model providers. The United States likewise upholds the "human authorship" requirement, as seen in U.S. Copyright Office practice and case law, while applying the fair use doctrine to evaluate the use of copyrighted data for AI training. In Vietnam, commitments under the CPTPP and EVFTA have driven intellectual property law reforms, including accession to the WCT and the 2022 amendments to the Intellectual Property Law to strengthen digital copyright protection. However, Vietnam has yet to adopt specific regulations regarding AI-generated works, though the forthcoming AI Law is expected to require copyright compliance from the model-design stage. Accordingly, Vietnam should clearly define the role of human creativity in the AI environment, develop mechanisms for managing training data, and balance copyright protection with innovation incentives, drawing on lessons from the EU and the United States.

Keywords: Artificial intelligence, Copyright, Digital copyright, Protection, Intellectual property law

1. Introduction
Artificial intelligence (AI) has increasingly demonstrated exceptional creative capacity, experiencing rapid growth since 2020 and producing a vast range of new creative works. This development poses significant challenges for copyright systems traditionally grounded in the principle of "human creative contribution." A 2025 study by the European Parliament shows that current AI training practices do not fully align with existing copyright exceptions related to reproduction, calling for clearer definitions of input/output boundaries, copyright-respecting mechanisms, and fair licensing models to balance innovation and authors' rights. In practice, both the European Union and the United States affirm that copyright protection only applies to works created by humans. For example, the EU requires that a work reflect the "author's own intellectual creation" to qualify for protection; similarly, the U.S. Copyright Office maintains that "a fundamental requirement of copyright is human authorship." This context illustrates that, as AI becomes capable of generating independent content, legal frameworks for copyright protection must be reassessed. This article focuses on the period 2020 - 2025 and examines how the EU, the United States, and Vietnam approach copyright protection in the AI era, particularly within the regulatory commitments under the CPTPP and EVFTA. Based on these comparative insights, the article proposes recommendations for improving Vietnam's legal framework.

2. Overview of copyright protection in the artificial intelligence era
2.1. European Union copyright law in the AI era under CPTPP and EVFTA
In the European Union (EU), the copyright system has long been based on the principle that a work must reflect the author's "creative will and personal imprint." Case law from the Court of Justice of the European Union (CJEU) affirms that a work can only be protected by copyright

if it demonstrates the author's "own intellectual creation" and reflects a creative expression that is personal to the creator. Based on this standard, only works bearing the personal mark of a human creator qualify as original works under EU copyright law. As a result, content generated entirely by artificial intelligence (AI) without human creative involvement is currently not eligible for copyright protection under the EU's legal framework. This position maintains the traditional principle of European copyright law, emphasizing the central role of human creativity in the creation process. At the same time, it presents challenges amid the rapid development of generative AI technologies, which increasingly produce works without user involvement in the conventional creative sense [1].

In response to the rapid increase in the use of copyrighted data and content for training artificial intelligence models, the European Union (EU) has implemented several legal instruments to regulate this issue. Notably, the Copyright in the Digital Single Market (CDSM) Directive 2019/790 introduced two exceptions related to text-and-data mining (TDM). Specifically, Article 3 permits TDM for scientific research purposes by authorized research organizations, while Article 4 allows broader TDM activities by other entities, provided that rights holders have not exercised their right to opt out of such uses.

Although this approach reflects an effort to balance copyright protection with innovation, many experts argue that the current opt-out mechanism has not kept pace with the characteristics of large-scale AI technologies. Allowing content owners to opt out of TDM without unified technical standards creates significant legal uncertainty for AI developers, particularly given that AI training datasets typically consist of fragmented, multi-format sources. An analytical report by the European Parliament also notes that the existing TDM exceptions are limited in scope and lack systematic design, failing to meet the immense and continuous data demands of modern AI systems. This situation underscores the urgent need for the EU to further refine its legal framework to ensure transparency, predictability, and a balanced allocation of rights and obligations between copyright holders and technology developers [2].

In addition to regulating data usage within the copyright framework, the European Union has also developed a specialized legal system governing artificial intelligence. Most notably, the EU Artificial Intelligence Act, adopted in 2024, represents the world's first comprehensive legal framework regulating AI based on a risk-based approach. This regulation classifies AI systems according to risk levels and imposes corresponding compliance obligations on developers and deployers. In particular, for general-purpose AI models, the legislation establishes clear transparency and accountability obligations. Developers of such models must prepare technical documentation, issue usage guidelines, establish policies ensuring compliance with EU copyright rules, and publish a summary of the training data used. These requirements indicate that the EU is shifting from a reactive to a preventive regulatory model, compelling AI developers to proactively demonstrate that their training data has been lawfully collected and used, and that copyright rules are fully respected. Additionally, the AI Act encourages the development of codes of practice and the issuance of implementation guidelines to support businesses in complying with the law and mitigating risks. This approach reflects the EU's efforts to harmonize innovation incentives with intellectual property protection, while enhancing transparency and accountability for AI systems amid rapid technological progress [3].

Although the European Union has introduced various new legal mechanisms to regulate the development and use of artificial intelligence, it remains firmly committed to the position that copyright protection does not extend to works created entirely by AI systems. Drafts and explanatory materials related to the EU AI Act emphasize that, even though the new framework strengthens data transparency, model-provider accountability, and strict compliance with copyright rules, "the legal status of AI-generated works remains unchanged." This means that only works reflecting human creative contribution are eligible for copyright protection under EU law. From this approach, it can be concluded that the EU continues to uphold the foundational principle of the traditional copyright regime, human authorship as the central condition for protection. However, rather than adopting a conservative legal stance, the EU simultaneously adapts its regulatory framework to support technological innovation. The combination of text-and-data-mining exceptions under the CDSM Directive and the training-data transparency obligations in the AI Act demonstrates the EU's strategy: strict protection of intellectual property rights while establishing a legal environment that enables responsible AI development consistent with the Union's rule-of-law standards.

2.2. U.S. Copyright Law in the Artificial Intelligence Era under CPTPP and EVFTA

In the United States, the approach to copyright protection in the context of artificial intelligence largely aligns with the position of the European Union: only works created by humans are eligible for protection. The U.S. Copyright Office (USCO), in multiple reports and official statements, has reaffirmed the longstanding principle that "the author must be human," a doctrine rooted in the U.S. Constitution and current copyright statutes [4].

The practical application of U.S. copyright law has reinforced this position. In the case concerning the Zarya of the Dawn comic book (2023), where some images were generated using the MidJourney tool, the USCO revoked the copyright registration for the AI-generated images, recognizing protection only for the text and creative elements directly produced by the human author. Copyright registration guidance issued by the USCO in March 2023 requires applicants to clearly disclose which content was generated by AI and describe the human creative contribution. In the same year, the Federal Court in Washington reaffirmed this principle, ruling that "there is no copyright protection for works created entirely by machines."

However, the U.S. copyright system does not completely dismiss the role of AI in the creative process. Rather, the law and judicial practice require case-by-case assessment. If a user demonstrates meaningful creative control over AI output, directs the content to a significant degree, and contributes sufficient original expression, that portion may be eligible for copyright protection. This approach reflects an effort to balance the traditional human-authorship principle with practical needs in the rapidly evolving landscape of AI-assisted creativity.

Additionally, the United States has not yet enacted a comprehensive statute specifically regulating artificial

intelligence; the legal framework currently relies primarily on existing copyright rules and administrative guidance. The U.S. Copyright Office (USCO) continues to conduct detailed studies and consultations, as demonstrated by its AI Reports (Parts 1 and 2, covering 2024–2025) on "copyright digitization" and "protection for AI-generated outputs." These reports aim to provide academic and practical foundations for future policymaking.

Regarding exceptions, the United States does not apply a text-and-data mining (TDM) exception similar to the European Union. Instead, U.S. law relies on the fair use doctrine to assess the legality of using copyrighted data for AI training purposes. Recent cases show that U.S. courts evaluate each situation based on the four traditional fair use factors, with particular emphasis on the transformative nature of the use and its market impact on the copyright owner.

Overall, the United States maintains the principle that copyright protection is fundamentally reserved for human creators, while simultaneously addressing ethical considerations, data transparency, and data ownership issues in the development and application of AI. This approach reflects a deliberate effort to strike a balance between fostering technological innovation and safeguarding a creative ecosystem built on human intellectual labor.

2.3. Vietnamese Copyright Law in the Artificial Intelligence Era under CPTPP and EVFTA

As a member of the CPTPP and a signatory to the EVFTA, Vietnam has undertaken extensive reforms of its intellectual property legal framework to comply with new international obligations, particularly in the field of copyright and related rights. Under commitments in the CPTPP and EVFTA, Vietnam is required to accede to key international copyright treaties, including the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). In practice, Vietnam completed its accession to the WCT in November 2021 and is currently implementing procedures to join the WPPT, thereby strengthening the legal foundation for protecting the rights of performers and producers of phonograms, especially in relation to broadcasting and online transmission activities.

These commitments require Vietnam's legal system to strengthen mechanisms for protecting copyright in the digital environment. Notably, the 2022 amendment to the Intellectual Property Law introduced Article 198b, which allows right holders to request competent authorities to apply technical measures to block access to websites containing infringing content. This provision marks a significant shift toward proactive copyright enforcement and aligns with TRIPS-plus standards under next-generation FTAs. It also demonstrates Vietnam's determination to enhance the effectiveness of copyright protection, meet the demands of digital-economy integration, and strengthen confidence among the creative community and international investors [5].

Regarding policies applicable to authors and AI-generated works, the Vietnamese Intellectual Property Law of 2005 (as amended in 2022) currently does not contain specific provisions addressing this issue. Under Article 13 of the IP Law, an author is defined as an "organization or individual who directly creates the work," thereby affirming that only creations bearing a human imprint are recognized and protected. This places Vietnam among jurisdictions aligned with the European Union and the United States in recognizing only human authorship and not acknowledging AI systems as legitimate creative subjects. Domestic legal analyses similarly confirm that no AI tool can be considered an author under Vietnamese law. In practice, if an individual uses AI and holds property rights over the completed work, they may be recognized as the copyright owner, although the degree of their creative contribution may not be subject to detailed proof. However, moral rights, including the right to be named as the author—belong only to the human who directly performs the creative activity, while AI software or AI developers are not recognized as authors.

Thus, Vietnam continues to uphold the foundational principle of traditional copyright law: only works that "contain the creative imprint of a human" are eligible for protection. This cautious approach reflects the country's prudence amid the rapid development of generative AI technologies, while highlighting the need for future research and policy development to address emerging legal issues related to AI-driven creativity.

In addition, international commitments under the CPTPP, EVFTA, and multilateral intellectual property treaties have played an important role in prompting Vietnam to improve its domestic legal framework. For example, the 2022 amendment to the Intellectual Property Law clarified the concept of co-authorship and the right to establish author identity, thereby providing a clearer legal basis for protecting complex works or works created through the participation of multiple contributors. At the same time, the law introduced more reasonable copyright exceptions and strengthened enforcement mechanisms, including administrative sanctions and potential criminal liability for online copyright infringement, thereby enhancing the practical effectiveness of intellectual property protection [6].

At the same time, Vietnam is developing an Artificial Intelligence Law expected to be submitted in 2025, with a policy direction requiring AI providers and developers to comply with intellectual property regulations from the design and deployment stages of AI systems. This approach reflects the gradual integration of copyright protection principles into AI governance, aligning with policy trends in developed jurisdictions. However, Vietnam has not yet issued specific regulations concerning the legal status of AI-generated works or mechanisms for determining the level of human creative contribution in cases involving generative AI. This legal gap presents an urgent task for lawmakers to establish an appropriate regulatory framework that balances technological innovation with the protection of intellectual property rights in the digital era.

3. Some Lessons for Vietnam

Based on the legislative experience of leading jurisdictions, Vietnam may consider several orientations for improving its copyright framework in the context of artificial intelligence as follows:

Firstly, clearly define the standard of "authorship" in the AI environment. Vietnam should continue to affirm the principle that the author must be a human while codifying criteria for assessing the degree of creative contribution by AI users. Accordingly, only content reflecting human creative direction, selection, modification, or arrangement should qualify for protection. This approach aligns with the position of the EU and the United States and avoids granting copyright to works generated entirely by autonomous systems.

Secondly, establish mechanisms for exceptions and licensing for AI training data. Vietnam may refer to the EU's text-and-

data mining model under the DSM Directive, but should design a mechanism that fits domestic realities. One option is to adopt a centralized licensing system or data-licensing platform combined with technical solutions to reduce risks associated with "opt-out" mechanisms such as in the EU. The objective is to balance copyright protection with enabling AI training activities within a tightly regulated scope.

Thirdly, impose transparency and intellectual property compliance obligations on AI model providers. Similar to the EU AI Act, Vietnam may require AI system developers to disclose information about training data, ensure lawful data collection and use, and commit to complying with copyright laws. Such rules would not only enhance the legal accountability of AI developers but also support more effective dispute resolution and enforcement of copyright. This is also consistent with integrating AI governance requirements into the existing IP system.

Fourthly, consider the possibility of establishing a sui generis protection mechanism for AI-generated works. Amid increasingly active academic debate, Vietnam may explore a specialized protection model for computer-generated works, similar to reform proposals in certain jurisdictions such as Ukraine. Under this approach, purely AI-generated works could receive a limited form of protection, distinct from traditional copyright, possibly with benefit-sharing mechanisms between users and AI developers where necessary. This pathway could progressively fill the legal gap during the transitional phase.

Fifthly, strengthen enforcement mechanisms and inter-agency coordination. Vietnam should enhance tools to address online copyright infringement, including website blocking, content takedown measures, and international cooperation in investigation and enforcement. Simultaneously, IP policy should be integrated with information technology, cybersecurity, and telecommunications regulations to address complex legal issues arising from new technologies. Developing voluntary industry codes of practice, similar to the EU, would also help encourage compliance with copyright norms without imposing excessive legal burdens.

4. Conclusion

In the era of artificial intelligence, both the European Union and the United States continue to uphold the fundamental principle that authorship must be human, and only works bearing the "creative imprint of the author" are eligible for copyright protection. At the same time, these advanced legal systems are adapting their regulations to the unique characteristics of emerging technologies by establishing exceptions for AI model training and requiring transparency from AI providers regarding the source, scope, and legality of training data. Vietnam, influenced by international commitments such as the CPTPP and EVFTA, has acceded to digital copyright treaties and amended its laws to strengthen protection in the digital environment; however, it still lacks specific provisions governing AI-generated works. Therefore, future legal reforms must clearly define the role of humans in AI-assisted creativity, establish transparent mechanisms for managing training data, and strike an appropriate balance between copyright protection and the promotion of innovation. Drawing on international experience and tailoring it to domestic conditions will help Vietnam develop a modern and effective legal framework, one that encourages the growth of AI technology while ensuring the legitimate rights and interests of creative stakeholders in a knowledge-based economy.

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