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Copyright in the Digital Age and the Dispute Resolution Model Through Arbitration

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Abstract

The rapid development of digital technology, including Artificial Intelligence (AI), has significantly affected the intellectual property (IP) law regime. Beyond business models for the commercialization of intellectual property objects, the existence of exclusive rights is also closely related to the use of copyrighted works as AI training data without authorization. This article examines contemporary debates surrounding the development of digital technology and AI and their impact on intellectual property law and protection in the context of global digital transformation challenges. This research employs a normative juridical method with a qualitative approach and descriptive-analytical specifications. The findings indicate that the existence of IP law is non-negotiable, even amid intense digital disruption. Disregarding the principle of exclusive intellectual property rights may lead to significant legal and economic risks, including market distortion, the loss of incentives for creators, and consumer harm. Therefore, a transformation of intellectual property law is required one that encourages collaboration with technological innovation without neglecting exclusive rights within the IP system. This article also emphasizes that arbitration is an effective, efficient, expertise-based, and confidential model for resolving intellectual property disputes, making it highly relevant in the digital era.

I. INTRODUCTION

At present, the intellectual property legal regime faces the greatest challenge in its history because it is interacting with the rapid development of digital technology. This research employs a qualitative method with a normative juridical approach in order to dissect the dynamics of intellectual property law amid the currents of digital transformation. The research does not confine itself to the text of existing statutes and regulations, but also explores how these norms interact with a rapidly changing technological reality.

To provide a more concrete picture, this research includes an analysis of legal cases that have attracted worldwide attention (*landmark decisions*). It examines, among others, the dispute in *Thaler v. U.S. Copyright Office* in order to test the philosophical limits of who may be recognized as an "author" within the legal system. The use of these real-world cases is intended to ensure that the resulting analysis does not become entangled in purely theoretical debate, but is grounded in legal facts as they have occurred in practice.

In addition, the analysis is carried out by comparing regulatory responses in several countries. This comparison is essential for seeing how different jurisdictions attempt to strike a balance

between protecting the rights of creators and supporting technological innovation. By combining primary data sources in the form of court decisions and regulations with secondary sources from credible media reports, this research is expected to map best practices and to offer solutions for a more adaptive and transformative reformulation of the law.

It should be noted that, in addition to being resolved through the courts, disputes may also be resolved through arbitration. Considering that disputes concerning AI and copyright often do not constitute contractual disputes but rather disputes arising from the use of copyrighted training data, parties wishing to resolve them through arbitration must first enter into an arbitration agreement.

II. DISCUSSION

2.1 Copyright in the Digital Era

At present, the protection of intellectual property rights has become a massively discussed global issue, particularly with the increasing use of AI technology to produce creations that frequently intersect with copyright, which places humans as the subjects who create such works. Generative AI technology relies heavily on existing data, including copyrighted material, to train its algorithms. This practice has triggered debate over the legality and ethics of using copyrighted works to train AI systems without the explicit permission of copyright holders.[1]

Debates about Generative AI often become trapped in the technological phenomenon itself, thereby forgetting that these machines do not operate in a vacuum. According to a research report from the Harvard Business Review entitled "*Generative AI Has an Intellectual Property Problem*," written by Gil Appel, Juliana Neelbauer, and David A. Schweidel on 7 April 2023, generative AI in fact has a fundamental problem with intellectual property law, which serves as a stark reminder.[2] The report states that generative AI can produce complex, high-quality works but raises key questions about the ownership and legal protection of those works. Although platforms such as ChatGPT or Midjourney appear capable of giving birth to "new" works, in reality they are merely gigantic data processors. They work by processing billions of parameters drawn from existing archives of images and text, and then rearranging those patterns into predictions that match the user's prompts.[3]

Cases such as *Andersen v. Stability AI* and the lawsuit *Getty Images (US) Inc v. Stable Diffusion* show how artists' works have been used to train models without compensation or permission. In the Getty Images case, the company filed a complaint against Stability AI for using nearly 12 million of its images without permission. The images were used to train the Stable Diffusion image-generation tool, which produces images in response to AI prompts.[4] The same occurred in the Andersen case, in which three artists, Sarah Andersen, Kelly

[1] Sin Zhi Ying, et.al, "AI Dilemma: Copyrighting Creativity in the Age of Artificial Intelligence", *International Journal of Cyber Criminology*, Vol. 18, No. 2 (2024): 38-56. https://doi.org/10.5281/zenodo.476618203.
[2] Gil Appel, et.al, "Generative AI Has an Intellectual Property Problem", Harvard Business Review, 2023, https://hbr.org/2023/04/generative-ai-has-an-intellectual-property-problem.
[3] Tanissa Mayra Tsabitha, "Perlindungan Hak Kekayaan Intelektual untuk Karya AI: Studi Kasus ChatGPT dan DeepSeek dalam Perspektif TRIPS Agreement", *Unes Law Review*, Vol. 8, No. 1, (2025): 192-204. https://doi.org/10.31933/unesrev.v8i1.22.
[4] Zach Schor, "Andersen v. Stability AI: The Landmark Case Unpacking the Copyright Risks of AI Image Generators", NYU Law, 2024, https://jipel.law.nyu.edu/andersen-v-stability-ai-the-landmark-case-unpacking-the-copyright-risks-of-ai-image-generators/.

McKernan, and Karla Ortiz, sued the AI application companies Stable Diffusion and Midjourney for alleged copyright infringement, because these applications can create AI-assisted image designs derived from the original artists' works without permission in order to produce the images that users want.[5] If the courts regard AI works as unlawful "derivative works," the consequences could be severe, namely copyright infringement with damages of up to hundreds of thousands of dollars per case.

One of the most important problems in the use of Generative AI is determining the ownership of rights in the works it generates. When AI independently creates content, the line of authorship becomes blurred, making it difficult to attribute creation to a particular human subject. This poses a fundamental challenge, considering that the intellectual property legal regime has traditionally relied on the identification of a human creator or author as the legal subject.[6] Although robots and AI systems can generate content or imitate human-like behavior, such technology still cannot be equated with human beings because it lacks the essential qualities that define personhood, such as consciousness, intent, and the capacity for subjective experience. Accordingly, copyright protection continues to require a human element, in which creative effort and expression originate from an individual possessing the characteristics and attributes inherent in humanity.[7]

Another case can be seen in the *trend* of creating digital works in the style of Studio Ghibli produced by ChatGPT, in which AI is able to transform photographs of themselves and their families into Ghibli-style characters without losing the original outlines and the identifying characteristics of the individual. Visually, the results are indeed stunning, because AI is able to turn personal photographs into characters bearing the visual characteristics of Hayao Miyazaki. Ethically and legally, however, this is a dangerous gray area. In Indonesia, this challenge is even more pronounced because the Indonesian legal system does not recognize the flexible fair use doctrine found in the United States. Article 44(1) of Indonesia's Copyright Law does provide limitations on use for educational purposes or criticism, but this provision is not strong enough to cover the automated commercialization carried out by AI machines. As a result, there is a very large legal gap: on the one hand, Indonesia wishes to support digital transformation, but on the other hand it lacks robust safeguards to protect local creators from the "plundering" of their works by algorithms.[8] Without a reformulation of the rules, the advancement of AI risks becoming a new instrument of exploitation in the creative world.

As a first step, the law needs to review basic concepts such as originality, ownership, and legal subjects, which have long constituted the foundation of copyright protection.[9] Reinterpreting these concepts is crucial so that the legal regime remains relevant in the face of

[5] Alissa Wiarnova, "Aplikasi AI Stable Diffusion dan Midjourney Dituntut karena Melanggar Hak Cipta", Whiteboard Journal, 2023, https://whiteboardjournal.com/ideas/art/aplikasi-ai-stable-diffusion-dan-midjourney-dituntut-karena-melanggar-hak-cipta/.

[6] Yuka Latieful Mantiqa, et al. "Generative AI in The Context of Intellectual Property Law: Urgency, Challenges, and Legal Protection", *JLPH: Journal of Law, Politic and Humanities*, Vol. 5, No. 6, (2025): 1-8. https://dinastires.org/JLPH/issue/view/106.

[7] Nicola Lucchi, "CHAT GPT: A Case Study on Copyright Challenges for Generative Artificial Intelligence Systems", *European Journal of Risk Regulation* Vol. 15, No. 3, (2023): 1-23.

[8] Dwi Ratna Indri Hapsari, et al., "The Legality of Intellectual Property by Artificial Intelligence in Indonesia", *KnE Social Sciences*, Vol 8, No. 21 (2024). https://doi.org/10.18502/kss.v8i21.14791.

[9] Irwan Setiawan dan Michael, "Pemidanaan Terhadap Pengguna Kecerdasan Buatan Melanggar Hak Kekayaan Intelektual", *Policies on Regulatory Reform Law Journal* (PLJR), Vol. 1, No. 2 (2025).

technological transformation. One form this may take is updating the definition of originality in the copyright regime, so that it is no longer understood solely as the direct result of human creativity, but also encompasses works generated by AI with human involvement in the development process.[10] Although AI can operate autonomously, human contributions through the provision of training data, algorithm design, and the determination of the purposes of use continue to influence the final result. Thus, by expanding the meaning of originality contextually, the law can provide protection for AI-based works without setting aside the fundamental principles of copyright protection.

In addition, adaptation of the legal system is also required in regulating copyright ownership of AI-generated works. One approach that may be considered is to grant rights to the individual or entity that exercises a significant degree of control over the process of creating the work, such as the technology developer or the AI user. This approach affirms the role of human contribution in the operation of AI while preventing the personification of technology as a rights-holding subject.

2.2 Ethical and Legal Aspects

Given that AI is becoming increasingly prevalent in the creative industries, ethical responsibility is a necessity and must be translated into clear regulatory standards. At present, several AI developers have begun to introduce *opt-out* mechanisms, which are systems that allow artists to request that their works be removed from AI training datasets.[11] However, this approach is still regarded as unfair in providing copyright protection because it places the burden on creators to "guard" their own works amid an unlimited ocean of digital data. The intellectual property legal regime should instead shift toward an *opt-in mechanism*, whereby AI developers are required to obtain explicit consent (*opt-in*) before using the works of others. Under an opt-in scheme, control over intellectual property returns to humans as its original owners, rather than being unilaterally governed by algorithms.[12] Nevertheless, amid such a vast ocean of data, requesting permission one by one is extremely complicated. This is where Collective Management Organizations become important, as they can serve as a forum for creators and connect them with AI developers through digital systems.

Beyond the issue of permission to use created data, AI training requires transparency, which in turn requires an *audit system/audit trail* capable of tracing the original data sources, the metadata of works, and the documentation of the prompts used to generate content. An audit trail is a comprehensive, chronological, and immutable record that documents the entire life cycle of an AI model, from its inception through to real-time operational decisions. An AI audit trail can be understood as a "black box" analogy whose function is not limited to recording errors or access times, but encompasses information on who was involved, what actions were taken, when and where those actions occurred, and the reasons underlying important decisions

[10] I Ketut Gede Adi Ramadika and Ketut Kasta Arya Wijaya, "Legality of Copyright Protection on Artificial Intelligence Works," *APPIHI*, Vol. 2, No. 1 (2025). https://doi.org/10.62383/pk.v2i1.460.
[11] Computer & Communications Industri Association, "AI and Copyright: what is an "opt out" and can it work?", CCIA, 2025, https://ccianet.org/library/ai-and-copyright-what-is-an-opt-out-and-can-it-work/.
[12] Adam Buick, "Copyright and AI training data—transparency to the rescue?", *Oxford Academic: Journal of Intellectual Property Law and Practice*, Vol. 20, No. 3 (2025): 182-192. https://doi.org/10.1093/jiplp/jpae102.

or processes made by or involving the AI system.[13] Accordingly, the audit trail plays a fundamental role as a principal pillar within an effective and accountable AI governance framework.

Substantively, an AI audit trail records and tracks various important pieces of information throughout the workflow of an AI system. These include, first, data provenance, namely the identification of the specific datasets used in the training and validation of the model, the sources from which the data were acquired, and the processing methods applied, including data cleaning, labeling, and transformation. Second, model lineage, which covers the version of the model that produced particular predictions, the identity of the developer, the time of model training, and the technical parameters and configurations, including the hyperparameters used. Third, the rationale of decision-making, namely information about the inputs and key features that influence particular outputs of the AI system, which is highly relevant for purposes of explanation and debugging. Fourth, operational history, which records the parties that deployed the model, the inputs used in the inference process, and the presence of human intervention, including the overriding or replacement of recommendations generated by the AI.[14]

Transparency of training data in AI technology fundamentally offers various normative and practical benefits. The most optimal approach to ensuring transparency is to open full public access to the datasets used to train a particular AI model. Through such access, third parties, including copyright holders, can directly review the training data used and independently verify the content it contains.[15] Given that AI developers must, in essence, have access to the entire dataset during the training process, this approach should in principle be applied, provided that the data are not deleted once training is complete.[16] Indeed, in practice, a number of developers have adopted this approach by providing complete copies of their training data online.

However, there are difficulties in providing full access to training data for most AI models. The first is a significant logistical constraint, particularly relating to the need to manage large-scale data comprising hundreds of thousands to millions of individual works. Second, this approach may also give rise to copyright law problems, because even if a work has been included in a dataset under a licensing agreement, copyright holders may not permit their works to be made freely available to other developers through open access to the dataset.[17] Accordingly, creators, whether individuals or corporations, also need to be proactive in protecting their intellectual assets and cannot merely wait for regulatory certainty from the government. This can be done by monitoring the appearance of their works in public datasets, utilizing AI-based search tools, and adjusting business agreements and licenses. For example, companies need to add specific clauses in vendor and customer contracts that govern the use of

[13] Aethera, "What is an AI Audit Trail and Why is it Critical for", 2025, https://aethera.ai/blog/what-is-an-ai-audit-trail-and-why-is-it-critical-for-governance.
[14] Julia Kokina, et al. "Challenges and opportunities for artificial intelligence in auditing: Evidence from the field", I*nternational Journal of Accounting Information Systems*, Vol. 56 (2025): 1-22. https://doi.org/10.1016/j.accinf.2025.100734.
[15] Eleonora Rosati, "Copyright Exceptions and Fair Use Defences for AI Training Done for "Research" and "Learning," or the Inescapable Licensing Horizon", *European Journal of Risk Regulation, Published online by Cambridge University Press*, Vol. 16, (2025). https://doi.org/10.1017/err.2025.10035.
[16] Madalina Busuioc, et al., "Reclaiming Transparency: Contesting the Logics of Secrecy within the AI Act", *European Law Open* Vol. 2, (2023). https://doi.org/10.1017/elo.2022.47.
[17] Joao Pedro Quintais, "Copyright, the AI Act and Extraterritoriality", *SSRN, Policy Brief The Liboin Council*, (2025). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5316132#paper-citations-widget.

generative AI, including liability for intellectual property infringement and the prohibition of entering confidential data into open AI systems. This legal practice is important so that intellectual property rights are not simply surrendered to machines.

In the future, generative AI may become a partner that strengthens human creativity rather than unfairly replacing it, because it is built upon a sense of protection of human rights. Content creators can build private datasets to train AI on the basis of their own works, with clear licenses and fair benefits. Indeed, collaborative models with fan communities can be formed to create platforms that are ethical, transparent, and lawful. Generative AI opens extraordinary potential, but it will be sustainable only if it is built upon a strong foundation of respect for copyright and legal protection. The future of AI is no longer only about machines that calculate and predict, but also about machines that can genuinely learn independently.[18] Oversight, ethics, and regulation may become a necessity if AI is not designed with strong goal alignment, in the absence of ethical guidelines and state regulations.

2.3 United States Court Decisions: AI is not a Legal Subject

The world of intellectual property law has just received an important precedent through the ruling of the Federal Court of Appeals in Washington, DC, and the U.S. Supreme Court. The court of appeals in Washington, DC, held that artwork generated by AI without human input cannot be protected by copyright under U.S. law.[19] In the case involving Stephen Thaler and his AI system called "DABUS," the court expressly refused to grant copyright in artwork generated entirely by a machine without human intervention.[20] Finally, the Supreme Court has ended the controversial attempt to have a machine named as the original author of an artwork submitted to the U.S. Copyright Office for protection.[21]

On 2 March 2026, the Court, without comment, rejected the appeal in the case of *Thaler v. Perlmutter* . Nearly a year earlier, the U.S. Court of Appeals for the District of Columbia Circuit had ruled that the Copyright Office had properly rejected Dr. Stephen Thaler's copyright claim for an AI-generated image titled "A Recent Entrance to Paradise." Thaler, a computer scientist, created a generative artificial intelligence called the "Creativity Machine," which then created the image by itself. In the copyright registration application, Thaler listed the Creativity Machine as the sole author of the work and himself as its owner. In his petition to the Supreme Court, Thaler asked the justices to consider whether "a work generated by an AI system without direct and traditional authorship contribution from a natural person can be protected by copyright."[22]

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[18] Ahmad M. Ramli, " Sistem Saraf Digital dan Kekhawatiran AI Akan Mengontrol Manusia", Kompas.com, 2025, https://www.kompas.com/tren/read/2025/04/10/120013865/sistem-saraf-digital-dan-kekhawatiran-ai-bakal-kendalikan-manusia?page=all#page2.

[19] Blake Brittain, "US Appeals Court Rejects Copyrights for AI-Generated Art Lacking 'Human' Creator", Reuters, 2025, https://www.reuters.com/world/us/us-appeals-court-rejects-copyrights-ai-generated-art-lacking-human-creator-2025-03-18/.

[20] Ahmad M. Ramli, "*Landmark Decision* Pengadilan tentang AI dan Paten", Kompas, 2023, https://www.kompas.com/konsultasihukum/read/2023/12/28/102731880/landmark-decision-pengadilan-tentang-ai-dan-paten?page=all.

[21] Scott Bomboy, "Supreme Court Denies Artificial Intelligence Authorship Claim for Artwork Copyright", National Constitution Center, 2026. https://constitutioncenter.org/blog/supreme-court-denies-artificial-intelligence-authorship-claim-for-artwork-copyright.

[22] *Ibid.*

This ruling clarifies the legal boundaries that still uphold the traditional concept of copyright, which is based on the idea that creativity is the product of human consciousness. It constitutes an important event showing that, thus far, the legal system is not yet prepared to recognize non-human entities as legal subjects in the context of intellectual property. It sharpens the line of demarcation: without a human "creative spirit," digital works are merely the product of algorithms that hold no exclusive rights.

The ruling also marks an important milestone in the legal debate surrounding the ownership of works generated by generative AI, whose role is increasingly significant in the creative industries. The Copyright Office had also previously rejected requests for copyright protection for AI-generated images such as those produced by Midjourney, although in that case humans were involved in the creation process. Unlike other artists, Thaler claimed that his AI created the artwork independently, without any human input whatsoever.

The distinction between works generated entirely by AI and collaborative work between humans and AI has become highly important. The Thaler case highlights that, without human contribution, AI works are regarded as lacking a legally recognized "creative spirit." This opens a broader discussion on the need for new definitions in copyright law to accommodate new forms of collaboration between humans and machines. Although the courts acknowledge the importance of technological development, they affirm that current copyright law still requires a human element as the creator. Judge Patricia Millett stated that many provisions of the Copyright Act would make no sense if the author were not a human being.[23] Thaler and his lawyers expressed their disagreement and plan to file an appeal, arguing that this ruling could potentially hinder innovation and investment in the rapidly developing field of creative AI.

Thaler's argument reflects the tension between technological development and the speed of legal adaptation. On the one hand, the law serves to uphold principles and stability; on the other hand, the inability of the law to adapt to disruptive technology can impede progress. This debate demonstrates the urgency of legal reformulation: the law is required not only to be the guardian of long-standing principles, but also to adapt to disruptive technology without losing the essence of its protection. If the law fails to adapt, there is concern that the extraordinary potential of human–machine collaboration will be hampered by uncertainty over the ownership status of works.

The copyright doctrine of fair use seeks to balance the rights of creators with the public interest. It is intended to provide certain exceptions from compensation in particular contexts. For example, the U.S. Supreme Court has held that recording a television program on a cassette tape to watch later is acceptable fair use, and that Google's use of the building blocks of Oracle's application programming interface qualified as fair use. However, it was held that Andy Warhol's artistic modification of a photograph of Prince in a commercial publication was not fair use.

AI companies argue that their models do not copy directly, but rather learn patterns from available data. Such arguments continue to gather momentum and have widened into a confrontation between technology developers and intellectual property advocates. It is

[23] Jeremy Werner, "The AI Beat Reporter: Covering Robots With Robots", Medium, 2024, https://medium.com/@jeremyawerner/the-ai-beat-reporter-covering-robots-with-robots-9a1c3c6c6baf.

contended that restricting access to copyrighted data can slow innovation, and that overly strict intellectual property laws can hinder progress and endanger U.S. national security.

This view is also in line with that of Big Tech, which has likewise voiced concern that strict regulatory models such as those in Europe should not be used as a global standard. Current realities show that the number of lawsuits against AI companies continues to rise. The New York Times is one of the plaintiffs. It asserts that AI content can harm the market for its original works. In its lawsuit, The New York Times demands accountability for billions of dollars in damages for the copyright infringement it has suffered.[24]

The courts, too, have begun to take a firmer stance, as seen in the Thomson Reuters case. As reported by LawSites in *"Breaking: Federal Judge Rules Legal Research Startup ROSS Infringed Westlaw's Copyrights, Rejecting Fair Use Defense,"* the federal judge ruled that the legal research startup ROSS infringed Westlaw's copyrights and rejected the fair use defense.[25] In an important decision with potentially major impact on the AI and legal publishing industries, U.S. Federal Judge Stephanos Bibas of the U.S. Court of Appeals for the Third Circuit ruled that the AI-based legal research startup ROSS Intelligence had infringed Thomson Reuters' copyright by using 2,243 copyrighted headnotes from Westlaw to train its AI system.[26] The judge rejected ROSS's fair use defense, emphasizing that the purpose and economic impact of the use harmed the copyright holder. He also reversed his earlier opinion by holding that Westlaw's headnotes meet the originality standard for copyright protection because they contain elements of creativity in distilling and explaining legal opinions.

This ruling does not entirely end the legal proceedings, as a number of issues remain undecided, such as the validity of some of the copyrights and whether ROSS copied the Westlaw Key Number System. The case began in 2020 after Thomson Reuters refused to license its content to ROSS, which then obtained indirect access through a third-party company, LegalEase.[27] ROSS itself has ceased operations since 2021 owing to this litigation pressure. The ruling sends a strong signal to AI companies, especially in the legal field, that the use of copyrighted material in AI training can create serious legal risks if valid permission has not been obtained.

Even in India, major publishers such as Penguin Random House and Bloomsbury have sued ChatGPT to prevent it from accessing their content. OpenAI also faces a lawsuit from ANI and has contested the jurisdiction of the Indian courts on the grounds that its operations are based overseas. This conflict between technological innovation and copyright protection is expected to continue to intensify. If researchers look more closely, the pro-abolition view of intellectual property law rests on the idea that there is a complex reality and monopoly in which intellectual property is frequently weaponized by large corporations to silence small competitors, so that this regime is needed as a potent weapon in competing with large

[24] Ferinda K Fachri, "The New York Times Gugat OpenAI dan Microsoft Terkait Dugaan Pelanggaran Hak Cipta", HukumOnline.com, 2024, https://www.hukumonline.com/berita/a/the-new-york-times-gugat-openai-dan-microsoft-terkait-dugaan-pelanggaran-hak-cipta-lt65981e7d77fc1?page=all.
[25] Bob Ambrogi, "Breaking: Federal Judge Rules Legal Research Startup ROSS Infringed Westlaw's Copyrights, Rejecting Fair Use Defense", LawSites, 2025, https://www.lawnext.com/2025/02/breaking-federal-judge-rules-legal-research-startup-ross-infringed-westlaws-copyrights-rejecting-fair-use-defense.html.
[26] *Ibid.*
[27] Stuart D. Levi, et al, "Court Reverses Itself in AI Training Data Case", Skadden, 2025, https://www.skadden.com/insights/publications/2025/02/court-reverses-itself-in-ai-training-data-case.

corporations. This accords with an official release of the European Commission entitled *"Benefits of Intellectual Property Rights,"* which states that the main function of intellectual property is to protect and encourage the development and distribution of new products and the provision of new services based on the creation and exploitation of inventions, trademarks, designs, creative content, or other intangible assets.[28] Another reason is that legal processes are also expensive and unfriendly to independent innovators. Furthermore, many digital works are used to train AI, yet the legal status of such use remains gray because the principle of fair use is unclear.

In the world of AI, where data and algorithms are essential, relaxing IP rules can accelerate the exchange of knowledge and encourage freer experimentation, as evidenced by the progress of open-source projects. The current IP system is also considered too complex and costly for small innovators or individual creators, so that reform could make access fairer. However, as a colossal legal regime that has existed for hundreds of years, the proponents of intellectual property protection are of course very dominant. Intellectual property is necessary as an incentive and protection for inventors and creators. Granting them exclusive rights is an essential element for investment and commercialization.

In view of the various legal problems and deadlocks described above, it is time to accept the reality that the intellectual property legal regime can no longer be maintained within a traditional approach; intellectual property law must be transformed through a more flexible approach, without sacrificing the rights of creators, so as to be more adaptive to data-driven business models, open technology, and cross-border collaboration. The transformation of Intellectual Property Rights refers to the process of changing or modifying existing intellectual property rights, whether through a change of form, combination with other intellectual property rights, or the application of new technology to existing intellectual property rights. The transformation of Intellectual Property Rights is useful for expanding the scope or value of intellectual property rights, enhancing their protection, or optimizing their use through digitalization, open source and Creative Commons, globalization, biopiracy and bioethics, and legal adjustment.[29]

The involvement of all stakeholders, from the government to the public, is the key to creating an environment that supports innovation and provides appropriate protection for intellectual property in an ever-evolving digital era.[30] The strength of copyright holders' exclusivity also needs to be reinforced, especially in the digital realm, which poses new challenges in handling copyright infringement cases. In addition, a balance between protection and access needs to be built, taking into account the interests and benefits for society, together with a system that enables innovators to access prior information and works without restricting the rights of the owners of the works or impairing their economic rights.

[28] European Commission, "Benefits of Intellectual Property Rights", https://policy.trade.ec.europa.eu/enforcement-and-protection/protecting-eu-creations-inventions-and-designs/benefits-ipr_en.
[29] Dede Agung, et al. "Blockchain dan Transformasi Hak Kekayaan Intelektual Sebagai Upaya Perlindungan Inovasi di Masa Depan", *JHHWS: Jurnal Hukum dan Ham wara Sains.* Vol. 3, No. 1, (2024): 32-41. https://doi.org/10.58812/jhhws.v3i01.919.
[30] Dian Utami Amalia, et al. "Perlindungan Hukum Kekayaan Intelektual di Era Digital di Indonesia", *Terang : Jurnal Kajian Ilmu Sosial, Politik dan Hukum*, Vol. 1, No. 1 (2024): 26–46. https://doi.org/10.62383/terang.v1i1.52.

One of the urgent agendas in this transformation is the reconstruction of the principle of fair use. In the era of artificial intelligence, the traditional fair use framework, which was born for the sake of education or minor criticism, now feels profoundly inadequate to address the practice of large-scale AI model training. The use of billions of copyrighted data points to build trillion-dollar business models cannot readily be regarded as ordinary "fair use." A new definition is needed that assesses fair use not only from the form of the work, but also from the intent of use, the scale of data collection, and the direct economic impact on the market for the original work.

The reconstruction of fair use must ensure that creators' works are not used without proper permission or compensation on the one hand, while also encouraging technological innovation. Technology innovators must be able to access prior data and works within reasonable limits in order to promote the creation of new technology. The new fair use principle must also take into account ethical aspects, transparency in use, respect for the sources of works, and protection of creators' moral rights. An automated collective licensing model is a solution that can be adopted to reduce the impractical complexity of licensing in this digital era. Given how complicated it is for AI companies to request permission one by one from millions of owners of works on the internet, technology-based automated licensing systems (such as smart contracts or blockchain) can serve as a middle path. With such a system, creators can be compensated automatically each time their works are used for machine training, without impeding the development process itself. The total abolition of intellectual property regulation is not a wise solution; rather, it constitutes a form of abandoning the legal protection of intellectual property in the face of complex, evolving problems.

The transformation of intellectual property law, including the reconstruction of the principle of fair use, is an important step to ensure that the system remains fair and capable of keeping pace with the times. A transformative legal approach must become a necessity: a system that positions inventors, innovators, and creators within a mutually supportive ecosystem rather than one in which they undermine one another. The main objective is to create a legal ecosystem that provides room for innovation while respecting and protecting the rights of inventors and creators. By creating a legal ecosystem that is fair and up to date with the developments of the times, we protect not only the past (creators' rights) but also secure the future (technological innovation).

2.4 The Role of Arbitration in Intellectual Property Disputes in the Digital Era

As previously stated, the existence and protection of intellectual property, especially copyright, face serious challenges as the digital revolution unfolds. Digitalization enables copyrighted works to be reproduced, modified, and distributed rapidly, massively, and across borders. Copyrighted works are also used as materials and datasets for Artificial Intelligence (AI) training sets.[31] This places the copyright regime, which emphasizes exclusive rights, in an

[31] Ahmad M. Ramli, "Hak Cipta vs AI Generatif", Kompas.com, https://www.kompas.com/tren/read/2025/03/10/124506865/hak-cipta-vs-ai-generatif.

increasingly tested position, both in terms of the effectiveness of protection and its relevance to technological developments.[32]

The development of digital technology and AI complicates the landscape of copyright protection. AI acts not only as a tool but also exploits copyrighted works as training data and automatically generates new content. This phenomenon raises fundamental legal issues, ranging from the legality of using works as training data and the ownership status of AI outputs to the limits of copyright infringement and exceptions within the digital ecosystem. A number of technology-based copyright disputes have begun to be tested in the courts, particularly in the United States. However, practice shows that conventional litigation mechanisms often face limitations in handling cases that are highly technical and multidisciplinary. Lengthy processes, rigid formal procedures, and challenges in understanding the technology have the potential to reduce the effectiveness of legal protection.

The character of copyright disputes in the digital era is generally not only juridical but also highly technical. Disputes over digital licensing, the use of content by platforms, and the use of works in AI systems demand an understanding of technology, algorithms, and business models. In this context, a dispute resolution forum is needed that can bridge the legal and technological aspects in a balanced manner.

Indonesian law has responded to this need through Article 95 paragraph (1) of Law Number 28 of 2014 on Copyright, which states: “Copyright disputes may be resolved through alternative dispute resolution, arbitration, or the courts.” This provision affirms that the law provides the parties with equal and flexible forum options, including making arbitration a dispute resolution forum with absolute competence equal to that of the courts.

Furthermore, the Elucidation of Article 95 paragraph (1) states: “Forms of disputes relating to Copyright include disputes in the form of unlawful acts, license agreements, and disputes over rates in the collection of remuneration or royalties. What is meant by ‘alternative dispute resolution’ is a dispute resolution process through mediation, negotiation, or conciliation.” This Elucidation shows that the legislators were aware of the complexity and diversity of copyright disputes in practice.

By explicitly including arbitration, the Copyright Law positions this mechanism as an important instrument in resolving intellectual property disputes. Arbitration is regarded as relevant because it is able to adapt to the character of copyright disputes, which are dynamic, technical, and economically oriented, particularly in the creative and digital industries. Arbitration in Indonesia is currently governed by Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution.

One of the main reasons for choosing arbitration is the possibility of appointing arbitrators with specialized expertise. The parties may select an arbitral panel that understands intellectual property law while also having a background or experience in cyber law, digital technology, and AI. In this way, the examination of the case can be conducted comprehensively.

The advantages of arbitration also lie in its speed. More flexible procedures, time limits on proceedings, the final and binding nature of awards, and limited recourse for annulment

[32] Ahmad M. Ramli, "Keputusan Pengadilan AS: Penggunaan Pelanggaran Hak Cipta Data Pelatihan AI", Kompas.com, https://www.kompas.com/tren/read/2025/06/28/081809965/putusan-pengadilan-as-penggunaan-data-pelatihan-ai-tak-langgar-hak-cipta.

provide faster legal certainty than litigation in court.[33] In the context of the digital economy, the speed of dispute resolution is directly proportional to the economic value of a work. Arbitration can also be conducted online in accordance with the Arbitration Rules of Procedure of the BANI Arbitration Center (Indonesian National Board of Arbitration). In terms of effectiveness and cost, arbitration is often considered more efficient and relatively cheaper for complex copyright disputes. The entire process can avoid the indirect costs arising from lengthy, multilayered, and uncertain litigation.

The aspect of confidentiality is another important advantage. Copyright disputes often involve license agreements, royalty structures, commercial data, and even confidential technology and algorithms that constitute trade secrets. Arbitration allows disputes to be resolved in closed proceedings, thereby protecting the business interests and reputations of the parties, including trade secrets.

Moreover, arbitration is better suited to the cross-border character of copyright disputes. Arbitral awards enjoy recognition and enforcement through the mechanism of the 1958 New York Convention, which Indonesia has ratified, thereby providing legal certainty for parties operating across various jurisdictions and the global digital ecosystem.

From a legal policy perspective, the existence of arbitration also reflects a shift from a repressive approach to one of governance and compliance. Dispute resolution is oriented not merely toward punishment, but toward restoration, the balancing of interests, and the sustainability of innovation and cooperation between the parties. Accordingly, arbitration of copyright disputes in the digital and AI era is not merely a procedural alternative, but a strategic instrument that is normatively recognized by Article 95 of the Copyright Law. Through a mechanism that is swift, effective, relatively inexpensive, confidential, and adjudicated by experts, arbitration is able to respond to the challenges of copyright protection while sustaining the dynamism of innovation within the modern digital ecosystem.

III. CONCLUSION

Intellectual property law in this era of digital transformation must be reconstructed to be more flexible and adaptive to data-driven business models and cross-border collaboration in a mutualistic manner, while continuing to respect the exclusive rights of inventors and copyright holders. The reconstruction of the fair use principle is an important step to ensure that the legal system remains fair to human creators without impeding the pace of artificial intelligence. Should disputes arise relating to intellectual property and the application of digital technology, the parties are advised to use arbitration as a form of dispute resolution that prioritizes handling by experts, proceeds effectively and swiftly, preserves the reputation of the parties, and holds competence equal to that of the courts. Through this transformative approach, we can create a legal ecosystem that not only respects individual exclusive rights but also guarantees public benefit and the sustainability of innovation in the future.

[33] Gary Born dan Cem Kalelioğlu, “Choice-of-Law Agreements in International Contracts”, https://assets.hcch.net/docs/1325a2b9-baa2-4c0a-8e59-0fb6572c49e8.pdf

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