

AI ART AND COPYRIGHT

Artificial Intelligence (AI) is revolutionising the art world. It is also raising questions about AI-generated art copyright and commercial use. As an AI artist, you must understand your legal rights and obligations regarding intellectual property and copyright. This fact sheet explains the key principles.

COPYRIGHT PROTECTION



For a creation to have copyright protection, it must be original, with some skill and effort involved in creating it. Accordingly, copyright law in the context of AI-generated art considers:

- **Type of Work:** Copyright protection for AI-generated works is strengthened if it is literary, dramatic, musical or artistic works (Artistic works include painting, sculpture, drawing, engraving or photograph, whether the work is of artistic quality or not);
- **Originality:** This is largely determined by:
 - the nature/type of the work;
 - how the AI program operates and how it is used;
 - the level of intellectual effort required by the user of the AI program to produce the work;
- **Human Authorship:** Copyright laws in Australia and the US require a human as the author. You must be able to demonstrate human involvement was influential in creating the artwork, and that the generator was merely a tool to create the artwork.

PROTECTING IP RIGHTS



- Even though there is ambiguity surrounding copyright protection for AI-generated art, you can still try to protect it by using licence agreements when selling your work.
- If you sell your art using NFT technology, consider using a16z's "Can't Be Evil" licences (CBE Licences). These licences set out what the purchaser of the NFT can and cannot do with your artwork.

AVOIDING INFRINGEMENT



- Ensure you have the right to use the images used to train the AI model. This is harder to control if you use a third-party generator.
- In this case, avoid using words that describe someone else's artwork. An artist can prove you breached their copyright if you describe it because these inputs can be pulled from the database.

COMMERCIALISATION



- Commercial purposes means any purpose where intellectual property (IP) is used in commercial activities or to generate financial returns e.g. using the IP on merchandise, leasing the IP, creating derivative works, etc.
- If you are the artist and you have created an original work, then you can use that work for any lawful purpose, including commercialising it.
- If, when creating your work, you use another person's IP (eg. a particular artistic element, or artwork of another person), then you will need to:
 - reach a written agreement with the owner of that IP (or the person with the right to sublicense that intellectual property), granting you a licence to use that IP for commercial purposes; or
 - have the IP owner agree to transfer ownership to you.
- Having a licence to use IP for commercial purposes may be subject to some restrictions. eg. limited to certain geographic locations.