

AI Art: A Legal and Moral Issue

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Introduction

Artificial Intelligence (AI) has emerged as a transformative force in various places such as big businesses, and its influence on the realm of art is one of the biggest things to happen in the world of art for a while. The combination of AI and art has given rise to a new age where machines actively contribute to the creative process however, challenging traditional notions of artistic expression is a tricky thing to get away with. To understand how AI art works an interdisciplinary approach is needed to understand the landscape of AI art, exploring it through legal, artistic, and scientific perspectives. The most important thing is examining the legal and ethical angles, understanding the artist's engagement with AI tools, and understanding how AI works from a scientific perspective. An interdisciplinary approach is needed to understand how ethical practice using AI is for art.

Legal Perspective

The incorporation of AI in art raises a lot of legal questions regarding intellectual property, ownership, and authorship. As AI algorithms autonomously generate artworks, determining the rightful owner becomes a complex task. Additionally, AI uses art made by artists and essentially steals their styles and claims it as their own. AI learns from previously made art and artists do not get any sort of money from companies that use their art to make their product better, which essentially infringes on copyright law. “. Often AI systems are designed in such a way that the underlying mechanism is not interpretable even by the

programmers who created them” (Surden, 2019). What Surden says displays that the data given by an AI is often impossible for the people who made it to understand. This can be carried over to AI art in the sense that the interpreted data from the AI can result in a piece coming out in multiple styles, this leads to a legal nightmare with artists battling to sue for infringement based on the AI’s jumbled work. Legally AI falls in a gray area and it is hard to say whether or not AI is infringing on laws when it takes so much from others and offers a “new” product. Legally AI should be judged on a case-by-case basis. Certain AI can infringe more than others and if the work falls within 100 years and is not in the public domain then the artist should have full rights to keep their work away or at least receive a commission on the work used by AI companies.

Artist Perspective

Artists are navigating a new terrain as they use AI tools to augment their creative process. There is contention however, many artists believe their work is being infringed on and they are losing jobs due to AI art. Examining how AI serves as a tool for companies and works against artists is in plain view to almost every person. By exploring the motivations, challenges, and viewpoints of an artist it is plain to see AI can be useful to them, but also a detriment. AI truly is a double-edged sword to an artist. “The notion of a work of art being the coherent expression of the individual’s psyche, emotional condition, or expressive point of view began in the Romantic era and became the prevailing norm in Western Europe and its colonies in the 19th and 20th centuries. Although this remains a common motivation for many artists working today, it does not mean it is the only and correct definition of art. And certainly, it is not a role that any AI system will ever be able to fulfill” (Mazzone, 2019). Emotion is the reason art is art. AI is a robot

and will never be able to fulfill that role. The concept of art being able to convey emotion and not just be used in business advertisements is lost on a lot of people in the field of AI. Art can not be appreciated by anyone who enjoys art if it does not have their blood, sweat, and tears in it. The most contentious issue with artists is the legality of AI art. “Such mimicking or use of an artist’s work and style may also be covered under moral rights in copyright law. Moral rights vest in “visual art”, such as paintings and photographs, and protect the creator’s personal and reputational interest in their work by preventing the distortion or defacement of the original work .”(Impact on Artists, 2023). An artist in most cases will not be able to appreciate someone typing four words and then saying they made a painting. Not only could someone steal an artist's style, but they can produce art faster. This not only hurts the artist in the form of stealing intellectual property, but it can also take away business. From an artist's perspective, AI art is a threat. While it can be a useful tool for others from an artist's point of view it is a threat to their livelihood.

Scientific Perspective

The scientific perspective of AI art involves the intersection of computer science, machine learning, and aesthetics. Additionally, it investigates the role of AI in understanding and replicating human creativity, providing a scientific lens through which we can appreciate the potential and limitations of AI in the realm of art. One of the biggest scientific questions is if AI can imagine. “Do AI algorithms imagine? Can we classify their output as imaginative? What is their effect on human imagination? Many scholars analyze imagination as an “inner” faculty disconnected from the outside world and do not refer to the possibility that imagination is shaped by the technologies surrounding us (e.g. Kant).” (Wellner, 2020). AI algorithms according to a

scientific perspective can not be imagined. AI uses a data matrix along with previously made art to make new patterns (Wellner, 2020). The issue with this is the AI taking bits and pieces of different artists' works and mashing them together. In essence, AI creates a collage of different artists' ideas and styles. It is obvious that an AI made a piece of artwork based on how it looks. "The issues of platform aesthetics are exemplified by the AI installations produced in Refik Anadol's studio [101], which flirt with sophisticated production techniques, formal oversaturation, and inflated presentation. Their dubious motivations are clumsily veiled by inane flowery premises and by infantile anthropomorphic metaphors such as "transcoding the processes of how buildings think", or "how AI systems dream" or "hallucinate"."(Grba, 2022.). The display of AI gives a very vibrant picture but it can often be jumbled as in AI art words never form correctly. AI only recognizes patterns and puts them together like puzzle pieces to make a piece of "art" that is immediately recognizable as made by AI. AI is not sophisticated enough to imagine a piece of art. From a scientific perspective, AI art is a cheap ripoff. In the future could become a contender for real artists' work.

Integrated Perspective

Bringing together the legal, artistic, and scientific perspectives, gives more questions than answers. Potential frameworks for collaboration between artists, technologists, and legal experts seem to be impossible. AI is not developed enough to make original art when looking from a scientific perspective, this means they need artist work to make art. Then the artist will get upset that their work is being stolen and attempt to sue them. From the legal perspective copyright is being infringed on and it is illegal for AI to use different artist's work, but it is impossible to track the people who can sue AI art because it synthesizes so many patterns it is nearly

impossible to tell who can sue an AI company. By considering the implications of AI-generated art it seems to be going in a downward spiral and the only way out of it is for AI to get advanced enough to imagine on its own. There is only a chance for a meaningful solution if science advances. Overall an integrated perspective shows that there is a long future ahead for AI and the battle between artists and companies.

Conclusion

In conclusion, the emergence of AI art represents a shift in the way we perceive and create artistic expressions. Art is an emotional thing and AI can not replicate it. Emphasizing the need for a balanced and ethical approach to integrating AI in the art world is essential. An artist is threatened by the rise of AI art. AI can take styles and produce art faster than artists can. This is a threat to the livelihood of artists. Legally art infringes on copyright but is impossible for a lawyer to sue a company when thousands of artists could claim a part of an AI artwork is theirs. This can lead to complex fruitless legal battles. While technology continues to evolve, understanding and navigating the complexities of AI art will be crucial in shaping an AI that will not infringe on an artist's work. From a scientific perspective, AI is not able to imagine or put any emotion into the art they have created. This has led to well-made, but strange and unique art that is easily recognizable as being done by AI. In the field of science AI is a long way from being able to make art that is unique enough that it will not infringe on an artist. An integrated perspective leads down a path of a complex legal and moral battle for artists and AI companies. This in some cases can make AI a more nuanced and advanced way to work. If science advances then there is a way for artists to have a happier acceptance of AI art as a whole. Overall AI is a

complex and new technology that is hard to navigate. The only way to go into the future with AI is to make it more advanced so it does not infringe on copyright. The only way for an artist to be happy is to wait for the future and hope for the best. A scientist will be eager to advantage of technology. However, a lawyer may be happy at any time because they will see a lot of business in terms of copyright law. Overall AI art needs to be monitored and tracked carefully as it does not infringe on artists, and hopefully find a happy medium.

References

Mazzone, M., & Elgammal, A. (2019). Art, Creativity, and the Potential of Artificial Intelligence. *Arts*, 8(1), 26. MDPI AG. Retrieved from <http://dx.doi.org/10.3390/arts8010026>

Surden, H. (2019, June 28). *Artificial Intelligence and Law: An Overview*.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3411869#paper-citations-widget

Jiang, H., Brown, L. T., Cheng, J., Khan, M., Gupta, A., Workman, D., Hanna, A.,
Flowers, J., &

Geburu, T. (2023). AI Art and its Impact on Artists. *ACM Digital Library*.
<https://doi.org/10.1145/3600211.3604681>

Wellner, G. Digital Imagination, Fantasy, AI Art. *Found Sci* 27, 1445–1451 (2022).
<https://doi.org/10.1007/s10699-020-09747-0>

Grba, D. (2022). Deep Else: A Critical Framework for AI Art. *Digital*, 2(1), 1–32. MDPI AG. Retrieved from <http://dx.doi.org/10.3390/digital2010001>