AI as artist: Applause, yes – but sorry, no copyright

From cave paintings to AI art, the tools used in the creative process continue to evolve

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For The Straits Times

The art world has been thrown into a stir by the apparent invasion of artificial intelligence (AI) into hallowed areas. Now that the top prize for emerging digital artists at the Colorado State Fair was won by a machine created by an algorithm, Midyearly, set off a backlash from artists who saw this as threatening.

Today, rapid advancements in AI capabilities to create art continue to redefine the human role in the creative process. Among these works of art rely heavily on the underlying algorithm and creative input of the programmers; the computers are akin to painters or sculptors – they are tools used in the creation of the artworks.

New tools like Midyearly mean even amateurs can create “art” by inputting words into a text box. This raises many questions, including who is determined as the painter or author – does the “tool” or program get a credit; what is originality; and how do the legacies of copyright stand up to this?

In Singapore, the reference here is not that the new Copyright Act that came into effect in November last year is silent on whether AI art is covered. However, a number of sections in the legislation make it clear that only a human individual can be an “author.” For instance, the duration of copyright is pegged to 70 years after the death of the human author (section 160), and copyright in an artistic work exists only if the author is a qualified individual where “he or she” is a Singapore citizen (section 77). The Singapore Court of Appeal has also ruled that copyright owners in any literary work, the authorial contribution must connect with the engagement of the human intellect which a non-human author is deemed to be unable to provide.

HOW AI ART EVOLVED

In April 2016, a computer-generated 10 painting created by an algorithm with facial recognition software that spent 38 months examining 248 known paintings by the Dutch painter, using 100 gigabytes of digitally rendered graphics. In 2018, however, a Paris-based collective, developed the painting Portrait of Edmond de Belamy through Generative Adversarial Networks, which used a sample set – in this case, thousands of portraits – to recognize patterns before creating new pieces with that knowledge.

In October that year, auction house Christie’s in New York marketed the painting as the first portrait generated by an algorithm to come up for auction, and sold it for US$438,000 (S$586,000), over 40 times its initial estimate. Since then, AI-generated works have made news, with masterpieces like Claude Monet’s Waterlilies (Pond) by Paris, by Ron Arad, this painting was noteworthy for not being algorithmic art from a person or an algorithm.

WHO IS THE CREATOR?

Many commentaries do not make a clear distinction between the AI as a “tool” used by human individual or the AI itself independently and autonomously producing a work without supervision or significant human input.

The former category is usually called AI-aided works, while there is no consistent term to define the latter category. The so-called AI-generated works.

Examples of the former include the work of artist Vincent Van Gogh, whose works are generated from scans of his handwriting and computer-generated math in his drawings, sculptures and installation works, and Scott Eaton, who creates a painting of a cat using his own computer vision and machine learning techniques.

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THE CONCEPT OF ART

Argentinian artist Sofia Crespo, seen here with one of her works, is part of the “generative art” movement, where humans create rules for computers which then use algorithms to generate new ideas, forms and patterns. PHOTO: AP

produce paintings and other artworks that are not. Others say such paintings were created with assistance, like Leonardo da Vinci’s Mona Lisa. Some say it requires a form of computer. In the 1990s, Andy Warhol befuddled much with his series of paintings of the Campbell’s Soup can. In the 1990s, Damien Hirst first painted a series of works. The Arrival Of Spring, was “nursery school children” painted on paper, with flocking reinforcing all aspects of production.

In 2019, Scott Eaton in his debut exhibition in London, declared that he was in this emerging field of AI art “not its creators or agents” but rather in making “art” with “tools” AI software that makes design decisions and enhances the creative possibilities available to the human artist.

Art, more than ever, is an art form or a tool, and the mechanisms associated with it have changed. Ultimately, determining who the author of AI-generated copyright should look closely at the tools the programme is using and the relevant data, and the users of the AI software that enables creative contribution and the final decisions.

Singapore’s Copyright Act (section 88) in the overall context of the programme, the algorithm, the data supplier and the relevant data, and the users of the AI software that enables creative contribution and the final decisions.

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