



AI MADE INVENTIONS AND AI CREATED WORKS IN EUROPE. WHAT DOES THIS HAVE TO DO WITH MY BUSINESS?

Marek Oleksyn, Co-founder & Partner, ROA Rasiewicz Oleksyn & Associates

Webinar

Wednesday, 19 May 2021, 15:00 BST





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A Word From Today's Chairman



Professor Michael Mainelli

Executive Chairman

Z/Yen Group



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Today's Agenda



- 15:00 – 15:05 Chairman's Introduction
- 15:05 – 15:25 Keynote Presentation – Marek Oleksyn
- 15:25 – 15:45 Question & Answer

Today's Speaker



Marek Oleksyn

Co-founder & Partner

ROA Rasiewicz Oleksyn & Associates



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IP Innovations
& People

**AI Made Inventions And AI Created Works In Europe.
What Does This Have To Do With My Business?**

Marek Oleksyn | attorney at law | ROA Rasiewicz Oleksyn & Associates

What is Artificial Intelligence?

Different approaches and different understandings of AI

A fresh, broad proposal from the European Commission for a legal definition of AI system:

EU Commission proposal for Artificial Intelligence Regulation COM(2021) 206 of 21 April 2021

AI system - means software that is developed with one or more of the techniques and approaches listed in Annex I and can, for a given set of human-defined objectives, generate outputs such as content, predictions, recommendations, or decisions influencing the environments they interact with

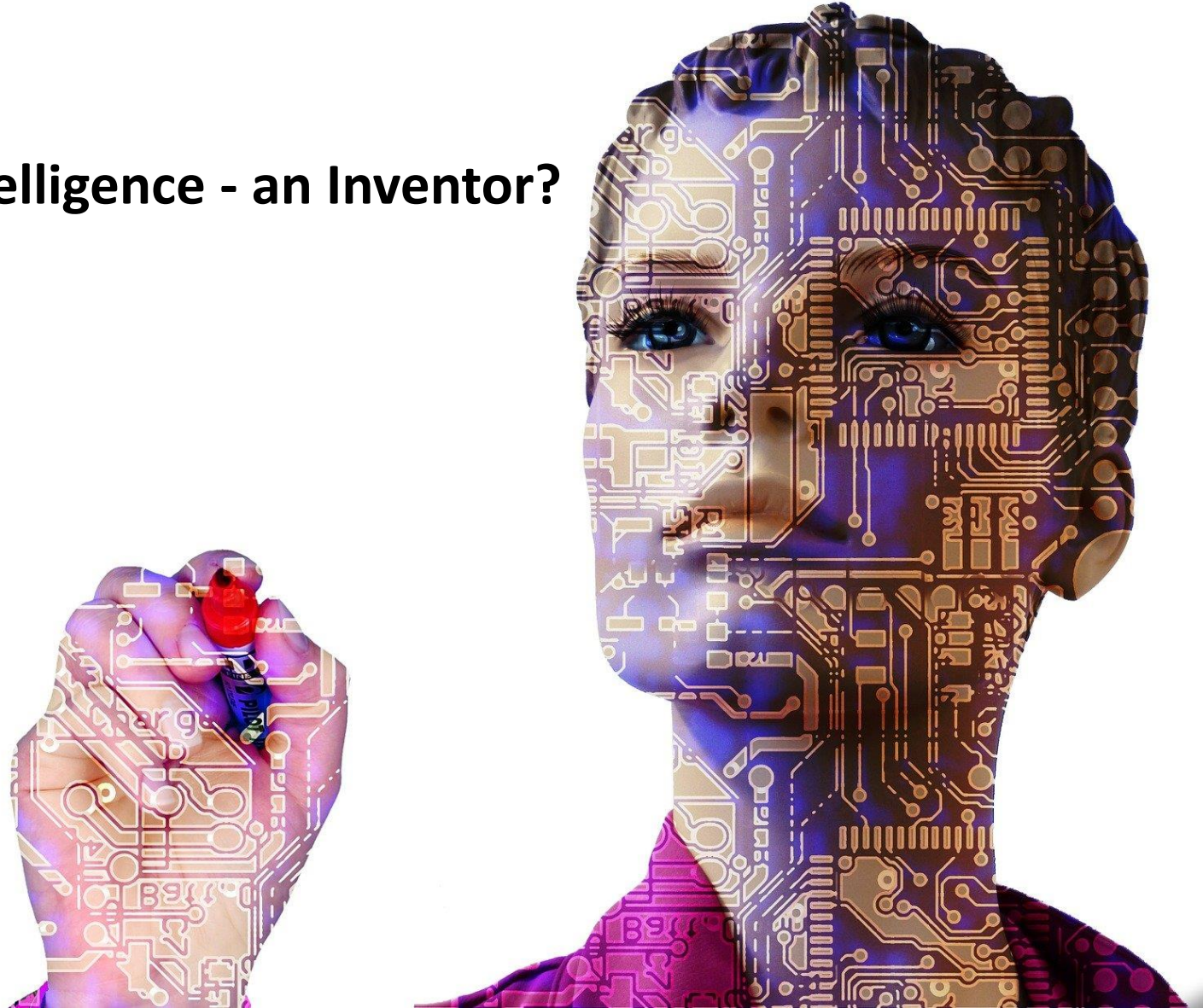
Annex I – AI techniques and approaches:

- **Machine learning approaches**, including supervised, unsupervised and reinforcement learning, using a wide variety of methods including deep learning;
- **Logic- and knowledge-based approaches**, including knowledge representation, inductive (logic) programming, knowledge bases, inference and deductive engines, (symbolic) reasoning and expert systems;
- **Statistical approaches, Bayesian estimation, search and optimization methods**



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Artificial Intelligence - an Inventor?



Innovative poll:

Do you think that patents for inventions made exclusively by AI algorithms:

1. Should not be granted at all.
2. May be granted to AI or its legal successor.
3. May be granted to the owner of the AI algorithm.





Why is the aspect of AI in inventing important at all?

Because inventions open the way to patent, and patent means monopoly.

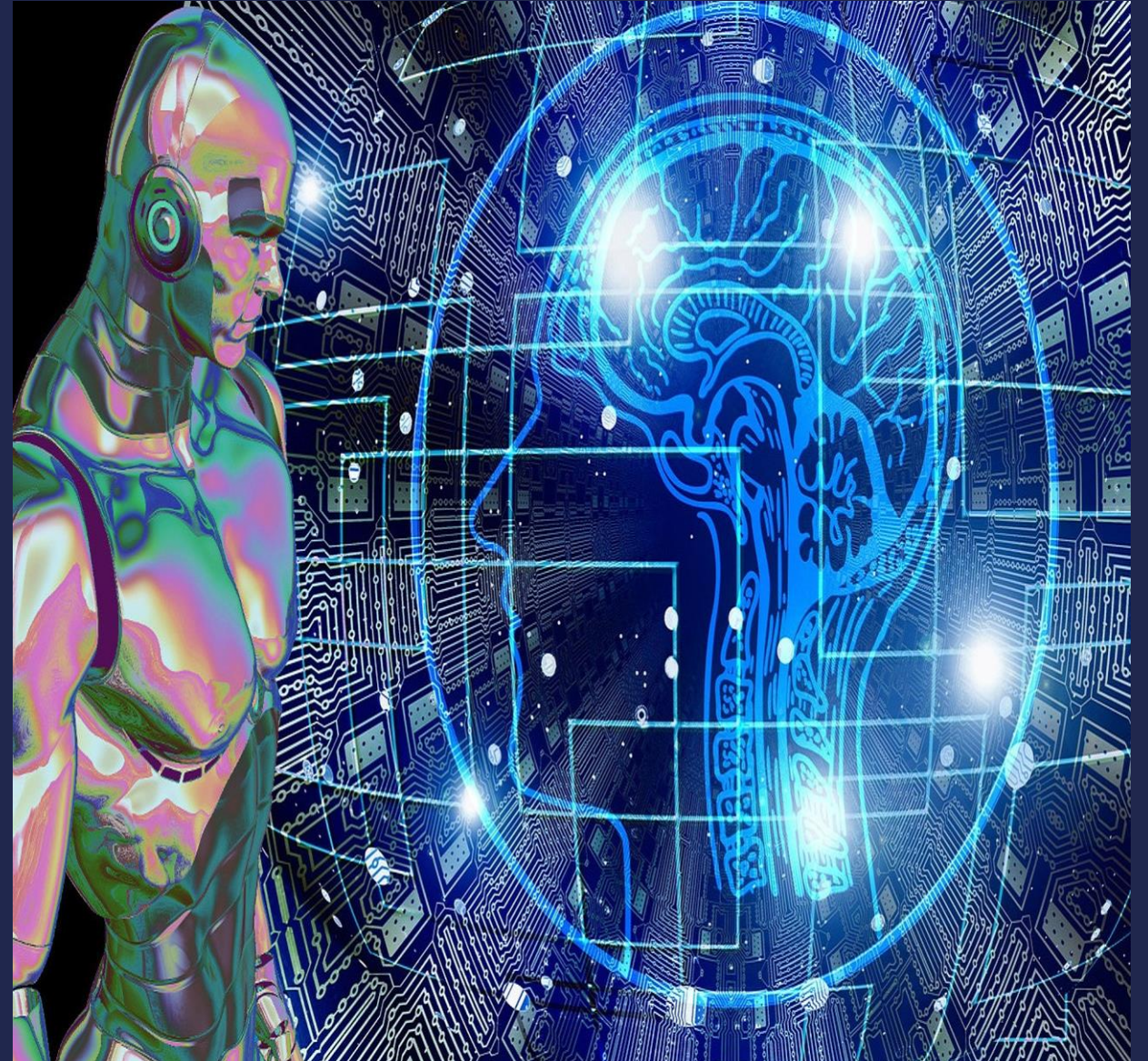
But obtaining a patent monopoly requires meeting specific requirements:

European patents shall be granted for any inventions, in all fields of technology, provided that:

- they are new,
- they involve an inventive step and
- they are susceptible of industrial application

- Right to apply for a patent - granted to every **person** being an „inventor”
- “Inventor” in relation to an invention means the **actual deviser** of the invention and “joint inventor” shall be construed accordingly – Article 7 of UK Patents Act 1977

- Is it necessary to indicate the inventor in the patent application?
- Can the artificial intelligence system fulfill the conditions of being "any person"?
- But what if the „actual designer” is not a human?
- Are these issues in any way legally regulated at the level of the EU or the European countries?





A European patent application may be filed by any **natural or legal person**, or **any body equivalent to a legal person** by virtue of the law governing it.

The right to a European patent **shall belong to the inventor or his successor in title**.

If by a final decision it is adjudged that **a person other than the applicant is entitled to the grant of the European patent**, that person may,

- (a) prosecute the European patent application as his own application in place of the applicant;
- (b) file a new European patent application in respect of the same invention; or
- (c) **request that the European patent application be refused.**

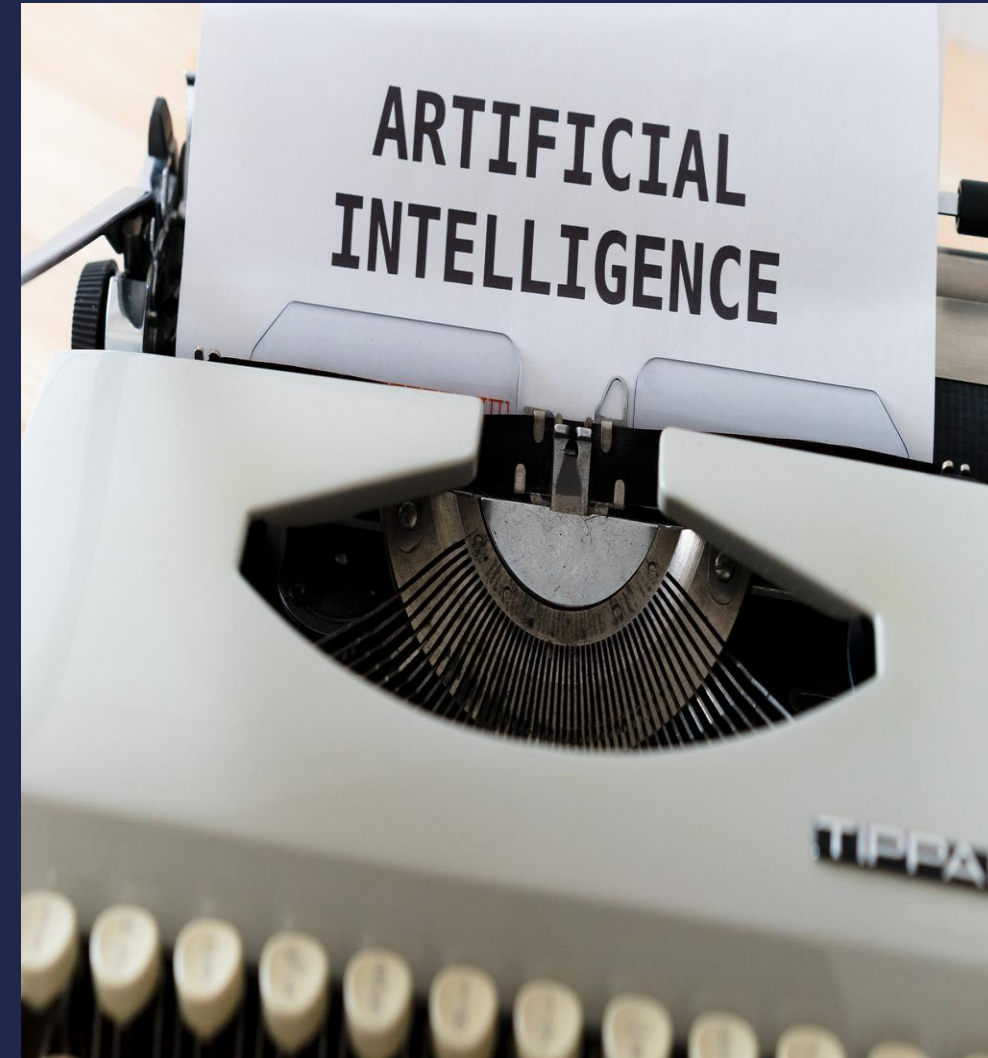
Articles 60 and 61 of the European Patent Convention



The European patent application **shall designate the inventor**. If the applicant is not the inventor or is not the sole inventor, the designation shall contain a statement **indicating the origin of the right to the European patent**.
Art. 81 of the European Patent Convention

Designation shall include name, surname, address
(another difficulty for AI)
Rules 19 and 41 of the Implementing Regulations to the EPC

- The EPO has refused two European patent applications in which a machine was designated as inventor. “DABUS” was indicated as inventor with respect to two European patent applications, which is described as “a type of connectionist artificial intelligence”. **The applicant stated that they acquired the right to the European patent from the inventor by being its successor in title.**
- EPO refused EP 18 275 163 and EP 18 275 174 on the grounds that they do not meet the requirement of the EPC that **an inventor designated in the application has to be a human being, not a machine.**
- An ‘AI Inventor’ is not acceptable as this does not identify ‘a person’ which is required by law. The consequence of failing to supply this is that the application is taken to be withdrawn – **UK IPO Formalities manual**





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England and Wales High Court of Justice Judgment – 21 September 2020 [2020] EWHC 2412 (Pat)

Mr. Justice Marcus Smith:

I am quite prepared to accept that there is a general rule that **the owner of a thing is owner of the fruits of that thing**. Thus, the owner of a fruit tree will generally own the fruit produced by that tree.

It is therefore quite impossible to say that **simply because (i) DABUS has invented something and (ii) Dr Thaler owns DABUS, Dr Thaler is entitled to the grant of a patent**. There must either be an application by the inventor within section 7(2)(a) (which cannot be made because DABUS is not an inventor nor a person) or the inventor must have transferred the right to apply enabling Dr Thaler to apply under one of section 7(2)(b) or (c) (which again cannot be in this case).

It would be far easier to contend that Dr Thaler was entitled to the grant of a patent pursuant to **section 7(2)(a) of the Patents Act 1977, on the ground that he (Dr Thaler) owned the machine that did the inventing**. That would actually be a much closer analogy to the general proposition advanced by Dr Thaler that "if you own the machine, you own the output of that machine". However, as I have noted, this was not a contention advanced by Dr Thaler: indeed, it was positively not advanced.





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**Isn't this discussion
purely academic?**

**Does this have a real
impact on business?**

Yes, it does:

What if a human is no longer a „designer” to the extent sufficient?

What if invention is made jointly by human and his „AI machine”?

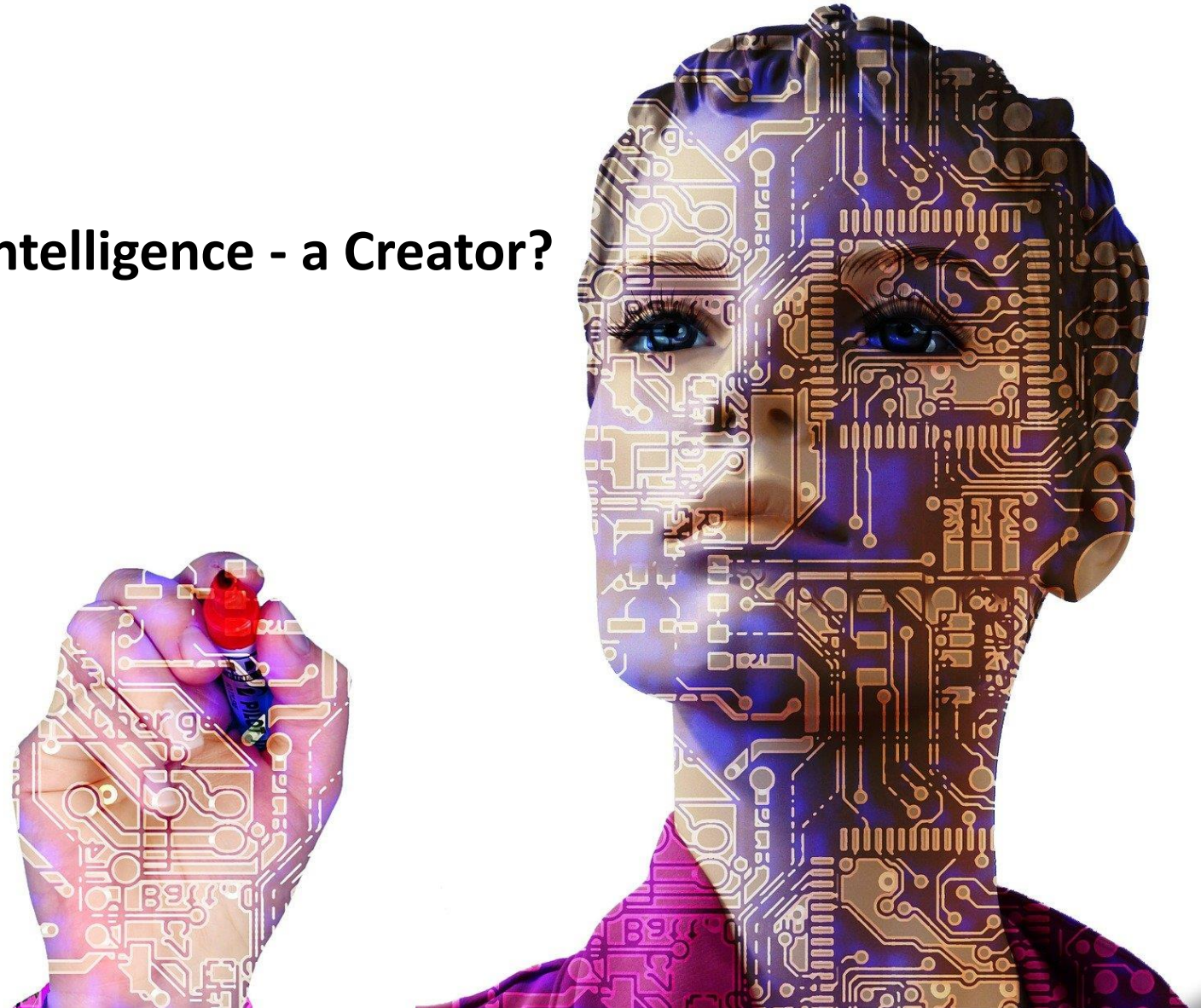
Inventorship not only determines ownership and effective IP rights assignments but also has impact on validity of patent granted

Motivation in the development of AI

Invention disclosure vs trade secret approach

**What paths are
possible to meet
these challenges?**

Artificial Intelligence - a Creator?





“Next Rembrandt” creative poll:

Who holds the copyright in this AI created painting?

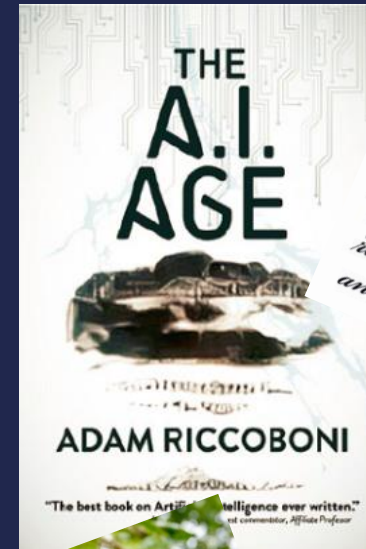
1. It is not a copyrightable work at all.
2. No one can copyright this work.
3. Persons co-authors of the AI algorithm.
4. An entity that ordered the work from persons co-authors.



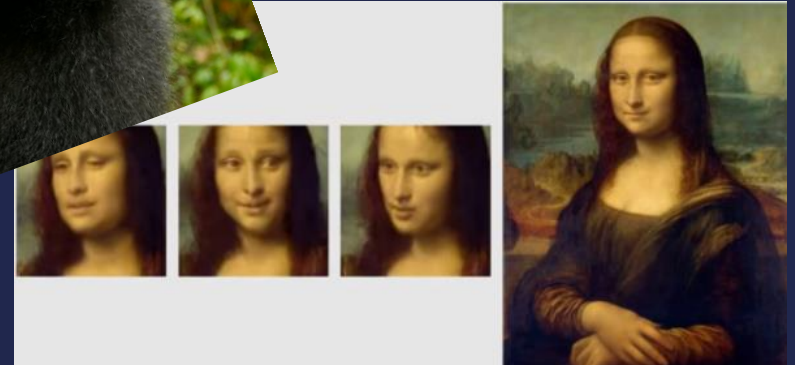
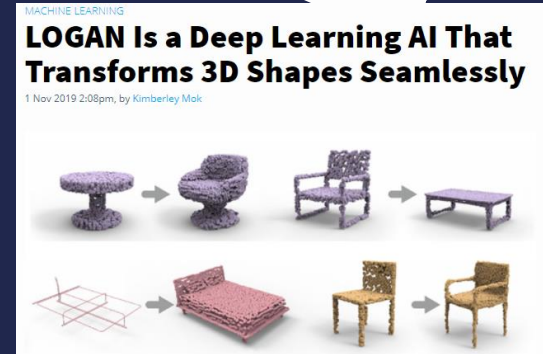
AI Created works

- AI the ...?
 - ...painter – Next Rembrandt
 - ...writer – Deep-speare, automatically generated news
 - ...composer – Flow Machines
 - ...designer – „The A.I. Age” book cover by *Generative Adversarial Networks*, LOGAN
 - ...”director” & performer – Deepfake Videos of Mona Lisa, Deep Nostalgia
- Authorship? Copyright? Design rights? Term of protection? Infringement?
- Should AI be considered a monkey taking a selfie?

Singapore Court of Appeal case *Global Yellow Pages Ltd vc. Promedia Directories Pte Ltd et al.*. [2017] SGCA 28 – compilation made without human participation



*Yet in a circle pallid as if flow,
By this bright sun, that with his light display
roll'd from the sands, and half the buds of snow,
and calmly on him shall in fold away*





Our writing equipment takes
part in forming our thoughts.

~ Friedrich Nietzsche



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Thank you for your attention!

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- Thu, 20 May (09:00-10:30) UK-China-Europe Relationships & Co-operation After Brexit: Rewiring The Connections
- Fri, 21 May (14:00-14:45) On The Shoulders Of Giants: The Digital Exploration Of Newton's Career At The Royal Mint
- Mon, 24 May (11:00-11:45) Emerging Central & South Asian Tech Hubs: The Indonesian & Malaysian Hubs Of 10 Years Ago?
- Tue, 25 May (09:00-09:45) How Biodiversity Underpins Economic Prosperity

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