



DECIPHERING OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS FOR AI-GENERATED WORKS IN NIGERIA THROUGH THE LENS OF THALER V. COMPTROLLER-GENERAL OF PATENTS, DESIGNS, AND TRADE MARKS



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Introduction.

In recent years, Artificial Intelligence (AI) has significantly reshaped and disrupted various spheres of human activity. Beyond merely enhancing human productivity through its heavy reliance on data generated by humans, this technological advancement has led to the emergence of more autonomous AI models such as generative AI, etc. These models exhibit the capacity to learn, adapt, and produce results without constant human intervention, thereby reaching new levels of sophistication. The increasing autonomy of AI has sparked contentious debates regarding the ownership of intellectual property rights for works enhanced/generated by AI systems. While some advocate for AI owning these rights, citing its creative contribution. On the flip side, others argue that ownership should lie with the programmers behind the AI. They emphasize the crucial role of human-generated data, which serves as the fundamental fuel powering AI algorithms and systems.

This controversy became the crux of the dispute in the recent case of *Thaler v. Comptroller-General of Patents, Designs, and Trade Marks* (2023) UKSC 49 where the Supreme Court of the United Kingdom in its judgment delivered on December 20, 2023, held a perspective that diverges from the stance taken by courts in other jurisdictions on this issue. Relying on the *Thaler's* case, this article aims to analyze the ownership of intellectual property rights for works created by AI machines in Nigeria.

A Concise Overview of the Judgment in Thaler's Case.

In *Thaler v. Comptroller-General of Patents, Designs, and Trade Marks*, the main question was whether an artificial intelligence (AI) system, called DABUS (Device for the Autonomous Bootstrapping of Unified Sentience), could be recognized as the inventor of a patentable invention under UK patent law. The case was brought by Stephen Thaler, who filed two patent applications for inventions that DABUS created on its own.

Thaler argued that since DABUS independently came up with these inventions without any human help, it should be named as the inventor. However, the UK Intellectual Property Office (UKIPO) rejected Thaler's applications, stating that the term "inventor" in the Patents Act 1977 specifically refers to a human being. The UKIPO concluded that the law does not allow for non-human inventors. Thaler then appealed this decision to the High Court, claiming that denying DABUS the title of inventor went against the purpose of patent law, which aims to encourage innovation. He argued that recognizing DABUS as an inventor would better reflect the reality of how the inventions were created.

The High Court upheld the UKIPO's decision, agreeing that UK patent law requires inventors to be natural persons (humans). The court emphasized that the language of the Patents Act does not allow for AI systems to be considered inventors. The Court of Appeal also took this stance. Thaler further appealed to the Supreme Court, which also ruled against him. The Supreme Court reiterated that the current law clearly defines an inventor as a human being and does not provide any legal basis for recognizing an AI as an inventor. The court highlighted that while the inventions produced by DABUS were remarkable, the existing legal framework must be followed.

A Brief Insight into Ownership of Intellectual Property Rights Under Existing Nigerian Laws and the Likelihood of Nigerian Courts Adopting the Approach in Thaler's Case.

In Nigeria, the ownership of intellectual property rights is primarily governed by several statutes, including the Copyright Act of 2022, the Trade Mark Act, and the Patent and Designs Act.

According to Section 5 of the Copyright Act, copyright is granted to works that meet specific eligibility criteria. Copyright will be conferred if the author, or any co-author in the case of joint authorship, is either a Nigerian citizen or habitually resides in Nigeria at the time when the work or a substantial part of it is created. Additionally, if at least one author is a citizen or habitual resident of a country that is party to an international treaty with Nigeria, or if the work is first published in such a country, copyright will also be conferred.

Section 28 of the Copyright Act stipulates that the ownership of copyright created by an individual is initially vested in that individual, referred to as the author, unless there is an agreement stating otherwise. For works created under a contract for services or during employment by a government entity or inter-governmental organization, copyright is vested in the respective government body unless agreed otherwise. In cases where a person commissions a work, such as a photograph or audiovisual piece for private and domestic purposes, that person is deemed to hold a non-exclusive license for non-commercial use and has the right to restrict publication or public display of the work.

In the case of a collective work, Section 28 asserts that copyright shall vest in the person who directed its creation, unless specified otherwise by an agreement. The individual authors of the incorporated works retain the right to exploit their contributions independently of the collective work's rights.

The term "author" is defined in Section 108 of the Act. For example, in audiovisual works, the author is the person who arranged for the making of the work unless otherwise agreed. In collective works, the author is the individual responsible for the selection and arrangement of the pieces. For photographs, the person who took the photograph is considered the author, with similar definitions applying to sound recordings and broadcasts.

Regarding trademarks, applications for registration must include the name, nationality, and address of the trademark's proprietor, which is also required for patents and designs. While the Copyright Act explicitly outlines who can be an author, the Trademark Act and the Patent and Designs Act do not specify who can be a proprietor or inventor. However, Section 18 of the Interpretation Act clarifies that "person" encompasses both corporate bodies and unincorporated associations.

It is noteworthy that in the context of patents, the right to a patent for an invention is vested in the statutory inventor, defined as the first person to file a patent application or validly claim foreign priority, regardless of whether they are the true inventor. The true inventor has the right to be acknowledged as such in the patent, and this right cannot be altered by contract. If an applicant obtains essential elements of a patent from another individual without their consent, all rights in that application are transferred to the true inventor or their successor. Furthermore, when an invention is developed during employment or under a commissioned contract, the patent rights typically belong to the employer or the commissioner, with provisions for fair remuneration in cases of exceptional importance or when the inventor has used resources provided through their employment. An individual is not recognized as an inventor if their role was merely supportive in the development process without any contribution to the inventive activity itself.

This framework under Nigerian law provides a basis for understanding the ownership of intellectual property rights. Although there have been no known applications for the registration of non-human inventions or copyrights in Nigeria, it is apparent that, as demonstrated in the *Thaler's* case, Nigerian courts would likely refuse such registrations. This is primarily due to the current framework of Nigerian law, which does not acknowledge or provide a legal basis for recognizing an AI as an inventor or author.

Conclusion.

Thaler's case underscores the challenges posed by AI advancements for intellectual property (IP) rights, revealing that current legal frameworks often fail to accommodate non-human inventors. This highlights the pressing need for IP laws to evolve and address these gaps. While countries like China (Beijing Internet Court) and South Africa have taken steps toward recognizing AI-generated inventions, Nigeria has yet to do so. Addressing this issue is crucial for fostering innovation, ensuring creators receive due recognition, and positioning Nigeria as a leader in IP protection.

In light of these developments, we commend all inventors, authors, artists, and other creators to actively seek the expertise of professional consultants and legal experts. Doing so will help ensure that their rights are adequately protected under the law, allowing them to navigate the complexities of intellectual property in a landscape increasingly influenced by AI technology.

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