



Artificial Intelligence and IP: Challenges to the fundamentals of the Copyright System

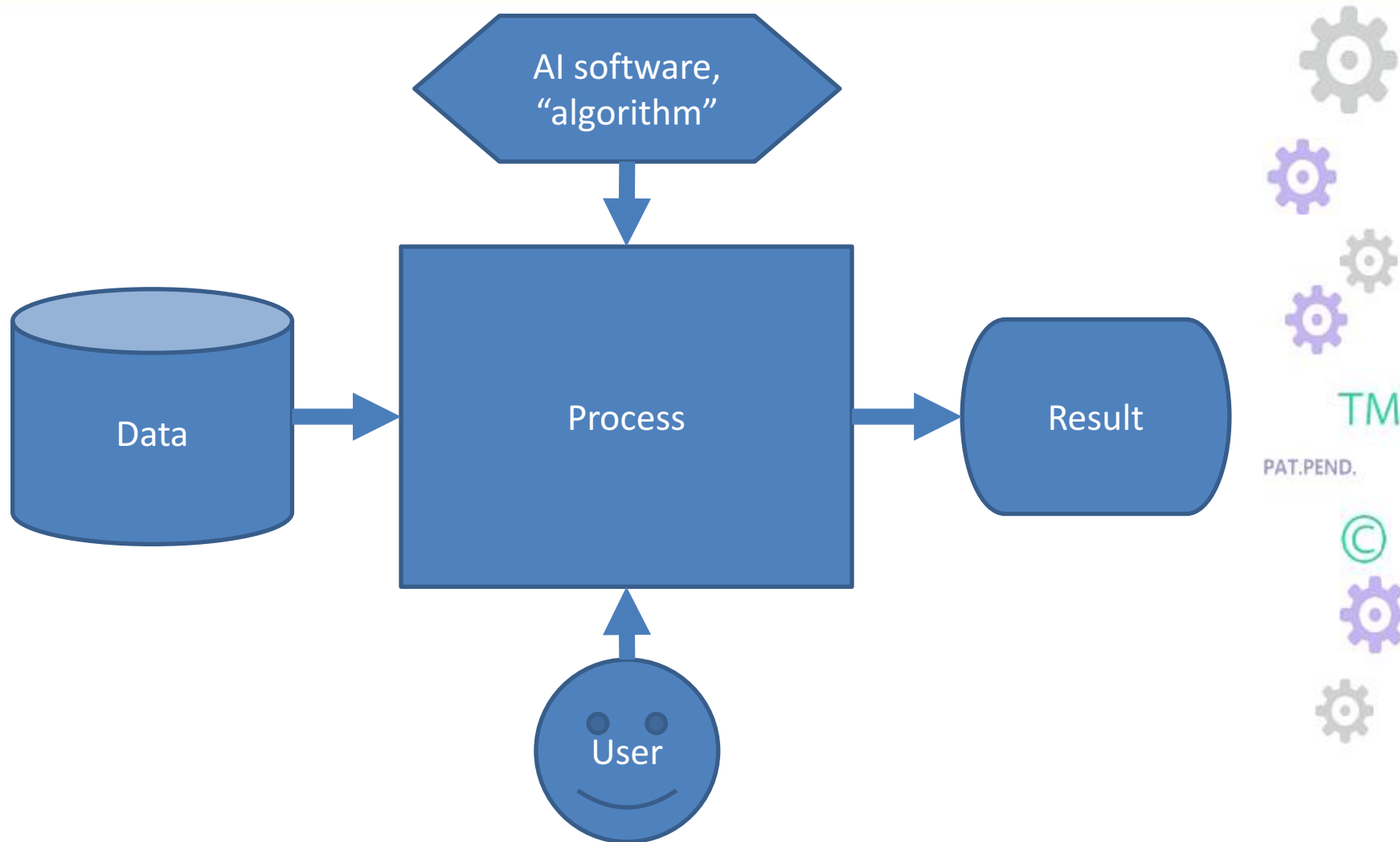
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Topics

- Who is the author of an automatically created work?
- Can *originality* be evaluated from the end-result?
- Neighboring rights
- Rights in AI model data



Basic AI System



Who is the author of an automatically created work?



- Many scholars have already discussed this
 - E.g. Rosa Ballardini, Andres Guadamuz, Tuomas Sorjamaa,...
- Currently, most definitions of originality require a human author → AI cannot be the author
- Good questions in relation to automatically created works:
 - Should they be copyrightable, in the first place?
 - If yes, who should get the copyright? AI developer, AI owner, user, data provider, ...?
 - Or the AI itself? If AI as a legal person was the answer, what would be the question?



How to evaluate originality?

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THEY STARTED two hours before daylight, and at first, it was not necessary to break the ice across the canal as other boats had gone on ahead. In each boat, in the darkness, so you could not see, but only hear him, the poler stood in the stern, with his long oar. The shooter sat on a shooting stool fastened to the top of a box that contained his lunch and shells, and the shooter's two, or more, guns were propped against the load of wooden decoys. Somewhere, in each boat, there was a sack with one or two live mallard hens, or a hen and a drake, and in each boat there was a dog who shifted and shivered uneasily at the sound of the wings of the ducks that passed overhead in the darkness.

Four of the boats went on up the main canal toward the big lagoon to the north. A fifth boat had already turned off into a side canal. Now, the sixth boat turned south into a shallow lagoon, and there was no broken water.

It was all ice, new-frozen during the sudden, windless cold of the night. It was rubbery and bending against the thrust of the boatmen. Then it would break as sharply as a pane of glass, but the boat would make forward progress.

Ernest Hemingway: Across the River and Into the Trees

Photos already challenge this principle



Reijo Keskikiikonen: Tommi
TN 2016:4



Adrian Paci: Centro di Permanenza Temporanea, 2007

- Are these copyrightable works – or merely random snapshots?
- Did the photographer make creative choices?
- Impossible to tell, if we don't know, how the pictures were produced



AI created works



Google



Neighbouring Rights

- If AI is not creative, but still produces something valuable, will there be a neighbouring right involved?
- Neighbouring Rights: a messy collection of narrow rights without clear justifications:
 - Producers
 - Phonogram, TV and film producers but not e.g. event producers
 - Broadcasting organisations
 - Signals by broadcasting organisations are protected whether valuable or not but other signals are not protected
 - Performers
 - Actors, singers have rights, but not e.g. acrobats or athletes
 - Photographer
 - All the photos, even automatically taken, are protected
- Casuistic rights + technological development = problems
- AI changes the work in each of the areas protected by neighbouring rights and makes it increasingly difficult to tell what is protected



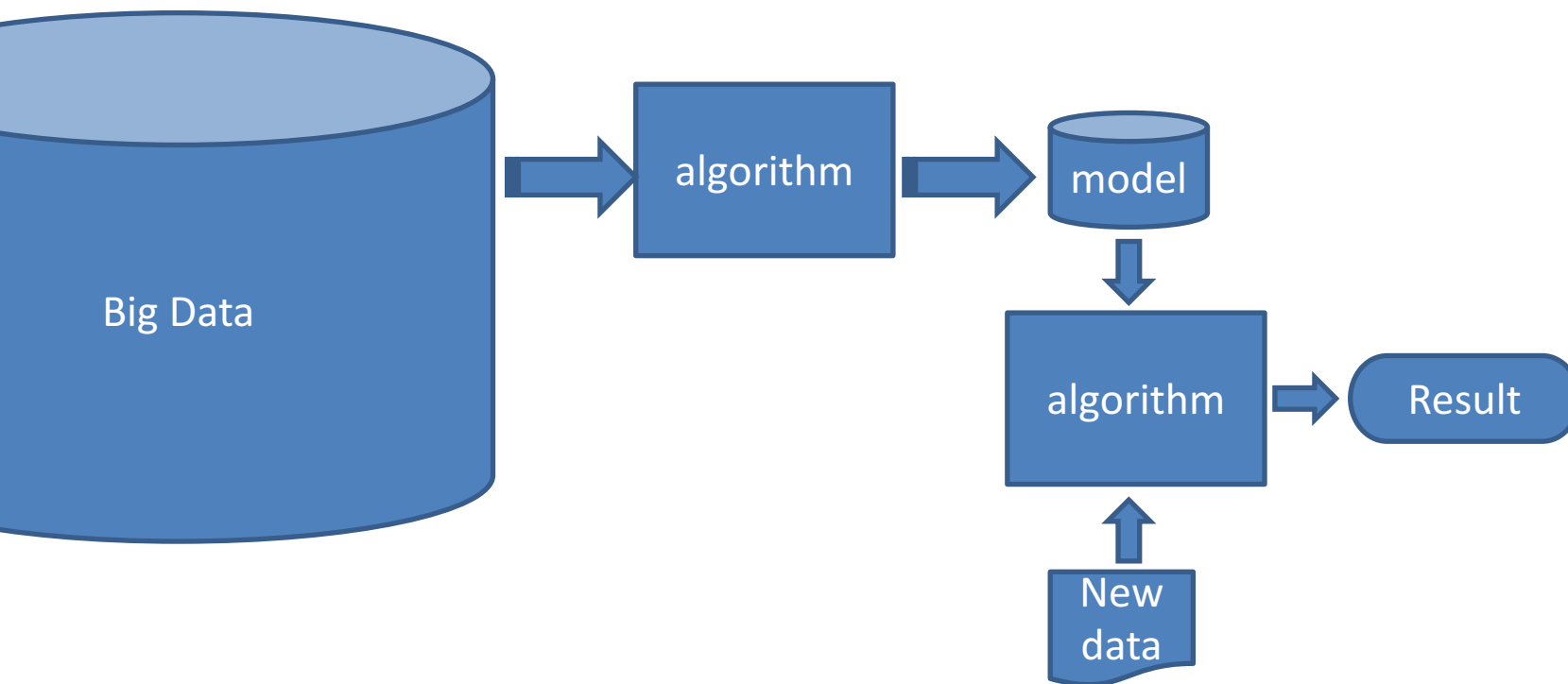
TM

PAT.PEND.



Rights in model data

- A sample AI:



- Model can be the most valuable part of an AI system
- Not copyrightable? Database protection? Any protection?

Conclusions

- Both the results produced by an AI system and also the most valuable parts of the system itself can arguably remain outside the copyrightable subject matter
- Risk to have yet another specific rule in the copyright regime
- Back to basics:
 - Why do we have a copyright system?
 - Who should benefit from original works?
 - Highlight and possibly revise the principles
 - Decrease in detailed rules
- Lawmakers: keep calm – do not overreact!

