



**AI AND INTELLECTUAL
PROPERTY IN MALAYSIA:
LEGAL GUIDANCE FOR
BUSINESSES**

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Introduction

The integration of artificial intelligence (AI) into business operations is becoming a norm. In this respect, it is increasingly crucial for businesses to understand the intersection of intellectual property (IP) rights and legal liability. Malaysian law presents unique considerations in this space, particularly in relation to AI development, usage, and the protection of AI-generated content. This article addresses essential legal questions surrounding AI and IP from a Malaysian perspective.

How can businesses in Malaysia protect their AI algorithms and models?

1. Copyright Protection

When a company develops its own AI algorithms and models, several avenues of protection under Malaysian law may apply. Most directly, the Copyright Act 1987 provides protection for original literary works, which includes

software source code that form the basis of AI algorithms and models. Thus, where these conditions are met, the AI source code qualifies for copyright protection.

2. Trade Secrets

Beyond copyright, trade secret protection plays a vital role. While Malaysia lacks a dedicated trade secrets statute, protection is available under the common law principles of breach of confidence. This can be reinforced through internal policies and contractual obligations such as non-disclosure agreements (NDAs). Companies should:

- Implement strict access controls on confidential code and training dataset.
- Use NDAs with employees, contractors, and vendors.
- Include confidentiality clauses in employment and service contracts.
- Develop internal policies around data security, model access, and proprietary processes.

3. Patents

For companies aiming to protect more technical innovations, patent protection may also be considered. Malaysian law remains cautious about granting patents for software per se, unless the software-related invention demonstrates a technical effect or is part of a larger technical process that meets requirements of novelty, inventive step, and industrial applicability, for example, these could be:

- AI models integrated into medical diagnostic devices.
- Machine learning-based industrial process control systems.
- AI-enhanced cybersecurity solutions with tangible hardware applications.

Copyright: Can I claim copyright for AI-generated content in Malaysia?

The protection of content generated by AI systems depends on the nature of the AI and the degree of human involvement. Where an AI is used as a tool under significant human direction such as

creative prompting or editorial refinement (e.g., prompting a generative model, refining the outputs, selecting components), the resulting work may be eligible for copyright protection, as one would say that the work is extensively created by the human author with the aid of an AI.

Conversely, where AI operates autonomously without human creative control, the current Malaysian copyright law does not currently recognize AI as a legal author. Given that only works authored by natural persons qualify for copyright, thus, outputs generated without human creativity (e.g., an AI generating music without any human input) would likely fall outside copyright protection.

In many instances, when AI systems are licensed from third parties or accessed through service providers (e.g., SaaS generative tools), outputs remain the intellectual property of the AI owner or provider unless explicitly assigned to the user. Therefore, it is crucial, for companies / users to ensure that they:

- Review licensing terms carefully.
- Negotiate clear clauses regarding ownership or transfer of IP in AI-generated outputs.

Combined Efforts: Who owns the copyright when humans and AI collaborate?

The situation becomes more nuanced when AI-generated outputs are the result of a mixed effort between human authors and AI systems. Globally, this is a grey area, but some parallels can be drawn. In the United Kingdom, Section 9(3) of the Copyright, Designs and Patents Act 1988 provides that in cases where there is no human author, the person “by whom the arrangements necessary for the creation of the work are undertaken” is deemed the author. However, this has not been widely tested in courts.

Malaysian copyright law, though not yet tested extensively in this context, would likely follow the principle that human authorship is necessary for protection. If the human plays a material creative role—such as selecting prompts, curating output, or editing AI-generated content—they may be considered the author of the work and can claim copyright in the final product. The AI in this context would be seen as a tool, much like a camera or photo editing software.

To illustrate this, here is an example - if a marketing team uses an AI tool like

Midjourney or ChatGPT to generate campaign visuals or text, but the team significantly modifies or directs the content to suit branding needs, they may qualify as the authors of the final work.

Fine-tuned / Modified AI systems: Can fine-tuning licensed AI models create new IP for the company?

Further complexities arise when a company builds upon a licensed large language model (LLM) or other foundational AI systems. If the licence permits such modifications or fine tuning, the resulting improvements, proprietary training data and bespoke configurations may be protectable as the company’s own intellectual property.

However, companies must bear in mind that:

- The original model remains the licensor’s property.
- Ownership of derivative models depends on the licence terms.
- Fine-tuned models can be protected under copyright (for unique configurations) or trade secrets (if kept confidential).

Hence, it is vital for licence agreements to delineate the rights of the licensee in any derivative tools or content and for companies to secure confidentiality over unique datasets or tuning methods, potentially through trade secret protections.

AI Prompts: Are AI prompts putting businesses at risk of IP infringement?

Prompts used to interact with AI can raise intellectual property issues, especially when they incorporate or reference existing copyrighted or trademarked materials. From a copyright perspective, reproducing substantial portions of copyrighted works in prompts may risk infringement pursuant to the Copyright Act 1987. Such examples could include entire passages from a copyrighted book in a prompt to generate summaries or uploading a film script to generate alternate scenes.

Similarly, referencing trademarked terms in a way that may confuse consumers or dilute brand identity can give rise to trademark claims under the Trademarks Act 2019. For example:

- Using a prompt like "Create a logo similar to NIKE® or McDonald's®" may lead to confusingly similar outputs.

- Including brand names like "Coca-Cola®" in AI-generated marketing content may result in brand dilution or misrepresentation.

Therefore, companies should avoid using unlicensed or protected content in prompts and implementing prompt review policies, especially for product development or public-facing/commercial content.

To summarise, users should be cautious and avoid inserting extensive copyrighted content into prompts or using trademarks in ways that could imply endorsement or mislead users.

Liability: What happens if AI-generated outputs cause harm?

There are currently no specific Malaysian laws governing AI-related harm. However, the use of AI systems may raise potential tortious liability under Malaysian law. If AI-generated outputs cause harm or loss - whether through misinformation, discriminatory decision-making, or operational errors - a company may be liable under general principles of negligence for failing to foresee or mitigate risks arising from AI use. Moreover, depending on the context of the AI-generated output, there may also exist

legal risks of defamation, misrepresentation, or product liability.

If a company develops the AI, it likely has a higher duty of care, particularly where it can foresee the consequences of the AI's use. On the other hand, if the company is merely a user of an AI licensed from a third party, the extent of liability may depend on whether it relied reasonably on the AI or whether it disclosed the system's limitations to customers or users.

Regardless of the role, companies should ensure transparency in the deployment of AI and adopt internal safeguards (e.g., human-in-the-loop systems, disclaimers, quality assurance processes) in place to mitigate the risks.

AI contractual clauses: What are the key clauses that should be included in AI-related contracts?

When entering into contracts involving AI systems, users should pay careful attention to licensing terms. Key provisions include the assignment or ownership of IP rights in the outputs, rights to fine-tune or retrain the system, limitations on the vendor's use of user data, and indemnities against IP infringement. Warranties ensuring compliance with applicable laws and ethical guidelines are also important,

especially in regulated industries such as telecommunications and finance.

In addition, both vendor and customer agreements should contain specific clauses that address AI-related risks. From a vendor's perspective, it is important to include disclaimers on the reliability or accuracy of AI outputs, limitations of liability for autonomous decisions, and exclusion of consequential damages. Customers, meanwhile, should ensure that IP in outputs is assigned to them, that their data will not be used to train the vendor's models without consent, and that they have audit rights or access to explanations of AI decision-making processes.

Shared ownership: How should contracts address shared ownership of AI-generated IP?

Finally, the question of shared ownership of AI-generated IP should be addressed carefully in contracts. While Malaysian law permits joint ownership of intellectual property, in practice it can lead to complications such as:

- **Disagreements on licensing:** One co-owner may wish to commercialize while the other does not.

- **Enforcement issues:** Joint action may be required to sue infringers.
- **Exit challenges:** Transferring or buying out ownership shares can be legally and operationally complex.

To avoid these pitfalls, shared ownership should therefore be accompanied by clearly defined rights and obligations, mechanisms for resolving disputes, and provisions for the exit or acquisition of ownership by one party. Where possible, it may be preferable to structure ownership such that one party owns the IP rights and grants the other a broad, irrevocable license, thereby avoiding potential deadlocks.

Wrapping Up: How can businesses legally future-proof their AI strategies?

In conclusion, the legal landscape surrounding AI and intellectual property in Malaysia remains in development. As the regulatory and case law framework on AI matures, companies can better position themselves by building the following strategies:

- **Establish strong IP protocols** around AI development and use.
- **Vet and negotiate licenses** thoroughly before adopting third-party models.
- **Secure rights in AI-generated outputs** where feasible.
- **Implement data governance and risk management** policies around AI use.
- **Build contracts that allocate liability**, protect proprietary assets, and ensure compliance with Malaysian IP laws.

This article was written by our Intellectual Property, Media, Sports & Gaming partners, Sri Sarguna Raj, Steven Cheok Hou Cher & Nicole Chong, with the assistance of Soo An Qi, Lim Chaw Zen and Michelle Yap Siew Hui (Senior Associate, Associate & Pupil). It contains general information only. It does not constitute legal advice or an expression of legal opinion and should not be relied upon as such.