# THINK YOUR BUSINESS OWNS ITS AI-GENERATED CONTENT? THINK AGAIN.

Category: Artificial Intelligence AI,Commercial Law,IT Law,Technology Law
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**AI Doesn't Own Your Content. But That Doesn't Mean You Do.**

Last week your marketing department used artificial intelligence "**AI**" to create a new advertising campaign.  Who actually owns it?  For many South African businesses, the instinctive answer is straightforward: "We do." The legal answer is more complicated. More importantly, ownership is only the beginning of the conversation. The more significant question is whether AI-generated content can become a valuable and legally protectable business asset.

At first glance, the answer appears straightforward. Most leading AI platforms state in their terms of use that users retain ownership of content generated through their systems.  Many businesses therefore assume that the legal position is settled.[1]

Unfortunately, the position under South African law is considerably more complex.  The challenge is not simply determining who owns AI-generated content. Before businesses consider ownership, they must answer a more fundamental question: can the content attract copyright protection? If the answer remains uncertain, businesses may invest substantial time and resources unnecessarily. They may also struggle to protect, license, enforce or commercialise the resulting intellectual property.

This uncertainty is not merely academic. It has practical consequences for businesses. These consequences can affect many areas of business. They include commercial agreements, software development, brand protection, mergers and acquisitions, and intellectual property management. As AI becomes more common in business operations, companies must understand these risks as part of sound corporate governance.

**The Business Reality: AI Has Already Entered the Boardroom**

Organisations once viewed AI as experimental technology, but they now embed it in their daily operations across virtually every sector. Many businesses do not realise it. However, AI already influences how organisations design products, deliver services, make decisions, and create intellectual property.

The commercial advantages are undeniable: faster output, quicker responses to market demand, and more human capacity for higher-value strategic work.

For decades, businesses have treated intellectual property as one of their most valuable assets.

Copyright protects creative works[2]. Trademarks distinguish brands in the marketplace. Patents safeguard innovation.[3] These rights help businesses commercialise their ideas and attract investment. They also allow businesses to license technology and prevent competitors from unfairly exploiting their work.

Traditional intellectual property law assumes that creative works originate from human skill, labour and judgment. Generative AI can produce sophisticated text, software code, marketing materials, images, music and designs with minimal human input. As a result, it blurs the line between human creativity and machine-generated output.[4]

This matters commercially far beyond the question of ownership. An AI-generated logo that cannot be protected offers little defence against imitation. Software code whose ownership is uncertain may complicate investment or acquisition transactions. Marketing content that inadvertently reproduces protected material may expose a business to costly disputes. For these reasons, businesses should treat AI-generated content like any other commercial asset. hey should ask two key questions: “Do we own this?” and “Can we protect, license, commercialise and enforce it?”

**When Does AI-Generated Content Qualify for Copyright Protection Under South African Law?**

South African courts have consistently held that originality is a prerequisite for copyright protection. Originality does not require novelty. However, a work must originate from the author through the exercise of sufficient skill, labour and judgment. If copyright does not arise, businesses have nothing to own, license or enforce. As a result, ownership is often a secondary issue.[5]

Many discussions about artificial intelligence begin with a question: who owns AI-generated content? In reality, that question may be premature. Businesses must first establish whether the work qualifies for copyright protection under South African law. Only then can they determine ownership. If copyright does not arise, businesses have nothing to own, license or enforce.

This distinction matters because copyright is one of the most valuable forms of intellectual property available to businesses. It protects literary works such as reports, software code and marketing copy. It also protects artistic works such as logos and illustrations, as well as musical works, films and sound recordings. These rights enable businesses to generate revenue, protect competitive advantage and prevent unauthorised exploitation of their output.

Legislators drafted the Copyright Act 98 of 1978 on the assumption that human authors create creative works. The Act therefore does not expressly regulate generative AI.

Courts and practitioners must answer questions about AI-generated works by interpreting existing provisions on authorship, originality and ownership. These provisions appear mainly in sections 1, 2 and 21 of the Act**.**

Modern generative AI systems differ from traditional software tools. They can produce sophisticated outputs from simple instructions.

A single prompt can generate an advertising campaign, write computer code, prepare business reports or create detailed artwork within seconds. This capability raises an important legal question: who, if anyone, is the author of work substantially generated by artificial intelligence?

**The importance of human authorship**

South African copyright law has traditionally been built on the concept of human creativity. Although

the *Copyright Act* recognises "computer-generated" works in certain circumstances, it does not expressly contemplate modern generative AI systems. These systems can produce highly original outputs with minimal human intervention.

South African courts have not yet considered generative AI directly, but existing case law provides a useful analytical framework. In *Haupt t/a Soft Copy v Brewers Marketing Intelligence (Pty) Ltd*, the Supreme Court of Appeal emphasised that copyright protects the expression of ideas resulting from the author's own skill, labour and intellectual effort. Although the dispute concerned software rather than AI, the Court's reasoning reinforces a principle that remains relevant today: technology may facilitate the creation of a work, but copyright ultimately protects the human intellectual contribution embodied within it.

Similarly, in *Moneyweb (Pty) Ltd v Media 24 Ltd*, the High Court reaffirmed that copyright protects the original expression of ideas, not the ideas themselves, and that originality depends on meaningful intellectual effort rather than novelty. Applied to AI, this raises a pointed question: where the machine performs most of the creative process, whose skill, labour and judgment is the law actually protecting? Neither case answers that question directly, but both confirm that human creativity remains central to South African copyright law – and, until Parliament or the courts say otherwise, this framework is likely to govern future disputes

These authorities do not provide definitive answers to questions surrounding generative AI. However, they demonstrate that South African copyright law has consistently placed human creativity at the centre of copyright protection. Until Parliament amends the Copyright Act or South African courts directly consider AI-generated works, these established principles are likely to provide the analytical framework through which future disputes will be resolved.[7]

**Does entering a prompt make you the author?**

One common misconception is that writing a prompt automatically makes the user the author of everything AI produces. The position is unlikely to be that simple. Consider two scenarios: a marketing manager who enters a single sentence – "create a luxury real estate advertisement" – and publishes the polished result with little modification; versus a manager who develops a detailed brief with original research, specifies tone, audience and branding requirements, and substantially edits the AI-generated draft before publication.

Both used AI, but the level of human intellectual contribution differs fundamentally. Whether sophisticated prompt engineering itself can satisfy the originality requirement is an open question that South African courts have not yet considered. Until they do, businesses should not assume that every prompt automatically gives rise to authorship – the degree of genuine human involvement is likely to matter a great deal.

AI should not be viewed as a substitute for human creativity but as a tool that enhances it. The stronger the human contribution to the creative process, the stronger the legal argument that the resulting work attracts copyright protection.

**Why legal uncertainty creates commercial uncertainty**

From a commercial perspective, uncertainty is often more damaging than an unfavourable legal rule. Businesses routinely invest significant financial resources in developing brands, software, advertising campaigns and proprietary content. These investments are made on the assumption that the resulting intellectual property can be protected and commercialised.

Where uncertainty exists regarding copyright protection, the value of those assets may also become

uncertain.  An investor conducting due diligence may question the ownership of AI-assisted software.  A purchaser acquiring a technology business may seek additional contractual warranties concerning AI-generated intellectual property. A licensing agreement may require more detailed provisions allocating responsibility if copyright ownership is later challenged.  In each of these situations, the legal uncertainty surrounding AI-generated content extends well beyond intellectual property law.  It becomes a matter of commercial risk management.

For that reason, businesses should resist the temptation to treat AI-generated content as legally equivalent to traditionally created works. Until South African law develops greater certainty through judicial interpretation or legislative reform, organisations should approach AI-generated intellectual property with appropriate legal and commercial caution.

**Five Legal Risks Every South African Business Should Consider Before Commercialising AI-Generated Content**

Many organisations already use AI to produce advertising campaigns, code, proposals, presentations, reports and customer communications – often treating the output no differently from work created entirely by human employees. That may expose businesses to avoidable legal and commercial risk.

1. **Your business may not have an enforceable intellectual property right**

Businesses often assume every AI-generated output automatically qualifies for copyright protection. If a competitor later copies that material and a court concludes the work lacks sufficient human authorship or originality, the business may be unable to prevent competitors from reproducing or exploiting it. Intellectual property derives much of its value from exclusivity – where exclusivity is uncertain, so is the asset's value. Businesses should keep clear records of human contribution: creative briefs, prompt development, editorial revisions and evidence of human decision-making.

- **AI-generated content may unintentionally infringe another person's intellectual property**

Businesses often focus on whether they own AI-generated content while overlooking whether someone else already owns something substantially similar. Generative AI systems learn from vast quantities of existing information. Despite safeguards, users should not assume that outputs are entirely free of copyright concerns. A generated logo may resemble an existing design, a marketing team may receive copy that reproduces distinctive wording, or developers may generate code that closely resembles protected work.

These issues can have significant consequences. Organisations may need to withdraw marketing materials, redesign branding, replace software, or defend against infringement claims, often after they have already committed substantial resources to those outputs.

Numerous parties have already instituted copyright infringement proceedings internationally against AI developers, alleging that they used copyrighted works in their training datasets without authorisation. These remain ongoing, but they show that copyright risk in AI extends well beyond ownership and may influence South African judicial thinking in future. Organisations must continue to apply human review, quality assurance processes, and legal oversight before they publish or deploy AI-generated content.

- **Commercial contracts may no longer provide adequate protection**

Many organisations drafted their existing service agreements, software development contracts, and intellectual property assignment agreements before AI became a routine business tool. As a result, these agreements often assume that humans alone produce creative work. Consider a marketing agency that assigns all IP to a client under an agreement silent on AI use, the level of human involvement, or infringement risk – if disputes later arise over ownership or originality, the contract may simply not address them.

Businesses should review commercial agreements for provisions dealing with AI disclosure, warranties of originality, allocation of infringement risk, ownership of AI-assisted deliverables, and confidentiality where AI systems process sensitive information. As AI becomes routine, contractual clarity will matter as much as technological innovation.

- **AI-generated intellectual property may affect investment, financing and corporate transactions**

Intellectual property is often among the most valuable assets a business holds, influencing valuations, investment and M&A. Where AI has contributed to those assets, investors and purchasers increasingly ask several important questions. Can the organisation demonstrate ownership of the relevant intellectual property? Did employees, contractors, or other contributors exercise sufficient human creativity to support copyright protection? Did the organisation conclude appropriate contracts with its employees, consultants, and service providers? Has the organisation assessed and managed the risk of infringing third-party intellectual property rights?

Prudent investors are beginning to examine the legal robustness of AI-generated assets much as they assess regulatory compliance, financial reporting and cybersecurity. Businesses strengthen their position in these transactions when they implement effective governance, maintain comprehensive documentation, and secure appropriate contractual protections, rather than relying on assumptions

- **AI governance is becoming a corporate governance issue**

Boards, executives, and business leaders should no longer view AI purely as an IT issue. Boards and senior management have fiduciary responsibilities to oversee material business risks, and as AI becomes embedded in core functions, governing AI-generated IP forms part of that responsibility. An effective framework need not discourage innovation – it should ensure innovation happens within appropriate legal and commercial boundaries, through approved AI platforms, internal review procedures, protection of confidential information, documentation of human involvement, and contracts that properly allocate legal risk.

**A broader lesson for South African businesses**

The value of intellectual property has never depended solely on its creation. It depends on the ability to identify it, protect it, commercialise it and enforce it with confidence. AI has not diminished the importance of intellectual property – if anything, it has made careful IP management more important than ever. Businesses that recognise this early gain a stronger advantage in harnessing AI’s benefits

and reducing legal uncertainty than those that do not.

**A Practical AI Governance Roadmap for South African Businesses**

The legal uncertainty surrounding AI-generated content should not discourage businesses from adopting AI – organisations that integrate it successfully are likely to gain real competitive advantage. Rather than waiting for legislative reform or judicial clarity, businesses should begin building governance structures now. The following principles offer a practical starting point:

- Treat AI-generated content as a strategic business asset. A campaign, piece of software or report generated with AI often becomes part of the organisation's IP portfolio and deserves the same governance as any other valuable asset.
- Keep people at the centre of the creative process. Human review, creative direction and editorial refinement improve output quality and strengthen the legal basis for claiming copyright protection.
- Businesses should develop internal policies to govern responsible AI use, define approved platforms and use cases, protect confidentiality, clarify IP ownership, establish record-keeping and human oversight requirements, and determine when employees may use public AI tools instead of secure enterprise solutions.
- Review commercial agreements with AI in mind, addressing disclosure, ownership of AI-assisted deliverables, confidentiality, liability, originality warranties and dispute procedures.

Monitor legal developments rather than waiting for certainty.AI is evolving faster than most legal systems can track, and South Africa is unlikely to be immune from future reform or judicial guidance. Businesses should therefore treat AI governance as an ongoing process rather than a once-off exercise.

**AI Is Changing How We Create, Protect and Commercialise Intellectual Property**

AI is transforming how businesses create, innovate and compete, reducing barriers to creativity and accelerating product development. South African copyright law assumes that human authors create creative works. However, generative AI now challenges that assumption in ways that legislators could scarcely have anticipated.

The most important shift for businesses is this: stop asking only whether you own AI-generated content and start asking whether that content can function as a legally reliable commercial asset. Ownership matters, but intellectual property derives its true value from the ability to protect it, commercialise it, enforce it and rely on it with confidence.

As South African law develops, one principle remains clear: AI may be transforming how people create intellectual property, but businesses must engage in careful legal planning to ensure that innovation delivers lasting commercial value. The future belongs to organisations that combine innovation with sound legal governance – recognising that technology and the law are no longer separate disciplines, but increasingly interconnected components of modern commercial strategy.

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[1] McKinsey "The state of AI in 2025: Agents, innovation, and transformation"

[2] Section 1 of the Copyright Act 98 of 1978

[3] https://www.ppmattorneys.co.za/ai-and-intellectual-property-should-machines-hold-patents/

[4] https://www.ppmattorneys.co.za/ai-and-intellectual-property-should-machines-hold-patents/

[5] Waylite Diaries CC v First National Bank Ltd 1995 (1) SA 645 (A); Moneyweb (Pty) Ltd v Media 24 Ltd 2016 (4) SA 591 (GJ)

[6] *To date, no reported South African court has directly considered whether copyright subsists in works generated predominantly by generative artificial intelligence. Consequently, the application of existing copyright principles to AI-generated content remains uncertain.*