Applicable Law to Copyright Infringement in the Era of Generative AI (summary)

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The intersection between generative artificial intelligence (AI) and copyright law raises complex legal issues not only during the utilization of AI but also during the training of AI models. This study focuses on legal concerns that arise from the use of existing copyrighted works in compiling training datasets. Specifically, it considers whether the reproduction of such works for training purposes constitutes infringement under existing copyright regimes.

While copyright law generally grants exclusive rights to authors, statutory limitations and exceptions, typically for purposes such as citation or reporting, may permit the use of copyrighted content without authorization in certain circumstances. A recent amendment to the Copyright Act introduced a limitation for purposes of information analysis, such as text and data mining (TDM), which may apply to AI training activities.

However, the scope of such limitations differs significantly across jurisdictions. Given that generative AI services frequently rely on globally sourced data and are deployed via the internet, the training and use of these models essentially involve cross-border factors. This gives rise to significant questions under private international law, particularly regarding the determination of the applicable law.

The 2024 Report on Copyright and AI of the Agency for Cultural Affairs (Copyright Subcommittee of the Council for Cultural Affairs) indicates that Japanese Copyright Law governs acts of use conducted within Japan. The identification of the relevant "place of use" remains, however, open to debate. The example provided in the Report, in which a training data collection program runs on a server located in Japan, may fail to reflect more substantive indicia of use, such as the location where the reproduction command is executed or where the output is obtained. A more functionally grounded approach may therefore be warranted.

Additionally, some suggest that Japan's statutory exception for information analysis may be considered an overriding mandatory provision (*loi de police*), applicable regardless of the governing law selected by conflict-of-laws rule. However, such a characterization remains doubtful and further scrutiny would be required, given the normative intent and limited scope

of the exception. More specifically, such scrutiny should take place within the field of substantive law, particularly copyright law.

This study also refers to international developments, specifically the European Union's AI Act. The Act preserves copyright protection for works used in the training of generative AI models and includes provisions suggesting possible extraterritorial application. Ongoing academic and regulatory discourse in Europe reflects a growing recognition of the intersection between copyright, AI, and private international law.

As global regulatory landscapes continue to evolve, this study emphasizes the necessity of sustained doctrinal and comparative research. Future research should monitor not only domestic legislative developments but also the trajectory of international regulatory efforts that increasingly shape the contours of AI governance.