ARTIFICIAL INTELLIGENCE AND INTELLECTUAL PROPERTY LAW IN KENYA: WHO OWNS AI-CREATED WORKS?

By Ng'ani Chrisphine Ligadho*

ABSTRACT

Kenya is rapidly adopting artificial intelligence (AI), and using it to spark new ideas, fuel creativity, and drive the economy forward. One can feel the country's ambition to become Africa's top AI destination. AI is evidently used everywhere from art and music to tech, healthcare, farming, and public services. It has enabled people to have powerful new tools to solve problems, speed up innovation, and express themselves in ways that just weren't possible before.

However, the law isn't keeping up. Kenya's main laws on copyright and patents like the Copyright Act and Industrial Property Act were drafted with human creators in mind. These laws never envisioned a world where AI could create art, music, or even inventions on its own. Therefore, when AI works without real human help, those creations do not fit into the current legal system. There is no clear way to recognize or protect them, which leaves such creations and investions in a rather tough spot.

Research shows that most Kenyan artists and inventors use AI as a tool to help with their projects. In those situations, people still get credit as the authors or inventors. That uncertainty about ownership of AI makes people nervous about investing or sharing these works. On top of that, most AI tools and data come from outside Kenya, which can lead to cultural bias and push African stories and knowledge to the sidelines.

If Kenya wants to get the most out of AI, it needs to update its regulations. This means rethinking who gets credit when AI is involved, making sure ownership is clear, and building a legal system that actually fits this new reality. The country needs laws that protect AI-generated work, stronger institutions to enforce them, and clear regulations for all creators, investors, and the public. If done correctly, this approach will protect local talent, encourage new ideas, and put Kenya in a strong position as a leader in AI. Ultimately, getting this balance right helps everyone who is driving growth, making sure no one is left out, and keeping Kenya's culture alive in a fast-changing world.

This research looks into the murky nexus between AI and Intellectual Propert (IP) law in Kenya. It looks at how the current regulations play out when AI is involved, who ends up owning what, and where the biggest legal blind spots are. It leans on Kenya's AI

* The author is a practicing advocate of the High Court of Kenya, LL.M (University of Dar es Salaam) LL.B (University of Nairobi) and a postgraduate diploma from the Kenya School of Law, E-Mail: chrisphinengani34@gmail.com.

Strategy, picks apart the statutes, and pulls in real-world examples from the creative and tech industries. The truth is, AI is moving fast in Kenya, but the law is lagging behind. The bottom line is that Kenya needs clear legal framework on AI and IP. Without them, creators and innovators are left unprotected. Cultural interests hang in the balance, and the country risks missing its shot to lead the region in ethical and sustainable AI.

INTRODUCTION

Kenya's Artificial Intelligence Strategy sets out a bold goal which is to make Kenya the top spot for AI innovation, research, and real-world application in Africa. This is not just about technology for acknowledgment's sake. The strategy sees AI as a real driver for growth, jobs, and a fairer society. At the same time, it's clear about protecting what matters such as data sovereignty, cybersecurity, and strong ethics so that people can actually trust AI and know that it is working for everyone, not just a few.[1]

This strategy did not emerge from a vacuum.[2] The government brought in voices and stakeholders from all over private companies, universities, non-profits, international groups, and everyday Kenyans.[3] The assembled team was essential since the whole approach is grounded in Kenya's own values and priorities and not just what's trending globally. At the heart of it, Kenya proposed an all-in strategy on developing and commercializing AI that solves real problems that Kenyans and their neighbors face.[4] The plan zeroes in on building a solid governance structure, getting AI into key areas like farming, health, security, education, and public services, and growing a lively local AI scene.[5] The strategy also puts equity at the front and center, making sure even the most vulnerable groups are not left behind as AI moves ahead. Kenya seeks to be the go-to place in the region for AI research, big ideas, and growing talent.[6]

The strategy stands on three main pillars including digital AI infrastructure, a strong national data system, and world-class AI research and innovation. These pillars are also based on numerous concepts such as solid governance, growing local talent, more investment, and a real push for ethical, inclusive AI. None of these works without teamwork, government involvement, industrial sector, schools, civil society, and local communities, all which have

1 *Gikunda, Patrick, Benson Kituku, Juliet Moso, Wai Lok Woo, and Pingfan Wang*. "Kenya's Ai Ethics and Governance Framework 2025." (2025).

2 Ibid.

3 *Jaldi, Abdessalam*. "Artificial Intelligence Revolution in Africa: Economic opportunities and legal challenges." Policy Cent. New South 7 (2023).

4 Ibid.

5 *Jaldi, Abdessalam*. "Artificial intelligence revolution in Africa: Economic opportunities and legal challenges." Policy Cent. New South 7 (2023).

6 *Nyakiongora, Geoffrey Mosoti*. "Bridging the Health Divide: Achieving Equitable Healthcare Access in Kenya through Artificial Intelligence." PhD diss., Massachusetts Institute of Technology, (2024).

a role to play. Kenya is rolling this out in stages starting with the basics, then moving to national policies, research centers, pilot projects, and ongoing checks to keep things on track. In the end, Kenya is aiming high, to lead the way in responsible, sustainable AI in Africa, and to make sure everyone gets to share in the benefits.[7]

THE KENYA COPYRIGHT ACT

Kenya's Copyright Act does not mention artificial intelligence directly, but it still lays out how the law treats AI-generated works.[8] In *Section 2*, the Act defines an "author" as a person. As such AI systems do not qualify as authors or copyright owners. The same section talks about "computer-generated work" and states that the author is whoever made the necessary arrangements to create it. That is about as close as the Act gets to talking about AI-generated content.[9]

Section 22(1) states that copyright only protects original works created by an author, which really means there has to be some human creativity involved. Since AI is not a legal person and doesn't have creativity the way humans do, it just cannot clear that originality bar on its own.[10]

Section 23 deals with the duration, residence and nationality of such copyright and again, it demands actual human intellectual effort something AI cannot provide independently. The Act doesn't address newer questions either, like who owns content AI produces on its own, how training data should be handled, or who is responsible if AI infringes someone's copyright. So, while the law doesn't talk about AI directly, its regulates around authorship and originality sending a clear message that in Kenya, only works created or guided by humans can get copyright protection.[11]

THE INDUSTRIAL PROPERTY ACT, CAP 509

Kenya's Industrial Property Act, Cap 509 does not talk about artificial intelligence at all. It does not mention AI or set any rules for inventions that come from AI systems. But if you look at certain sections, you start to see how the law handles anything related to AI.

Section 2 says an "inventor" is the person who comes up with the invention. So, basically, only real or legal persons can be inventors. AI systems are neither real or legal persons. Resultantly, AI cannot be listed as an inventor or be given patent rights. *Section 21(1)* of the act doubles down on this. Every patent application has to include the inventor's name, which is most often than not a human name or the name of a legal person and not

7 Ibid.
8 The Kenya Copyright Act Cap 130, Laws of Kenya.
9 The Kenya Copyright Act Cap 130, laws of Kenya.
10 Ibid.
11 Ibid.

a machine's. *Section 23*, on the other hand, states that only the inventor or someone the inventor assigns can own a patent. Again, AI is out of the picture it cannot own or transfer rights.[12]

Section 22(1) lays out what makes an invention patentable. The invention has to be new, novel, and useful in some industry. The law assumes a human was involved in the process of coming up with the idea. In that case, if an AI tool produces anything absolutely independent, it probably will not meet that unspoken rule that human touch has to be involved. The Act does not speak to anything concerning inventions made entirely and absolutely by machines, who owns them, or whether AI could ever count as a co-inventor.[13] Hitherto, only inventions involving human inventors get recognized in Kenya. Inventions created by AI purely are left in a sort of legal lacuna, with no clear way to claim ownership or protection.

COPYRIGHT AND ARTIFICIAL INTELLIGENCE CREATED WORKS.

Kenyan artists and other stakeholders are moving into the world of AI, weaving new technology into their creative work. This is straight from a recent study by Creatives Garage, part of Mozilla's Africa Mradi research on how AI is shaking things up in Eastern and Southern Africa.[14] Their report, "Artificial Intelligence in Africa," looks into how Kenyan creatives use AI tools, what they're getting out of it, and the hurdles in their way. It also delves into how these artists are working with tech personnel and policymakers.[15]

The research brought together over 100 people artists, AI developers, IP experts, government officials, and representatives from national institutions to give a wider scrutiny into Kenya's creative and tech scene. It turns out that AI is already in use everywhere, more than three-quarters of the 130 creatives surveyed were already using tools like ChatGPT, Google Gemini/Bard, Canva, Grammarly, Google Translate, and Midjurney. They use these AI tools for everything from generating images to editing videos and polishing up their writing. None of these AI tools are made in Kenya.[16]

Most creatives see AI as a powerful boost, but they are clear that it is not magic, and it cannot replace the spark of human creativity.[17] There are some big worries, too. People and creators are anxious about losing jobs, dealing with copyright headaches, and watching

12 Ibid.

13 Kenya Industrial Property Act, Cap 509.

14 *Creatives Garage – AI/KE Report 2024* "Artificial Intelligence in Africa: Investigating the impacts of AI on the Creative Community in Kenya." Available at: https://creativesgarage.org/aike-report-2024 (Accessed 11 November 2025).

15 *Creatives Garage – AI/KE Report 2024* "ARTificial Intelligence in Africa: Investigating the impacts of AI on the Creative Community in Kenya." Available at: https://creativesgarage.org/aike-report-2024 (Accessed 11 November 2025).

16 Ibid.

17 Ibid.

western perspectives crowd out local voices especially since so much African cultural information is missing in these AI systems and tools.[18] Numerous stakeholders affirm that it is time to overhaul IP laws to handle AI-generated content and protect cultural heritage. There is also a real gap in how well creatives understand their own IP rights.

The report doesn't just point out problems. It calls for strong policies to protect artists' work, keep AI development transparent, and make sure AI is used ethically. The report also pushes for training programs for policymakers, African-built AI tools, and richer, more representative datasets. The goal is to get local artists involved so that AI actually reflects Kenyan and African realities.[19]

KEY OWNERSHIP SCENARIOS IN KENYA

In Kenya, who owns AI-generated work really comes down to how much a human actually contributes. The law right now, mainly the Copyright Act (Cap 130) and the Industrial Property Act only recognizes human involvment or humans as authors and inventors.[20]

First, when someone uses AI just as a tool, maybe an artist, a writer, or a programmer. He or she leans on AI to help out and nothing more. They are still making all the important choices such as deciding what to feed into the AI, tweaking what comes out, shaping the final product, or blending AI results into their bigger project. That person, the law calls him or her the author. *Section 2* of the Copyright Act emphasizes this concept, since the human is the one putting in the actual creative effort, which *Section 22* of the Copyright Act demands. Same goes for inventions, the human stays the inventor under the Industrial Property Act. This is the present clear situation, and it fits well with how the law already works.[21]

On the other hand, when the human's role is lighter, maybe they just set things up, tell the AI what to do, and step back. They might write prompts, pick data, fiddle with settings, or spell out what they want. Even in such cases where the AI does most of the heavy lifting after that, the person who set it all in motion is still the legal author.

Section 2 of the Copyright Act indicates that whoever makes the arrangements for a computer-generated work is the author. If a filmmaker in Kenya uses AI to generate scenes,

18 *Eke, Damian, and George Ogoh*. "Forgotten African AI narratives and the future of AI in Africa." The International Review of Information Ethics 31, no. 1 (2022).

19 *Ndungi, Rebeccah, and Maria Ulfah Siregar*. "The effects of artificial intelligence on the Kenyan society." *Indonesian Journal of Electrical Engineering and Computer Science* 32, no. 2 (2023): 1199–1205.

20 Ibid.

21 *Ngaruiya, Njeri, Jonathan Donner, Joshua Kinuthia Baru, and Babra Wanjiku Chege*. "The domestication of AI by Kenyan digital creators." In Proceedings of the 4th African Human Computer Interaction Conference (2023):71–75.

or a designer types up prompts to create images, they actually own the copyright even if the AI does most of the actual creating.[22]

Despite this, things get complicated when AI runs on its own. If an AI system churns out something new without any real human input or direction, the law does not foresee how to address the same. Presently, Kenyan law does not recognize AI as an author or inventor. It has to be a person, someone who adds their own originality or brainpower. If there is no human touch, the work does not get copyright or patent protection. That means nobody owns what AI independently produces, it therefore, falls straight into the public domain. This leaves a big gap, and it is a headache for everyone from tech innovators to artists and policymakers. Honestly, with the rapid advancement in AI, Kenya's laws need a serious and comprehensive update and restructure to keep up.[23]

INDUSTRIAL PROPERTY LAW IN PATENTS AND AI-GENERATED INVENTIONS

As earlier inidcated, figuring out who owns AI-generated work really concerns the extent of human involvment. Kenyan laws only recognize people as authors and inventor's, however, machines do not count. Any person who uses AI just as a tool to help with their creative process is still in control and directs the AI tool. The act of controlling and shaping the final product is human input. That in itself is enough for the law to regard an individual as the "author," since the person is bringing original ideas and effort. Similarly, the same works for patents especially if one is using AI to help invent something, but the real spark comes from the person who then becomes the inventor.[24]

When a person sets up the parameters for an AI tool to bear most of the work, the law still sides with the human. The Copyright Act, as indicated above states that the author of a computer-generated work is the person who arranged for it to be created. In case one is giving prompts, picking data, or setting up the AI to make something, even if the machine runs with it, then the person legally becomes the author. A Kenyan filmmaker using AI to generate scenes, or a designer crafting images through prompts can still own the copyright since he or she is the person who kicked things off, not the AI.[25]

On patents, the Industrial Property Act is pretty clear that patents are issued to persons. The law defines the inventor as a human and only allows humans, or someone they have assigned their rights to, to apply for and hold patents. There is no room in the rules for AI to be named as an inventor. This is not just legal nitpicking, it means if an AI invents

22 *Koros, Chebet.* "Right To Research and Copyright Law in Kenya." (2023).

23 *Yamamoto, Takashi*. "AI Created Works and Copyright." Patents & Licensing 48, no. 1 (2018): 1–16.

24 *Giczy, Alexander V., Nicholas A. Pairolero, and Andrew A. Toole.* "Identifying artificial intelligence (AI) invention: A novel AI patent dataset." *The Journal of Technology Transfer* 47, no. 2 (2022): 476–505.

25 Ibid.

something completely on its own, without real human direction, there is no straightforward way to get a patent for it in Kenya.

Essentially, there are three main scenarios in practice. First, if a human uses AI as a tool but supplies the main idea, that person gets the patent.[26] This matches how the Kenyan Industrial Property Institute (KIPI) describes patent law. There is a need for novelty, an inventive step, and practical use, but the human has to be behind it. Second, if one builds the framework, set up the model, picks the training data, or write the prompts that lead to a new technical solution they are still the inventor in the eyes of the law. The key element is that an individual is directing the process, not just watching the AI work.

Then there is the other scenario where AI creates something new entirely on its own, with barely any human input. Kenyan law doesn't have a clear answer here.[27] No one can list an AI as the inventor, and international cases like the "*DABUS SAGA*" show how messy this can get. Experts in Kenya have confessed that the law needs an update, or else we will see inventions where no one able to claim or protect them. Presently, if there's no human inventor, the invention probably cannot get a patent, or someone would have to step in and claim the rights, which opens up a 'whole can of worms' on fairness and incentives.[28]

Eventually, in Kenya, if there is meaningful human involvement, that person or whoever they assign their rights to, owns the AI-created work or invention. If not, the law does not really suggest what to do, at least not yet.[29]

POLICY GAPS IN KENYA'S AI & IP FRAMEWORK

Kenya does not have a law that really focuses on artificial intelligence. There are rules about data protection, cybercrime, consumer rights, and intellectual property, but those were all enacted before AI became a big deal and a sector in need of regulation. These laws do not cover the complicated, sophisticated and tricky concers that AI brings forth.[30]

Due to this, there is no clear rulebook or regulation for how to copyright or patent products created through AI should be protected. This applies to art, books, or any other invention. In intellectual property law, there is a big lacuna since the law states that inventors or authors have to be actual humans. That leaves AI and its place in intellectual property in a sort of a lacunae. When an AI tool comes up with something new on its own, with little or no help from a person, the law becomes inadequate. There is absolutely

26 *McCarthy, John*. "Artificial intelligence, Logic, and Formalising Common Sense." *Machine Learning and the City: Applications in Architecture and Urban Design* (2022): 69–90.

27 *Kang'Ethe, Mitchelle*. "Me, Myself, and AI: Should Kenya's Patent Law be Amended to Recognise Machine Learning Systems as Inventors?." *Strathmore L. Rev.* 8 (2023): 73.

28 Ibid.

29 *Kang'Ethe, Mitchelle*. "Me, Myself, and AI: Should Kenya's Patent Law be Amended to Recognise Machine Learning Systems as Inventors?." *Strathmore L. Rev.* 8 (2023): 73.

30 *Gikunda, Patrick, Benson Kituku, Juliet Moso, Wai Lok Woo, and Pingfan Wang*. "Kenya's Ai Ethics and Governance Framework 2025." (2025).

no way to give credit, ownership, or rights to the people who built, own, or use the AI. This happens in some instance since AI was built for autonomy or semi-autonomy. The real challenge then comes when trying to convince people to invest resources or time into building new AI tech.[31]

Apart from this, there are multiple laws which all work on their own and distinct from the others. Data protection, cybercrime, consumer rights, intellectual property are all handled separately. This separation makes things complicated. It is cumbersome to deal with issues like who controls data, how to prevent bias in algorithms, or how to make sure automated decisions are fair and transparent. Kenya does not have a single, unified approach to regulate any of that.[32]

Numerous agencies that are supposed to regulate and enforce these laws also exist, except that they do not have enough expertise or resources to adress these challenges. Most of them are not equipped to handle complex AI systems or figure out who really made what, and protect rights around AI-created work.

Kenya does not have a proper strategy and law on how to put a price on intellectual property that comes from AI, or to help people actually make money from it. Without clear regulations on who owns what, or how to enforce those rights, investors and innovators are going to think twice before investing in AI research and development.

Apart from the ethical, social, and cultural side of things, the law does not indicate that AI developers have to be open about what data they used to train their systems. There are no requirements to guard against bias, or to make sure local knowledge and culture is protected. Without such safeguards, there's a real risk that AI could exploit community knowledge or creative work without consent, without protecting culture, and without sharing any benefits.[33]

WHY THESE GAPS MATTER

Presently, the gaps in Kenya's policies leave creators and inventors guessing about what is actually allowed or protected when it comes to AI. No one is really sure who owns things like AI-generated art, patents, or code. As a result, a lot of people just ignore the process of trying to protect their work. This hurts innovation, scares away investment, and slows down local skills from growing. Additionally, when most of the AI tools come from outside the country, there's a real risk of people getting exploited or even losing parts of their cultural identity.[34]

31 Ibid.

32 *Iseko, Achi.* "Rethinking AI Superintelligence Preparedness through a Justice Lens." International Journal of Science, Technology and Society 13, no. 5 (2025): 177–189.

33 Ibid.

34 *Owiny, Patrick*. "Catching Up With Technology: Utilization of Artificial Intelligence in Kenya: Issues, Opportunities and Challenges." Opportunities and Challenges (February, 2025) (2025).

The truth is, Kenya's laws are presently not fashioned for the complex and complicated world of AI-generated products. If Kenya actually wants to stand out as a regional leader in AI and make sure local creators don't get left behind it needs to step up. That means clear AI-focused IP and governance laws, stronger institutions, and smart policies that actually protect people while encouraging new ideas. Balance is key, there is a need to promote innovation, and keep things ethical, honor local culture, and make the rules which are clear for everyone.[35]

CONCLUSION

Systems of production, creativity and innovation are being reconfigured globally by Artificial intelligence (AI) and Kenya is not left behind.[36] With digital technology, increasingly integrated into economic and social organization, AI is now extending its reach.[37] For instance, AI is becoming more prevalent in creation of works, analysis of data, design work in software development, and technical troubleshooting,. In acknowledging this change, Kenya has articulated a forward-looking national strategy on Artificial Intelligence (AI) whose purpose is to position the country as Africa's leading anchor for AI's research, model building and applications.[38]

The approach presents AI as a driver of effective and resilient solutions in sustainable development, economic growth, and social inclusion, while also highlighting national priorities domains such as data sovereignty, cybersecurity governance or equitable access. This vision puts AI not as a mere technology that companies can take advantage of, but a strategic asset with important legal, economic, and social implications.[39]

AI and intellectual property law in Kenya are on a collision course, and honestly, not enough stakeholders are talking about it. The whole point of intellectual property is to encourage people to create new things, whether that's art, inventions, or stories, by giving them exclusive rights over what they make. But AI has completely shaken things up. Machines can now pump out music, art, and even inventions that sometimes match or outdo what humans ordinarily create.[40]

35 Ibid.

36 *Sampene, Agyemang Kwasi, Fredrick Oteng Agyeman, Brenya Robert, and John Wiredu*. 'Artificial Intelligence As A Pathway to Africa's Transformations." Artificial Intelligence 9, no. 1 (2022).

37 *Abbas Khan, Muhammad, Habib Khan, Muhammad Faizan Omer, Inam Ullah, and Muhammad Yasir*. "Impact of artificial intelligence on the global economy and technology advancements." In Artificial General Intelligence (AGI) Security: Smart Applications and Sustainable Technologies, Singapore: Springer Nature Singapore, (2024): 147–180.

38 *Gikunda, Patrick, Benson Kituku, Juliet Moso, Wai Lok Woo, and Pingfan Wang*. "Kenya's Ai Ethics and Governance Framework 2025." (2025).

39 Ibid.

40 *Munywoki, Teresia*. "AI Systems and the Future of Intellectual Property Regimes." *The Commonwealth Cyber Journal*: 59.

This raises numerous questions. Some include; (i) *where does this status leave us? (ii) Who actually owns something an AI creates? (iii) Can you protect AI work under current IP laws?* and *(iv) what happens when a person barely touches the process, or maybe isn't involved at all?*[41].

Right now, Kenya's main IP laws the Copyright Act (Cap 130) and the Industrial Property Act (Cap 509) do not comprehensively address these issue. Both laws stick to the idea that only people and not machines can be authors or inventors. The Copyright Act mentions "computer-generated works" in passing, and patent law only recognizes human inventors, but neither one really deals with the reality that AI can act on its own or with very little help from people.[42] Due to this, a lot of AI-generated works have no proper legal protection and such rights are seldom considered in any law. The same is a nightmare for creators, investors, and anyone trying to make policy within the AI and Intellectual property space.[43]

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Koros, Chebet. "Right To Research and Copyright Law in Kenya." (2023).

41 Ibid.

42 *Koros, Chebet*. "Right To Research and Copyright Law in Kenya." (2023).

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