

The image features a large, stylized logo for 'AI' in the background. The letters 'a' and 'i' are rendered in a light grey, textured font with a thick orange border. The 'a' is lowercase and the 'i' is lowercase. The logo is centered on a dark brown, textured background.

# AI-Generated Works and Originality Criteria

LL.D Anette Alén-Savikko/Ulap & UH  
Future Regulation of Industrial Internet

10 September 2017

# Our/my research

- Forthcoming article on AI and originality
- Alén-Savikko, A., Pihlajarinne, T., Kauranen, I., Nyberg, T., Poesche, J. (2018) Decentralized production and industrial property rights. NIR.
- Poesche, J., Pihlajarinne, T. E., Alen-Savikko, A. K., Nyberg, T. & Kauranen, I. (2018) Decentralized Production: The Need for Social Norms-based Intellectual Property? International journal on management of innovation & technology.
- Alén-Savikko, A. (forthcoming) Network neutrality in the era of 5G: a matter of faith, hope and design?

# Background

- automation and artificial intelligence (AI) in content production (eg art, news)
- tech development, autonomous machines, machine-learning  
cf. “instrument”  
→ human author distances
- copyright protection?
- authorship?
- originality?
- other options of protecting AI-generated content (eg related rights)?

# Originality

- key concept
  - int
  - EU
- two traditions:
  - copyright: sweat of the brow, skill and labor, utilitarian
    - eg UK: originating from the author, amount of effort
  - droit d'auteur: personality, natural rights
    - moral rights

# Originality

- EU harmonisation in copyright since 1980s
- Dir: software (2009/24), , databases (96/9) photos (93/98)
- CJEU
  - C-5/08 Infopaq
  - C-393/09 BSA
  - C-403/08 & C-429/08 FAPL
  - C-145/10 Painer
  - C-604/10 Football Dataco
  - C-406/10 SAS

# Originality

- no dramatic changes to the Finnish situation
    - quite low threshold (cf critique)
    - eg Copyright Commission
    - personality, room for creative choices
    - "others would not end up with the same end result"
- (→ shift more towards creativity via choices and organisation?)

eg not only description of facts in automated news production

# Originality

- challenges in the era of automation and AI
  - intellectual creations as embodiments author's **personality**, personal stamp
  - room for creative choices (rule-based systems?)
  - strong AI / autonomous systems?
  - need for incentives?

Cf. UK

CDPA: provisions for computer-generated works ("*there is no human author of the work*"), no moral rights, 50 years

# Other options?

- related right tailored for AI
  - investment protection (instead of fragmented related rights)
    - no moral rights
    - shorter term
    - who invests and takes risks (related to content production)
  - Division(?)
- romantic >< machine-oriented copyright (not attached to a human author)
- rethinking originality; would play a role only in the former



# Conclusions

- controlled scope of copyright (justified incentives)
- no more fragmentation desirable (eg a dedicated related rights protection)
- better to continue with requirement of human input
  - machine-generated products would fall into the public domain

# Thank you!

[anette.alen@helsinki.fi](mailto:anette.alen@helsinki.fi)

