# From Plagiarism to Process Transparency: Redefining Student Authorship in Light of International and Comparative Copyright Law

## Del Plagio a la Transparencia de Proceso: Redefiniendo la Autoría Estudiantil a la Luz del Derecho de Autor Internacional y Comparado

Nalia Paz Nardo[1] 

[1]Universidad de Artemisa, Departamento de Ciencias Jurídicas. Artemisa, Cuba.

**Corresponding author:** Nalia Paz Nardo 

## ABSTRACT

This paper analyzed the tension between the use of generative artificial intelligence (GAI) by students and legal and academic frameworks based on human authorship. A doctrinal analysis of international and comparative copyright law was conducted to demonstrate that GAI is inherently incapable of being recognized as a co-author, and that this legal vacuum is not a flaw but a structural limitation of the system. Given this regulatory inability, it was argued that the educational community must transcend the legal debate and generate new ethical-pedagogical frameworks. As a solution, it was proposed to redefine "student authorship," shifting the focus of evaluation from the final product to the writing process. The study concluded that implementing a model of "process authorship," centered on transparency, critical curation, and reflection, represents a pedagogical opportunity to prepare students for an environment of co-creation with machines, overcoming the limitations of AI detectors and prohibitive policies.

**Keywords:** Generative Artificial Intelligence; Law; Authorship; Transparency; Academic.

## RESUMEN

Este trabajo analizó la tensión entre el uso de inteligencia artificial generativa (IAg) por estudiantes y los marcos legales y académicos basados en la autoría humana. Se realizó un análisis doctrinal del derecho de autor internacional y comparado para demostrar que la IAg es inherentemente incapaz de ser reconocida como coautora, y que este vacío legal no constituye una falla sino un límite estructural del sistema. Ante esta incapacidad regulatoria, se argumentó que la comunidad educativa debe trascender el debate jurídico y generar nuevos marcos ético-pedagógicos. Como solución, se propuso redefinir la "autoría estudiantil", desplazando el foco de la evaluación desde el producto final hacia el proceso de escritura. El estudio concluyó que implementar un modelo de "autoría de proceso", centrado en la transparencia, la curación crítica y la reflexión, representa una oportunidad pedagógica para preparar a los estudiantes para un entorno de co-creación con máquinas, superando las limitaciones de los detectores de IA y las políticas prohibitivas.

**Palabras clave:** Inteligencia Artificial Generativa; Derecho; Autoría; Transparencia; Académico.

## INTRODUCTION

The emergence of generative artificial intelligence in classrooms has triggered a fundamental

paradox for higher education: students use tools such as ChatGPT, Gemini, or DeepSeek as collaborators in the writing process, while existing legal and academic frameworks cling to a concept of individual and human authorship that fails to capture this new reality.

This tension between the emerging practice of co-creation with AI and outdated regulatory systems—from intellectual property law to academic integrity codes—creates a vacuum that educational institutions are attempting to fill, often clumsily, with AI detectors and prohibition policies.

This paper argues that international copyright frameworks, anchored in the principle of human authorship, are inherently incapable of recognizing AI as a co-author. This inability is not a flaw, but a reflection of the limits of a system designed to incentivize human creativity. However, this legal vacuum forces the educational community to transcend the legal debate and generate new ethical-pedagogical frameworks that redefine "student authorship," shifting the focus of assessment from the immaculate final product to the transparent, critical, and reflective writing process. The objective of this chapter is therefore threefold: to analyze the notion of "author" in international and comparative law to demonstrate the legal exclusion of AI; to argue that this gap represents an opportunity to rethink assessment; and to propose a model of "process authorship" that prepares students for a world where co-creation with machines is a reality.

## DEVELOPMENT
### Theoretical framework: the principle of human authorship in copyright law
Copyright is based on a fundamental principle: the protection of original works that express a human being's intellectual personality. "Originality," the threshold for protection, does not refer to novelty, but rather to the work being an intellectual creation that reflects the free and creative decisions of its author (Cámara Águila, 1998). This principle of human authorship is deeply rooted in international treaties and comparative jurisprudence.

At the international level, the Berne Convention for the Protection of Literary and Artistic Works, while not explicitly defining "author," has been uniformly interpreted by the World Intellectual Property Organization (WIPO) bodies to refer exclusively to human creators (World Intellectual Property Organization, 2023). This interpretation is reinforced by the WTO TRIPS Agreement, which consolidates the Berne standards and emphasizes the protection of expressions rather than ideas, a distinction that presupposes a conscious agent behind the expression(Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994).

*Comparative law analysis*
A comparative law analysis confirms this principle almost unanimously. In the United States, the precedent is clear. The case of Feist Publications v. Rural Telephone Service established that copyright requires a "minimum of creativity," an inherently human standard (Feist Publications, Inc. v. Rural Telephone Service Co., 1991). More recently, the "Monkey Selfie" case (Naruto v. Slater) and the guidelines of the U.S. Copyright Office have made it clear that "the Office will register an original work of authorship, provided that a human being created the work." (U.S. Copyright Office, 2021). The Office relies on the Trademark Cases of 1879, where the Supreme Court defined copyright as the protection of the fruits of "intellectual labor" that "are founded on the creative powers of the mind." (The Trademark Cases, 1879).

In the European Union, the framework is equally explicit. The case law of the Court of Justice of the European Union (CJEU), particularly in the Infopaq case, consolidated the standard of

originality as "the author's own intellectual creation" (Infopaq International A/S v. Danske Dagblades Forening, 2009).This standard, which requires the work to bear the "imprint" of its creator's personality, is incompatible with a non-human entity that lacks intentionality and personality. Although the Directive on Copyright in the Digital Single Market does not directly address AI authorship, its doctrinal basis is inseparable from the human element (Directive (EU) 2019/790, 2019).

A notable exception, but one that proves the rule, is found in the United Kingdom. Its Copyright, Designs and Patents Act of 1988 contains in section 9(3) a specific clause for "computer-generated works," establishing that the author is "the person who makes the arrangements necessary for the creation of the work" (Copyright, Designs and Patents Act, 1988). While this provision seems to offer a solution, it is a rarity in the comparative landscape and generates its own debate: who is that person? The programmer of the algorithm or the user who writes the prompt? As Guadamuz points out, this ambiguity is resolved on a case-by-case basis, but it does not equate the computer with an author; instead, it attributes authorship to a human being because of their role in the process (Guadamuz, 2020a).

Finally, in Latin American jurisdictions, the principle remains unchanged. For example, Mexico's Federal Copyright Law defines the author in Article 5 as "the natural person who has created a literary and artistic work" (Ley Federal del Derecho de Autor, 2024). This definition, replicated in much of Ibero-American legislation, rules out any possibility of recognizing legal or creative personality in a machine.

**Generative AI as a "non-author": application of the legal framework and exclusion of programmers**

Applying this established legal framework, it is clear that generative artificial intelligence cannot be considered a co-author. This conclusion is based on several legally sound arguments.

First, AI lacks the fundamental elements that the law associates with authorship: intentionality, consciousness, and creative will. A human author possesses a mind capable of forming concepts, making aesthetic decisions based on emotion or experience, and expressing a personal view of the world. Generative AI, such as GPT-4 or image diffusion models, operates by predicting the most likely next data unit (word, pixel) based on patterns identified in its training data (Coupeau Borderas, 2025). It has no goals, emotions, or semantic understanding of the content it generates. As Grimmelman states, "there is no such thing as a work authored by a computer" because authorship requires agency that current machines do not possess (Grimmelmann, 2016). They are tools of astonishing complexity, but tools nonetheless.

Second, and crucially, the creators of AI (programmers, engineers, and technology companies) cannot claim authorship of the specific works generated by their systems either. Their creative and investment work is embodied in the algorithm code and model architecture, which may be protected by copyright or trade secrets (World Intellectual Property Organization, 2024a). However, this protection ends with the software itself. Once the model is trained and deployed, its output is unpredictable and undirected. Programmers have no creative control over the particular poem, essay, or image that their AI generates at a user's request. The causal chain between the creation of the program and the creation of the individual work generated is too long and mediated by algorithmic autonomy and user input to attribute authorship to the developers (World Intellectual Property Organization, 2024b). As WIPO points out in its dialogues, there is a clear distinction between the authorship of the AI program and the authorship of the content

it produces (Painer v. Standard VerlagsGmbH and Others, 2011).

Third, the prompt or instruction provided by the user does not, in most cases, constitute a work of sufficient originality to attribute full authorship of the generated text to the user. A simple prompt is analogous to commissioning work from a ghostwriter; the user's creative contribution is minimal and does not meet the standard of "own intellectual creation" required by law (Guadamuz, 2020b). Even more sophisticated prompts act as input parameters for a complex system whose outputs are unpredictable and not entirely directed by the user. The prompt is an input, not a detailed creative plan that controls every aspect of the resulting expression.

The conclusion of this analysis is inescapable from a legal perspective: neither AI is a co-author, nor are its creators the authors of the works generated. The legal "author" of an AI-generated text is, at best, the human user. Still, their claim to authorship is weak and questionable if their creative contribution is limited to basic instructions. In practice, many of these texts could be considered works of weak authorship or, in cases of minimal human contribution, even fall into a limbo close to the public domain because they lack an identifiable human author who has provided the necessary creative spark.

**Consequences for academic assessment: from legal vacuum to pedagogical opportunity**
The identified legal vacuum has profound implications for education. The most common institutional response has been technological and punitive: implementing AI detectors and treating its undeclared use as plagiarism. However, this approach is problematic. Detectors are notoriously inaccurate, and their logic reinforces an obsolete assessment model focused on the authenticity of the final product, a model that AI has made easily manipulable.

The inability of copyright law to solve this problem is not a failure, but an invitation to pedagogical innovation. If the law cannot recognize co-authorship with AI, education must transcend the traditional concept of sole authorship to embrace a model of "process authorship" or "pedagogical co-authorship." In this model, student authorship no longer resides exclusively in the original writing of each paragraph of the final text, but is demonstrated through the curation, critical review, transformation, and integration of AI output into an academically sound and personal work.

The key elements of this new paradigm are radical transparency, where the student declares the use of AI and attaches the history of the interaction; the quality of the prompt and dialogue, evaluating the sophistication and iterative nature of the instructions; appropriation and added value, where the core of authorship lies in how the student edits, verifies, and transforms the text with their unique voice; and metacognitive reflection, which requires an explanation of the purpose and learning derived from using the tool.

**Towards an assessment framework based on process authorship**
To operationalize this model, we propose an assessment framework that replaces the binary question "Is this text original?" with the multidimensional question "How have you directed and appropriated the creation process with the tools at your disposal?" This framework is structured around four main criteria, each with its respective weight. The Prompt Design and Evolution criterion, with a weight of 25 %, evaluates the ability to formulate clear, specific, and iterative instructions to guide the AI, assessing persistence in refining prompts and the overall dialogue strategy. The Selection, Verification, and Synthesis criterion, with a weight of 25 %, evaluates the critical use of information generated by AI, requiring students to contrast facts and concepts

with reliable academic sources, identify potential biases or errors, and synthesize information coherently. The Transformation and Personal Style criterion, with the highest weighting of 30 %, evaluates the extent to which the student has reworked the AI-generated base text, assessing restructuring, rewriting to incorporate a personal voice, and adding their own examples and original arguments. Finally, the Reflection and Transparency criterion, with a weight of 20 %, evaluates the honesty and depth of reflection on the process, including explicit disclosure of AI use, presentation of interaction history, and metacognitive analysis of decisions made and learning gained.

## CONCLUSIONS

International and comparative copyright law, as it currently stands, does not resolve the challenge posed by generative AI in education; instead, it starkly highlights it. Its inherent inability to recognize AI as a co-author and the corresponding exclusion of programmers as authors of the generated works is not a gap that should be filled with hasty legal reforms, but rather a mirror of the limits of our evaluation systems based on individual authorship of the final product. This legal limit, far from being an obstacle, serves as a liberating force that compels pedagogy to evolve.

The real opportunity lies in abandoning the technological war over detectors and plagiarism to embrace a richer, more relevant pedagogy of writing. The "new literacy" must teach students to be conductors of a complex creative process that includes AI tools, rather than glorifying the isolated soloist. By redefining student authorship in terms of process, transparency, and critical appropriation, we not only mitigate the problem of "AI plagiarism" but also equip students with the critical thinking, information management, and digital ethics skills essential to the 21st century. The future of academic writing lies not in banning shadows, but in learning to dance with them in the light of day.

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