

Is the AI company (creators, trainers, etc.) subject to copyright infringement liability?

Is literary, dramatic, musical, or artistic work being used by the AI company?

No copyright

No copyright

Is the author/maker of the work sufficiently connected to a treaty country under Section 9(1) of the Copyright Act?

No copyright

No copyright in Canada (may be copyright elsewhere)

Is the work fixed in a material form? (Note: in Canada, this is NOT a necessary requirement, but the courts apply it anyway. See Canadian Additional Copyright Infringement Inc., [2014] 20 C.P.R. 75.)

No copyright

Was the copyright term expired? (i.e. is the work in the public domain?)

No copyright

No copyright

Did the AI company copy the work? (engaged the rights of reproduction, distribution, communication to the public, or derivative works?) (Note: in Canada, the term "derivative work" is not used per se but certain types of derivative works are considered copying. See section 3 of the Copyright Act for the precise language used.)

No infringement

Note what specific act constituted the copying, e.g. Was it during the training of the AI? The creation of a new work? Did copying take place more than once? You will need to know this for all of the following questions, but especially in considering fair dealing.

Was the copying authorized?

No infringement

No infringement

Did the copying include the work's original expression?

No infringement

No infringement

Did the copying include a substantial amount of the work's original expression?

No infringement

No infringement

Was the copying fair dealing under one of the enumerated purposes in the Copyright Act? (See analysis in separate flow chart.) (Note: this analysis is based on the specific acts of copying, not any incidental non-copying acts that occurred.)

No infringement

No infringement

Was the copying for private purposes as permitted under section 29.22 of the Copyright Act?

No infringement

No infringement

Was the copying for a personal disability as permitted under section 32 of the Copyright Act?

No infringement

No infringement

Does a public interest exception to copyright infringement apply (see Hubbard v Wason, [1972] 1 Q.B. 80)?

No infringement

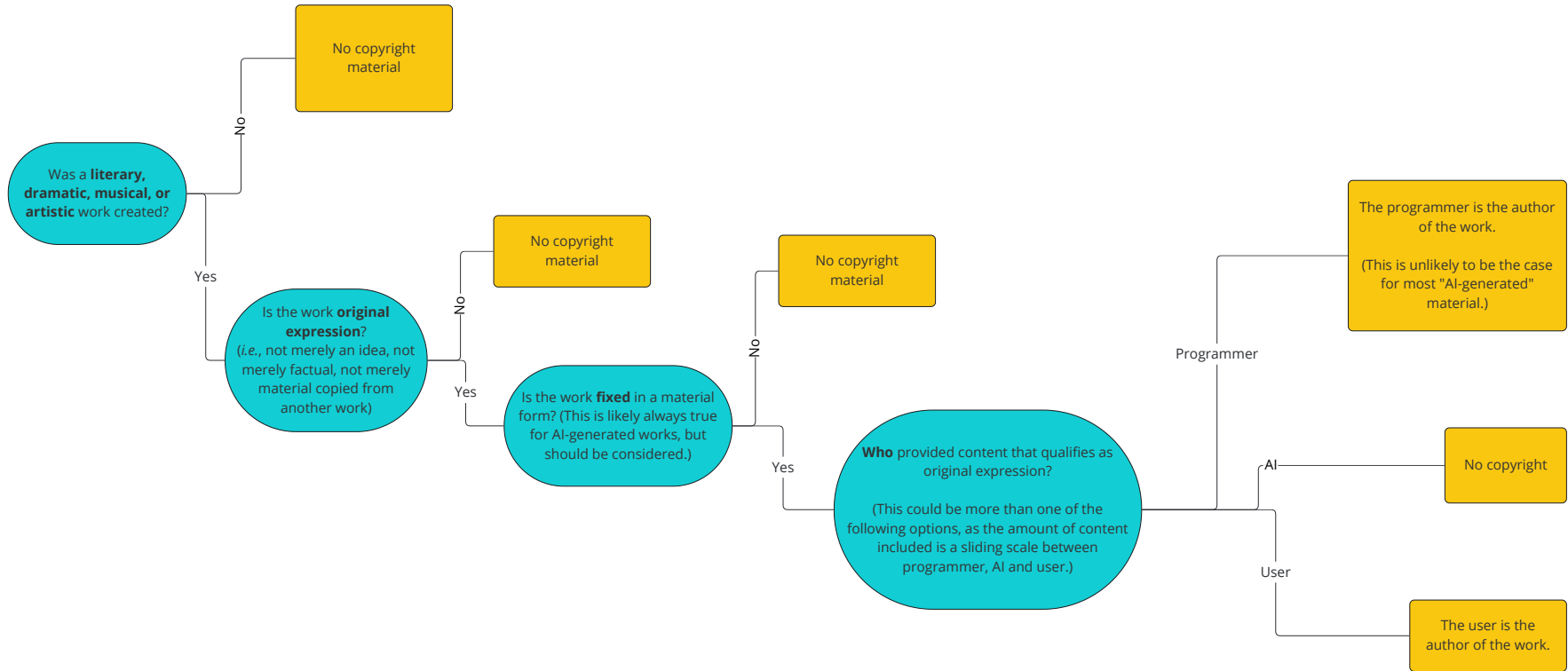
No infringement

Does another user's right and/or exception to copyright liability apply?

Infringement exists. Court to consider damages.

No infringement

Is the AI-generated work subject to copyright protection?



Is the AI-generated work fair dealing?

### Step 1

Was the AI-generated work created for one of the following **enumerated purposes**?

- Research
- Private Study
- Education
  - Parody
  - Satire
- Criticism
- Review
- News Reporting

### Step 2

Do the fair dealing factors weigh in favour of fair dealing (**bolded** factors are likely particularly important in analyzing AI-generated works)?

- **Purpose of the dealing**
- Character of the dealing
- **Amount of the dealing**
- Alternatives to the dealing
  - Nature of the work
- **Effect of the dealing on the work**

### Step 3

For works made for purposes of criticism, review, or news reporting, was the **source** and **name** of the author/performer/maker/broadcaster of the work mentioned, as applicable?