

The concept of theft, as defined by the Theft Act 1968 in the UK, involves the dishonest appropriation of another person's property to deprive them of it permanently. However, when submitting an essay written by artificial intelligence (AI), the boundaries between AI-generated content and ordinary attempted theft become blurred. This essay explores the distinctions between AI-generated papers and traditional theft, focusing on the six elements outlined in the Theft Act: dishonesty, appropriation, property, belonging to another, and the intention of permanent deprivation. By delving into the nuances of each element and considering the implications of AI technology, we can better understand the unique ethical and legal challenges AI-generated content poses.

Ordinary attempted theft can be defined in the UK as follows:

“A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and ‘thief’ and ‘steal’ shall be construed accordingly” (Section 1 (1), Theft Act 1968).

Consequently, six elements outlined in the following six sections define the parameters of theft. These are: dishonestly (S2), appropriates (S3), property (S4), belonging to another (S5), with the intention of permanently depriving the other of it (S6) (Theft Act 1968).

This essay will examine the differences between submitting a paper written for one by artificial intelligence and ordinary attempted theft in the order of the sections.

Dishonestly (S2)

There are two ways to interpret ‘dishonest.’ The first is dishonestly passing off an artificial intelligence-written essay as one's own. However, this does not violate S2 of the Theft Act if specific parameters are met - for instance, if the AI pool of data was legally acquired by contract and the use of the AI service was following contract laws. While this may violate competition rules, this must not be equivalent to violating theft laws.

The second interpretation refers to dishonesty in the context of the Theft Act 1968. Suppose the means through which artificial intelligence had acquired the data pool was without permission, license, or grant of use by the original owner. In that case, the AI service provider itself is dishonest. The dishonesty also does not fall under any subsections of the explanation of the term “dishonestly” (Section 2, Theft Act 1968). Notably, subsection S. 2(1)(b) provides an exception, which states, “if he appropriates the property in the belief that he would have the other's consent if the other knew of the appropriation and the circumstances of it” (Section 2 (1), Theft Act 1968). However, it could be argued that most writers do not have any reason to consent and that the societal

consensus over AI evokes discussion and debate rather than an unequivocal agreement of automatic use of works for AI that would constitute implied consent.

Thus far, it is the AI service provider that is dishonest. Now, we will consider the implications for the *user* of such a service. The user is likely to have a reasonable suspicion that current AI technology uses data from original writers and whether it was done by an appropriate method such as contracting or asking for permission. Upon using the AI service, there are two points to consider. (a) The AI service may produce something new that has no resemblance to the originals. However, (b) The AI algorithm may be one that copies and strings together phrases, sentences, or paragraphs from a variety of sources. In case (a), the technology mimics a student reading 100 Plato, Socrates, and Hume works and then writing an essay from scratch based on what he or she has *learned*. In case (a), the AI algorithms mimic human *learning* rather than copying and pasting coherently. In such cases, it could be argued that using type 1 AI products does not violate the original writers' rights as the algorithm merely 'reads' and artificially mimics the neurocognitive *learning* processes. There is nothing inherently objectionable about reading or learning. It would be questionable as per *competition rules* but not within the scope of theft laws. In case (b), the algorithm is structured as a copy-and-paste job where parts of works written by others are copied into a cut-and-paste essay. As such, the knowing usage of the final product could be seen as dishonest. The user's deliberate usage of the AI service could constitute a second dishonesty through an accessory on top of the original possible dishonesty of the AI service provider in trawling and using non-consensual writing as input data.

Appropriates (S3)

S3 deals with appropriation: "(1) Any assumption by a person of the rights of an owner amounts to an appropriation, and this includes, where he has come by the property without stealing it, any later assumption of a right to it by keeping or dealing with it as owner" (Section 3, Theft Act 1968). As in case 1, where the AI algorithm mimics *learning* but not copy-and-paste collating, the AI service generates new work. As such, it is between the user and the AI service provider who is the 'owner.' Presumably, where there is a contract for value to use the AI service, the AI-generated work is made for the user: the user has the ownership rights or the license to operate. Where there is no contract for value, but the AI service provider provides it for free, there is a general invitation and an implied license for users to use the final work.

However, in case 2, where it is a collation of numerous works, a user submitting an AI-generated essay will inevitably assume a right to deal with it as owner. This would fall within S3 as the copy-and-paste formula is a collation or 'appropriation' of numerous original writings. Hence, a copy-and-paste type AI-generated essay submission would constitute multiple counts of appropriation under S3.

Property (S4)

Property refers to the copyright of the original work (Section 4, Theft Act 1968).

Belonging to Another (S5)

The original writers own the original work. Where the AI service had contracted, asked permission, or legally gained contractual rights or licensee rights over the original works as input data, this “violation” is extinguished.

This can be compared in parallel to a senior manager of a company instructing a junior member to write a report. The senior manager then presents the report to another party - e.g., an external party or a board of directors. The junior member writes the report. However, because there is a contractual relationship wherein the junior member is remunerated in salary for writing reports (and other work), the senior manager is not in contravention of any theft as it no longer ‘belongs to the junior member. This situation embodies the work-for-hire concept, an exception to the general copyright principle, which states that the copyright belongs to the author who created the work.

Similarly, *if* the AI input method had purchased the input rights, there could be a potential transfer of rights and a license to use. As such, it could extinguish claims under Section 5 of the Theft Act 1968.

However, in the early stages of AI technology, most companies had no legal infrastructure to extinguish claims or handle or transfer ownership rights. Most would trawl the internet for freely accessible content using a bot and procure data to input into AI databases. This rudimentary early-stage AI method would cause issues with S. 5. However, future streamlined AI trawling processes or an overhaul via input by voluntary submission in exchange for compensation could make AI no longer in contravention of S. 5 (Section 5, Theft Act 1968).

Intention to permanently deprive another (S6)

Finally, in S. 6, a critical legal contest is highlighted. Originally, the theft had mainly encompassed the appropriation of physical objects where copies could not be infinitely replicated to no detriment to the original owner. In ‘ordinary theft,’ the harm caused is permanent resource deprivation. The immorality is thus the unfair depletion of resources to the thief. The harm, however, is in a case where copies could be infinitely replicated is a lighter one. Initially limited to necessities that would not be invented if they did not have a long enough market monopoly to earn back the ‘lost wages’ during the invention years, intellectual property is now very different from before. Intellectual property gradually expanded to non-critical works that were neither necessities nor had

a public interest in technological development, such as brand names, logos, and trademarks. These at least had market value and were subject to possible heavy lobbying to protect market share interest and economic interests. However, the line was further diluted and watered down.

Now, even non-critical works with zero market value are being pushed into the definitional boundaries of IP. The harm is therefore characterized by ‘copycat’ annoyance, ill-will, or unfairness. From a moral perspective, while this is unequivocally negative, morality remains disproportionate to theft that deprives intellectual property born out of necessity or public interest. There is the spirit of the law and the letter of the law. In this case, the spirit of the law is in flux and ever-changing. The underlying morality is outrightly negative, but it is disproportionate to be lumping a copycat-ism practice common even in primary schools to S. 6 laws. Returning to the question of what makes an AI submission different from ordinary theft, ordinary theft was immoral due to the harm caused to the victim, and that encompassed the spirit of the law. However, the dilutions of definitions have eroded the moral-legal boundaries bit by bit; ordinary theft has the weight of legal immorality and the proportionality to its harm. In contrast, the difference is that AI submissions are a bane rather than a boon to society yet they lack the same moral weight of permanent deprivation and are disproportionate to its immorality.

The Theft Act 1968, however, was enacted in 1968 after intellectual copyrights were firmly entrenched in the law. The letter of the law is clear on IP. Section 6 clarifies situations where “A person appropriating property ... is nevertheless to be regarded as having the intention of permanently depriving the other of it if his intention is to treat the thing as his own to dispose of regardless of the other’s rights” (Section 6, Theft Act 1968). Consequently, a user submitting an AI piece is subject to the legal fiction constructed in S. 6 (1) as he intended to “treat the thing as his own to dispose of regardless of the other’s rights” (Section 6, Theft Act 1968).

In conclusion, the difference between submitting an AI-generated piece and ordinary theft is manifold. Much of it depends on the type of AI technology being used - whether it is *learning*-based, where the algorithm merely ‘reads’ and mimics learning, or whether it is cut-and-paste *copying*-based, where the algorithm copies and pastes from various sources. The former technically does not appropriate anything as reading is not within the scope of IP violations. Learning as humans do is not illegal either. Automating the process of reading and learning as humans do is neither inappropriate nor unlawful. While the AI service provider has done nothing wrong or illegal, the user using the service may be subjected to non-IP-based issues such as non-legal competition rules or contractual provisions under *contract law* rather than IP or Theft Act 1968-based laws. The scrutiny of copying-type AIs will hinge upon the presence or absence of explicit agreements, permissions, or contracts surrounding the input data, shaping the path toward a more comprehensive understanding of AI’s role in creativity and intellectual property.

Bibliography

Artificial intelligence all for views: copyright and related rights, GOV.UK, 2021
<https://www.gov.uk/government/consultations/artificial-intelligence-and-intellectual-property-call-for-views/artificial-intelligence-call-for-views-copyright-and-related-rights>

Hugenholtz, P.B., Quintais, J.P. Copyright and Artificial Creation: Does EU Copyright Law Protect AI-Assisted Output?. *IIC* 52, 1190–1216 (2021). <https://doi.org/10.1007/s40319-021-01115-0>

Mark Dsouza, Don't panic: Artificial Intelligence and Criminal Law 101, UCL Discovery, 2020
<https://discovery.ucl.ac.uk/id/eprint/10113470/1/M%20Dsouza%20-%20Don't%20Panic%20Artificial%20Intelligence%20and%20Criminal%20Law%20101.pdf>

Theft Act 1968, Legislation.gov.uk. <https://www.legislation.gov.uk/ukpga/1968/60/contents>

Work for hire, LII Legal Information Institute, Cornell Law School
https://www.law.cornell.edu/wex/work_for_hire