RETHINKING

OWNERSHIP, AUTHORSHIP, AND VALUE CREATION IN INTELLECTUAL PROPERTY POLICY FOR AFRICAN ARTIFICIAL INTELLIGENCE

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Executive Summary

Artificial Intelligence (AI) offers transformative potential for Africa, with the capacity to generate significant economic growth, drive innovation, and advance the African Union's Agenda 2063 and the Sustainable Development Goals. Yet, the rapid rise of AI, particularly generative AI technologies, presents unprecedented misalignments between AI realities and existing traditional intellectual property (IP) frameworks.

Globally, AI-generated works face legal uncertainty due to the human authorship and inventorship requirements embedded in copyright and patent laws. For Africa, these challenges are compounded by historical dynamics, where the continent has often been perceived as a standard taker, with limited influence over global IP norm-setting and sustained commercial pressures to concede rights over locally generated data.

This policy brief recommends that African countries require a distinct, context-aware approach to IP governance for AI. Central to this approach is a rethinking of ownership, authorship, and value creation across the AI lifecycle, rather than a narrow focus on downstream AI outputs alone. Key policy tensions arise around the legal status of AI systems, constrained access to high-quality data, and the protection of Indigenous Knowledge (IK) systems.

To address these challenges, African IP policy should advance governance frameworks that provide AI and IP guidance to clarify ownership and responsibility; enable open and responsible access to African data, while remaining fair, inclusive, and aligned with African cultural and societal priorities; recognise and protect Indigenous Knowledge by ensuring community control, prior informed consent, equitable benefit-sharing, and ongoing oversight, including through context-aware licensing models such as the Nwulite Obodo Open Data Licence (NOODL); and support government investments in developing African-language datasets, community-generated data, national AI research centers, and affordable computing capacity.

Introduction

Artificial Intelligence (AI) presents an immense opportunity for Africa, with the potential to drive significant economic growth and accelerate progress towards the African Union's Agenda 2063 and the Sustainable Development Goals (SDGs).[1] However, the rapid expansion of generative AI technologies, while fostering new efficiencies and creative possibilities, simultaneously challenges traditional Intellectual Property (IP) frameworks, particularly regarding ownership, authorship, and value creation.[2]

Globally, AI-generated works are generally excluded from copyright and patent protection due to the foundational requirement for human authorship and inventorship, creating legal uncertainty across jurisdictions.[3] For Africa, this uncertainty is compounded by historical dynamics in which the continent has often been positioned as a standard taker,[4] rather than a standard maker, operating under pressures to concede IP rights over data and cultural resources while functioning primarily as a downstream market for global platforms.[5]

Building a distinctly African approach to AI and IP governance necessitates aligning IP policy with foundational continental strategies, such as the African Union's (AU) Continental AI Strategy[6] and the Protocol to The Agreement Establishing The African Continental Free Trade Area On Intellectual Property Rights.[7] This approach must prioritize data sovereignty, integrate ethical, people-centered principles, and establish new frameworks for determining authorship, ownership, and equitable value creation derived from AI-driven creativity and innovation.[8] Policy reforms must clarify IP laws for AI-related innovation, harmonize regulatory environments continent-wide, and intentionally facilitate African-led creation to ensure that the transformative potential of African AI benefits all its citizens.[9] Accordingly, this brief adopts an understanding of African AI as artificial intelligence that is developed in Africa, by Africans, and designed to respond to the continent's contextual needs and development priorities.[10]

Key Legal Challenges Between Artificial Intelligence and Intellectual Property: Authorship, Data Access, and Indigenous Knowledge

The interaction between IP and AI raises foundational conceptual questions regarding the legal classification of AI systems and the distribution of rights arising from AI-generated outputs. Current debates frequently conceptualise AI through two lenses: AI as a legal object or tool, where IP protection is sought for the creative or

[1] African Union, *Continental Artificial Intelligence Strategy: Harnessing AI for Africa's Development and Prosperity* (July 2024) https://au.int/sites/default/files/documents/44004-doc-EN-_Continental_AI_Strategy_July_2024.pdf page 17 accessed 26 November 2025

[2] Alexander Cuntz, Carsten Fink and Hansueli Stamm, *Artificial Intelligence and Intellectual Property: An Economic Perspective* (WIPO Economic Research Working Paper No 77, 2024) page 9, 17, 18, 22, 23 https://www.wipo.int/edocs/pubdocs/en/wipo-pub-econstat-wp-77-en-artificial-intelligence-and-intellectual-property-an-economic-perspective.pdf accessed 26 November 2025

[3] Anthi Gaidartzi and Irini Stamatoudi, 'Authorship and Ownership Issues Raised by AI-Generated Works: A Comparative Analysis' (2025) 14 *Laws* 57 https://www.mdpi.com/2075-471X/14/4/57 page 1 accessed 26 November 2025

[4] African Union, *Data Policy Frameworks: 42078-doc-DATA-POLICY-FRAMEWORKS-2024-ENG-V2* ,2024, (2, 17) https://au.int/sites/default/files/documents/42078-doc-DATA-POLICY-FRAMEWORKS-2024-ENG-V2.pdf page 17 accessed 26 November 2025: Consider a "standard taker" to mean jurisdiction(s) that adopt and implement technical, legal, or regulatory standards developed elsewhere, rather than developing its own standards or tailoring the same to its unique needs (a standard maker).

[5] See: Caroline Ncube et al., *Policy and Legal Recommendations to Tackling the Challenges and Seizing the Opportunities of Artificial Intelligence in Africa*, in Artificial Intelligence and the Law in Africa (2024); Chijioke I. Okorie & Melissa Omino, "Addressing Inequitable Openness in Licences for Sharing African Data and Datasets Through the Nwulite Obodo Open Data Licence" (2025) 7(3) *Law, Technology and Humans* 94; African Union, *Continental Artificial Intelligence Strategy* (2024) (n 1).

[6] African Union, *AI Strategy (n 1)*

[7] African Union, *Protocol to the Agreement Establishing the African Continental Free Trade Area on Intellectual Property Rights* (19 February 2023), A. 3, 4 (g), and 17. <https://commons.laws.africa/akn/aa-au/act/protocol/2023/free_trade_area_on_intellectual_property_rights/media/publication/aa-au-act-protocol-2023-free_trade_area_on_intellectual_property_rights-publication-document.pdf> accessed 28 November 2025

[8] Centre for Intellectual Property and Information Technology Law (CIPIT), The State of AI in Africa Report (2025), 56-58 <https://aiconference.cipit.org/documents/the-state-of-ai-in-africa-report.pdf> accessed 26 November 2025

[9] African Union, *AI Strategy (n 1)*, 28-29

[10] CIPIT, 'The State of AI in Africa Report' (n 8), 23; See Angeline Wairegi, Melissa Omino and Isaac Rutenberg, 'AI in Africa: Framing AI through an African Lens', Communication, technologies et développement [Online], 10 | 2021, <https://doi.org/10.4000/ctd.4775> accessed 5 February 2026

inventive output of the AI system; or as a legal subject, potentially as an inventor or author.[11]

As a legal object or tool, AI could be used to drive innovation across African societies, requiring IP policymakers to determine how the IP system can support AI development and application for the benefit of the continent.[12] Conversely, where AI is considered as a legal subject, it challenges traditional IP law which is not designed to recognize non-natural or non-juristic persons, as authors or inventors.[13] While most jurisdictions have rejected recognising AI as an author[14] or inventor,[15] the emergence of AI-generated works continues to expose regulatory uncertainty regarding ownership allocation, economic rights distribution, and liability for infringement.[16]

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Beyond questions of authorship, there is a crucial need for data access, as the development of AI systems are entirely dependent on vast, high-quality data sets.[17] However, many data sources, including texts, images, among others, are protected by IP rights, especially copyright. In practice, this restricts access, forcing AI developers to use limited or biased open-source data.[18]

Moreover, existing standard public open data licences, while designed to promote open access, often fail to address context-specific inequalities regarding infrastructure capacity and benefit-sharing, placing African data owners at a disadvantage compared to global tech giants.[19] These inherent inequities in data sharing, especially concerning locally generated African datasets, call for novel equitable licensing frameworks to exist.[20]

These challenges are particularly acute in relation to AI deployment involving Indigenous Knowledge (IK) systems, which are typically characterized by collective or communal ownership and transmission; and do not align to conventional patent and copyright frameworks that are designed around individual ownership and exclusive rights.[21] When AI technologies are utilized for the collation, preservation, and dissemination of IK, complex questions arise regarding exploitation, ownership of the resulting data, access, and equitable compensation.[22]

Tackling Intellectual Property Ownership, Authorship and Value Creation in the African AI Context

Addressing these inequities requires African IP frameworks to rethink open access to African data; shifting towards governance approaches that are "fair, inclusive and culturally relevant in the African context".[23] This is encapsulated in the notion that IP should not restrict innovations by actively imposing specific protection

[11]Chijioke Okorie, 'Beyond Intellectual Property Protection: Other Artificial Intelligence Intellectual Property Strategies For The African Context', Artificial Intelligence and the Law in Africa, 153 <https://www.researchgate.net/publication/378555631_Artificial_Intelligence_and_the_Law_in_Africa> accessed 28 November 2025; See Lai A 'Artificial Intelligence, LLC: Corporate Personhood as Tort Reform', 597.
[12]Ibid, 161
[13]Ibid; See for example in Kenya: s. 2 Copyright Act 2001 and s. 2, Industrial Property Act, Cap. 509, <https://new.kenyalaw.org/akn/ke/act/2001/3/eng@2022-12-31> accessed 5 February 2026
[14]*See: Aryeh Movement Limited vs Cynthia Beldina Akoth Okello*, COPTA/E001/2025, 8-10; Thaler V Perlmutter, 2025 WL 839178, D.C. Cir., March 18, 2025.
[15] *Thaler (Appellant) v Comptroller-General of Patents, Designs and Trade Marks (Respondent)* 2023 UKSC 49
[16] Ncube C and Rutenberg I 'Intellectual property and Fourth Industrial Revolution technologies 1', 399-401 <10.2307/jj.12406168.19> accessed 6 February 2026
[17]Okorie (n 11) page 159
[18]Ibid
[19]Ibid
[20]Chijioke I Okorie and Melissa Omino, 'Addressing Inequitable Openness in Licences for Sharing African Data and Datasets Through the Nwulite Obodo Open Data Licence' (2025) 7(3) Law, Technology and Humans, 94-106 <https://lthj.qut.edu.au/article/view/4001> accessed 30 November 2025
[21]Angeline Wairegi and Melissa Omino, 'Just because you can, doesn't mean you should: The case for and against utilisation of artificial intelligence for indigenous knowledge curation and preservation in Kenya', Artificial Intelligence and the Law in Africa, 192 <https://www.researchgate.net/publication/378555631_Artificial_Intelligence_and_the_Law_in_Africa> accessed 28 November 2025
[22]Ibid
[23]Okorie & Omino (n 20), 3

regimes.[24] Rather, African IP policymakers should adopt balanced, development-oriented IP frameworks that strategically deploy limitations, exceptions and licensing mechanisms to create an enabling environment for developing AI technology across Africa,[25] while safeguarding legitimate public and community interests.

In the AI context, ownership cannot be confined to downstream outputs alone. Value creation begins upstream; with datasets, annotation processes, infrastructure, and social knowledge systems.[26] Effective African IP governance must therefore recognise the role of these inputs and ensure that access frameworks do not legitimise uncompensated extraction or asymmetrical value capture by external actors.[27]

Conventional IP concepts of authorship privilege individual, identifiable creators, offering limited protection for collectively produced or intergenerational knowledge systems.[28] This poses acute challenges for AI systems trained on IK, cultural expressions, and community-held data.[29] In response, African IP and data governance policies should explicitly recognise that IK data used in AI systems remains under the authority and control of the relevant indigenous communities.[30] This entails enforceable requirements for prior informed consent, equitable compensation for commercial utilization, and ongoing oversight throughout the AI development process.[31]

Aligning IP governance with data infrastructure development, improved regional AI research networks and affordable computing capacity will help ensure that regulatory reforms translate into tangible innovation outcomes.

A core policy concern is the growing disconnect between where AI value is created and where it is captured. African actors frequently supply the data, cultural resources, and labour that underpin AI systems, yet economic returns often accrue elsewhere.[32] To address this imbalance, IP governance reforms must be designed to retain value locally, rather than merely facilitate participation in global AI markets on unequal terms.[33] Operationalising this objective calls for context-sensitive licensing frameworks.[34] Tiered licensing models, such as Nwulite Obodo Open Data Licence (NOODL) among others, that reflect contextual cultural sensitivity and equitable revenue-sharing models,[35] provide promising mechanisms that allow African policymakers to reconcile openness with protection, ensuring that data access frameworks support innovation without eroding community rights or reproducing extractive value chains.[36]

Ultimately, an African approach to AI and IP should prioritise equity, contextual justice, and community-centred governance. Aligning IP governance with data infrastructure development, improved regional AI research networks and affordable computing capacity will help ensure that regulatory reforms translate into tangible innovation outcomes. Further, by grounding AI development in locally driven principles of IP ownership, data access, and stewardship, African policymakers can ensure that the continent adopts AI technologies that actively shape Africa's innovation value, direction, and impact.

[24]Okorie (n 11), 162
[25]Caroline Ncube, Desmond Oriakhogba, Tobias Schonwetter and Isaac Rutenberg, 'Policy and legal recommendations to tackling the challenges and seizing the opportunities of artificial intelligence in Africa', Artificial Intelligence and the Law in Africa, 355 <https://www.researchgate.net/publication/378555631_Artificial_Intelligence_and_the_Law_in_Africa> accessed 28 November 2025
[26]See CIPIT, State of AI in Africa 2023 and 2025 (n 8); Okorie & Omino (n 20)
[27]Okorie & Omino (n 20), 5-7: The article provides apt illustrations on the contextual inequalities facing African AI developers.
[28]Wairegi and Omino, (n 21), 192
[29]Debbie Collier, 'Labour law as a technology for humanising work in the digital era', Artificial Intelligence and the Law in Africa, 209 <https://www.researchgate.net/publication/378555631_Artificial_Intelligence_and_the_Law_in_Africa> accessed 28 November 2025
[30]Wairegi and Omino, (n 21), 200
[31]Ibid
[32]Okorie & Omino (n 20), 5-7
[33]Ibid.
[34]Licensing African Datasets, 'Home' (Licensing African Datasets) <https://licensingafricandatasets.com/> accessed 30 November 2025
[35]Chijioke I Okorie and Melissa Omino, 'Addressing Inequitable Openness in Licences for Sharing African Data and Datasets Through the Nwulite Obodo Open Data Licence' (2025) 7(3) Law, Technology and Humans, 94–106 <https://lthj.qut.edu.au/article/view/4001> accessed 30 November 2025 - Such frameworks build upon the structure of existing SPOLs but are adapted to explicitly recognize disparities in capacity and ensure equitable sharing of benefits for African dataset owners.
[36]Ibid

Policy Recommendations

To operationalise a coordinated African approach to AI and intellectual property governance, policymakers should consider implementing the following measures:

A. **Provide AI–IP policy guidance to clarify ownership and responsibility:** Governments and IP authorities should issue clear policy guidance on how AI systems should be treated as tools, and clarifying how ownership, responsibility, and liability can be attributed to human actors and institutions across the AI value chain. These principles should be embedded in public procurement, publicly funded research, and innovation support programmes to reduce uncertainty and shape equitable market practice;
B. **Adopt context-sensitive data licensing frameworks as a regulatory standard for AI development:** Policymakers and IP authorities should endorse tiered, development-oriented data licensing frameworks that incorporate benefit-sharing, revenue-sharing, or capacity-building obligations for commercial AI uses. Such licences should differentiate access by use case and development impact, ensuring African datasets support innovation without enabling extractive value capture;
C. **Institutionalise Indigenous Knowledge governance in AI through enforceable consent and oversight mechanisms:** African states should establish enforceable governance frameworks requiring prior informed consent, equitable compensation, and ongoing community oversight for the use of Indigenous Knowledge in AI systems. These safeguards should apply across the AI lifecycle and be coordinated through IP offices, data authorities, and cultural institutions to prevent misuse and ensure community-centred value creation; and
D. **Strengthen investment in African AI development:** African governments, in partnership with regional development institutions and research networks, should prioritise investment in local dataset development, community-generated data, national AI and IP research centres, and affordable computational infrastructure to reduce dependence on foreign resources.

Conclusion

Africa stands at an important moment to redefine intellectual property governance for artificial intelligence, with a unique opportunity to move beyond imported legal models that entrench data extraction, asymmetrical value capture, and rigid conceptions of authorship, in favour of context-responsive frameworks that promote innovation while safeguarding communal and public interests. By institutionalising equitable and responsible access to public-sector data and cultural heritage, ensuring meaningful community control over Indigenous Knowledge through enforceable, context-sensitive licensing frameworks, including NOODL-style licences, and strategically investing in locally generated datasets, computational infrastructure, and national AI research centres, African states can reduce structural dependence on external AI ecosystems and foster inclusive, Afrocentric AI innovation systems. If implemented effectively, these policies can shift Africa from a data supplier to a leader in shaping AI governance and innovation.

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