

ARTIFICIAL INTELLIGENCE AND COPYRIGHT LAW, INSIGHTS AND CHALLENGES FOR THE INDIAN LEGAL REGIME

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ABSTRACT

Artificial intelligence and copyright are gradually evolving areas of creativity. The copyright subsists on original literary, dramatic, musical, and artistic works, cinematographic films, and sound recordings. These works are frequently used to sell, make copies, communicate to the public, and make adaptations. Artificial intelligence is computer-programmed technology that can understand and mimic human emotions. They can use their past experiences and present data to make suitable decisions. The area in which this technological influence is exerted is vast and rapidly changing. Artificial intelligence has long entered the artistic field and tightened its claws in recent decades. The one who can minimize that intervention is copyright law. The copyright act does not recognize artificial intelligence as an author or co-author because the copyright act only recognizes actual individuals as authors. In the current world artificial intelligence has neither been given a human status nor considered as a juristic person but only as an intelligent tool to achieve innovations of man's desire. If that is the case, how the artistic work created by artificial intelligence is protected? And if they are not protected how can be protected? Let's look at the reproducibility, repeatability, and replicability of artificial intelligence in the artistic and creative world.

Keywords: Copyright, Artificial Intelligence, AI Tools, Author, Artistic Work, Creative Work.

INTRODUCTION

Artificial intelligence is a part of computer science that creates machines that can mimic human behavior by utilizing algorithms for problem-solving and decision-making capabilities through machine learning and deep learning mechanisms. There are two set classifications for artificial intelligence¹. They are based on capabilities and functionality. Based on capabilities, the classification is divided into Narrow Artificial Intelligence, General Artificial Intelligence, and Super Artificial Intelligence. Based on functionality, they are classified into Reactive

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¹ Sunny Betz, (March 23,2023) <https://builtin.com/artificial-intelligence/types-of-artificial-intelligence>

machines, Limited memory, Theory of mind, and Self-awareness. The objective of the Copyright Act 1957 is to amend and consolidate the law relating to copyright and protect the originality and creativity of the authors related to original literary, musical, and artistic work, cinematographic films, and sound recordings. Artificial intelligence is the fastest evolving area of technology which is deployed across every sector in every aspect of economy, military, and social application.

The conflict between artificial intelligence and the Copyright Act of 1957 arose when the original artistic, literary, and dramatic work, sound recording, and cinematographic films were created by machines. The question of conflict is, whether the Copyright Act, of 1957 recognizes artificial intelligence as an author. Whether the work created by artificial intelligence possess the essence of a true original work.

ARTIFICIAL INTELLIGENCE AND COPYRIGHT

The concept of copyright was developed from the early 16th century onwards. Copyright enables exclusive rights over the original creative work to reproduce, sell, make adaptations and translations, communicate to the public, make copies of the work, etc., and Section 14(a) to Section 14(e)² Copyright Act, 1957 defines the meaning of the copyright and it includes all rights which existed over a copyrighted work. The copyright is only made available to an actual creation, not to an idea related to any creation. Copyright Right Act only recognizes work and can be copyrighted only when there is sufficient human intervention.

In Navigators Logistics Ltd. V. Kashif Qureshi and Ors³. The plaintiff's confidential information about the company including trade secrets was stolen by the defendant and the plaintiff also argued for protection under section 17 of the Copyright Act, 1957. The court held that only a natural person can become the author of a copyright and not an artificial person and the copyright only exists in unpublished work the only if the author is a citizen of India or a resident of India at the time of creation of the work.

Artificial intelligence has become more profound in creating artistic work in the 20th century. Artificial general intelligence is a stage of artificial intelligence where the intelligence of the machine reaches a human-like level. They are prone to teaching and their grasping skills are

² Copyright Act, 1957

³ (2018) 254 DLT 307; (2018) 76 PTC 564

far superior to humans. This type of AI can offer companionship and guidance and can create artistic work like painting and sculpting.

The creation of the Tandem AI App ⁴which uses specific algorithms to create visual output where the AI can reason the scribbles into artistic paintings or pictures and can even use emotion filters. The Anatomy Lesson of Dr. Algorithm ⁵created by Harshit Agarwal with the help of the Tandem AI App embedded in 60,000 surgical pictures of the human body is an inspired work by Rembrandt's painting The Anatomy Lesson of Dr. Nicola Tulp ⁶which was created with the help of artificial general intelligence and exhibited the work AI art exhibition in South Korea, Germany, Austria, Australia, and the US.

The Midjourney ⁷is an artificial generative intelligence program that is found in the year 2022. It is a text-to-image generating platform where artwork can be created within minutes. They function using the input of natural language descriptions called prompts. There is other such platform like DALL-E, Stable Diffusion, etc. All of these AI tools work by using deep learning technology of the machine. The architecture work also found new thresholds with the help of AI tools like Augmented Reality (AR), Virtual Reality (VR), Building information modeling (BIM), 3D Printing, etc. Most of this work cannot adhere to decision-making even though they can make splendid designs for the architecture field which far surpass human creativity. But they can only be employed as an assistant to achieve more innovation in human output.

Generative artificial intelligence is a deep machine-learning mechanism that can generate high-quality text, information, pictures, translation, etc. by using prompts. The generation of creative work in a split second is the feature of such AI tools. The generative AI has been programmed in such a way that it can identify anomalies and draw solutions to them in split seconds. Though they can create brilliant texts or images, there are some drawbacks to the same. That is there is a high chance for plagiarism in the work and the ChatGPT displays an inability to change the initial prompts.

⁴ Harshit Agarwal (2016) <https://harshitagrawal.com/works/tandem>

⁵ Harshit Agarwal (2016) <https://harshitagrawal.com/works/the-anatomy-lesson-of-dr-algorithm>

⁶ Dr. Bryan Zygmunt "Rembrandt, The Anatomy Lessons of Dr. Tulp" (August 8, 2015) <https://smarthistory.org/rembrandt-anatomy-lesson-of-dr-tulp/>

⁷ Claburn; Thomas (August 1, 2022) Holz founder of AI Art service Midjourney on future images

AI Music can create music within soundtracks and music which may vary from rock music to classical music. Artificial Intelligence Virtual Artist (AIVR) ⁸technology is the first AI music generator that is accepted by the music community SACEM. It can make emotionally engaging music by deep learning algorithms. The user of this AI Music tool can compose music by genre, themes, and moods. Artificial intelligence has been associated with all fields of copyright for a long period.

WHO IS THE AUTHOR?

Section 2(d)⁹ defines who is an author. At present, the copyright act does not artificial intelligence as an author because section 2(d) expressly states that the original artistic work should be created by an individual. Section 17 of the Copyright Act, of 1957 recognizes the author as the first owner of the copyright unless there is an agreement to the contrary, that is a contract of service or apprenticeship. The law only recognizes a natural or juristic person as the author.

In the *Naruto v. David Slater* case popularly known as the Monkey Selfie case, the People for the Ethical Treatment of Animals (PETA) and David Slater, a wildlife photographer. The monkey took a selfie with his camera and later the photographer published it and the photo became popular. PETA claimed that Naruto should be perceived as someone not as something should given the copyright of the picture to Naruto. The court of California held that there is no such precedent where a non-human entity has given the copyright. So, the monkey has not given the copyrights over the photo.

There arises the important question of whether artificial intelligence needs to be considered and perceived as human. The answer is a no because even though artificial intelligence employs logical reasoning to identify anomalies and draw solutions within split seconds, artificial intelligence can only supplement human efforts rather than replace them. The main reason for this is that artificial intelligence does not create any work with its creative capacity. The AI is programmed in such a way that they have to go through millions and millions of past data. By

⁸ Charles-Louis Machuron (October 21, 2016) <https://www.siliconluxembourg.lu/aiva-the-artificial-intelligence-composing-classical-music/>

⁹ Copyright Act, 1957

¹⁰ Kapil Chandra (march 21, 2018) Monkey selfie case-significant to copyright act, 1957

<https://www.lawyersclubindia.com/articles/monkey-selfie-case-significance-to-copyright-act-1957-8883.asp>

storing this data and using the same by assessing the prompts and environments in which they operate, AI creates the specific creation. In the strict sense, the work they create is not original.

CHALLENGES FOR THE INDIAN LEGAL REGIME

The Copyright Act, of 1957 extends to the whole of India. The Indian law does not consider AI as an author so the work created by AI cannot be copyrighted. The main conflict arises when considering the authorship of an AI tool is that who should be considered as a real author. Is the person who is giving the prompt to create the work or the developer of the AI tool? Copyright act strictly revolves around the fact that the author is a natural or juristic person, a real person.

Section 57¹¹ of the act deals with the author's special rights. That is even after assignment either wholly or partially the author can claim authorship over the work and can claim damages for the distortion, mutilation, or prejudicial actions against the author's reputation. If the author is an AI tool, can it sue another for the above-mentioned damages when considering the royalty criteria, an author cannot waive his or her right under the Copyright Act, of 1957. If the author is an AI tool, then a reasonable doubt arises about who will be fixing the amount of royalty.

An author is a person who can sue and who can be sued for any matter of infringement of copyright and public morals respectively. If an author writes obscene content, against public morals, etc. Then can artificial intelligence be sued as an author and take responsibility for the same? Section 18¹² of the act deals with the assignment of copyright. An assignment of copyright is only valid in the eye of the law when the agreement is in writing and the assignor or his duly authorized agent signs the agreement. If AI is considered as the author, it can neither sign the agreement nor authorize an agent to do the same. Artificial intelligence poses these kinds of potential challenges to India's Copyright Act, of 1957.

BENEFITS OF COEXISTENCE OF AI AND COPYRIGHT

In a rapidly developing world with innovations and technologies, the coexistence of artificial intelligence and copyright is inevitable. Artificial intelligence has made their influenced literature, music, gaming, and even films. The world has arrived at a point where it cannot eliminate AI from its everyday life. The artificial intelligence is expanded from a Rule-based

¹¹ Copyright Act, 1957

¹² Copyright Act, 1957

AI to a Self-aware AI which may be further expanded and developed to a God-like AI. Machine learning has enabled artificial intelligence to more than follow a rule, they have given it a goal. Artificial intelligence is continuously trained by AI artist with a wide range of databases and information to enhance their work to a more accurate level of creativity.

The presence of Augmented Reality, Virtual Reality, and Mixed Reality can be effectively used to create new artistic work. All we need to trigger those activities is the use of a prompt. Specific prompt is to be given to make a more creative and artistic work. Human input is necessary to get the machine output so why don't consider the possibility that their coexistence can bring? Just like the creation of New Rembrandt's ¹³masterpiece using cutting-edge information technologies. The new frontier of artistic and creative work will evolve through coexistence.

In 2015 artificial intelligence could convert the image to text and in the current time, we are using the reverse pattern like text to image. Now the current world is afraid of the fast-developing AI and they have the question, of whether AI will surpass humans. But the bright side of the same is that the creative world is changing. We could get maximum diverse output with a minimum amount of input. Human creativity and artificial intelligence should walk hand in hand to change the fashion industry, film industry, and architecture. But in literary and musical work humans can use AI to assist the work to a limited extent otherwise there will be a great chance of plagiarism because artificial intelligence creates by analyzing and decoding past information.

Still, artificial intelligence cannot be considered as an author under the copyright act because it does not possess the capacity to shoulder the responsibilities of an author. But their assistance in the field of creativity is top-notch.

CONCLUSION

Artificial intelligence is a brainy technology that can develop greater work in the current world. Artificial intelligence has made numerous creative works in the fields of literature, painting, architecture, music, etc. However, the Copyright Act, of 1957 does not recognize artificial intelligence as an author which is stated under section 2(d) of the act. Artificial intelligence is also unable to perform those specific functions that a natural person could perform effortlessly.

¹³ World intellectual property organization (may 2017) *Andres Guadamuz, Senior Lecturer in Intellectual Property Law, University of Sussex, United Kingdom*

Just like entering into an assignment agreement, one can sue and can be sued in the eye of the law, can enjoy the special rights and privileges available for an author under the Copyright Act, of 1957.

The artificial intelligence presence in the current creative world is inevitable for exploring the new frontiers of imagination. The coexistence of copyright and artificial intelligence is necessary to create artistic work with sufficient human output. Artificial intelligence can transform human output into valuable creation. Imagine a world where human imagination is fully exploited and utilized by highly intelligent machines thereby creating masterpieces.

