

AI - GENERATED CREATIONS: WHO HOLDS THE PEN?

Upasna Upadhyay*

ABSTRACT

The field of authorship and ownership in India is changing as a result of the introduction of artificial intelligence (AI) in creative industries. As artificial intelligence (AI) systems exhibit an astounding capacity to produce content, including music, literature, and visual arts, the issue of who owns the rights to these works grows more intricate. In examining how current intellectual property laws handle the issues raised by this new technology, this article looks at the developing legal framework around AI-generated works in the Indian setting. Only original works created by human writers are afforded copyright protection in India, according to the Copyright Act of 1957. The concept of human creativity, which is fundamental to Indian legal philosophy, serves as the foundation for this principle. But when material created by AI proliferates, this human-centred approach comes under attack. Though there are currently no conclusive decisions, notable judgments and interpretations in Indian law are starting to examine the implications of AI in creative processes. Furthermore, given the importance of traditional knowledge and cultural narratives in the Indian setting, the ethical implications of AI in creativity are noteworthy. To promote innovation while honouring cultural legacy, it is crucial to strike a balance between defending the works of human creators and appreciating the innovations of AI as a tool for creativity. This article seeks to add to the continuing conversation on how technology, creativity, and intellectual property intersect in a world that is changing quickly by examining the legal environment as it stands today and speculating about what may be possible in the future.

Keywords: Copyright Act, Artificial Intelligence, Intellectual Property.

INTRODUCTION

“You could imagine AI progress happening in an incremental way where, every year, there’s slightly better AI than previously. Or, you could imagine that, at some point, we have some amazing insight that [results in] having very good AI quite suddenly. Often, people expect the latter one to happen and sort of plan accordingly... We are interested in how likely it is to go

*BA LLB, FIFTH YEAR, PROFESSOR RAJENDRA SINGH UNIVERSITY.

either of those ways,” says Grace.¹

Artificial Intelligence (AI)’s rapid advancements are transforming various industries, including healthcare and finance, and posing a challenge to traditional notions of authorship and ownership. Its autonomous ability to generate original works, such as music and visual arts, raises the question of who owns the rights to these innovative outputs, as copyright and patent laws traditionally rely on human creativity.

The growing role of AI in the global economy has led to a significant challenge in intellectual property frameworks. As AI's capabilities expand, existing frameworks must adapt to ensure their relevance and effectiveness. This writing explores the legal, and ethical aspects of AI-generated IP. The goal is to seek the answers to the focal question: who truly owns the creations of AI?

Navigating the uncharted territory of AI and intellectual property.

The independent creation defence is poised to take on greater prominence, thereby helping address some of the concerns of both those for and against subjecting the outputs of AI systems to copyright. The independent creation defence is likely to increase in importance in the AI context because AI systems utilizing widely available public domain techniques and similar inputs may often yield similar creative outputs that are nonetheless independently derived.²

One of the most critical remaining concerns is that applying copyright to AI-generated outputs will significantly inhibit creative efforts overall. For instance, if a creative party utilizing AI is able to produce thousands or even millions of copyrightable works in a short span of time, ten each of those thousands or millions of copyrights may stand in the way of other creative parties wishing to make use of the same or similar expression in their own creative efforts.³

ISSUES RAISED IN AI-GENERATED INTELLECTUAL PROPERTY (IP)

1. Ownership

In 2023, Getty Images commenced a lawsuit against Stability AI claiming infringement of

¹ Jonathan Follett ‘Could Machines Become Creative?’ (Towards Data Science, 14 Jun 2019)
<<https://towardsdatascience.com/could-machines-become-creative-49f346dcd3a3>>

² Ibid

³ Clark D. Asay ‘Independent Creation in a World of AI’ (FIU Law Review, 2020)
<<https://ecollections.law.fiu.edu/cgi/viewcontent.cgi?article=1427&context=lawreview>>

intellectual property rights including copyright in content owned or represented by Getty Images⁴. “It is Getty Images’ position that Stability AI unlawfully copied and processed millions of images protected by copyright and the associated metadata owned or represented by Getty Images absent a license to benefit Stability AI’s commercial interests and to the detriment of the content creators,”⁵ said Getty Images.

Another significant case on the same lines took effect, where The New York Times initiated a legal battle against OpenAI and Microsoft for copyright infringement, marking a new escalating legal battle over unauthorized use of published work for AI training⁶.

What unites these cases is the question of whether using AI-generated work is permitted by law. Were ownership and copyright rights violated? If so, how much may the businesses that replicated and produced a by-product of their previously published work be held accountable under the aforementioned cases?

2. Authorship

Authors are always the starting point and centre of any discussion on copyright law. According to the labour theory developed by Locke, for instance, the intellectual labour of the author mixed with other resources justifies the author’s right over the fruit of his/her labour. The personality theory by Hegel claims that a work belongs to or reflects the personality of his/her creator. Although the utilitarian theory⁷ starts with the welfare of the public and society as a whole, the fact that the copyright is considered an incentive for the authors to create cannot be denied. But who is to be conceived as the author of a work?⁸

Last year saw the most amount of cases, issues and questionable/ argumentative aspects of generative AI another such add to the list was, a new song allegedly by Drake and The Weekend which became a sensation on Tiktok and Spotify, named “Heart on My sleeves”, not just because of its melody and lyrics but because of the fact, that the alleged artists had nothing to

⁴ *Getty Images (US), Inc v Stability AI, Inc* (1:23-cv-00135).

⁵ ‘GETTY IMAGES STATEMENT’ (Getty Images, 17 Jan 2023) <<https://newsroom.gettyimages.com/en/getty-images/getty-images-statement>>

⁶ Michael M., Grynbaum, and Ryan ‘THE TIMES SUES OPENAI AND MICROSOFT OVER A.I. USE OF COPYRIGHTED WORK’ (The New York Times, 27 Dec 2023) <<https://www.nytimes.com/2023/12/27/business/media/new-york-times-open-ai-microsoft-lawsuit.html>>

⁷ Rajshree Chandra ‘The Utility of Intellectual Property Rights’ (Oxford Academic, 18 Oct. 2012) <<https://academic.oup.com/book/2137/chapter-abstract/142091580?redirectedFrom=fulltext>>

⁸ Rosa Maria Ballardini, Kan He & Teemu Roos ‘AI-Generated Content: Authorship and Inventorship in the Age of Artificial Intelligence’ (Edward Elgar Publishing, 2019) <<https://www.cs.helsinki.fi/u/ttonteri/pub/aicontent2018.pdf>>

do with the song. The song was created using training the Artificial Intelligence with Drake and The Weekend's voices and previous work⁹. Later on, the song was taken down from all the platforms.

3. Liability

AI is a broad field whose origins in the mid-20th century coincided with the meeting between theoretical computer science and the first modern computing machinery.¹⁰ The pivotal role played by AI in World War II led to a subsequent rapid development of the field, with successful applications observed in the industry throughout the second half of the 20th century. However, the progress of AI as a field has never been homogeneous nor linear, with several AI technologies promising breakthroughs that later led to the so-called AI winters.¹¹

AI is a computer-operated software but very unlike any of the existing ones. It personifies a chronology of commands telling a computer to transform input data into preferred output information.¹² It is capable of high-complexity tasks, like problem-solving, decision-making, learning, teaching and much more. But the problem comes into existence when we understand that AI does not know the extent to which it should operate, and when there's no end point of execution, it gets harmful.

Since AI is a mechanically operated software with no bottom line, who are we going to hold liable for any of its wrong-doings? The person who gives it the command or the companies who incorporated/ manufactured it?

The general rule says that juristic individuals have the inherent right to sue and be sued in their names, while non-legal entities can only sue or be sued if it is created or vested by a statute¹³.

⁹ Rachel Reed 'AI CREATED A SONG MIMICKING THE WORK OF DRAKE AND THE WEEKEND. WHAT DOES THAT MEAN FOR COPYRIGHT LAW?' (Harvard Law Today, 02 May 2023) <<https://hls.harvard.edu/today/ai-created-a-song-mimicking-the-work-of-drake-and-the-weeknd-what-does-that-mean-for-copyright-law/>>

¹⁰ A. M. TURING 'COMPUTING MACHINERY AND INTELLIGENC' (Mind, October 1950) <<https://academic.oup.com/mind/article/LIX/236/433/986238>>

¹¹ The term AI winter has been coined to describe the periods of retraction in investment on and adoption of AI technologies that followed periods of major interest in the field due to a given breakthrough

¹² Aruna Pattam 'Artificial Intelligence, defined in simple terms' (HCLTech, 16 Sep 2021)

<<https://www.hcltech.com/blogs/artificial-intelligence-defined-simple-terms>>

¹³ <https://www.questjournals.org/jrhss/papers/vol12-issue2/1202153156.pdf>

THE LEGAL FRAMEWORK FOR COPYRIGHT ON INTELLECTUAL PROPERTY AND ARTIFICIAL INTELLIGENCE IN INDIA

Critical concerns concerning copyright and intellectual property (IP) rights have been brought up by the quick development of artificial intelligence (AI) technology in a number of countries, including India. While US copyright laws prioritize human inventiveness, while the UK system aims to broaden the scope of copyright laws by accepting AI-generated work, the UK system has tried to make the scope of copyright laws wider than the US system. India has adopted a narrower interpretation of the term 'person', following the conventional approach of the US¹⁴. India has a robust intellectual property (IP) legal framework, ensuring protection for various forms such as copyrights, patents, trademarks, designs, geographical indications, and plant varieties, each governed by specific legislation and regulatory bodies, in line with international standards and agreements.

The Copyright Act of 1957 serves as the cornerstone of copyright law in India. It states under Section 51, copyright is infringed when:

Any person, without a license from the owner of the copyright, or in contravention of the conditions of a license, does anything that the copyright owner has the exclusive right to do¹⁵.

Journal of Legal Research and Juridical Sciences

Under section 14 of the Copyright Act, 1957, In the case of literary, dramatic, or musical work not being a computer program, the Copyright owners have the right to reproduce the work, right to issue copies of the work, right to make any cinematographic film or sound recording in respect of the work and the right to make any translation or adaptation of the work.¹⁶

The difficulty of establishing the authorship and ownership of works produced by AI is growing as these technologies advance. Since AI is not considered an author" under Indian copyright law, human authors are the primary recipients of recognition. This restrictive interpretation is consistent with the long-standing view, that human creativity is valued in copyright law in the United States¹⁷. Important concerns of originality and ownership are

¹⁴ 'EXPLORING THE NEXUS BETWEEN ARTIFICIAL INTELLIGENCE AND COPYRIGHT ACT, 1957' (IIPRD, 11 Oct 2023) <[¹⁵ Copyright Act 1957, Section 51](https://www.iiprd.com/exploring-the-nexus-between-artificial-intelligence-and-copyright-act-1956/#:~:text=Copyright%20Act%2C%201957,-In%20India%2C%20the&text=%5B10%5DThis%20means%20that%20if,be%20liable%20for%20copyright%20infringement.></p></div><div data-bbox=)

¹⁶ Copyright Act 1957, Section 14

¹⁷ PAUL KIMANI 'TOWARDS A COPYRIGHT LAW THAT ENCOURAGES CREATIVITY' (Franklin pierce school of Law, 2923) <<https://law.unh.edu/sites/default/files/media/2023/03/kimani-2.pdf>>

brought up by the Indian copyright framework's lack of explicit protections for AI-generated works. Who owns the copyright, for example, if an AI system makes music or paints? According to current interpretations, these kinds of works might not be eligible for copyright protection under current regulations unless there is clear evidence of human involvement in the creation process.

India being the fastest-growing economy is also attempting to develop innovative solutions to deal with AI (the revolution of the decade). Following the global trend, in 2018 India also published a roadmap for regulating AI and took some very prominent steps,

1. Artificial Intelligence Task Force by the Ministry of Commerce, Government of India¹⁸, this task force established by the Ministry of Commerce, is in charge of developing plans to further AI applications and research. It seeks to investigate how artificial intelligence (AI) can revolutionize industries such as health care education, and agriculture, ultimately enhancing citizens' quality of life.
2. "National Strategy for Artificial Intelligence" by NITI Aayog¹⁹, this plan describes a thorough approach to AI development in India. It highlights how crucial it is to have legal and ethical frameworks in place to make sure AI technologies are created and used properly.

They came in force to look into the matter, of how AI can help transform sectors like agriculture, education, health, and investment. And how it will impact the lives and to regulate it in a positive manner.

CONCLUSION

Reflecting upon the question- who owns the right of Artificial intelligence creations? It is cardinal to acknowledge AI with the aspect of it being an hinged part of today's technologically dominating and inclined world, and that it has become an integral and constitutive part of this forever changing world. There have been increasingly diverse applications of machine learning and artificial intelligence all over the globe. "Can we take what humans think is beautiful and creative and try to put that into an algorithm? I don't think it's going to be possible for quite a

¹⁸ 'ARTIFICIAL INTELLIGENCE TASK FORCE' (Ministry of Commerce and Industry GOI, Mar 2018)
<<https://www.aitf.org.in/>>

¹⁹ 'NATIONAL STRATEGY FOR ARTIFICIAL INTELLIGENCE' (NITI Aayog, June 2018)
<<https://www.niti.gov.in/sites/default/files/2023-03/National-Strategy-for-Artificial-Intelligence.pdf>>

while” says Jason Toy the CEO of an upcoming company working in artificial intelligence.²⁰

If there is a day in future when intelligent machines are smarter than human beings machines would obviously be intelligent enough to ask for the protection of their intellectual labour. However, as a famous quote reads “Act now before it’s too late,” it’s always better to be equipped with the things needed for the future²¹. It needs to be ensured that it faces some explicit legal restraint so that it does not cause any deleterious effect on human intellect and inventiveness.

Reviewing the existing laws regarding copyrights and ownership, and generating strong legislation that strikes a balance and protects the rights of creators whether generative - AI or human-generated work, should be taken into consideration and given the primary importance. The ethical ramifications of AI in the creative process should be carefully considered, even beyond legal definitions. Because AI systems are trained on large datasets that frequently contain previously published works, questions regarding originality and possible copyright are raised.

In the context of AI, India's copyright laws are at a turning point. Even while the current legal framework is strong in safeguarding human ingenuity, it needs to change to keep up with the growing AI-driven environment. The quintessence, utilizing the potential of AI by making a progressive legal structure.

²⁰ ‘The quest for AI creativity’ (IBM) <<https://www.ibm.com/watson>>

²¹ Pratap Devarapalli ‘Machine Learning to Machine Owning: Redefining the Copyright Ownership from the perspective of Australian, US, UK and EU law’ (European Intellectual Property Review, 2018) <<https://eprints.qut.edu.au/123333/15/123333.pdf>>