THE PROMPT AS PAINTBRUSH: NAVIGATING COPYRIGHT AND AUTHORSHIP IN THE AGE OF GENERATIVE AI

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ABSTRACT

Generative Artificial Intelligence (AI) presents a profound challenge to the foundational principles of copyright law, which are historically centred on human authorship. This article explores the critical legal and philosophical questions of ownership and originality in the age of AI. It first establishes the crucial distinction between "AI-assisted" works, where AI acts as a tool, and "AI-generated" works, where AI performs the expressive "heavy lifting." The core of the analysis is a comparative study of two divergent jurisdictional approaches: the United States and India. The U.S., through landmark decisions like Thaler v. Perlmutter and its rejection of the Suryast registration, has adopted a hardline "human-authorship-only" rule, relegating works with insufficient human creative input to the public domain. In stark contrast, India maintains a "strategic ambiguity" rooted in Section 2(d)(vi) of the Copyright Act, 1957, which defines an author as "the person who causes the work to be created." This article examines this ambiguity through the conflicting Indian Suryast registration, the government's 2024 policy statement, and the progressive judicial observations of Justice Gautam S. Patel. The analysis concludes that the U.S. approach offers legal certainty at the cost of flexibility, while India's ambiguous stance, though creating market uncertainty, leaves room for novel interpretations, including AI juristic personhood and new derivative work paradigms.

Keywords: Generative Artificial Intelligence, Copyright Act, AI-Assisted.

INTRODUCTION

Historically, the creation of art was all about the physical connection with the materials; artists had to feel the gritty charcoal or the soft clay to make something or hold a paintbrush to draw on a piece of paper. Every piece of art showcased not only creativity but also patience, effort,

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and skill. The beauty of the artwork wasn't only in its appearance but also in the hard work, time, and even the little mistakes that made it unique. People used to believe that art could only come from human touch, emotion, and physical work. The entire process of creating art has transformed. The physical tools that were used in the past have been replaced by a sort of dialogue with artificial intelligence. Now, a well-written prompt can produce an image without needing a single drop of paint. For the modern creator, the keyboard is the new brush, and the prompt is the pigment. The "canvas" isn't a sheet or board but a huge collection of images stored in data. You don't need to be a skilled painter now, but you do need to think creatively, describe what you imagine clearly, and understand how the AI reads your words. The artist sort of becomes a director, guiding the computer to create what they want.

Generative AI has not only transformed how art, music, and writing are created, but it has also raised big questions about creativity and ownership. These AI systems can produce original-looking works from simple human instructions, challenging long-standing ideas about authorship and originality. Intellectual property (IP) laws, which were designed to protect human creators, are now struggling to define who owns AI-generated works. The line between a tool and a creator has become increasingly unclear, leading to a complex legal and ethical debate. At the centre of this debate are important questions: Who is the true creator of an artwork made by AI, the person who wrote the prompt, the company that built the AI, or the AI itself? Can something made by a machine be considered "original"? And who owns the rights to these creations? These questions are not just theoretical; they directly affect artists, businesses, and the entire creative industry. Generative AI is changing the very meaning of creativity and authorship, forcing society to rethink how we define and protect art in the digital age.

AI-ASSISTED VS. AI-GENERATED WORKS

To understand the legal challenges around AI and copyright, it is important to first distinguish between two main types of creative works: AI-assisted and AI-generated. This difference is not always clear, but it plays a major role in how copyright laws, especially in the United States, decide whether a work can be protected. AI-assisted works are those where a human remains in charge of the creative process. The artist uses AI as a tool to help them bring their ideas to life, similar to how a photographer uses a camera or a designer uses editing software. In such cases, the human decides the main creative elements, such as the concept, composition, and style, while the AI simply helps execute those choices.

AI-generated works, on the other hand, involve very little human involvement. Here, the person might only give a short instruction or write a text prompt, and the AI system independently makes most of the creative decisions. The AI decides the details, like colours, shapes, or sentence structure, turning a general idea into a finished product. The legal problem arises when it becomes difficult to tell whether AI acted as a *tool* or as a *creator*. The focus of copyright law has shifted from *who created the work* to *how the work was created*. Courts now look closely at how much control humans had over the AI's final output. The key question is: did the human contribute enough creatively to be considered the "author"?

Since copyright law currently requires a human author, courts often frame AI as a mere assistant or instrument. But this creates confusion. As AI systems become more advanced and independent, the amount of human input needed to claim authorship may actually have to increase. This constant change makes the legal situation uncertain for artists, companies, and anyone using AI in creative work.

This intense focus on the "author" stems from the foundational pillar of modern copyright law: the human creator. In the United States, this principle is not merely a policy but a constitutional mandate, designed "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors... the exclusive Right to their respective Writings." The law's primary purpose is utilitarian: to provide a limited monopoly as an incentive for human beings to engage in the difficult process of creation, thereby enriching the public.

When a work is created with minimal human input, what we've defined as "AI-generated," this human-centric legal framework creates a complex ownership puzzle with four main contenders:

The AI Developer: One could argue that the programmers who built the AI are the authors. However, this claim is legally weak. They are seen as creating the tool, not the specific expression. Their role is analogous to that of a camera manufacturer to a photograph; they enabled the creation but did not exercise direct creative control over the final, specific output.

The User/Prompter: This is the most fiercely contested area. The user initiates the process, but the strength of their claim depends entirely on their degree of control. A simple prompt (e.g., "a cat in the style of Van Gogh") is typically seen by regulators as an unprotectable "idea." The AI, not the user, is considered responsible for the specific "expression", the final composition, colour palette, and details. This legal hurdle, known as the idea-expression

dichotomy, is why the U.S. Copyright Office has rejected claims based on simple prompts alone.

The AI Itself: From a functional perspective, the AI makes the creative choices. However, this is a legal non-starter. Copyright is a property right, and to hold property, an entity must have legal personhood. AI systems are currently considered property, not persons, and thus cannot own copyrights.

The Public Domain: This becomes the default position in jurisdictions like the U.S. that strictly adhere to the human authorship rule. If no human can be identified who provided a sufficient level of creative input to be deemed an "author," then no copyright ever exists. The work is born directly into the public domain, free for anyone to use.

This legal reality creates a significant paradox, especially for the emerging skill of prompt engineering. A highly detailed, creative, and complex prompt may itself be a copyrightable literary work. Yet, the visual or textual output generated from that very prompt may remain uncopyrightable because the expressive "heavy lifting" was outsourced to the machine. This commercial friction may disincentivise the use of "AI-generated" tools for projects where clear ownership is critical, pushing the market back toward "AI-assisted" models where creators can perform more granular, post-generation human editing to firmly establish their authorship.

A COMPARATIVE ANALYSIS OF JURISDICTIONAL APPROACHES

United States: A Hardline Stance on Human Authorship: The United States has taken the strictest position on AI and copyright. Both the U.S. Copyright Office (USCO) and federal courts insist that only works created by a human being can be protected under copyright law. This position was firmly established in the case of *Thaler v. Perlmutter*. *Stephen*,[1] Thaler attempted to register an image titled *"A Recent Entrance to Paradise,"* which he claimed was created entirely by his AI system, the *Creativity Machine*. The USCO[2] rejected the application, and the D.C. Circuit Court of Appeals later upheld that decision. The court ruled that "human authorship is an essential part of a valid copyright claim," and that the term "author" in the Copyright Act implies a human creator. The reasoning was simple: copyright law exists to encourage human creativity, not to reward machines.

[1] Thaler v. Perlmutter, No. 22-CV-384-1564-BAH
[2] U.S. Copyright Office

This principle was reaffirmed in another case involving Indian artist-lawyer Ankit Sahni and his AI tool RAGHAV,[3] which created an artwork titled *"Suryast."* Sahni used Van Gogh's *The Starry Night* as a style reference and his own photograph as input. However, the USCO denied copyright registration, reasoning that Sahni's human involvement was too limited. The final artistic choices, such as how the style was applied, were made by the AI system, not by Sahni. Together, the *Thaler* and *Suryast* cases form a clear rule in the U.S., if AI determines the expressive elements of a work, it cannot be copyrighted. Such works are considered to enter the public domain.

India: A State of Strategic Ambiguity: India's position is far less clear, mainly because of the way the Copyright Act, 1957, is written. Section 2(d)(vi)[4] defines the "author" of a computer-generated work as "the person who causes the work to be created." This wording is open to interpretation and could allow the user who provides the prompt or initiates the AI process to be recognised as the legal author, a view completely different from U.S. law. This ambiguity came to light in Ankit Sahni's "Suryast" case, which was treated very differently in India. In 2020, the Indian Copyright Office (ICO) became the first authority in the world to grant copyright registration listing both Sahni and the AI RAGHAV as co-authors. However, the ICO[5] later issued a withdrawal notice, questioning whether an AI could legally hold authorship status. Despite the notice, the registration remains marked as "registered" on the ICO's website, leaving the legal position highly confusing.

In February 2024, the Indian government told Parliament that the country's current IP laws are "well-equipped" to handle AI-related issues and that there are no plans to introduce separate laws for AI-generated works. This reflects a deliberate policy of strategic ambiguity, allowing courts to decide AI-related cases individually rather than setting fixed legal rules.[6]

JUSTICE GAUTAM S. PATEL'S OBSERVATIONS

A significant moment in India's evolving stance on AI and copyright came with the observations of Justice Gautam S. Patel of the Delhi High Court in 2023. [7]Although his remarks

[3] https://ksandk.com/intellectual-property/divergent-copyright-recognition-ai-generated-works-sahnis-case-us-vs-india/
[4] Section 2(d)(vi) of the Copyright Act, 1957
[5] Indian Copyright Office
[6] https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2004715
[7] https://www.livelaw.in/top-stories/who-owns-copyright-in-generated-arts-created-by-ai-justice-gautam-patel-highlights-new-legal-challenges-278090

were *obiter dicta*, meaning they were not part of a formal judgment, they have had a strong influence on the ongoing debate over AI authorship.

Justice Patel argued that Indian copyright law must evolve with technology instead of strictly adhering to outdated legal definitions. He put forward three key ideas to guide this change:

Redefining the Concept of "Author": Justice Patel questioned whether the word "author" in the Copyright Act should always mean a human being. He drew a comparison between AI systems and juristic persons such as corporations, non-human entities that the law already recognises as having rights and responsibilities. He suggested that AI could similarly be treated as a juristic person in limited contexts, such as being credited for authorship. This represents a novel and progressive departure from the global approach.

Recognising the User as the Author of a Derivative Work: He proposed that AI-generated outputs could be seen as derivative works. In this view, the AI's database and algorithms form the "underlying work," while the user's inputs, like prompts, selection, and creative direction, constitute original human contribution. Thus, the user could be legally recognised as the author of the portions they influenced. This flexible interpretation aligns better with how humans actually collaborate with AI in creative fields.

Adopting a Practical and Balanced Approach: Justice Patel emphasised that completely denying copyright to AI-generated works could create a legal gap that stifles creativity and investment. If artists or businesses spend significant resources developing AI-generated content without any legal protection, it would discourage innovation. His approach seeks a middle ground, acknowledging the user's creative role while viewing AI as a tool that enhances, rather than replaces, human creativity.

The contrast between the United States and India highlights two very different approaches to AI and copyright. The U.S. has drawn a firm line, allowing protection only for works that clearly demonstrate human authorship and creative control. India, on the other hand, has chosen to maintain a flexible and uncertain stance, leaving room for judicial interpretation in each case. While the U.S. model offers clarity and consistency, it may limit innovation by discouraging AI-assisted creativity. India's approach, though uncertain, provides adaptability in a rapidly changing technological environment. Ultimately, both systems reveal the same challenge: the need to balance technological progress with the fundamental legal principle that copyright protects human creativity.

UNRESOLVED LEGAL QUESTIONS IN THE INDIAN CONTEXT

While Justice Patel's views mark a progressive step forward, they also leave behind several unresolved questions that Indian lawmakers and courts will eventually need to address.

Determining the Threshold of Originality: One of the key challenges is defining how much human input is necessary for AI-generated content to qualify as "original." For instance, is a simple text prompt like "a beautiful sunset" enough to claim authorship, or must the user engage in a detailed, multi-step process involving specific creative choices and refinements? Indian courts will need to develop a clear test to decide when a user's interaction with an AI system crosses the threshold into genuine authorship.

The Training Data Dilemma: Another major concern relates to how AI systems are trained. Most AI models rely on vast datasets that may include copyrighted works from around the world, including India. This raises the risk of copyright infringement claims against AI developers, as using protected material without permission could violate the Copyright Act of 1957. Developers might argue that such use falls under "fair dealing" under Section 52(1)(a)[8] for research or review purposes. However, whether commercial AI training can be justified under this exception remains an open and highly debated question in Indian copyright law.

The Question of AI Personhood: Justice Patel's idea of granting AI a juristic personality, similar to that of corporations, presents another layer of complexity. If AI were recognised as a legal author, difficult questions would arise: Who owns the copyright? Who bears liability if the AI infringes on another's work—the developer, the user, or the AI itself? While this idea reflects an innovative approach to modern technology, it could also complicate legal accountability and enforcement.

In essence, while India's flexible and open-ended stance allows room for legal evolution, it also introduces significant ambiguity. The coming years will likely see Indian courts playing a crucial role in shaping how authorship, originality, and liability are understood in the age of artificial intelligence.

[8] Section 52(1)(a) of the Copyright Act, 1957

CONCLUSION

The shift from the physical paintbrush to the intellectual prompt represents a paradigm shift in human creativity, forcing a global legal reckoning. As we have seen, the foundational question of "who is the author?" is being met with starkly different answers. The United States has provided a clear, bright-line rule: without a human hand guiding the core expressive elements, there is no copyright. This approach offers stability and predictability, but it may disincentivise the very act of "prompt engineering" as a creative art, creating a paradox where the prompt is protected, but the resulting image is not.

India, in contrast, offers a flexible, if unsettling, ambiguity. Its "causes the work to be created" clause in the Copyright Act, 1957, keeps all options on the table. As evidenced by the *Suryast* case,[9] which was registered in India while being rejected in the U.S., and the forward-thinking observations of Justice Gautam S. Patel, India's legal system is openly grappling with novel concepts of derivative works and even limited AI personhood. This path, while creating uncertainty for businesses, allows for a co-evolution of law and technology, where courts can adapt on a case-by-case basis.

Ultimately, the U.S. and Indian approaches symbolise a core philosophical divide. The U.S. seeks to protect the traditional definition of human artistry, while India seems willing to explore a new definition of human-machine collaboration. As generative AI becomes more integrated into the creative economy, the world will be watching to see which legal philosophy, rigid predictability or flexible ambiguity, proves more durable and best serves the ultimate goal of copyright: "to promote the Progress of Science and useful Arts."

[9] https://ksandk.com/intellectual-property/divergent-copyright-recognition-ai-generated-works-sahnis-case-us-vs-india/