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## Can an AI-Generated Artwork be “Original” under the Indian Copyright Act 1957?

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*The rapid growth of Generative AI has impacted the public on a large scale. AI bots like ChatGPT, MidJourney, Gemini, Sora, etc., are the major players in this field. People give prompts using texts and images, and these tools help them create the requested image. But the main question is, can these artworks be called “Original” under the Copyright Act of India? Precedents give different views on this matter. In *EBC v D.B. Modak*, AI was not accepted just because it didn’t consist of the human touch and was not considered human enough to be called “Original”, whereas in the “Suryast” case, AI was accepted as it consisted of creativity and was creative enough to be considered “Original”. This paper will examine the different doctrines, the doctrine of “Modicum of creativity” and the doctrine of “Sweat of the Brow”, used for examining the originality and humanness of the creation and deciding whether the creation should be granted copyright or not. This paper will also discuss the legal frameworks of different countries and their provisions on Copyright, along with continuing and pre-decided case laws for a better understanding. The paper also discusses the challenges India is facing with regard to the matter and the future position of AI in our system, backed by government documents and papers. The paper concludes with suggestions and ideas of what and how an AI should be presented in India and its legal framework.*

**Keywords:** *technology, human-generated, originality, authorship.*

## INTRODUCTION

In the midst of 2022, Generative AI bots like Midjourney, DALL-E2, and Stable Diffusion went viral for creating images, allowing users to give a text prompt and generate an image based on that prompt. In November 2022, OpenAI launched its biggest AI platform, ChatGPT. The most viral AI of the generation, it reached 1 million users in just 5 days of its launch, and by January 2023, it had marked its territory by reaching 100 million users. This was the exact moment when Generative AI came into the picture for the general public.

In 2024, the focus shifted from just a creative AI platform to high-fidelity video and reasoning AI models like OpenAI’s Sora and Google’s Gemini, which could solve complex problems with their deep-thinking feature. This transformation is marked as a “profound transformation” in the creative industry, marking a shift from traditional tools to autonomous creations through AI algorithms.<sup>1</sup> ‘Other powerful technology companies, such as Meta, are following suit and incorporating AI into their products, such as AI chatbots with personalities, illustrating the trend towards resource inequality within the AI playing field.’ ‘Outside of Tesla, Musk is also looking for further ways to implement AI technology and has launched a startup, xAI, to compete with OpenAI’s ChatGPT.’

Mr Robert Yu, in his work “The Machine Author”, argues that this generation’s “Mechanical authors” do not need legal or financial motivation to create artworks. Unlike humans, programs will continue to produce and process, whether they receive copyright or not. He suggests that programs will continue to work regardless of any reward or copyright. Even if these work satisfactorily to acquire the key elements of the Copyright Act, there will remain major discussion points like the authorship, allocations, and public benefit.<sup>2</sup>

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<sup>1</sup> Sydney Rouser, ‘Unfair Competition in the Creative Industries: The Impact of AI Scaping’ (2024) 16(3) Tennessee Journal of Law and Policy <<https://ir.law.utk.edu/cgi/viewcontent.cgi?article=1169&context=tjlp>> accessed 26 April 2026

<sup>2</sup> Robert Yu, ‘The Machine Author: What Level of Copyright Protection Is Appropriate for Fully Independent Computer-Generated Works?’ (2017) 165(5) University of Pennsylvania Law Review 1245 <<https://pennlawreview.com/2020/04/28/the-machine-author-what-level-of-copyright-protection-is-appropriate-for-fully-independent-computergenerated-works/>> accessed 26 April 2026

## **RESEARCH QUESTION**

One question that is to be proven in this article is whether India requires a change (or amendment) in its current statute of the Copyright Act, or if the original statute is enough to govern the AI and media collaboration? Whether the amendment (if required) should be as per the UK's Copyrights, Designs and Patents Act, 1988 (CDPA)?

## **COPYRIGHT ACT IN INDIA AND THE CONCEPT OF 'ORIGINALITY'**

Article 14 of the Copyright Act of 1957 defines the meaning of copyright as “For this Act, 'copyright' means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely—

- a. in the case of a literary, dramatic or musical work, not being a computer programme —
  - i. to reproduce the work in any material form, including the storing of it in any medium by electronic means;
  - ii. to issue copies of the work to the public, not being copies already in circulation;
  - iii. to perform the work in public, or communicate it to the public;
  - iv. to make any cinematograph film or sound recording in respect of the work;
  - v. to make any translation of the work;
  - vi. to make any adaptation of the work;
  - vii. to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);
- b. in the case of a computer programme—
  - i. to do any of the acts specified in clause (a);
  - ii. to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme: Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.
- c. in the case of an artistic work,
  - i. to reproduce the work in any material form, including—

(A) the storing of it in any medium by electronic or other means; or

(B) depiction in three-dimensions of a two-dimensional work; or

(C) depiction in two dimensions of a three-dimensional work;

- ii. to communicate the work to the public;
- iii. to issue copies of the work to the public, not being copies already in circulation;
- iv. to include the work in any cinematograph film;
- v. to make any adaptation of the work;
- vi. to do in relation to adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

d. In the case of a cinematograph film,

- i. to make a copy of the film, including -

(A) a photograph of any image forming part thereof; or

(B) storing of it in any medium by electronic or other means;

- ii. to sell or give on commercial rental or offer for sale or for such rental, any copy of the film;
- iii. to communicate the film to the public;

e. in the case of a sound recording,—

- i. to make any other sound recording embodying it, including storing it in any medium by electronic or other means;
- ii. to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording;
- iii. to communicate the sound recording to the public.”<sup>3</sup>

With such a vast definition of copyright, probably covering every detail regarding creative media and artworks, it fails to cover AI and its artwork explicitly. Section 2(d)(vi) defines the author of

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<sup>3</sup> Copyright Act 1957, s 14

a computer-generated work as “in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created.”<sup>4</sup> But the clause was added in 1994, which came into effect in 1995. This was way before generative AI even existed. With the birth and development of Gen-AI, it’s the computers that are making the artwork, not the person using the device. The person is just giving a prompt to create the image. Can that artwork or creation be called ‘original’? Section 13 of the Copyright Act discusses the works in which copyright subsists, focusing on the originality of the work required to obtain copyright. But in the generation of AI, do these works require human intervention to be called original?

In the case of *Eastern Book Company v D. B. Modak* (2008), it was held that “one of the key requirements is that of originality which contributes, and has a direct nexus, in maintaining the interests of the author as well as of the public in protecting the matters of the public domain. It is a well-accepted principle of copyright law that there is no copyright in the facts per se, as the facts are not created nor have they originated with the author of any work which embodies these facts.”<sup>5</sup> From the given ratio decidendi of the case, if it is created from a human mind, it is an original work. The act looks for intellectual contributions rather than just a contribution to creation.

### **“SWEAT OF THE BROW” VS “MODICUM OF CREATIVITY”?**

The “Sweat of the brow” doctrine is adapted from the English Common law, which prefers the artist’s hard work instead of the creative aspect of the creation. The “Modicum of creativity” is the minimal degree of creativity that should be visible in the artwork to be able to be recognised as original, and the works that are the output of mere mechanical skills or labour cannot, as decided in the case of *EBC v D.B. Modak* (2008).

This decision in *D.B. Modak’s* case pointed to the closeness of Indian Copyright law to the U.S Supreme Court’s decision in *Feist Publications Inc. v Rural Telephone Services Co.*, 499 U.S. 340 (1991)<sup>6</sup>, stating the requirement for “independent creation plus a modicum of creativity.” The Indian court moved from a standard largely dependent on the eloquence of the labour by the

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<sup>4</sup> *Ibid* s 2(d)(vi)

<sup>5</sup> *Eastern Book Company and Ors v D B Modak and Anr* (2008) 1 SCC 1

<sup>6</sup> *Feist Publications Inc v Rural Telephone Service Company Inc* [1991] 499 U S 340

author to one that put more emphasis on the inventive aspect of copyright.<sup>7</sup> Hence, choosing the “sweat of the brow” doctrine for determining whether the work should be given copyright or not.

## THE “SURYAST” CASE

In 2020, Ankit Sahni created an artwork called “Suryast” using an AI system called RAGHAV (Robust Artificially Intelligent Graphics and Art Visualiser). This artwork was created using a photograph authorised by Ankit and “The Starry Night” by Vincent Van Gogh. Ankit attempted to secure a copyright for the output generated by RAGHAV. Ankit was trying to get a copyright for the picture named “Suryast” under the name of the AI bot RAGHAV, but it was denied copyright due to the absence of a Human author. It was later granted permission when Ankit gave his name as the co-author of the said painting. The painting was then registered in the copyright office under the title “Suryast” and Applicant “Ankit Sahni” (ROC No.: A-135120/2020).<sup>89</sup>

While Indian Law accepted RAGHAV as an applicant, with Ankit Sahni as the co-author of the generated work, global law still refuses to accept the work and register it, as it is seen to have a close resemblance to the painting of Van Gogh. The USCO declined the registration of the painting, claiming it lacked the “human authorship”. Mr Sahni reapplied for the copyright, but the USCO stood by its earlier decision not to register the artwork. It shows that India is the first country to recognise copyright for AI-generated content. Canada, on the other hand, considers the artwork and gives a copyright only when AI is considered as a joint author in the work. Ankit’s artwork was only accepted when he argued that his creation and skills were inseparable from the AI tool, and therefore, they were co-authors for the work. While Canada and India had accepted Suryast, other countries like the US, UK and China (Beijing) were not ready to accept the work,

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<sup>7</sup> Purti Sharma, 'THE IP PROTECTION IN AI SYSTEMS: LEGAL ANALYSIS OF COPYRIGHT, TRADEMARK AND PATENT LAW' (2025) 3(4) LawFoyer International Journal of Doctrinal Legal Research 84 <[https://lijdrl.com/wp-content/uploads/2025/11/LIJDRL\\_PAPER-5-Vol-III-Issue-IV.pdf](https://lijdrl.com/wp-content/uploads/2025/11/LIJDRL_PAPER-5-Vol-III-Issue-IV.pdf)> accessed 26 April 2026

<sup>8</sup> Nayantara Sanyal et al., 'Intersection of Intellectual Property Rights and AI-Generated Works – Part I' (*Bar and Bench*, 05 March 2024) <<https://www.barandbench.com/view-point/intersection-intellectual-property-rights-ai-generated-works-part-i>> accessed 26 April 2026

<sup>9</sup> Vedika Chawla, 'Ankit Sahni’s AI “Co-authored” Artwork Denied Registration by US, Continues to be Registered in India' (*SpicyIP*, 15 December 2025) <<https://spicyip.com/2023/12/ankit-sahnis-ai-co-authored-artwork-denied-registration-by-us-continues-to-be-registered-in-india.html>> accessed 26 April 2026

even with RAGHAV as its joint-author. They were looking for originality and not just creativity. The Beijing court said that AI will be accepted when it brings out some originality in its artwork.

### **THE COPYRIGHT WITHDRAWAL**

In 2021, the Copyright Office sent Mr Sahni a letter regarding the withdrawal of the copyright of “Suryast.” The office stopped recognising AI as an author and raised questions on the legality of AI and RAGHAV, drawing attention to section 2(d)(iii) and 2(d)(xi) of the Copyright Act relating to artist, artistic work and computer-generated works. Mr Sahni argued back that any provision of the act does not explicitly mention that the registrar could call back the copyright after its acceptance, unlike section 127 of the Trade Marks Act and section 77 of the Patents Act. The decision is yet to be made, but Mr Sahni’s work still has a copyright and is still listed in the office.<sup>10</sup>

### **THE GLOBAL PERSPECTIVE**

Before 2021, India considered AI an author; after the Suryast case, it cannot be said for sure that India stopped considering AI legal, as the final decision has not been made. For now, it accepts AI, as the work still has copyright and is registered with the copyright office. Different countries may have different perspectives on AI. Unlike India, there are countries that prevent AI from getting copyright just because it is not considered original under statutory provisions.

In the U.K., the CDPA (Copyright, Designs and Patents Act) governs copyright and bundle of rights. It is enforced jointly with Patents and designs in the Intellectual Property Office (IPO) with its headquarters in Wales. Section 9 of the CDP Act defines authorship. Section 9(3) says that “In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.”<sup>11</sup> This provision says that for any artistic or creative work, which is computer-generated, the author of that work is the one who takes the necessary steps to create the work. On the contrary, section 178 gives minor definitions, which also define “Computer-generated” as “‘computer-generated’, in relation to a work, means that the work is generated by

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<sup>10</sup> Sukanya Sarkar, ‘Exclusive: Indian Copyright Office issues withdrawal notice to AI co-author’ (*ManagingIP*, 13 December 2021) <<https://www.managingip.com/article/2a5bqtj8ume32iwlaoy5y/exclusive-indian-copyright-office-issues-withdrawal-notice-to-ai-co-author>> accessed 26 April 2026

<sup>11</sup> Copyright, Designs and Patents Act 1988, s 9(3)

computer in circumstances such that there is no human author of the work.”<sup>12</sup> But this provision was written and passed away before the generation of AI. Therefore, computer-generated works still require a human to give input to create any artistic work. Over time, this provision got some judicial interpretation and doctrinal clarity. In the case of *Nova Productions Ltd. v Mazooma Games Ltd.*,<sup>13</sup> the High Court held that the programmer of the game is the original author of the game, as he is the one who wrote and programmed the game. What inspired the defendants’ game was too general to form a substantial part of the claimant’s literary works. On the contrary to this, the judgment given by the court of appeal in the case of *THJ Systems v Daniel Sheridan*<sup>14</sup> was based on “personal touch” and “creative choices” of the programmer. The court held the whole emphasis on the originality of the work and the software developer’s personal touch to its design, rather than the person who has used it. The developer had given the program all that was required to be called an “original” artwork. Hence, from these judicial interpretations, we get to know that the person who programs it and gives it a touch of originality is the one to have the title of an author.<sup>15</sup> But there still lacks an explicit provision or a judgment to conclude that AI cannot be an author in any creative works.

Unlike U.K provisions, the US has a different viewpoint on AI and its legal positioning. The US follows the Copyright Act of 1976, USCO (United States Copyright Office), a federal agency for all issues regarding copyrights, which has the right to sue and impose punishment for any kind of breach. The US perspective on AI can be seen in a very intriguing case of AI usage for artwork, famously known as the “Zarya of the Dawn” case. *Zarya of the Dawn* was a comic book about a girl named Zarya and her adventurous activities she did on a mission to find her real identity and her friend. This novel was just a series of AI-generated pictures made with the popular image-generating AI called MidJourney, which went viral in 2022-23. The producer of the novel, Kris Kashtanova, used those AI-generated pictures, and with the help of her ‘human-generated’ storyline, she made the novel and named it “Zarya of the Dawn”. The US courts apply a test called the Fiest Test, and they look for an independent creation with a certain minimum amount of creativity before granting a copyright. However, the Copyright Office grants its copyrights to

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<sup>12</sup> *Ibid* s 178

<sup>13</sup> *Nova Productions Ltd v Mazooma Games Ltd and Ors* [2007] EWCA Civ 219

<sup>14</sup> *THJ Systems Ltd and Anr v Daniel Sheridan and Anr* [2023] EWCA Civ 1354

<sup>15</sup> Syn Ong, “The UK’s Curious Case of Copyright for AI-Generated Works: What Section 9(3) Means Today” (*Authors Alliance*, 19 May 2025) <<https://www.authorsalliance.org/2025/05/19/the-uks-curious-case-of-copyright-for-ai-generated-works-what-section-9-3-means-today/>> accessed 26 April 2026

human creators only. The copyright officers identified too much “distance” between the user’s input and the output for copyright protection. Kashtanova’s lawyers argued that they were putting too much emphasis on the output of the AI and too little focus on Kashtanova’s human creative inputs. Hence, the court ruled that the human-generated texts are protected by copyright, but the AI-generated images will not be protected under the Copyright Act of 1976.<sup>16</sup> In the case of *Thaler v Perlmutter*, a scientist named Stephen Thaler created a generative AI named “Creativity Machine” and used that machine to create a picture, and Dr Thaler named the picture “A recent entrance to Paradise”. He submitted the picture for Copyright in the US Copyright Office. Dr Thaler listed the “Creativity Machine” as the sole author of the picture, and himself as the owner of the picture. The Copyright Office denied copyright to the picture based on the policy that the work requires to be authored by a human being. The case went to the US District Court for review of the Copyright Office’s decision on the copyright of the picture. The district court reaffirmed the decision of the office and denied Dr Thaler’s request for the copyright of the AI-generated picture.<sup>17</sup> Therefore, unlike the UK and India, the US refuses to grant AI-generated works copyright and only grants it to human-made works.

In Australia, the copyright issues and matters are governed by the Copyright Act of 1968. According to this act, any artistic work of an author will last for the rest of the life of the author plus 70 years.<sup>18</sup> Australia only provides copyrights to those works that have human authorship. Without a human authorship or the originality of human creativity, the work will not be accepted, and hence no copyright will be provided. This is proven by a case, *Telstra Corporation Limited and Anr. v Phone Directories Company Pty Ltd and ors.*<sup>19</sup> Section 128 of the Copyright Act provides that “a name purporting to be that of the publisher appeared on copies of the work as first published; then, unless the contrary is established, copyright shall be presumed to subsist in the work, and the person whose name so appeared shall be presumed to have been the owner of that copyright at the time of the publication.”<sup>20</sup> Telstra Corporation completely relied on the provision text for the presumption of authorship. Telstra presumed that it applied in his favour as they submitted each directory which bore notations to ‘a Telstra Corporation Limited’ and

<sup>16</sup> Tony Analla, ‘Zarya of the Dawn: How AI is Changing the Landscape of Copyright Protection’ (*Jolt Digest*, 03 March 2023) <<https://jolt.law.harvard.edu/digest/zarya-of-the-dawn-how-ai-is-changing-the-landscape-of-copyright-protection>> accessed 26 April 2026

<sup>17</sup> *Stephen Thaler v Shira Perlmutter* [2025] No 23-5233 (D C Cir 2025)

<sup>18</sup> Copyright Act 1968, s 33

<sup>19</sup> *Telstra Corporation Limited and Anr v Phone Directories Company Pty Ltd and Ors* [2010] FCA 44

<sup>20</sup> Copyright Act 1968, s 128

‘This directory is produced for Telstra Corporation Limited’. Telstra also filed affidavits to establish subsistence of copyright in the directories, which evidence covered the issue of authorship. If Telstra could establish that the directories were original literary works, it would not be necessary to identify the name of every author of those works. The court in this case held that s 128 is directed to a situation where the identity of the author or authors cannot be ascertained, as opposed to a situation where an author or authors cannot be identified at all. The court found that the evidence filed by Telstra rebutted the presumption that copyright subsisted in the directories as a result of the ‘a Telstra Corporation Limited’ notation, because it illustrated Telstra’s failure (or inability) to identify at all an author or authors of the works. Therefore, Telstra could not rely on the presumption in section 128 as to authorship.<sup>21</sup> Hence, even Australia only identifies Human Authors for their creative work, and only people who can prove their ability to identify an author can get the authorship of their work.

Hence, we can see that the UK, US, and Australia have a completely opposite approach to AI in legal terms. Where the UK has allowed, maybe not through a provision, but by being silent on the point that it only accepts human-generated works and not AI-generated, the US and Australia are clear on their views that only human-generated works are to be accepted, and no AI-generated works will be copyrighted. The US even has certain tests that look at the creativity and originality of the work to determine whether the work should be given copyright or not. Meanwhile, India is still making its decision on the pending issue.

## **CHALLENGES IN INDIA**

AI is an essential tool nowadays. Our daily life revolves around using AI for anything and everything. But being a friendly tool, it also has some side effects. There are various challenges that India could face if AI and its legal position are not discussed sooner. The most affected part is the legal domain. Legal position is a position of trust, accountability, secrecy, confidentiality, and so much more. It is an attorney-client relationship that consists of personal information and details that no one else should know. With AI not having end-to-end encryption, it becomes

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<sup>21</sup> Helen Macpherson, ‘Telstra Corporation Limited & anor v Phone Directories Company Pty Ltd & ors [2010] FCA 44’ (*Lexicology*, 01 April 2010) <<https://www.lexology.com/library/detail.aspx?g=1b46e8c7-25ea-410e-ba84-9b7b38aa4016>> accessed 26 April 2026

unsafe to give AI your data, which could be read by the servers, and they can be used for any other bad purposes.

With regards to the challenges, AI is trained with a vast number of databases, some of which are copyrighted works of other authors. They are trained to read all the databases and give an output based on those databases. This may lead to copying of the original texts and creating a replica of the existing works already copyrighted. The subcommittee report of 2024 by the Department for Promotion of Industry and Internal Trade, “Working paper on Generative AI and Copyright”, the committee found two main legal challenges. The challenges are (i) the use of copyrighted material as input for AI training, and (ii) the copyrightability of works generated by AI models. The committee raised a large question regarding the training of AI tools (ChatGPT, DALL.E, Copilot by Microsoft, MidJourney, Gemini by Google, and many more) using the copyrighted datasets and tools without prior consent from the rightsholders. It also questioned what the conditions are to make such uses deemed lawful? To find these answers, the committee took consultations from various stakeholders. The committee also highlighted the lack of clarity regarding the rights of creators concerning AI training and output, and the potential need to interpret or redefine the scope of such rights.

The committee report underscored that resolving these issues is necessary to improve legal certainty and enable consistent application of the law by users and public authorities.<sup>22</sup>

## **THE FUTURE OF AI AND ITS POLICIES**

Since the statutes and government have been silent on AI till now, there needs to be reforms with the changing dynamics of the world. We might get to see the changes pretty soon, as the government has already started planning new reforms for the future of AI. The Department for Promotion of Industry and Internal Trade formed a committee constituted of government officials and external experts to examine the intersection of generative artificial intelligence and copyright through a legal and policy lens. The Committee has examined the extant framework, global developments and internationally published literature on the subject. The Committee held detailed consultations with various stakeholders. NITI Aayog has developed a national

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<sup>22</sup> ‘Working Paper on Generative AI and copyright Part 1’ (*Department for Promotion of Industry and Internal Trade*, 01 December 2025)  
<<https://www.dpiit.gov.in/static/uploads/2025/12/ff266bbeed10c48e3479c941484f3525.pdf>> accessed 26 April 2026

strategy for AI, with the hashtag “#aiforall” circulating nationwide. The agency has done an extensive amount of research and has come up with developments that India called for. The government has planned to set up a centre of research excellence for AI. They also plan on building an attractive IP regime for AI innovation by setting up a task force consisting jointly of the Ministry of Corporate Affairs and DIPP to examine and issue appropriate modifications to the IP regulatory regime about AI, instituting legal frameworks for data privacy, and setting up a centre for studies on technological sustainability to address issues regarding privacy, ethics, legal aspects and others.<sup>23</sup>

The standing committee in the 161st Parliamentary report has brought some recommendations regarding AI and Intellectual Property. “The Committee recommends that a separate category of rights for AI and AI-related inventions and solutions should be created for their protection as IPRs. It further recommends that the Department should make efforts in reviewing the existing legislation of The Patents Act, 1970 and Copyright Act, 1957, to incorporate the emerging technologies of AI and AI-related inventions in their ambit. The Committee recommends the Department adopt the approach in linking the mathematical methods or algorithms to a tangible technical device or a practical application, which should be adopted in India for facilitating their patents as being done in the E.U. and the U.S. Hence, the conversion of mathematical methods and algorithms to a process in this way would make it easier to protect them as patents.”<sup>24</sup>

With these new policies upcoming and the government taking steps to finalise the originality and legality of AI-generated artworks, the position of AI in India, legally or in any other aspect, should be declared sooner or later. We might be getting new provisions discussing AI’s copyrightability and legality, and whether it will be accepted in India or not.

## **SUGGESTIONS**

The public suggests that there should be a digital transformation, improving its efficiency and reducing copyrighted works. The public suggests that the rightsholders should have an option to choose whether their work can be given for AI training, and they should be able to get the details

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<sup>23</sup> *National Strategy for Artificial Intelligence* (NITI Aayog 2018)

<sup>24</sup> Department Related Parliamentary Standing Committee on Commerce, *Review of the Intellectual Property Rights Regime in India* (Rajya Sabha Secretariat 2021)

easily, whether the AI developer is using their work responsibly and transparently.<sup>25</sup> On failure, the stakeholder should be able to sue the AI developer for not following the conditions. The rightsholders should be given credit for usage of their work by the AI developer and the AI trainer who is using the materials for training purposes.

The public also suggests that there should be new reforms and policies that completely focus on AI and copyright matters, and with clearer explanations, as the public remains unsure about the legality and acceptance of AI in India and the consequences that follow later. The public demands a better version of Generative AI, which is much faster and better than the old models, an AI that can actually show ‘originality’ instead of copied material and databases.

The public demands a version that is secretive, confidential, private and does not leak data. Having an end-to-end encrypted model is a must. The public’s inputs are their private inputs and not a source to teach and develop Gen-AI. Hence, the public suggests improvement in the legal framework and a better version of generative AI for better and original results, removing the issue of copyright stealing.

## **CONCLUSION**

Looking at the legal framework of India, the Copyright Act of 1988, and the precedents that followed (The “Suryast” case, *EBC v D.B. Modak*), it can be said that the factors of “Originality” and “Authorship” cannot be said to be synonymous. Both cases had very different judgments. One focused too much on the creative aspect of the artwork, and one focused severely on the humanness and originality of the artwork. Hence, drawing attention to the synonymous part, which clearly does not exist.

Where countries like the US and Australia had a fixed judgment regarding AI, India is still playing with formulas and doctrines to get a fixed definition. AI has no motive to create any artwork, but its creations are damaging the hard work and livelihood of thousands of human creators who use their actual skills to bring a masterpiece to life and not use machines and other people’s works to create one with similarities to all of them. The law can neither protect the

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<sup>25</sup> Matthew Sag, 'COPYRIGHT SAFETY FOR GENERATIVE AI' (2023) 61(2) *Houston Law Review* 295  
<[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4438593&\\_cf\\_chl\\_tk=aKlNTTcFKpO67rF2qKio7dn.tbYrsKuCQyGBe.tP7lU-1780376359-1.0.1.1-Vw6IIHff1mHwjrlNom6a3KKE\\_Mw6wCgVBddrxzjkGU](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4438593&_cf_chl_tk=aKlNTTcFKpO67rF2qKio7dn.tbYrsKuCQyGBe.tP7lU-1780376359-1.0.1.1-Vw6IIHff1mHwjrlNom6a3KKE_Mw6wCgVBddrxzjkGU)> accessed 26 April 2026

human creators nor the mechanical creators with the flexible framework available to India, unlike the US, UK, Australia, and other countries. The goal of law is to protect humans and their properties, not confuse them or ruin them completely.