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Who owns AI-generated creativity? Can AI-generated works have ownership when there is no human authorship?

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The development in artificial intelligence has challenged the understanding of authorship and ownership in the copyright ecosystem. Systems produce images, music, content, software code, and creativity, but it has now blurred the line between human creativity and machine-generated output. This creates a confusion between the allocation of ownership to whom it should be actually given. The article analyses the difference between originality and authorship, which is embedded in copyright jurisprudence, and notices if the AI-generated content can satisfy the legal requirements, which are mentioned in the Copyright Act.

The article further examines the comparative approach adopted in the United States, the United Kingdom, and the jurisdiction of the European Union and the main focus is whether we are able to protect human creativity under copyright law to incentivise innovation. The dilemma particularly arises in the interpretation of section 2(d)(vi), “a person who causes a work to be created” as the author of computer-generated works. This law provides authorship to the human who has provided the prompts, coding, decoding and the arrangements of the output. On the other hand, section 17 of the Act states that the ‘author’ of a work is typically the first owner. So, if any program or any digital work is generated, the person who initially holds it or causes it to be done is the initial owner. In other words, it means the person who holds the system operates the rights. The key legal implications would come under legal proceedings that are debated in Indian courts about how traditional copyright laws are applied to modern machine creativity.

The article further demonstrates that Indian law prioritises human intellectual contribution more relevant to AI-generated creativity on the basis of protection and further contends by saying that complete denial of protection may discourage commercial investment and technical development. It also maintains a balance where copyright management work would extend to AI until human creative control is there. There are certain legal clarification which are concerning, as ownership and liability are important to maintain an improving digital economy, with a concern to find the foundation of copyright jurisprudence.

Keywords: *creativity, authorship, ownership, AI.*

INTRODUCTION

Recent years have given innovative forms to artificial intelligence. There is a transformation in creative production where we know artificial intelligence is capable of making images, writing stories and poems, music, show content writing, making dialogues and showing how cinema can work with minimal human involvement, etc. Many applications such as ChatGPT, Gemini, and Midjourney have blurred the line between human creativity and AI-generated content. This challenges foundational assumptions of copyright law about authorship and ownership. The problem is particularly significant because the Copyright Act was enacted in 1957; at that time, computers merely functioned as normal tools, but now are used as autonomous creators. The increasing use of AI-generated content has generated problems regarding ownership, originality and infringement. So, Indian Copyright law doesn't merely recognise artificial intelligence as an author.

The controversy arises when the AI-generated works satisfy the originality and authorship under the Copyright Act. The controversy is further attributed to section 2(d)(vi), "person who causes the work to be created." This is further justified if there is a degree of human involvement, since it is necessary for the copyright protection of generative AI systems. The Copyright Act 1957 should differentiate between the human-generated work and the AI-generated work. Copyright should only be extended to human creation and where it exists. If we extend it to AI-generated work, it will dissolve the purpose of the Copyright Act and would historically refer to human intellectual labour and creativity.

ORIGINALITY AND HUMAN AUTHORSHIP UNDER INDIAN COPYRIGHT LAW

Indian copyright treats human intellectual effort as the centre for copyright protection. Section 13¹ grants us protection in the category of original literary, dramatic, musical and artistic works, including cinematograph films and sound recordings. The published work must either be published first in India, or the author must be an Indian citizen, more likely a domiciliary of India at the time of publication or after death. If the work is unpublished, the author must be an Indian citizen or domiciled in India at the time the work was created. If it is an architectural work or design, it must be located in India.² Indian courts have understood the concept of skill requirement and labour which is exercised by a human author.

In *Eastern Book Company v D B Modak*, the Supreme Court emphasised that copyright protection arises from individual creativity rather than mechanical effort.³ Similarly, in *R G Anand v Deluxe Films*, the court held that the expression of an idea is protected by copyright; the idea, the theme, or the plotline itself is not. The 3-judge Bench of the Supreme Court held that the court differentiated between the expression of an abstract idea, which is provincialism and the expression of human thoughts itself (including dialogues, scenes and characters built).⁴

These court hearings demonstrate that copyright law revolves fundamentally in human centric form. Even if we take the example of ChatGPT, we write the prompt in the text box for what we want, and eventually AI determines the final expression. This shows AI-generated works have complicated the work, and the machine itself is used as a substantial portion of the creative process, which makes the doctrine difficult. If the whole originality depends upon human creativity, the AI-generated works may fail at a certain point for copyright protection because, at the same time, the AI-assisted outputs have come through the exercised prompt of engineering, editing and arrangement.

The dilemma in Section 2(d)(vi)⁵: The section revolves around who is the causer and what are the human authorship requirements. It states that the author of a “computer-generated”

¹ The Copyright Act 1957, s 13

² The Copyright Act 1957, s 13(2)

³ *Eastern Book Company and Ors v D B Modak and Anr* AIR 2008 SC 809

⁴ *R G Anand v M/S Deluxe Films and Ors* (1978) 4 SCC 118

⁵ The Copyright Act 1957, s 2(d)(vi)

literary, dramatic, musical or artistic work is the person who causes the work to be created.⁶ The clause was generated at a time when computers functioned merely as a programming instrument rather than being based on predetermined prompts and commands. At first glance, it would appear like AI-generated content, but if we dig deeper, we will see the unpredictable results that are based upon AI generation rather than trained extensive datasets.

The major ambiguity arises with the rise of generative AI and in the definition of human effort in copyright law. The phrase “person who causes the work to be created” creates ambiguity. It becomes unclear whether the author should be the software developer, the owner of the AI model, the user providing prompts or no person at all. It remains unclear who has caused the work to be done. The law leaves ambiguity as to whom the authorship should belong.

The Act defines computer programs but doesn’t specify autonomous machine learning algorithms. Thereby, relying on this clause would grant us the legal authorship of the traditional definition of machines and how they were used earlier, along with human intervention. If we take an example where a user uses a five-word prompt, and AI provides a sophisticated artistic output, and the whole output appears to be artificial in nature. At the same time, there can be a disregard where the AI developer has used the creative contribution in selecting the prompts and the outputs.

This section demonstrates the ambiguity regarding the modern AI generative systems and the current statutory framework.

WHAT IF WE COMPARE THE JURISPRUDENCE?

Comparative jurisprudence provides a platform at the broader and global level where global uncertainty exists regarding AI-generated works. If we compare it with the United Kingdom, they have adopted a really flexible approach for section 9(3) of the Copyright, Designs and Patents Act 1988.⁷ This Act recognises the author of computer-generated work as the person who makes the necessary arrangement for the creation. This provision allows some degree of protection for machine-assisted learning.

⁶ Copyright Act 1957, s 2(d)(vi)

⁷ Copyright, Designs and Patents Act 1988 (UK), s 9(3)

On the other hand, the United States has strongly inferred the requirement of human authorship. In *Thaler v Perlmutter*, the copyright protection cannot be extended to works that are generated by artificial intelligence without human creative input.⁸ This states that the United States has refused copyright protection because no work can be purely or completely AI-generated; there is a significance of human effort and little more.

The European Union considers copyright as a fundamental property right governed by a structured framework of directives and regulations, which are designed to protect creators, foster digital content sharing, and cultural diversity and the regulations. It emphasises human intellectual creation on the basis of originality. European Union fully excludes autonomous machine-generated outputs.

The comparative study deeply reveals about deep philosophical differences in how they are created and protected. They reveal this through the civil approach of the European Union, the common law approach of the US/UK, and the flexibility of exceptions, which deals with fair use and fair dealing. This follows with digital platform and intermediary liability, EU digital single market (Article 17), which shifts the concern to a proactive monitoring model. The big tech holders must deploy upload filters and secure license agreements with the right shareholders. This shows AI-generated works risk undermining the normative foundations of copyright itself.

WHY SHOULD FULLY AUTONOMOUS AI WORK NOT RECEIVE ANY COPYRIGHT PROTECTION?

Granting copyright protection fully to ai generated works would create both conceptual and policy difficulties. Copyright law primarily exists to enhance human creativity and to protect human creativity. The grant of exclusivity is justified because the author invests intellectual labour, skill and personality into their own work, but if we talk about ai generated work, they lack their own creativity, legal personality, consciousness and idea behind doing that work. They neither have incentives nor do they possess moral claims to the authorship.

If there is unrestricted protection for machine-generated works, it could lead to monopolisation of creative content. Since AI can generate several outputs at once, these simultaneous results can

⁸ *Thaler v Perlmutter* [2023] 687 F Supp 3d 140 (DDC 2023)

overwhelm the public domain and can disrupt the balance between private rights and public access feasibility.

Machine-generated outputs may dilute the originality threshold itself. The law protects intellectual creativity rather than AI-generated automated protection. If we treat human expression as equivalent to autonomous machines' outputs, then it is a real concern.

If, at the same time, we deny protection to all AI-generated work would also be unfair. If we see human users often use prompts, they edit through Canva, use Kine master; apart from that, they curate and do arrangement. These contributions remain eligible for creative control in copyright protection, thereby becoming demonstrable.

WHAT IS THE BALANCED INTERPRETATIVE APPROACH?

The Indian copyright law should provide a distinction between AI-assisted and autonomous AI-generated works. The rapid evolution of artificial intelligence has introduced a profound paradigm change in the creative industries and necessitates a balance between AI innovations and providing legal protection to human creators. The inquiry of whether AI-generated works can possess ownership in the absence of human authorship has forced the legal system to reevaluate the earlier frameworks of intellectual property rights. The judicial stance on purely ai generated works that lack human involvement has become ineligible under the current US laws. This decision prioritises the rights of human creators and has clearly set boundaries for the AI-generated outputs. It safeguards traditional intellectual property. Human involvement may be assessed through various factors such as complexity of prompts, creative modifications, editorial interventions and selection and arrangement of outputs.

Conversely, the full ai generated output with no human creativity should not receive copyright protection. This approach would help to save the human-centric foundation while accommodating technological innovations.

Future industries would adapt a collaborative ecosystem where legal protections would be modernized the ai assisted creations, and on the other hand, they would ensure that the moral rights of human authors work as a fuel and a very foundation of artificial intelligence. The parliament would amend the Copyright Act 1957 by defining AI-generated and AI-assisted works, then establishing the ownership and authorship standards, clarifying the threshold of

human engrossment which is necessary for authorship and addressing the liabilities arising from AI-trained databases. This reform would provide clarity to creators, businesses, and innovators to prevent doctrinal inconsistency.

CONCLUSION

Generative artificial intelligence has uncovered the inadequacies with the Indian copyright law. The Copyright Act 1957 was drafted when computers normally worked as a processing unit, but now, they have emerged as outputs with generative and human-centric prompts and creations. This results in the ownership and authorship, which has now become an unprecedented interpretative challenge.

The Indian copyright jurisprudence continues to prioritise human intellectual creation based on copyright protection. If we grant unrestricted copyright to AI-generated works, it would risk the philosophical and doctrinal foundation of copyright law. The AI ownership trajectory points towards a highly interconnected and well-defined future. This ensures fairness in both ownership and the distribution of benefits. The AI-generated creativity is being recognised as an interconnected network of data, capital and human ingenuity. If we embrace shared intellectual property rights, then industries would not only help in constructing a more equitable and functioning legal framework but also a more equitable platform for the future of legal assistance.

Nevertheless, AI-assisted creativity with humans should get legal recognition. Thereby, Indian law must have a balanced framework to protect human creativity and ai generated technological developments. If it is through government-mandated worker ownership models, or through cross-industry collaborative partnerships, even if there is a required strategic use of publishing and licensing. Then the focus is shifted to the human author. The development of a flexible licensing model would be a direct response to the dilemma and would help to monetise the firms. Ultimately, controlling AI applications without human authorship over the specific creative outputs that are generated by the algorithms.

Thereby, artificial intelligence continues to reshape creative industries; Indian copyright law must examine the doctrinal coherence within the generative AI framework. Legislative clarification concerns authorship, infringement liability, and training data practice, which would ensure certainty in India's evolving digital economy. We can consider artificial intelligence as a

primary technological tool that is capable of human creativity rather than authorship altogether. This shows the future of artificial intelligence depends upon the balance between encouraging innovation and safeguarding the foundation of creativity itself. Hence, through this, doctrinal coherence would be preserved, and the integrity of law in the digital age would be maintained.