
AI'S IMPACT ON COPYRIGHT LAW IN THE RELATION TO AI-GENERATED CONTENT

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ABSTRACT

The advancement of Artificial Intelligence (AI) has led to revolutionization of content creation in digital era. The integration of AI in content generation has led to a paradigm shift in Copyright law, thereby challenging the traditional notions of authorship, ownership, and originality. This research paper tries to examine the complexities and problems arising out of AI generated work with Copyright law, by mainly focusing on issues of authorship and ownership. This papers also provides a distinction between derivative and original works. The main focus of this paper is to understand the evolving nature of Copyright law in relation to AI.

Further this paper examines key legal principles such as India “Sweat of the Brow” and "Modicum of Creativity" doctrines, ethical considerations, and duration of Copyright protection, considering application to AI-generated works. This paper highlights the importance of establishing a new legal framework and guidelines for governing Copyright related issue in AI generated work with an aim to foster innovation and creativity. It has emphasised on striking for a balance between innovation and protection of rights of creators, with a need for collaborative efforts among policy makers and other stakeholders. This paper underlines the importance for establishment of clear legal standards and ethical norms to ensure equitable treatment and responsible use of AI-generated work.

Keywords: Artificial Intelligence, Copyright Act, AI generated content, Creativity and Ownership.

INTRODUCTION

Artificial Intelligence (Hereinafter called as AI) was initially introduced in year 1956 by John McCarthy in the Dartmouth Conference. There is no legal definition for AI. It refers to ability of machines to do things that human require intelligence for doing so. It can be commonly defined as the capacity of computers to do functions such as thinking learning and problem solving etc. Since then, AI has been advancing, evolving and improving. AI can now even generate new content. Today AI is deeply integrated into various sectors it can detect diseases, analyse market trend, generate art, create music, generate pictures, etc.

The evolution of AI in content creation have led to challenges revolving around Copyright law. Copyright law usually protects human creativity which grants right to authors for protecting their original creative work¹. But as now AI can produce art, literature, music, etc, this arise questions on applicability of Copyright Law to AI generated work. The main issue arises over the authorship of AI generated work. Copyright requires a human author but AI being non-human complicates this paradigm. Countries like US Don't acknowledge non-human authorship making it a grey area while UK have legal provisions that give authorship to the human operator authorship who has created the AI generated work. Another important issue in AI generated work is originality, AI generate unique and unplagiarised content but it outputs are based on patterns and learnings from the content which is already made by other person this raises questions on infringement of Copyright Act. As AI is developing day by day there arise a need for a proper legal framework revolving these issues.

ARTIFICIAL INTELLIGENCE

AI can be referred as a development of computer system which are capable for doing tasks which usually requires human intelligence. AI is modelling of human intellect in machines that are capable of doing activities which normally require intellect from humans, such as thinking, reasoning, learning, and problem solving. AI systems are intended to evaluate massive volumes of data, identify trends, and make sound judgements or forecasts. AI is essential for digitization and innovations across all the sectors in globe.

¹ "Copyright Basics" (USPTO, March 8, 2018), <https://www.uspto.gov/ip-policy/Copyright-policy/Copyright-basics>, accessed June 7, 2023.

Some main reasons why AI is relevant are:²

- AI helps to automate ordinary operations, allowing humans to focus more upon higher-value tasks. Thereby helping in improving performance, enabling organisations to accomplish more using less time and money.
- AI algorithms are capable of analysing large volumes of information and offer significant understanding which helps to support the process of decision-making. Businesses may make more accurate and timely data-driven choices by utilising AI's capacity to identify trends and relationships.
- Chatbots powered by AI and virtual assistants offer a personalised and effective help, in resulting in an improved user experience. AI-powered recommendations also assist in a personalised services adhering to specific consumer needs and preference, resulting in increased customer satisfaction.
- AI promotes innovation which enables the creation of new products and services. Companies that use AI technology could explore new frontiers, develop revolutionary products, and gain a competitive advantage in the market.

HISTORY OF COPYRIGHT LAW

The concept of Copyright emerged in 18th century in British statute granting authors rights for their work when in public domain. Copyright law safeguards the expression of ideas, rather than the ideas themselves. Copyright is provided for a limited period of time and does not continue perpetually. This equilibrium incentivizes writers while allowing for social benefits from free usage of works after protection. Copyright holders have exclusive rights to reproduce, distribute, and modify their works. Its main objective is promoting creativity and innovation by maintaining a proper balance. In India Copyright law was made applicable in 1914 in British Colonial era. India retained the act after independence and enacted own Copyright Act in 1957 that aligned with international standards and norms it guaranteed Copyright protection to various to different works several amendments. Over the years act have been made in order to ensure fair use and fair dealing and also include challenges posed by growing technology. The

² “The Importance of AI and Automation in the Workplace” (*IoT For All*, February 27, 2019), <https://www.iotforall.com/ai-automation-workplace-importance>, accessed June 7, 2023.

Act is continuing to evolve with the aim to balance interest of creators users as well as public thereby helping in fostering innovation.

COPYRIGHT LAW

Copyright is a type of intellectual property right which protects the original work of creator and grants them exclusive rights to distribute and modify their work. This helps the author to ensure that the work which they have created is not exploited by others and they have a control over the use of the work. Copyright protection only applies upon creation of a new and original work. It grants the creator the sole authority to permit or restrict replication, dissemination, and any other activities associated with their work.

Copyright infringement might happen when AI produce work that violate Copyright. Determining responsibility in AI-generated work can be complicated since it raises problems regarding the role of human input, the amount of originality, and the extent of AI's autonomy.

The emergence of AI has created issues in Copyright law regarding the authorship and ownership. This poses legal as well as moral concerns, necessitating a trade-off between safeguarding original artists and encouraging AI-driven innovation.

LEGAL PRESPECTIVES IN INDIA (AI AND COPYRIGHT)

The Copyright Act of 1957 regulates matter penetrating to Copyright in India. According to section 2(d)³ of Copyright Act which defines author as an individual or legal entity which is responsible for creation of a work. It does not explicitly include AI as a recognized author. The courts have reaffirmed many times through judgments that work developed by AI is not considered as created by author and is not entitled to Copyright.

The main issue is whether AI generated work or the computer author work meet the original criteria stated under section 134 of the Copyright Act. Courts have in many judgments reiterated the fact that originality is a human generated intellect. But there still exists a grey area and more clarity is required on application of Copyright to AI generated works. There is a need for creating a legal provision and framework to govern as AI generated work is not

³ The Copyright Act, 1957, §2(d), Acts of Parliament, 1957 (India).

⁴ The Copyright Act, 1957, §13, No. 14, Acts of Parliament, 1957 (India).

addressed specifically under Copyright Act. There are different legal viewpoints regarding ownership of AI generated work in India and these are all theoretical in nature, as there exist no specific legal provision to provide a clarity and equitable legal structure.

Copyright requires that there exists an original work which means that the work which has to be Copyrighted is the creator's independent effort and creativity this helps to ensure that Copyright only protects expression of idea not the idea themselves. Works which are copied and are not eligible to be Copyrighted. The Supreme Court of the United States ruled in *Feist v. Rural* (1991)⁵ that a work is considered original if it has a "modicum of creativity" in addition to being independently created. In *Eastern Book Company v. D.B. Modak* (2008)⁶, the Supreme Court of India took similar approach and rejected the "sweat of the brow" concept and instead adopted the "modicum of creativity" doctrine.

This is one of the basic and standard principles under for Copyright protection that it only applies to work which are expressed in tangible form. The work to be Copyrighted must be perceptible either directly or with help of any device as expression of these ideas receives protection. The threshold to determine creativity is relatively low but there must exist some level of creativity in work this implies that even though work might be simple it should have some intellectual or artistic expression it must represents authors skills judgment or creativity

Copyright protection is not provided till perpetuity it has a limited duration of time. The time is decided upon keeping in mind several factors, such as laws of the country, type of work and where the work was created. Usually, Copyright is given Copyright protection last for the life of the author and an additional year of 50 to 70 yrs and then later it enters public domain and can be used by anyone.

Copyright automatically applies when upon creation of a work and does not require a formal registration. But authors in some countries can choose for registration of their work for additional legal benefits and better representation in court of law. The registration will enable the creator to provide better evidence of ownership in a legal proceeding in case of any Copyright infringement. Registration is optional in many places but it is advised for the creators to register for an enhanced protection of their works.

⁵ *Feist v. Rural*, 499 U.S. 340.

⁶ *Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1.

Copyright protection is given in accordance with the laws where the work was created or the author resides. Most of the countries give Copyright protection for work under international Copyright treaties, which ensures that they enjoy protection beyond the borders of country. These rules might vary from country to country depending on national laws and international agreements. Copyright protection also applies to derivative works only if some new work is created using preexisting work. It only covers protection for the new work added and not for the underlying work. Sometimes a permission from the Copyright owner of original work is required to create a derivative work. This helps to ensure that the creators of new work get the freedom to work upon the original and existing works while respecting the rights of original creators.

IMPACT AND COMPLEXITIES OF ARTIFICIAL INTELLIGENCE ON COPYRIGHT LAW

AI creates an important challenge to the core and fundamental principle of Copyright laws as it usually protects the work which is created by human beings. AI generated work which is based on trends and patterns of preexisting work which blurs the difference between derivative work and originally produced work. The Copyright Act only focuses on human writers but due to the evolution of technology it is difficult and important to determine the author of AI generated work, whether is it AI itself or the operator. Another problem is longevity, as Copyright rights only last for a certain period after the author's death. Identifying for Copyright protection becomes difficult when dealing with AI-created work. Moral rights, which preserve the personal and reputational components of a work for its author, are unclear in the context of AI, which lacks purpose and emotion.

In case of *Naruto v. Slater*⁷, a macaque monkey (Naruto) took a photo with a British photographer, David Slater's camera. Later, PETA sued Slater, claiming that Monkey owns the Copyright right of the picture taken. The US 9th Circuit Court of Appeals held that animals cannot own Copyright rights. This case had been frequently cited in many debates relating to non-human Copyright claims, especially with those made by AI.

The integration of creativity in AI has led to many complexities and problems in the existing Copyright law. The claim related to authorship and question on the application of Copyright

⁷ *Naruto v. Slater*, No. 16-15469 (9th Cir. 2018).

Law to AI-generated content gets more and more complicated as AI has learned to produce content without any human intervention. AI can easily duplicate and regenerate information from prior published work raises significant claims on fair use of derivative works and proper enforcement of law. There is also no standardisation of law between countries regulating AI and Copyright separately. There is need for a whole new legislation keeping in mind the implications of AI, for stimulation innovation and creativity while protecting rights of individuals.

Artificial Intelligence and Human Creativity

Combining AI and human creativity is interesting as well as complex. AI's ability to produce content a wide range of content creates a challenge to human creativity, as AI generates content by using already published human content. AI generated content might be innovative but it follows the patterns form previously created work. AI generated work lacks cultural depths emotions and experiences, which is an important inspiration behind human creativity. AI has ability to create and generate content quickly and cheaply which possesses a threat to human artist and their jobs. As AI has become more available there arise a prominent risk of it getting abused, leading to liabilities of Copyright infringement or creating false information that might be dangerous. Due to the more evolution of AI it has raised a question about the identity and purpose of human artist. AI possess ability to enhance and expand human creativity. However, it also raises questions about the nature of creativity, authenticity, and the role of artists in the digital era.

Authorship and Ownership

The usage of artificial intelligence in content generation have challenged many traditional concepts regarding authorship and ownership. There arises an important question whether the AI is the author or the developer or user of the AI generated content as it is created without any human interaction.

Attributing authorship to AI poses numerous challenges and issues. Usually, the Copyright law relies only on human creation which raises concerns on originality and authenticity of AI generated content. AI cannot be a qualified author thus finding an appropriate human becomes more challenging and might result in more uncertainty, legal conflicts and economic difficulties. Determining authorship is vital and important for establishing ownership right,

assigning attribution and protecting economic interest.

Originality and Authenticity

AI undermines the standard definition of 'original' work in Copyright law. Originality is generally associated with human creativity, intuition, and experience. AI generated work appear unique but are usually taken and based on preexisting works. It creates a question whether AI generated work is actually original or a derivative work. Human creators include intention, emotion, and cultural context into their works while in AI generated work where there is absence of human characteristics, raises concerns about the legitimacy of its unique works. AI-generated work creates a challenge over Copyright laws as these laws were developed prior to emergence of AI. There has been a constant debate in Legal systems whether such work is eligible for Copyright protection or not. Despite many challenges Copyright protection for AI-generated work can be done under existing laws only if AI-generated work includes components created or authorised by humans. Even if the process is automated Copyright can still safeguard and preserve expression of work.

ETHICAL CONSIDERATIONS

AI generated content raises ethical concerns relating to transparency and accountability. Many scholars have argued that AI systems might create biases, which can result in social prejudices and the marginalise works of underrepresented authors and creators highlighting the importance of transparency.⁸ AI generated content must not avoid reinforcing existing biases to provide equal opportunities for all the creators. It is very important to establish a clear legal framework and regulation to delineate accountability among the AI developers and AI users. It is essential for AI developers to adhere to ethical standards and norms by prioritising justice, equity and transparency. Mitigating biases and encouraging diversity in training databases with incorporating ethical considerations to algorithm designs can help to alleviate ethical problems.

Content producers should think about how to employ AI systems ethically, as well as how to properly attribute and recognise human contributions. Consumers should be careful to discern

⁸ Guadamuz, A. (2021). Do androids dream of electric Copyright? Comparative analysis of originality in artificial intelligence generated works. *Intellectual Property Quarterly*, (2), 169-186.

between AI-generated and human-created material, and they should be aware of the possible consequences of sharing or utilising such works.⁹

NEED OF NEW LEGAL FRAMEWORK IN INDIA

In India “Sweat of the Brow” doctrine was used to determine the originality of work, in which Copyright was given to works even though expression of Idea was same but was not copied as whole, then Copyright protection was granted¹⁰. But later court shifted to approach of “Modicum of Creativity”, where author has to just show a minimal level of creativity¹¹.

The problem arises for providing Copyright protection to AI generated works such as “New Rembrandt” and “Daddy’s car”, these new works are created by AI after analysing the previous works. With the rise in creation of AI generated work there arise a need to check if these can be given Copyright or not. In India Copyright protection is only provided to a person who is considered as legal entity and not AI which is not recognized as a legal standing entity. By using “Modicum of Creativity” test copy right of AI generated work can be given to the creator of AI or to the person who has generated it and has put in into public domain¹². But these people don’t do any work or show a minimal level of creativity or skill, all the work is done by AI which creates a problem as it goes against the doctrine of “Modicum of Creativity”. AI generates data by using machine learning by scanning and analysing a large database to generate work which might result in Copyright infringement of other authors.¹³

As the technology is improving, it will be beneficial to incorporate a new Framework which will recognise AI as a legal entity so that AI can become owner of the work generated. This will also overcome the challenge of not meeting the standards given under “Modicum of creativity” test as the one who exercised the creativity and skill is receiving the Copyright. In the new framework is it advisable to incorporate a lower level of Copyright infringement to AI as its uses already generate content to male new content.

⁹ Ibid.

¹⁰ University of London Press, Ltd. V. University Tutorial Press Ltd. (1916) 2 Ch 601.

¹¹ Feist v. Rural Telephone Service Co (1991) 499 U.S. 340.

¹² Karthiayani A, Artificial Intelligence and Intellectual Property Laws in India. Is it time for renaissance? 3 (2018), <https://www.ijlmh.com/artificial-intelligence-and-intellectual-property-laws-in-india-is-it-time-for-renaissance/> (last visited April 12, 2024).

¹³ WIPO Conversation on Intellectual Property (IP) and Artificial Intelligence (AI), 8 (2020), https://www.wipo.int/meetings/en/details.jsp?meeting_id=55309 (last visited Nov 10, 2024).

AIs should not be viewed as independent beings from their creators or owners. If they are treated as independent legal entities, the AIs would be held liable for situations of infringement, which is not possible. As a result, AIs should be regarded an extension of the authors in terms of payment for Copyright usage and culpability in situations of data violation. This also ensures that the owners receive the consideration paid for the right to utilise the Copyright. This would also assist to encourage individuals to develop more AI-generated content.

Section 24¹⁴ of the Indian Copyright Act Limits Copyright protection to 60 years after the author's death. However, if an AI is granted Copyright protection, it is very likely that perpetual ownership will be granted. As a result, the new framework can include a law specifically designed for AIs can also be used to establish the term for which an AI can retain a Copyright, which may differ from a Human Copyright.

CONCLUSION

Copyright law is an essential component in safeguarding Copyright rights and promoting creativity. It offers creators the freedom to decide how their work can be used, distributed, and adapted by providing them exclusive rights. Balancing innovation with the protection of intellectual property rights is important for a harmonious coexistence of AI and Copyright in the digital age. The digital age poses many challenges in redefining notions of originality and authorship.

These challenges underlines and emphasise the need for a new Copyright framework and guidelines that accommodates the unique attributes of AI. Balancing the advancements of AI with the protection and promotion of Copyright rights will be paramount and essential.

As AI continues to reshape the creative landscape, a proactive, informed, and collaborative approach to Copyright law will be essential. Balancing innovation with the protection of intellectual property rights will be paramount for a harmonious coexistence of AI and Copyright in the digital age.

The age of AI presents both challenges and opportunities for Copyright law. The convergence of Artificial Intelligence (AI) and Copyright law is reshaping traditional

¹⁴ The Indian Copyright Act, 1957, No.14, Acts of Parliament, 1957, Sec 24.

legal paradigms. Central challenges include redefining notions of originality, grappling with ambiguous authorship, determining the appropriate duration of protection for AI-generated content, and navigating the complexities of moral rights. These challenges underscore the need for a modernized Copyright framework that accommodates the unique attributes of AI. On the flip side, the prospects are promising: AI can enhance Copyright enforcement, streamline licensing processes, and potentially democratize content creation. As we look to the future, the intersection of AI and Copyright will inevitably become more intertwined. Balancing the rapid advancements of AI with the protection and promotion of intellectual property rights will be paramount. It's an evolving narrative, one that demands collaborative, adaptive, and forward-thinking strategies to ensure that the digital age remains both innovative and just.