
LEGAL RECOGNITION OF AI GENERATED COPYRIGHTED WORK IN INDIA - PROBLEMS & PERSPECTIVES

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ABSTRACT

The generative AI revolution has revolutionized creative spaces and made it possible for machines to compose music, write literature, create visual arts, and much more. However, this technology poses a significant challenge to the very foundation of copyright, based on human authorship, originality, and ownership of rights. The present legal framework of India was largely conceived with human creators in mind, and applying it to AI-generated works and their copyrightability reveals various limitations. The paper explores the complexities in matters of originality, authorship and ownership that AI-generated content creates within copyright law in India and draws upon insights into potential frameworks to balance innovation with protecting the rights of traditional creators.

Introduction

Artificial intelligence (AI) has transformed the creative industries, causing an unprecedented rise in AI-generated art, music and literature. These developments create new possibilities for creativity, but also raise complex legal questions about 'Copyright in AI-generated works'. Traditionally, copyright law has protected the products of human intelligence and imagination based on authorship, originality, and rights associated with economic interests, yet these foundational concepts have already been challenged by machines which can autonomously create content. Its capacity to create raises basic questions of whether traditional principles of copyright can or ought to be applied to machine works and, if they do apply, then how.

This paper aims to examine the legal matters regarding AI-generated works in the Indian copyright regime as follows:

- Can AI-generated works be granted copyright protection in India?
- What legal challenges exist around the copyrightability of AI-generated works?
- How can Indian copyright law evolve to balance innovation with the protection of human creators' rights?

Copyright Law in India: An Overview

The Copyright Act, 1957 is the bedrock of Copyright Protection in India safeguarding the rights of creators, based on originality, human authorship, and economic entitlements. It has always been an assumption of tradition that only human creators produce original works worth copyright, in other words, exclusive rights given to persons in creative fields like literature, music, art, and cinematographic film.

Copyrightability Criteria:

- **Originality:** The work has to be original. Originality postulates that the work would have to arise from the skill, knowledge, or creative efforts of the originator.
- **Human Authorship:** Traditionally, copyrights were all about human creative works and expected a human mind behind every copyrighted product.

- **Fixation:** This creative work must be set in some form of tangibility, whether recorded on paper, written, or even digitally stored.

Relevant Provisions in Section 2(d):

As per Section 2(d) of the Act, definition of author categorically is provided. Regarding computer-generated works, Section 2(d)(vi) defines the person who "causes the work to be created" as an author. It leaves open an issue whether human intervention needs to be considered for authorship in AI-generated content or not.

Case Law and Precedents

A case often quoted in the discussion of copyright and computer-generated content is *Navigators Logistics Ltd. v. Kashif Qureshi*¹. The court was concerned with whether a list compiled by a computer was copyrightable; and it answered that copyright requires human intervention. The court refused to grant copyright to the list since there had not been substantial human input. It relied on what is referred to as the "**Significant Input Test**," where the extent of human skill, knowledge, judgment, and labor in creating the work is significant. The Bench opined,

- “An author must create a piece of literary work using his skill and judgment to receive protection under the Copyright Act. Copyright cannot exist if there is neither skill nor judgment used in a compilation.
- **The author of a literary work must be a natural person and not an artificial person.”²**

This case is one of the foundational precedents in determining AI-generated works, showing that, in current Indian law, copyright is unlikely to extend to purely AI-driven outputs unless there is significant human contribution.

¹ Navigators Logistics Ltd. v. Kashif Qureshi & Ors, (2018) 254 DLT 307, (2018) 76 PTC 564

² Linet Christina Thomas, June 24, 2022 - Navigators Logistics Ltd. v. Kashif Qureshi & Ors (<https://cyberblogindia.in/navigators-logistics-ltd-v-kashif-qureshi-ors/>)

Understanding AI-Generated Works

Types of AI-generated works can be categorized depending on the level of human engagement:

Fully Autonomous AI Productions: Such works are developed by AI systems that don't have much human influence once they are set up. For instance, one might have an AI trained on large datasets that produced music, artwork, or literature autonomously.

AI-Assisted Human Works (Generative AI): Here, the AI is more of a tool or collaborator with the human creator, wherein a human creator may be directing or adjusting the AI output. For example, an artist might use AI in generating design ideas that they would then adjust and polish into a completed piece. Here, human input is more pronounced as it blends the old way of authorship with new technological help that falls much more in line with contemporary copyright structures.

Is AI an "Author"?

This issue remains an open and challenging one as far as whether AI could stand independently under Indian law. Traditionally, the core of copyright law lies in human creative input, intention, and personal involvement in the making of work. Granting the status of an author to AI will challenge the axiomatic values conferred by the current copyright law.

There are three primary doctrinal theories involved in ascertaining whether AI may qualify as an author:

Labour Theory: The theory holds that copyright is a fruit of labor of the creator of work. However, AI-generated works bring complications because machines may be able to do the creative task autonomously, without any human labor. If labor is not human, then the theory raises questions about the copyright eligibility because copyright traditionally compensates the effort of the creator.

Reward Theory: This theory postulates that copyright incites creativity through rewards as it compensates creators with original works. Motivations, however in AI are not seen: there are no desires that are economic or personal that would make the creation happen. Applying this theory to AI is very challenging since it operates based on programming, not personal motivation.

Personality Theory: Personality theory treats copyright as a product of the personality of its creator, considering that work to be a reflection of thoughts, emotions, and personality of the creator. The application of this theory to AI is particularly tricky, since AI does not have personal characteristics, consciousness, or self-expression. It, therefore, lacks personality without which an AI work does not contain the kind of individuality, personality theory attaches value to, and so the argument for AI as an author becomes very hard.

Under the law of India prevalent today, Section 2(d)(vi) of the Copyright Act did not envision non-human authorship and, in doing so, has silently removed AI from the position of an author. Further, the jurisprudence of India places a lot of emphasis on human input into the act of creation, hence, AI, per se, cannot be considered as an author.

Challenges in Granting Copyright to AI-Generated Works

Human Authorship Requirement:

Perhaps one of the major impediments in copyrightability of AI-generated work under Indian law lies on principles based upon human authorship. Section 2(d)(vi) clears up that only those persons who "cause" a work to be created are authors in the case of computer-generated content, thus automatically excluding autonomous AI from authorship status. Fully autonomous AI-generated works, which have no significant human intervention, may not be eligible for copyright protection under the existing legal standards.

Lack of Originality:

Another fundamental concern would be whether the works of AI satisfy the standard of originality set under the copyright law. Generally, originality has been construed as an element of human labour, skill, judgment or creativeness. Although the vast majority of AI-produced work is dependent on large libraries of existing works to give rise to new works, it raises questions as to whether works so created are actually novel or original. Additionally, while AI can generate content that appears creative or novel, it relies on pre-existing data and algorithms for generation, raising questions about whether the work is "truly original or merely a derivative of the data it was trained on."³ AI often imitates styles or elements of pre-existing

³ Pawardipti789 - Navigating the Legal Minefield: Intellectual Property and Copyright Challenges in the Age of Generative AI (<https://rentprompts.com/blog/slug?id=66e47257904579b89834d629>)

works, which may raise a problem about the originality that is required to uphold copyright.

Ownership and Economic Rights Issues

The question of ownership over AI-generated works is a tough nut to crack, particularly when there are several stakeholders. When copyright protection may apply, it is still uncertain who will be considered the rightful owner:

The Developer: Since the developer made it and coded the AI, they can, in a sense, be claimed to own everything coming from the AI, simply because they built the system.

The User: If the user issued specific prompts or directed exactly what to do with an AI, then this might be said to have come from them, due to the fact that without their input shaping that output, nothing at all would have been received.

The AI Itself : While the present laws do not recognize the non-humans as copyright owners, the autonomous AI system that produces works on its own, thus stands as a self-sustained creator, but being a non-human agency it remains out of the race.

However, this question is circumstantially covered by section 2(d), where "the person who causes the work to be created" is the author, and such identification, by inference, may go in favor of the developer or user but leaves significant ambiguity.

Moral Rights and AI:

This adds an added layer of complexity to the issue. Moral rights generally encompass two rights: the ***Right of Paternity and the Right of Integrity***, the 'right of attribution' and the 'right to object to any distortion or modification of the work likely to prejudice the name and reputation of the creator'⁴, respectively. However, since AI lacks consciousness, emotions, and reputation, it cannot be attached personally to its works, like moral rights are supposed to protect.

If AI were considered an author, then the notion of moral rights would become problematic because the rights given to a non sentient entity would take away the previous attachment with

⁴ Section 57(1), Copyrights Act, 1957. Author's special right.

human dignity and integrity.

Copyright Infringement and AI-Generated Works

Replicating Existing Works/Creating Similar Versions: AI models are fed with vast datasets, often sourced from copyrighted materials, hence it tends to repeat some of those works in its own rendition. This tends to raise questions about derivative works as well as infringement of copyrights because AI creates work nearly identical to the originals which it was trained on. Considered in the manner in which these systems generate works, by combining and manipulating other pre-existing works, sometimes crossing over the lines and creating infringing material is possible.

Doctrine of Fair Dealing : The doctrine of fair dealing, allows for limited uses of copyrighted works for research, criticism, or news reporting, but its application to AI-generated works is unclear. Unlike traditional fair use, AI does not reference or quote works for purposes of criticism or commentary but rather synthesizes from training data in ways that might eventually lead to the replication of copyrighted material.

Case Study: RAGHAV AI's Suryast

Suryast is an AI-generated work created by **RAGHAV AI**. This is one of the best examples of AI-driven creative productions, offering an opportunity to discuss how such a creation might align with or challenge the more current copyright standards in India, specifically with regard to originality and authorship.

The digital art piece **Suryast** by RAGHAV AI is itself based on a copyrightable photograph. Moreover, **Suryast** is inspired by Vincent van Gogh's famous painting the **Starry Night**, blending the original photograph with stylistic cues of van Gogh's work. This dual foundation in both a copyrighted photograph and a well-known artwork adds significant complexity to the copyright status of **Suryast**. As such, inclusion of copyrighted material along with easily recognizable style aspects drawn from a famous work puts the person in question as concerned with originality, ownership and possible infringement.

To the best of my knowledge, its output is based on pre-existing styles and forms found within its training data. AI's creativity is mechanical without human-like inspiration or creative intent.

This, in turn, creates issues with whether Suryast fulfills some of the origin and creative spark criteria for copyright protection, especially considering the Indian law stipulates that there must be a requisite level of human involvement and skill in creating copyrightable works.

This case illustrates the broader uncertainties faced by the Copyright Office in adapting to the increasing prevalence of AI-generated art. It highlights the urgent need for a clear legal framework to address issues of authorship, originality, and ownership in the context of AI-generated works.

Perspectives, Considerations, and Recommendations on AI-Generated Works

Ethical Issues:

Growing AI-generated content raises ethical questions about its impact on the human creators and the creative industries. Identifying AI-generated products in the copyright law undermines human creativity and reduces the demand for human art, literature, and music. By allowing AI-generated works, creativity becomes less meaningful in relation to human identity and individuality, and how society will value artistic expressions.

The ethical issues raise a call that the consequences of AI recognition on human creative industries should be pursued with immense care for the welfare of the human creators.

Legal and Public Policy Implications:

The changes in law with respect to AI-generated works can be a great challenge. Recent debates in Indian Parliament within the **161st Report of the Parliamentary Standing Committee** on the issues have revealed in plain sight that there can be possible protection conferred on these AI-generated works with the amending the Indian Patent and Copyright Acts duly taken into cautions thereof without violating the traditional creators in the slightest degree, thus requiring the changing aspects of authorship, originality, and ownership for what AI generates.

This might mean that a new category is instituted specifically for AI-generated work, to have rights and protections distinctly different from human-produced work. Laws may include provisions to ensure that significant human intervention is present when AI works are considered valid for copyright.

Recommendations: Balancing Innovation and Protection

- **Amendments to Indian Copyright Law:** Changes to Indian copyright law may be made to establish the status of AI-generated works such that copyright would only extend to works with notable human contribution. This could ensure human-driven creative industries remain incentivized and valued.
- **A separate category of rights:** It is possible to establish a separate category to protect AI-generated works and the appropriate protections by referring to those rights and limitations that carry an acknowledgment of AI.
- **Guidelines for Licensing and Usage:** To make the ownership issue clear, guidelines may be set for licensing AI-generated content, which would focus on the roles of developer, user, and AI system. Such guidelines would outline the clear expectations of rights in AI-generated works in terms of sharing or licensing to protect creators and end-users.
- **Ethical Oversight Committees:** It will be beneficial to have an oversight committee or advisory body that oversees and evaluates the ethical implications of AI-generated works in the Indian regime. This advisory body will guide policy developments so that the evolution of copyright law remains in step with public interest and ethical standards.

The copyright law will have to undergo sensitive reforms on issues of authorship, originality, ownership, and ethics while accommodating AI-generated content. The framework can create a new category for AI works, refine copyright criteria, and put in place ethical oversight in order to encourage technological innovation and protect human creativity to make copyright a meaningful incentive for human authors.

Conclusion

Summary Findings:

Generative AI has brought with it new complex challenges to traditional copyright law, particularly regarding originality, authorship, ownership, and ethics. Questions arise on the issue of who or what should be recognized as the author when AI can produce creative content autonomously and whether such works meet the originality standards necessary for copyright

protection. The complications also arise with the disputes of ownership because the outputs are claimed by developers, users, and even the AI systems themselves. The ethical implications will arise since recognition of AI-generated works would influence the value put on human creativity, which may alter the cultural and economic fabric of creative industries. As things stand in India, with the Indian Copyright Act having a strong emphasis on human authorship and creative labor, there seems to be an absence of frameworks in terms of addressing the particularity of AI-driven creativity.

Closing Thoughts:

The relationship between technology, creativity, and the law is undergoing a shift that is currently taking shape through generative AI. This means that the development of the legal framework requires responsiveness in balancing human rights with AI-driven potentialities. As AI goes further and further into areas of authorship and originality, Indian copyright law needs to adapt and provide some clarity on how AI-generated works are to be dealt with, possibly by either creating a new category or amending the criteria of authorship and originality so that it incorporates the fine role of AI. This approach will help India grow towards an environment that advances and encourages technology while leaving copyrights as a meaningful tool that provides protection for human creativities.