THE OWNERSHIP CONUNDRUM OF GENAI OUTPUTS: A COMPARISON BETWEEN THE RIGHTS OF THE PROMPTER AND THAT OF THE PLATFORM THROUGH THE LENS OF THE STATUTORY AND THE JUDICIAL PARADIGMS

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INTRODUCTION: THE PARADOX OF OWNERSHIP – AI VS HUMAN

The structure of IP law has always been based on a single premise: creative expression is a strictly human activity. For centuries, copyright systems have been constructed to encourage human intellect, both economically and philosophically. However, with the sudden uproar of Large Language Models (LLMs) and more sophisticated diffusion models, this paradigm has been broken.

Generative Artificial Intelligence systems are not just about automating processes; they are about creating, abstracting, and making decisions creatively that are comparable and often superior to those of human authors. The legal system is thus caught up in a situation that has never been faced before: who owns the results produced by an AI platform? Where does the intellectual property lie between the end-user (the prompter) whose particular instructions led to the creation of the system and the platform (the developer) that created the architecture of the model, neural weights, and algorithmic layers used?

This inquiry goes beyond being a theoretical exercise and has significant economic consequences for the global digital economy. From being a curiosity to a tool that could impact entire industries, the absence of a clear law governing generative AI poses a significant threat to industry stability. The issue at the heart of this legal battle is an intricate mix of private contract law and statutory intellectual property regulations.

Platforms try to regulate ownership allocation via Terms of Service (ToS), but these are always in conflict with the strict public law standards of authorship, originality, and statutory

protectability. This essay explores this nexus and analyses the conflicting arguments of prompters and platforms in the context of contract law, the Indian Copyright Act, 1957, comparative international jurisprudence, and the doctrinal difficulties raised by the "Originality Paradox" from a systemic perspective.

OPENAI'S TERMS OF USE, SECTION 3 - COMPREHENSIVE ANALYSIS

In the realm of content ownership, it is essential to consider what ChatGPT has to say. Notably, the entire responsibility for the content generated by Chatgpt lies with the user and not with the AI Language model. It further states that the use of the platform is dependent on the terms and conditions set by the company, which is giving access to this platform, that is, OpenAI, LLC.

OpenAI's Section 3, stating the terms of use, deals with the area of content. The content as per this section is defined as the input that the AI user provides to the platform and the output generated by ChatGPT based on this input.

In terms of content ownership, between the prompter and AI, the prompter (you) owns the content that you enter and the content that comes out. "OpenAI gives the user (you) all the rights, title, and interest.

The terms state that OpenAI "assigns" to the user "all its right, title, and interest in and to the output. At the same time, the entire responsibility for the legality of the content is transferred to the user, who will be fully liable for the content not infringing on any applicable law or these Terms.

A. Barrier of Nemo Dat Quod Non Habet.

Section 3 is legally shaky when examined in light of the basic principles of property and contract law; however, it is a neat, marketable fiction of ownership transfer. The term assigns suggests a very specific sequence of events: First, OpenAI has a valid and existing proprietary interest in the output generated by the prompter, and then that proprietary interest is legally transferred to the prompter.

The basic common law principle "Nemo dat quod non habet" (no one can give what he does not have) is the fundamental limitation of this private arrangement.

The work created by An AI-generated output is automatically in the public domain as soon as it is generated if it does not meet the threshold for copyright protection as a work of public law. It is converted to a non-property item by the statute.

Consequently, OpenAI does not have any statutory copyright rights to the output at the time of creation. Since OpenAI does not have a property right at the beginning, it has nothing to give to the prompter under Section 3. The assignment clause was a null clause. The prompter is not granted an exclusive "statutory IP right" that can be enforced against the world, but instead is granted a contractually negotiated covenant from OpenAI, which states that OpenAI will not sue the user for using the output. This is a license in personam, not a right in rem (in property).

B. The issue of contractual privity and third-party enforcement.

If one can assume that Section 3 functions as a binding contract between OpenAI and the prompter, then that is fine, but it fails to come into effect when it comes to third-party exploitation. The longstanding principle of privity of contract is that a in contract right and duties can't be imposed and granted to third parties, not party to the contract.

A prompter cannot use OpenAI's Terms of Use to file a lawsuit against any third party who misappropriates, replicates, or commercially exploits an AI-generated output produced by the prompter. To maintain an infringement action in court, the plaintiff must prove that it has a valid universal copyright in rem against the public, which is the statutory copyright.

Corporate Terms of Service can be powerful instruments to govern bilateral commercial business relations, allocate operational risk, and establish the scope of a platform's licence to its customers. However, they are helpless in creating statutory intellectual property rights in the absence of the legislature.

Statutory Analysis

To ascertain the validity of GenAI output without the need for a private contractual agreement, the explicit text of the Indian Copyright Act of 1957[1] must be consulted. The Act defines the term "author" in section 2(d) in a comprehensive and strict manner:

[1] The Copyright Act, No. 14 of 1957 (India)

Statute-based definition of "Author" under Sec 2(d).

Section	Modality of Work	Statutory Definition of "Author"
Section 2(d)(i)	Literary or Dramatic Works	The author of the work
Section 2(d)(ii)	Music Works	The composer
Section 2(d)(iii)	Artistic Works	The artist
Section 2(d)(v)	Cinematograph Films	The producer
Section 2(d)(vi)	Computer-Gen Works	**"The person who causes the work to be created"**

Subsection (vi) is a very progressive and conscious addition by the Copyright (Amendment) Act, 1994[2], to take care of the developments of digital and computer-assisted technologies in the early stages. However, the meaning of the phrase "the person who causes the work to be created" has sparked an intense jurisprudential civil war in today's GenAI world.

A. The Interpretation Chaos: Platform vs. Prompter

Interpretation A: The Platform Developer

From this perspective, the entity that causes work to be created is the AI platform developer. The user's prompt would simply be unexecuted text without the developer's work to curate multi-terabyte training corpora, fine-tune complex transformer architectures, and maintain the massive cloud computing infrastructure.

The developer sets the mathematical range of parameters from which the AI can pull to create an expression. From this perspective, the prompter is simply a consumer who is making a simple turn of a key, while the developer is the one who is actually creating the generation.

[2] The Copyright (Amendment) Act, No. 38 of 1994 (India).

Interpretation B: The Prompt User

On the other hand, the prompter may be considered the immediate cause of the expression. An LLM that is sitting on a server and doing nothing does nothing. It requires the targeted, creative, and iterative thinking of a human prompter to generate a particular output. The prompter sets the stylistic restrictions, semantic bounds, and thematic boundaries. The prompt is the conditio sine qua non—the condition without which the latent potential of the model's weights is not realized; the necessary condition that makes the model's weights real.

But the Amendment of 1994 is a historical and contextual reading that greatly restricts Interpretation B. The Indian Parliament enacted Section 2(d)(vi) to safeguard the then-available 'predictable and deterministic' computer-assisted tools like compilers, early databases, and Computer-Aided Design (CAD) software. These systems involved a human programmer who mathematically programmed a computational calculator.

In contrast, GenAI is based on deep neural processing with extremely high probabilities. The input prompt from the user and the resulting granular output were nonlinear and unpredictable. The algorithmic layers are a mathematical synthesis that is not directly visible to the user; therefore, it is very difficult to say that the human prompter directly "causes" the specific granular expression produced by the neural network.

B. Human-centered Sections 13 and 22

Even if an applicant can avoid the ambiguity of Sec 2(d)(vi) of the ICA, the macro-framework of the Copyright Act is still very human-centric. Section 13(1)(a) provides that copyright is only found in literary, dramatic, musical, and artistic works that are "original. This requirement is further strengthened by Section 22, which stipulates the express term of copyright protection:

“Except as otherwise hereinbefore provided, copyright shall exist in any literary, dramatic, musical or artistic work… published during the lifetime of the author until sixty years from the beginning of the calendar year next following the year of the author's death.”

The legislative framework is completely defective in the case of a non-human entity. AI models do not have a natural lifespan, leave an estate, or suffer biological death. Under Section 22, if an AI platform or autonomous algorithm is identified as the copyright owner under Section 2(d), the structure of calculating the term of copyright would be impossible. This would result

in an unbridgeable gap in legislation.

Thus, any reading of the Act that would attempt to remove the natural, living human person from the heart of the definition of authorship is contrary to both the text and the structure of the Act.

From Sweat of the Brow to Modicum of Creativity

The term "originality" is the basis for determining whether a work is eligible for copyright protection. An examination of the development of the concept of originality in common law shows why the outputs of AI-generated art (GenAI) are not easily afforded statutory protection.

A. The Evolution of the Indian Originality Standard

In the past, English courts had taken the position that the *"Sweat of the Brow"* doctrine applied. This low-threshold principle held that any industrious compilation, raw physical labor, or financial investment in the creation of a work was entitled to copyright protection, most importantly to stop free-riding by competitors.

However, the Supreme Court of the United States famously broke this industrious-labor standard in Feist Publications, Inc. v. Rural Telephone Service Co.[3] found that facts are not copyrightable and that pure labor is not enough. The Feist court introduced the concept of "*Modicum of Creativity"* to determine whether a work is protected by copyright, which requires it to have an independent creative spark, no matter how small, to be protected.

In the famous case of Eastern Book Company v. D.B. Modak[4], the SC refused to subscribe to either extreme and chose a middle course. The issue was whether a legal publisher could be the copyright holder of copy-edited, head-noted, and cross-referenced judgments. In order to be original, a work does not need to be deeply novel or creative, but it must utilize "skill, judgment, and labor" that is "not trivial or purely mechanical. The Court held that the work should be original, meaning the author used his own skill, judgment, and labor in producing the work, but it should not be so simple that it is merely a mechanical exercise.

[3] *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991).
[4] Eastern Book Company & Others v. D.B. Modak & Another, (2008) 1 SCC 1 (India)

There are three fatal hurdles for raw GenAI outputs.

1. Problem of Triviality: If the user gives a very vague prompt (e.g., "Write a 500-word essay on climate change in the style of Charles Dickens"), the human part of the job is confined to providing a high-level conceptual structure. All executions are automatic.

2. The Execution Gap: The actual skill, judgment, and labor required to arrange words, construct complex syntax, maintain thematic tone, or render pixel values are performed only by the mathematical weights and hidden layers of the model.

3. Mechanical Exercise: The prompter's physical generation now becomes a simple keystroke. Pressing "Generate" is not enough to meet the Modak standard because the human did not create the actual expression.

B. Analysis of Supporting Indian Precedents

***1) Rupendra Kashyap v. Jiwan Publishing*[5]**

In a case involving copyright in examination question papers, the Delhi High Court said that the 'author' would be the one who has to suffer the 'mental strain, sweat and toil' in conceptualizing the text and arranging it in a concrete form. Abstract ideas are not copyrighted; they must be embodied in a physical, intellectual human creator who turns ideas into tangible products. This creative mental stress cannot be experienced by an AI platform that is not conscious.

***2) Navigators Logistics Pvt. Ltd. v. Union of India Kashif Qureshi* [6]**

The Delhi High Court considered whether a compilation of logistics data automatically generated by a software program is eligible for copyright protection. The Court determined that the "originality" test was not met by an automated compilation produced by a computer program without any meaningful human selection, curation, or creative arrangement. The Court made it clear "The law requires an original compilation, which an automated compilation, without human effort, human selection or curation, does not satisfy."

[5] Rupendra Kashyap v. Jiwan Publishing House & Ors., 1996 (38) DRJ 81 (Del.) (India)
[6] Navigators Logistics Pvt. Ltd. v. Kashif Qureshi & Ors., (2018) 254 DLT 307 (Del.) (India)

This decision directly addresses the essence of the GenAI outputs. This creates a clear legal precedent that if a work is created automatically by a machine controlled by an algorithm, it is not a human work protected by law under the Copyright Act.

Infamous Raghav AI Precedent and Contemporary Jurisprudence

A) The RAGHAV AI Controversy

The most notable administrative and legal development in India in relation to AI authorship was the case of a digital painting called "Suryast" (an expressionist landscape inspired by Van Gogh's work). The artwork was created with the help of an AI application developed by corporate lawyer Ankit Sahni, named RAGHAV (Robust Artificially Intelligent Graphics and Art Visualizer).

The procedural history of "Suryast" reveals a measure of regulatory uncertainty:

1) First application: Sahni appointed the RAGHAV AI application as the sole author. However, the Indian Copyright Office stated that a non-human software tool could not be recognized as an author, and this was rejected outright.

2) The Second Application: Sahni re-filed, with himself (the human developer) and RAGHAV AI as co-authors. The Copyright Office issued a certificate of registration, which is a historic event, to an AI tool as a joint author in November 2020, but it misregistered the certificate.

3) In late 2021, the Indian Copyright Office formally withdrew the notice after receiving heavy backlash both at home and abroad. The Office pointed out that under Section 2(d)(iii), the author of an artistic work must be a human. Sahni objected to the withdrawal, stating that the Copyright Act does not have any specific statutory provisions for reviewing or cancelling a certificate of registration once it is issued.

This disagreement led to a structural deadlock and showed that the administrative system in India is not equipped with clear statutory boundaries to deal with autonomous machine creation. However, at the same time, as if to emphasize the fractured nature of global IP strategy, the Intellectual Property Office in Canada registered a parallel application for "Suryast" and granted registration to Sahni and RAGHAV AI as co-authors.

B. Global Parallel Jurisprudence: Strategic Shifts 2025-2026

- *Western Alignment*

Machine authorship has been decisively rejected by U.S. courts. In Thaler v. Perlmutter[7], the U.S. The District Court for the District of Columbia ruled that the U.S. Copyright Office's decision to reject an AI system as an author was correct, as the 1976 Copyright Act requires that the work be authored by a human, which is essential.

According to the formal administrative guidelines of the USCO, the copyright applicant must clearly disclose the use of GeAI in the submitted work. Content created using a machine must be disclaimed and not protected unless the applicant can show that there was significant human control, such as extensive manual editing or creative selection and arrangement.

This was clearly illustrated in the case of the graphic novel Zarya of the Dawn by Kris Kashtanova. [8]The USCO initially registered it, but it was later rescinded when they found that the images were created using Midjourney. The Office divided the protection: it did not protect Kashtanova's human input (text and selection/arrangement of elements) but refused to protect the individual AI-generated images separately.

- *The European Flashpoint*

The debate in Europe has moved beyond the theoretical questions of authorship to the realm of high-stakes commercial litigation. In its seminal Infopaq International A/S v. Danske Dagblades Forening[9] decision, the European Court of Justice (CJEU) held that copyright protection can only be extended to material that is original in the sense of being the "author's own intellectual creation. Later CJEU decisions have further defined a work as the product of the author's own intellectual efforts when the author makes "free and creative choices" which give a "personal touch" to the work. This led to several courts, such as the Prague Municipal Court, concluding that the images created by AI are not eligible for copyright protection because they are not the result of the creative choices of a human.

By 2025–2026, the scope was widened to include inputs through cases such as GEMA v.

[7] Thaler v. Perlmutter, 687 F. Supp. 3d 140 (D.D.C. 2023)
[8] *See* U.S. Copyright Office Review Board, *In re Zarya of the Dawn* (Feb. 21, 2023)
[9] Case C-5/08, Infopaq International A/S v. Danske Dagblades Forening, 2009 E.C.R. I-06569

OpenAI. GEMA, the German music rights association, has filed a lawsuit against OpenAI, claiming that the ingestion and creation of musical outputs "in accordance with the probabilistic model" infringed on the EU AI Act's strict requirements for copyright transparency. This litigation puts the debate on "who owns the output" versus "does the generation process itself inherently infringe the training inputs," and places output rights squarely on the shoulders of the input liabilities.

- ***China's split personality: Dreamwriter and Beijing Internet Court.***

In contrast to the Western trend, Chinese courts have established a pro-commercial trend. In the case of Tencent v. Shanghai Yingxun[10] (2019) reported that the Shenzhen Nanshan District Court ruled that an article on finance created by Tencent's intelligent writing system (Dreamwriter) was protected by copyright. The court concluded that the arrangement, stylistic parameters, and data selection made by the human editorial team of Tencent is sufficient human intellectual creation, and Tencent is the copyright owner of the arrangement.

The Beijing Internet Court made an unprecedented ruling. The court determined that a user has a copyright interest in a GenAI-generated image if the user has “iteratively modified the prompts, chosen specific parameters, and directed the generation process.” The court determined that GenAI is a contemporary tool used by humans, and that so long as the result is the product of a user’s ‘original intellectual investment, ’ the user should be recognized as the author.

C. The Indian Context

In Tarun Chaudhary & Anr., v. Kuldeep Meena & Ors.,[11] the Delhi High Court was the forum where the structural crisis in India reached its zenith in April 2026. The plaintiffs asked the court to issue an interim injunction to bar the infringement of their musical track, "Teri Yaadon Ki Chadar Odhe.”

A pivotal discovery during the evidentiary hearings was that the entire composition, melody, and singing were created by a text-to-audio AI system called SUNO AI, using minimal prompts

[10] *Shenzhen Tencent Computer Sys. Co. v. Shanghai Yingxun Technology Co.*, (2019) Yue 0305 Min Chu No. 14010 (Nanshan Dist. People’s Ct. Dec. 24, 2019) (China)
[11] Tarun Chaudhary & Anr. v. Kuldeep Meena & Ors., CS (COMM) [Case Number/2026], order dated Mar. 25, 2026 (Del. HC) (India)

from the user.

The interim injunction was denied by Justice Tushar Rao Gedela. The Court said it was not satisfied on a prima facie basis that "copyright can subsist in a musical composition which has been created entirely by means of an Artificial Intelligence platform. In view of the systemic nature of the problem, the Delhi High Court made the Registrar of Copyrights a necessary party defendant to help the Court understand whether the music is protected under the Indian Copyright Act by being created through the use of a prompt. Noticing the systemic nature of the problem, the Delhi High Court made the Registrar of Copyrights a necessary party defendant to assist the Court in understanding whether prompt-driven, machine-generated music is protected in India under the Copyright Act.

This pending litigation is a good illustration of the vulnerability identified in this study: a prompter who uses the entire power of a GeAI platform for the execution of a work is highly unlikely to be granted exclusive property rights that can be enforced against the public.

The Originality Paradox is the final step.

To qualify for the Modak standard, a prompter must show that their prompt is exceptionally complex, precise, and uniquely creative, to demonstrate that the input requires a high degree of personal skill and judgment.

However, the second they prove that the output is tightly, determinately coupled to their very complex prompt, they create a huge legal problem: they make it clear that the output is an inseparable derivative work of the underlying software architecture, the weights of the transformer, and the previously used training data, which belongs to the platform.

On the other hand, the simpler and more minimal the prompt, and the more complex and rich the output from the GeAI tool, the less the prompter can take credit for the expression. The human input is not sufficiently skilled, labored or judged, leaving the generation an uncopyrightable product of a mechanical process.

The more control the prompter takes over the prompt, the more they emphasize that the machine is doing a derivative process that is based on the engineering of the platform. The less control they exert, the less original the work is under public law.

Recommendations for the Indian Ecosystem

The lack of clarity in the law is a big challenge for the technology startups, local platforms and the creative industry in India. The Indian Parliament needs to enact specific statutory measures to tap into the potential economic impact of AI, which is estimated to be $957 billion, while safeguarding the rights of human creators.

1. Amend the Copyright Act, 1957, Section 2(d)

The CDPA framework of the UK needs to be imported and adapted by India explicitly as ‘necessary arrangements’. The Act should be amended to make a clear distinction between the "Computer-Assisted Works" (where the computer is used in the traditional manner, and the expression is guided by a human mind) and the "Autonomous GenAI Works" (where the expression is generated probabilistically by an algorithm). In the case of autonomous works, the author should be considered to be the person (the developer or the advanced enterprise user) who made the structural arrangements needed to generate the work.

2. Formulate a Clear "Human Curation and Modification" Standard

The legislature should make clear that an unedited GeAI output in its original state is not copyrightable, but that an output that has been substantially curated by a human, then manually edited or has been creatively multi-layered is beyond the EBC v. D.B. Modak threshold. This would safeguard the next generation of human effort invested in the modified work, from the possibility of commercial free-riding.

Conclusion

The current copyright system, which was built for human creative works, is clearly not sufficient to address the ownership issue of Generative AI-generated works. As shown, private contractual fixes are superficial, short-term structures, like OpenAI's Terms of Use. They are indefinitely limited by the public law principles of contractual privity and nemo dat quod non habet, and cannot create valid universally enforceable property rights without a recognized human author.

At the same time, the Indian copyright system is still very human-centric with respect to the term of protection (Section 22) and the requirement of originality in the EBC v. D.B. Modak

paradigm. As a result, raw, unedited AI outputs are left unprotected in the public domain.

The RAGHAV AI administrative reversal and the Tarun Chaudhary music litigation before the Delhi High Court show that the definition of "computer-generated works" as it existed prior to the internet is creating significant uncertainty in the law and regulatory deadlocks.

India needs to break free from obsolete legal constructs to address the Originality Paradox. India can build a strong and future-proof IP system by updating the statutory definitions, adopting an objective test for "necessary arrangements" and creating an equitable data-mining licensing collective. This will help safeguard human creative industries and give legal assurance for technological innovation in the digital age.