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## LEGAL PERSPECTIVE ON COPYRIGHT FOR MUSICAL WORK GENERATED BY AI

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### ABSTRACT

As Artificial Intelligence (AI) increasingly progresses as an assistive tool in the music industry, questions arise in respect of the copyrightability of generated musical work. Whether the developer or the prompter is the author of that work is the pertinent question. Other aspects that will be discussed in this piece are rights incidental or ancillary to copyright like performers' rights, rights of a composer and rights over the literary work within the music. It also argues about potential infringements by AI systems and enforcement of liabilities arising therefrom. Infringements while training an AI system and infringing performers' rights post-generation shall be expounded upon. It argues that as per the provisions of the Copyright Act, and without any regulatory clarification, copyright on such generations subsists in the developer. The piece also puts forth certain open questions seeking regulatory clarification.

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With the advent of generative AI, the use of AI systems in the creation of musical work has been increasing. We have already enjoyed songs created by the voice cloning of popular personalities including our Hon'ble Prime Minister.<sup>1</sup> We have also seen producers and composers using the voice of late singers like Bamba Bakya and Shahul Hameed to produce music.<sup>2</sup> Today, AI systems are not only capable of co-piloting to produce music, but can also produce musical work independently.<sup>3</sup> However, a void remains to be filled in the regulatory regime for work generated by AI systems. The answer to whether copyright subsists in works authored by AI systems under the Copyright Act, is unequivocally negative. Section 13(2) expressly provides that copyright shall subsist in work authored by citizens only. The intent u/s 40 and 41 to which Section 13 is subject, is also against providing copyright to such work. So, we have musical work in which copyright shall not subsist, irrespective of how original or creative such work may be. Consequently, copyrightability of musical work created by AI systems has led to a discourse in the sphere of Intellectual Property Laws. Therefore, the scope of this article shall be to address the question that, should reforms be made for copyright to subsist in musical work authored by AI.

Under Section 2(p) of the Copyright Act, 1957 defines musical work as a work consisting of music including the graphical notations of such work. However, the lyrics and performance of that musical work form intellectual properties separate from that of the musical work. The copyright with respect to the lyrics of that song may lie with the author or lyricist under Section 2(d)(i). The singer or performer of the music has certain “performers’ rights” as provided under Section 38, 38A and 38B. When it comes to the sound recording of the musical work, the copyright shall vest in the producer of the song. “Sound recording” has been defined u/s 2(xx) and generally means the recording, by means mechanical or electronic, of the sound produced through performance of the musical work. The copyright of the sound recording shall be with the producer. In case of AI providing assistance to the producer, the copyright shall still lie with the producer as Section 2(uu) provides a wide connotation to the term producer i.e. who takes the initiative and responsibility for making the work. Moreover u/s 2(d)(vi), in case of

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<sup>1</sup>Shubham Arora, *No, PM Modi Did Not Sing This Mukesh Classic: How to Identify Deepfake Audio*, Times Now (Jan. 4, 2025), <https://www.timesnownews.com/technology-science/no-pm-modi-did-not-sing-this-mukesh-classic-how-to-identify-deepfake-audio-article-116934012>.

<sup>2</sup>Utkarsh Mani Tripathi, *AR Rahman using AI to create music might feel like modern-day magic, but where does it stop?*, Vogue India (Jan. 31 2024), <https://www.vogue.in/content/ar-rahman-using-ai-to-create-music-might-feel-like-modern-day-magic-but-where-does-it-stop>

<sup>3</sup>*Music AI Sandbox, now with new features and broader access*, Google DeepMind (April 24 2025), <https://deepmind.google/discover/blog/music-ai-sandbox-now-with-new-features-and-broader-access/>

computer-generated work, the one causing the work to be so generated shall have the copyright. So, when assistance of an AI system is taken for producing a musical work, the one who takes the initiative to take such assistance shall have the copyright.

It is impractical and non-intuitive (for now) to think that AI systems can record musical work independently. Therefore, what we should be concerned with is the copyrightability of – the musical work composed by AI, literary work contained within the musical work authored by AI and musical work performed by AI. It is quite clear that generative AI has an intellect similar to that of human beings. Therefore, such intellect also makes AI capable of poetry and giving melody to such poetry. The leading Large Language Models, e.g. ChatGPT, Perplexity, Gemini, etc., are capable of composing music, when they are prompted with inputs like the genre, mood and theme of the music. With emergence of tools like Suno AI and Google MusicLM, creating music through textual inputs has also become possible. The conundrum that arises is that whether such output can be granted copyright.

An AI system produces an output by analysing the phrases of the input. Such analysis is possible by virtue of it being trained on large datasets. Datasets are constituted by information stored in servers. Similarly automatic music generating systems are trained by using pre-existing music datasets.<sup>4</sup> So, any musical work composed by AI is based on pre-existing musical work. However, the musical work generated doesn't replicate such existing work but derives from it. It compiles several musical works to generate a work. Therefore, such generated musical work would be a derivative work. The requirement of originality in derivative work is fulfilled if sufficient skill, labour or experience is expended after it is sourced from original work i.e. it should not have been copied but should have originated from the original work.<sup>5</sup> Therefore, the musical work generated can be considered to carry a degree of originality. But it is a legal requirement that the author of the original work has to be a natural person.

U/s 2(d)(vi) where a musical work is computer-generated, the person who causes the work to be created shall be the author of the work. But such generated work is due to the collective

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<sup>4</sup>Miguel Civit, Javier Civit-Masot, Francisco Cuadrado, Maria J. Escalona, *A systematic review of artificial intelligence-based music generation: Scope, applications, and future trends*, Expert Systems with Applications, Vol 209, [https://www.sciencedirect.com/science/article/pii/S0957417422013537?ref=pdf\\_download&fr=RR-2&rr=936cd5332f0194b3#d1e2769](https://www.sciencedirect.com/science/article/pii/S0957417422013537?ref=pdf_download&fr=RR-2&rr=936cd5332f0194b3#d1e2769)

<sup>5</sup> *Eastern Book Co. v. D.B. Modak*, A.I.R. 2008 S.C. 809 (India).

effort of the person who provided the prompt to the AI system i.e. the one who gave the textual input, and the person who enabled the AI system to work as it does, i.e. the AI developer. As the U.S. Copyright Office has clarified that work generated by AI shall be deemed a work in the public domain, currently it seems that none amongst the two should be granted copyright.<sup>6</sup> However, Suno AI and other such applications are commercial entities and it cannot be expected that they continue with their current business models. When they shift to a subscription-based model, the work generated cannot be considered to be in public domain. Suno AI launched the V4 of its application which can generate high-quality audio and author lyrical content, and will provide such benefits only to its subscribers.<sup>7</sup> While Suno's terms of service provide that it shall hold rights over the outputs produced, a clarification from regulators for mitigating the ambiguity in the industry is still awaited.

In addition to the subsisting of copyright with respect to generated work, another conundrum is the possible infringement of copyright while training AI systems on pre-existing music datasets. In June 2024, Sony Music, Universal Music Group and Warner Records sued Suno AI and Udio for copyright infringement alleging that the AI companies accessed copyrighted recordings to produce music tracks.<sup>8</sup> While Udio responded that it is making efforts to incorporate filters which may prevent such access, it also asserted that its technology purports to foster innovation by creating original music. Therefore, restricting copyright to musical work produced by AI may be prudent to prevent infringement, but concerns remain that such restriction may limit innovation. The ruling of District Court of Delaware in *Thomson Reuters Enterprise vs Ross Intelligence*<sup>9</sup> is one of the first with regards to copyright infringement by AI systems. The court ruled that training AI models with copyrighted work amounts to copyright infringement. The court held that case of Thomson Reuters prevails on fair use defence over Ross AI's, as the latter's use is commercial and not transformative. However, Ross AI being a non-generative AI system, the ruling doesn't hold a significant precedential value in the current context. But it can assist to form a perspective on the issue.

While copyright infringement by AI remains a concern, another concern associated with the context is possible violations of performers' rights. Acclaimed singer Arijit Singh had filed a

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<sup>6</sup> U.S. Copyright Off., Copyright and Artificial Intelligence, Part 2: Copyrightability (2025), <https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf>.

<sup>7</sup> Brain Hiaat, *AI Music Is More Realistic Than Ever: Meet Suno's New Model*, Rolling Stone (Nov. 19 2024), <https://www.rollingstone.com/music/music-features/ai-music-generator-new-model-suno-1235172581/>

<sup>8</sup> *UMG Recordings, Inc. v. Suno, Inc.*, No. 1:24-cv-11611 (D. Mass. filed June 24, 2024).

<sup>9</sup> *Thomson Reuters Enter. Ctr. GmbH v. ROSS Intel. Inc.*, 694 F. Supp. 3d 467 (D. Del. 2023).

complaint in Bombay High Court claiming infringement of his performers' rights u/s 38B of Copyright Act.<sup>10</sup> The Bombay High Court restrained several entities from using the singer's name, voice, singing style and technique and other attributes forming part of his personality. The court was concerned that performers' rights are vulnerable to being violated by AI content creators. The Court referred to *R. Rajagopal v. State of TN*<sup>11</sup> where it was held unauthorised and illegal use of a celebrity's persona violates the right to privacy of such celebrity. This raises significant concerns about the work generated by the tools like Suno AI and Google MusicLM. Almost all automatic music generators are trained on specific datasets so that the AI system develops a specific style.<sup>12</sup> Therefore, it seems that for AI systems to be trained on datasets containing copyrighted work, licensing is imperative. But such requirement can be considered as impeding innovation. Again, regulatory clarification is imperative to resolve such conundrum.

The originality of musical work authored by AI is a question of fact and shall depend upon extent of transformation that AI has incorporated into such work. However, most AI systems don't just replicate styles from the datasets they are trained on, but they consolidate such styles, the textual inputs and the musical theory rules they are fed with to produce the music that they are prompted to produce. Such consolidation results in production of music that exerts the same emotion and mood as demanded by the prompter.<sup>13</sup> Supposing that such works are accorded originality, subsistence of copyright in such works, seems to be with the AI developer. This means that the AI system should be reckoned as an artificial person. Rights against infringing outputs can be enforced against the AI developer. As far as reservations relating to copyright infringement and performers' rights are concerned, they can be mitigated by imposing licensing mandates on AI companies. Hence, a legislation specifically addressing AI regulation is the need of the hour.

There are multiple issues which revolve around copyrightability of musical work generated by AI. Whether such work shall be considered original; on whom shall copyright subsist; whether

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<sup>10</sup>*Arijit Singh v. Codible Ventures LLP*, 2024 SCC OnLine Bom 2445 (India).

<sup>11</sup>*R. Rajagopal v. State of T.N.*, 6 S.C.C. 632 (India 1994).

<sup>12</sup>Miguel Civit, Javier Civit-Masot, Francisco Cuadrado, Maria J. Escalona, *A systematic review of artificial intelligence-based music generation: Scope, applications, and future trends*, Expert Systems with Applications, Volume 209 (2022), [https://www.sciencedirect.com/science/article/pii/S0957417422013537?ref=pdf\\_download&fr=RR-2&rr=936cd5332f0194b3#d1e2769](https://www.sciencedirect.com/science/article/pii/S0957417422013537?ref=pdf_download&fr=RR-2&rr=936cd5332f0194b3#d1e2769)

<sup>13</sup>Adyasha Dash and Kathleen Agres, *AI-Based Affective Music Generation Systems: A Review of Methods and Challenges*, ACM Computer Survey 56, 11, Article 287 (2024), <https://dl.acm.org/doi/10.1145/3672554>

such work amounts to copyright infringement and violates performers' rights – are issues that must be addressed. Moreover, regulation must foster innovation and scientific temper, and at the same time must protect rights of all entities concerned. The existing IP laws of India are consonant with TRIPS and have been successful in providing effective and stable resolution to disputes and challenges. But AI is here to disrupt the IP landscape. Therefore, we must pursue such disruption and incorporate pertinent regulations for benefit of all parties concerned.