
BALANCING INNOVATION AND INTEGRITY UNDER COPYRIGHT WITH REFERENCE TO MORAL RIGHTS

Divyashree Lohar, Assistant Professor, ISBR Law College, Bangalore

K.M. Nanditha, Assistant Professor, ISBR Law College, Bangalore

ABSTRACT

Digital technology and AI have transformed the way original works are created, raising complex issues surrounding the copyright and moral rights of authors, including protecting authors' moral rights. Protecting moral rights emphasises the personality of the author and respecting their creation. This review of moral rights describes the current conditions concerning generative AI, remix culture and digital distribution, as well as where things stand with respect to moral rights in the United States and India. The review provides a detailed look at how the United States and India statute law concern themselves with protecting the moral rights of authors through the digital medium. Thus, the article proposes a reimagined configuration of authors' moral rights that balances advances in technology and the maintenance of the artist's creation.

Keywords: Moral Rights, Generative AI, Authorial Integrity, Digital Creativity, Copyright Law.

I. Introduction

Art serves not only as an expression of an individual's perspective but also as a means for preserving cultural references including history, social morals and values. Through literature, paintings, songs and other forms of artistic expression, individuals may express themselves and this exchange of culture is recorded historically. As part of creating a piece of art, it is vital for the creator to convey their unique artistic vision while preserving the authenticity and integrity of the work. Because of this, any deviation from or misunderstanding about the true nature of a work (i.e., misattribution) or any unauthorized alteration or modification to a work erodes the creator's personal connection with that particular work, as well as the public's ability to accurately understand the work's cultural significance or reference point.¹

Moral rights afford the opportunity to protect the relationship that exists between a creator and his or her creation. Economic rights focus on commercial exploitation; moral rights protect the creator's personal characteristics, such as the right to be named as the author (attribution), the right to prevent mutilation and/or distortion and the right to protect his or her honour and reputation. In India, moral rights are provided with a unique position in the law concerning copyright and specifically provide for the protection of the creators' character rights and the continuing connection between the creator and his or her work, thus preserving the artistic integrity of the work after an economic right has been assigned/transferred.²

In the digital environment, the idea of who is the author and who has control over a work has changed drastically with the introduction of technology and Artificial Intelligence that can independently create text, images, music and video from pre-existing materials. This advance blurred the distinction between original and derivative creations and created a new culture of remixing, mashups, memes, deep fakes and artificially created media.³ Generative AI represents a special challenge with respect to moral rights, as AI generated works are created generally without the knowledge or intent of a human creator. An AI generated work could include works that reflect the style of other artists; imitate the look and feel of another artist; or take multiple, protected works and re-combine them in ways that are otherwise not traceable

¹ PAUL GOLDSTEIN, GOLDSTEIN ON COPYRIGHT § 5.1, at 5:3–5:6 (3d ed., Wolters Kluwer 2011).

² P. NARAYANAN, COPYRIGHT AND INDUSTRIAL DESIGNS 303–07 (4th ed., Eastern Book Company 2010).

³ Lawrence Lessig, Remixing Creativity: How Creativity Is Being Strangled by the Law, 10 VAND. J. ENT. & TECH. L. 1, 4–7 (2008).

back to a specific author. Because of this risk, there is an increased risk of misattribution, distortion of original work and damage to the reputation of an original work's creator. While copyright does exist to protect the rights of human authors, traditional copyright laws do not address the current forms of transformation enabled due to advances in technology and AI and it is likely that the methods of protection will have to be changed to reflect that.⁴

Against this backdrop, the article critically analyses the future viability and fragility of Moral Rights within the context of AI. The research paper is focused on whether there are existing structures in place which can protect against AI challenges with regard to author attribution and artistic integrity and how these structures are supportive to society's overall benefit from technological innovations. This paper emphasises Indian practise and makes reference to the United States as a comparison. Through an evaluation of statutory provisions, judicial interpretation and emerging policy discussions, the author seeks to clarify the role of Moral Rights as an effective means of protecting artist dignity and cultural authenticity in an AI-based creative environment.

II. Conceptualisation of Moral Rights

Moral rights, a separate area of copyright law, lie at the crossroads of legal theory, moral philosophy and cultural theory. This means that unlike economic rights, which rely on market-based reasoning and support through user fees, moral rights are based on the concept of the natural and inherent connection between the work and the identity of the creator.⁵ An understanding of moral rights must therefore go beyond the definitions in copyright statutes and include an exploration of the philosophical principles that justify their existence. The concept of moral rights, as described in this article, will provide both an overview of the meaning and limits of moral rights and will offer a basis from which to assess current issues created by advancements in technology (digital technology and generative artificial intelligence) and how those advancements may impact both moral rights and the rights of creators in general.⁶

⁴ World Intellectual Property Organization, Revised Issues Paper on Intellectual Property Policy and Artificial Intelligence 11–18 (2020), <https://www.wipo.int>.

⁵ Martin A. Roeder, The Doctrine of Moral Right: A Study in the Law of Artists, Authors and Creators, 53 HARV. L. REV. 554, 555–58 (1940).

⁶ Justin Hughes, The Philosophy of Intellectual Property, 77 GEO. L.J. 330–35 (1988).

A. Meaning and Scope of Moral Rights

Unlike Economic Rights, which protect the author for financial reasons only, Moral Rights protect the personal and the reputational interests of the creator, regardless of whether or not the creator has any economic interests in the work.⁷ Moral Rights provide that the creator has first and foremost a connection to the work; as such, the creator's identity is tied to the work permanently even when the creator conveys (assigns) their Economic Rights.⁸

Upon the granting of the "Right of Attribution" (right of paternity), the creator has exclusive rights to be identified as the creator of the work. Also, this right allows the creator to prevent anyone from giving false attribution to the work.⁹ The Right of Attribution is important because it protects the reputation of the creator and provides historically accurate cultural archives of artistic works. In a digital environment, where creative works are often copied and shared without appropriate attribution to the original creator, the need for attribution becomes critical.¹⁰

The right to integrity allows the author to object to any distortion, mutilation or modification of the work that may prejudice the author's honour or reputation.¹¹ The intent of the right is not to ensure that the work always remains unchanging but to provide protection against changes made to the work that adversely affects its expressive essence or mischaracterizes the author's intended vision. Thus, by preventing derogatory treatment of works, the integrity right preserves the cultural and artistic meaning that invested in the work. Depending on the jurisdiction, moral rights may also include the right of disclosure, the right to withdraw and the right to retract.¹² Together, these rights reinforce the concept that creative expression involves moral agency and personal judgment beyond the economic realities of exploitation. A defining characteristic of moral rights is non-transferability and in most of the systems, inalienability, representing the idea that an author's personal dignity and artistic

⁷ Berne Convention for the Protection of Literary and Artistic Works art. 6bis, Sept. 9, 1886, as revised at Paris on July 24, 1971.

⁸ The Copyright Act, 1957, § 57.

⁹ The Copyright Act, 1957, § 57(1)(a).

¹⁰ Jane C. Ginsburg, *The Author's Name as a Trademark: A Perverse Perspective on the Moral Right of Attribution*, 19 CARDOZO ARTS & ENT. L.J. 384–88 (2001).

¹¹ The Copyright Act, 1957, § 57(1)(b).

¹² Neil Weinstock Netanel, *Alienability Restrictions and the Enhancement of Author Autonomy in Copyright Law*, 24 RUTGERS L.J., 365–69 (1993).

identity cannot be commodified and can never be permanently severed from the creator.¹³

B. Philosophical Foundations

The theories behind moral rights are fundamentally tied to the Foundations of Personhood, which assert that there is an inherent link between a person and their creative output. The philosophical theories that serve as the basis for understanding moral rights have been supported by great thinkers including G.W.F Hegel and Immanuel Kant. Hegel believed that property is the method by which an individual's will and personality are externalized to the world; because creative works embody self-expression at an elevated level, therefore they deserve additional protection. Infringement on creative works is, in effect, an infringement on the individual's personhood.¹⁴ In a parallel vein to Hegel's perspective, Kant also saw authorship as a reflection of the moral autonomy of the author and as a result, Kant viewed creative works as forms of communication between the author and the public that could not be altered or misrepresented without infringing upon the moral agency of the author.¹⁵

The philosophical foundations of moral rights have been reinforced by the romantic view of authorship that developed in the 18th and 19th centuries, where romantic authorship highlighted originality, individualism and emotional expression, with the artist as a creative genius whose work is uniquely identifiable with that individual.¹⁶ This notion had a considerable impact on the Continental European Copyright Traditions and formed the basis of Author Moral Rights in the majority of Civil Law jurisdictions, where authors were perceived as the creators of their works rather than simply the producers of a commercial product.¹⁷

Both romantic authorship and personhood are based upon the assumption that artists have an everlasting relationship with their works, this view has been a part of the economy and has been established to continue to represent an artist's intent and to protect the dignity of artists. In the age of digital and artificial intelligence, the re-examination of this idea and its implications for the future will be paramount, as creativity continues to move away from

¹³ Christophe Geiger, "Moral Rights" in the Information Society, 19 COLUM. J.L. & ARTS 1, 12–15 (1995).

¹⁴ G.W.F. HEGEL, PHILOSOPHY OF RIGHT 41–45 (T.M. Knox trans., Oxford University Press 1967).

¹⁵ IMMANUEL KANT, THE METAPHYSICS OF MORALS 79–81 (Mary Gregor trans., Cambridge University Press 1996).

¹⁶ Martha Woodmansee, The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the "Author", 17 EIGHTEENTH-CENTURY STUD. 425, 426–30 (1984).

¹⁷ J.A.L. STERLING, COPYRIGHT IN A GLOBAL CONTEXT 121–24 (Cambridge University Press 2002).

traditional views of creator, original work and the maintenance of an artist's identity.¹⁸

III. Moral Rights, Technology and Cultural Change

Technological changes have repeatedly transformed how we produce, share and consume creative works. As technology transitions from print to broadcast to digital formats, a consistency across all major transitions has affected both the Author Control and access by others to the material. Moral Rights are intended to protect both the Author's personality and their integrity as an Artist; however, these rights are being challenged as the nature of Cultural Production changes. More Cultural Production is created collaboratively, iteratively and in the digital space, so that we must now more closely examine how these traditional concepts surrounding Author's Morality will hold given the modern realities and views now on freedom of expression, accessible knowledge and creativity through transformations.¹⁹

A. Moral Rights vs. Dissemination of Knowledge

Moral rights regimes can limit the sharing of knowledge and creative works. Copyright law generally is viewed as temporary monopoly right to foster learning, creativity and societal well-being. Moral rights are being described as a way for people to have their feelings about how meet or use their work placed above the overall good of society and provides no real benefit to the public as a whole. The moral right to integrity may restrict adaptations, translations and reinterpretations of works that may otherwise contribute to the cultural dialogue and to the accessibility of works to those with disabilities.²⁰

The significance of the moral rights issue is heightened in the online world where technology allows works to be copied and modified almost instantaneously and creates opportunities to experience artworks as never before, making it easy for creators and audiences to interact with each other outside of the traditional creator-surrounding audience model. The enforcement of moral rights in such settings runs the risk of inhibiting parody, commentary and creative re-use that are important to the development of a democratic society and the cultural growth of the society.²¹ Conversely, if moral rights are not enforced and the creator's right to

¹⁸ Jane C. Ginsburg, A Tale of Two Copyrights: Literary Property in Revolutionary France and America, 64 TUL. L. REV. 991, 1003–07 (1990).

¹⁹ Neil Weinstock Netanel, Copyright and a Democratic Civil Society, 106 YALE L.J. 283, 347–52 (1996).

²⁰ Berne Convention for the Protection of Literary and Artistic Works art. 9(2), Sept. 9, 1886, as revised at Paris on July 24, 1971.

²¹ Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569, 579–81 (1994).

control access to their creation is allowed to be stripped away, it creates a risk to the creator's reputation and potentially distorts the way in which the creation was intended to be perceived by the creator and by the audience.²²

The tension between individual rights (i.e., dignity) and cultural advancement (i.e., creative works) demonstrates a greater normative dichotomy when compared to copyright. Financial benefits associated with copyright monopolies are limited through various exceptions; however, there are very few limitations placed upon moral rights in terms of balancing competing interests in an equitable manner. Because of this lack of limitations, courts must often serve as mediators between claims of public interest and artistic integrity on a case-by-case basis resulting in arbitrary and inconsistent levels of protection for similar types of work.²³

B. Digitally Modified Music and Remix Culture

The interaction between moral rights and technological change within the music industry is illustrated by the way that digitally modified music has become a primary source of new forms of artistic expression.²⁴ The use and modification of recorded sound (via sampling, mashups, remixes or DJing) is a primary vehicle to create new works that result being new interpretations of recorded sound which simultaneously create new meanings and obscure the distinction between original and derivative works.²⁵

From the perspective of moral rights, the transformation of existing sound recordings creates questions regarding attribution and integrity. When sampling without attributing credit to the creator of the original sound recording, the original creator is generally not identified; in addition, the ability of the creator of a sound recording to maintain the integrity of their work may be compromised when extensive modifications are made to the original work. As a result, some creators may experience a negative impact on their reputation from being linked to both new genre(s), message(s) or political context(s) that are created through a remix, even in the

²² Julie E. Cohen, Copyright, Commodification and Culture: Locating the Public Domain, 8 J. INTELL. PROP. L. 1, 26–30 (2001).

²³ LIONEL BENTLY & BRAD SHERMAN, INTELLECTUAL PROPERTY LAW 246–48 (5th ed., Oxford University Press 2018).

²⁴ KEMBREW MCLEOD & PETER DICOLA, CREATIVE LICENSE: THE LAW AND CULTURE OF DIGITAL SAMPLING 23–29 (Duke Univ. Press 2011).

²⁵ UNESCO, Convention on the Protection and Promotion of the Diversity of Cultural Expressions arts. 1(g), 4(4), Oct. 20, 2005.

absence of any economic loss.²⁶

Remix Culture also challenges typical notions of the integrity of an artist. Historically, music has developed through borrowing, reinterpretation and cross-cultural interaction. Therefore, since remixing was enabled by digital broadcasting, it should be seen as an avenue for cultural innovation or as a valid example of involvement in the making in art; however, it is also a form of interpolation that is inserting one's own context into an existing art piece and therefore is not simply appropriation.²⁷ Identifying transformative creativity that enhances cultural expression from the way that the original work is merely denigrated is difficult.²⁸

However, the complexities introduced by today's technology to both private and public entities add further layers of complexity in distinguishing between the two. Digital platforms drive the flow of distribution and as such, the platforms encourage and value user engagement with content rather than crediting and recognizing the original creators. The platforms thus create barriers for the original creator and elevate the remix of his or her original work.²⁹ Consequently, the provision of moral rights provides guidance in this regard; moral rights provide a level of protection to authors to ensure that they are recognized for their work and the manner in which the work was created, as well as the recognition and protection of their reputational rights.³⁰

IV. Moral Rights under Indian Copyright Law

Moral Rights under India copyright law are an important part of the copyright system in India. Indian copyright law recognizes the person and reputation of authors, in addition to their right to distribute and exploit economically their Work. This is in contrast to other jurisdictions with moral rights that are viewed as extrinsic to most Copyright Law and have no meaning outside a specific industry or area.³¹ The complexities and lack of clarity in the real world have arisen as a result of the dramatic changes taking place within the digital and technological creative environment with respect to issues like politically based enforcement of moral rights

²⁶ Edward Lee, Warming Up to User-Generated Content, 2008 U. ILL. L. REV. 1459, 1488–92 (2008).

²⁷ Amar Nath Sehgal v. Union of India, (2005) 30 P.T.C. 253 (Del.) (India).

²⁸ Madhavi Goradia Divan, Moral Rights: A Struggle Between Authors and Users?, 3 NUJS L. REV. 215, 228–31 (2010).

²⁹ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market art. 17, 2019 O.J. (L 130) 92.

³⁰ Super Cassettes Indus. Ltd. v. Myspace Inc., (2017) 236 D.L.T. 478 (Del.) (India).

³¹ PROF. P. BERGER & M. HUDEC, COPYRIGHT LAW IN INDIA 112–15 (LexisNexis 2d ed. 2020).

and also in the area of posthumous protection, which is typically recognized for the duration of the term of copyright.³²

A. Statutory Framework under the Copyright Act, 1957

The statutory provisions relating to moral rights in India are contained in Section 57 of the Copyright Act, 1957. Given that Section 14 sets out the range of exclusive economic rights, moral rights are defined in Section 57 as separate and distinct authorial property rights which exist independent of any assignment or transfer of copyright.³³ This means that under this Act authors can claim authorship of their work and they can prevent any actions that could potentially harm their honour and reputation from the moment the work gets published including; distortion, mutilation, modification etc.³⁴

In India, the moral rights of the author are regarded as continuing personal rights after the transfer of the economic rights of the copyright and thus represent a shift away from the traditional market-oriented approach towards intellectual property. The requirements contained within the Copyright Act 1957 for authors to protect their reputational image as opposed to simply providing compensation for their economic loss are an essential aspect of the nature of the moral rights, which also emphasize a strong focus on the non-commercial and personalized nature of these rights.³⁵ Ultimately, this approach supports and builds upon the personhood theory of creative authorship. It supports the view that a creative work is made up of the identity of the author and moral character of the individual also represents the embodiment of the work.³⁶

Through the Copyright (Amendment) Act 1994, this Framework was elaborated upon by further defining changes made for technical or commercial purposes (i.e. to create a film from a novel) not constituting a breach unless they damage the creator's integrity or reputation. This Amendment was intended to achieve a compromise between protecting a creator's dignity and

³² Farrah R. Khan, Posthumous Moral Rights Protection in India: Emerging Challenges in the Digital Age, 7 *ILI L.J.* 89, 92–93 (2021).

³³ Vikas Sethi, Moral Rights under Indian Copyright Law: Conceptual Framework and Judicial Interpretation, 12 *J. INTELL. PROP. L.* 45, 48–49 (2020).

³⁴ Copyright Rules, 2013, r. 4 (India).

³⁵ S. Narayan, Moral Rights in India: A Perspective on Personality and Authorship, 8 *INT'L J. INTELL. PROP. L.* 101, 104–05 (2019).

³⁶ K. R. Choudhary, Copyright Law in India: Moral Rights and Personhood, 5 *INDIAN J. L. & TECH.* 33, 36–37 (2021).

maintaining the right of creators to freely utilize new distribution techniques while continuing to provide core protection for creators' moral rights.³⁷

B. Judicial Interpretation

Indian courts have contributed greatly to the development and reinforcement of moral rights. In *Mannu Bhandari v. Kala Vikas Pictures (Pvt.) Ltd.*,³⁸ the Delhi High Court found that the author retained his/her moral right even though the author had transferred the economic rights for a film version of the literary work. In this case, the court determined that changes made to the original literary work that were significant enough to change the original work's fundamental quality could violate the author's right to integrity. This case demonstrates that when an author contracts to transfer economic rights of the literary work, the author does not lose his/her personal connection to the literary work through the operation of the contract.³⁹

The Delhi High Court's ruling in *Amarnath Sehgal v. Union of India*⁴⁰ is a hallmark of Indian moral rights jurisprudence. In this ruling, the Delhi High Court determined that the government's removal of and negligent storage of the artist's mural violated the artist's moral right to integrity. Importantly, the Delhi High Court recognized that moral rights should not be viewed solely as stand-alone rights; rather, moral rights serve to protect the culture of society from the loss of cultural heritage through the destruction of artistic works. Further, the damages awarded in this case, including an award for damage to reputation, signals that Indian court's view violations of moral rights as serious violations of the law. Collectively, these rulings support that the Indian courts view moral rights as separate from other legal rights, that moral rights are enforceable and that they are essential to the integrity of the creative process and the dignity of the creative individual.

C. Ambiguities and Limitations

There remain many ambiguities in India's moral rights framework, despite robust statutory protection. One such ambiguity is the duration of an author's moral rights post-mortem. While Section 57(2) allows legal representatives to exercise moral rights after the

³⁷ P. Narayan, Protection of Moral Rights under Indian Copyright Law, 12 J. INTELL. PROP. L. & PRACT. 88, 90–91 (2016).

³⁸ *Mannu Bhandari v. Kala Vikas Pictures (Pvt.) Ltd.*, 1996 Supp (2) Delhi L.R. 218 (Del. H.C.).

³⁹ P. Narayan, Protection of Moral Rights under Indian Copyright Law, 12 J. INTELL. PROP. L. & PRACT. 88, 92 (2016).

⁴⁰ *Amarnath Sehgal v. Union of India*, 1992 Supp (1) Delhi L.R. 237 (Del. H.C.).

death of the author, it does not allow representatives to assert their right to claim authorship of the work created by the deceased author. This places an unknown about how an author's work will be identified or attributed to them after their death and therefore inconsistent with the purpose of preserving an author's identity and legacy.⁴¹

Enforcement of moral rights is complicated by the nature of many industries operating in digital space, especially because there are so many different means through which an infringement of an author's moral rights may occur, including multiple jurisdictions. Currently, the remedies available under Section 57 are largely after-the-fact; an author may only seek damages or an injunction after the author has suffered harm. There are also limited preventative measures available under Section 57. In addition, many forms of use of copyrightable works in today's world have not been addressed by statute, including use of works in digital formats, platforms, through intermediary uses and through algorithmic modification and use; thereby creating significant gaps in the interpretation of moral rights law.⁴²

Because of the fact that an artist's professional career today is increasingly reliant on the use of platforms, intermediaries and AI-assisted tools to create and distribute their works, it is clear that the current interpretation of moral rights needs to be re-examined to ensure that it remains relevant and effective in today's digital world.⁴³

V. The United States Approach to Moral Rights

The United States has historically adopted a utilitarian and market-oriented approach to copyright, displaying sustained reluctance toward recognising moral rights as autonomous authorial entitlements.⁴⁴ Unlike civil law jurisdictions, which treat moral rights as inherent to authorship, the U.S. copyright framework has prioritised economic incentives and dissemination of works. This divergence becomes particularly salient in the context of artificial intelligence, where questions of authorship, attribution and integrity intersect with

⁴¹ P. Narayan, Protection of Moral Rights under Indian Copyright Law, 12 J. INTELL. PROP. L. & PRACT. 88, 94 (2016).

⁴² Kembrew McLeod & Peter DiCola, Creative License: The Law and Culture of Digital Sampling 45–47 (Duke Univ. Press 2011).

⁴³ P. Narayan, Protection of Moral Rights under Indian Copyright Law, 12 J. INTELL. PROP. L. & PRACT. 88, 97 (2016).

⁴⁴ Jane C. Ginsburg, Moral Rights and the Market-Oriented Approach of U.S. Copyright Law, 45 COLUM. J.L. & ARTS 1, 3–5 (2022).

innovation-driven policy objectives.⁴⁵

A. Evolution of Moral Rights in the United States

Through ratification of the Berne Convention in 1989, the United States increased its engagement with the concept of moral rights. Instead of using a basic approach through comprehensive moral rights legislation, the U.S. has taken a fragmented approach to comply with the requirements of the Berne Convention.⁴⁶ The only comprehensive statement regarding moral rights made by the United States is contained within the Visual Artists Rights Act (VARA), 1990. Under VARA, certain visual artists are given a limited right of attribution and right of integrity. However, VARA has a very narrow application, as it does not cover any literary, musical or audiovisual works and allows for significant waivers of the variances.⁴⁷

Outside of VARA, there has been some recognition of moral-rights-like protection through various laws. The Lanham Act has been used at times to provide recourse against false attribution or misrepresentation⁴⁸ and Section 1202 of the Digital Millennium Copyright Act provides some limited protection for Copyright Management Information (CMI), which may provide support for certain forms of attribution.⁴⁹ However, these three areas do not provide true moral-rights-type protection and the moral-rights conception of personality rights provides a very different functional protection.

Overall piecemeal approach to developing moral rights is reflective of a larger systemic rejection of grounding copyright in dignity-based authorial concepts. The interests of authors are largely subsumed by consumer protection and the interests of unfair competition, thereby reinforcing the idea that moral rights are more peripheral than foundational.

B. AI and Copyright: The U.S. Copyright Office Reports

The emergence of generative AI has led to an increased interest in copyright principles

⁴⁵ ROBERT A. GORMAN, COPYRIGHT LAW IN THE UNITED STATES 122–25 (Aspen Publishers, 5th ed. 2020).

⁴⁶ Berne Convention for the Protection of Literary and Artistic Works art. 6bis, Sept. 9, 1886, 1161 U.N.T.S. 3, as amended by the Paris Act of July 24, 1971.

⁴⁷ Pamela Samuelson, Moral Rights and the Visual Artists Rights Act, 70 NOTRE DAME L. REV. 221, 225–27 (1995).

⁴⁸ Margo A. Bagley, Attribution Rights and the Lanham Act: Protecting Authorial Integrity, 42 J. COPYRIGHT SOC'Y U.S.A. 155, 160–63 (1995).

⁴⁹ Digital Millennium Copyright Act 1998, § 1202.

in the U.S. The Copyright Office's Copyright and Artificial Intelligence Report Series address three related topics, that is, digital replicas and deepfakes, copyrightability of outputs produced by AI and legality of AI training situations. Digital replicas and deepfakes are the first area addressed by the reports and the issue of concern for those seeking to simulate someone else's identity (e.g. voice, likeness or art style).⁵⁰ While these practices can create significant moral and reputational harm, they are primarily addressed under rights of publicity and consumer deception laws in the U.S. as opposed to the moral rights doctrine associated with most countries.⁵¹

The second area addressed by the EO is that human authorship is still required for copyright protection, therefore, works produced solely by AI are not eligible for copyright protection, while AI-assisted works must have a substantial amount of human creativity included and will therefore not be eligible for copyright if they were created with no or minimal human creative contribution. This requirement for human authorship implies that there is a connection between creativity and personality; hence, the moral rights framework will likely continue to develop more completely over time.⁵²

The reports address the legality of using copyrighted works as part of AI training datasets. Rather than requiring that all referenced authors obtain a license to use their copyrighted works, the Copyright Office states that the concept of fair use must be applied;⁵³ therefore, judges will ultimately interpret the legality of large-scale training.

C. Fair Use and AI Training

Fair Use is an important principle in U.S. Courts for Copyright decisions, as it allows the Law to adjust to changes in technology. The courts assess whether something should be allowed as fair use by considering four factors: the purpose and character of the use; the type or nature of the material being used; the amount of the material being used; and whether there is an adverse effect on the Marketplace.⁵⁴ When it comes to the argument for using AI for collecting

⁵⁰ U.S. COPYRIGHT OFFICE, COPYRIGHT AND ARTIFICIAL INTELLIGENCE: DIGITAL REPLICAS AND DEEPFAKES 3–8 (2023), <https://www.copyright.gov/policy/artificial-intelligence/deepfakes.pdf>.

⁵¹ Pamela Samuelson, Intellectual Property and AI-Generated Works: Moral Rights in the U.S. Context, 37 BERKELEY TECH. L.J. 1025, 1038–41 (2022).

⁵² Jane C. Ginsburg, Authors, AI and Copyright: Moral Rights and the Question of Human Creativity, 70 J. COPYRIGHT SOC'Y U.S.A. 201, 212–14 (2023).

⁵³ Authors Guild v. Google, Inc., 804 F.3d 202, 213–15 (2d Cir. 2015) (discussing transformative use and fair use in large-scale digitization projects).

⁵⁴ Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569, 577–79 (1994) (outlining the four-factor fair use test).

and Training Data, supporters claim that the AI is being used in a Transformative way, since when the AI is trained, it doesn't just re-produce a Copyrighted work 'word-for-word', it identifies and extracts the statistical patterns and then applies those patterns to generate 'new' products. Critics of AI training claim that large amounts of Creative works being fed into an AI for training creates a 'substituting' impact on the Marketplace, where the products created by the AI compete directly with the works of human Creators.⁵⁵

Fair Use analysis in the United States has been focused primarily on economic impact and economic harm suffered by the copyright owner and has paid little attention to issues surrounding dignity, integrity, attribution and reputation. Therefore, there has not been significant progress in developing and applying the ideas of 'moral harm' in terms of imitating an author's Style and distorting their Context generally resulting from AI Training Data. The emphasis on market analysis as a priority shows the lack of structural capabilities of the U.S. copyright framework.⁵⁶ While Fair Use provides flexibility and adaptability for creators to utilize technology in innovative ways, it has not developed the required normative language to address the ethical and moral components of creativity, which are becoming increasingly important as a consequence of the development of Generative AI.⁵⁷

VI. Generative AI, Copyright and Licensing Debates in India

Generative artificial intelligence has emerged as a new force that has forced Indian policymakers to examine the adequacy of current copyright frameworks in relation to large amounts of data and AI-generated content. Generative AI does not merely deal with the reproduction and distribution of content as previous digital disruptions did; rather, generative AI involves the systematic ingestion of a substantial amount of copyrighted works for the development of AI technologies to create new original content.⁵⁸ As a result, India is beginning to develop a copyright policy position regarding generative AI that attempts to balance the needs of innovation, copyright protection and the interests of creators, but has not been without

⁵⁵ Andrew R. Heim, Fair Use in the Age of AI: Transformative Use and Market Substitution, 45 COLUM. J.L. & ARTS 89, 102–05 (2022).

⁵⁶ Pamela Samuelson, Allocating Ownership Rights in Computer-Generated Works, 37 J. COPYRIGHT SOC'Y U.S.A. 393, 402–05 (1990).

⁵⁷ Christina Angelopoulos, Artificial Intelligence and Copyright: Perspectives on Moral Harm and Ethical Creativity, 34 EUR. INTELL. PROP. REV. 190, 193–95 (2023).

⁵⁸ Intellectual Property India, Consultation Paper on Artificial Intelligence and Copyright, 2024, <https://ipindia.gov.in/ai-copyright-consultation.pdf>.

controversy.

A. DPIIT Working Paper on Generative AI (2025)

On December 2025, the Department of Industry & Internal Trade published Stage 1 of its generative AI and Copyright working paper. It proposes a hybrid licensing solution based on ‘one nation & one license’ that would provide a centralised government licensing solution for generative AI to use copyrighted material in their training processes and developers obtaining blanket licenses would pay into a new Copyright Royalties Collective for AI Training (CRCAT) on behalf of all developers, who would receive payments based on the percentages of their original use of copyright protected material.⁵⁹

The Working Paper is based on some existing models of collective management of copyright and aims to reduce the transaction costs and complexity of collecting and paying royalties to authors for the training of generative AI systems. The Working Paper presumes that a mandatory licensing scheme will enable copyright holders to be paid for their contributions and provide reliable, legally sound, frameworks within which to operate for AI development.⁶⁰ Additionally, the proposal will indicate the government’s intent to provide regulatory oversight over generative AI’s training so as to provide a method of governance through the use of copyright licensing.⁶¹

Although this paper recognises the significance of innovation and technology growth, it instead has a detailed control-focussed policy approach. Through framing AI Training using Licensing Policies for Copyright, this proposal potentially extends the coverage of Copyright Law to areas historically covered by limitations and exceptions.

B. Critical Evaluation of Underlying Assumptions

There are a number of questionable assumptions underlying the DPIIT proposal. The first is that copyright serves primarily as an economic motivator for creativity. However, studies show that authors of works in the creative industries often earn very little from their copyright

⁵⁹ Department for Promotion of Industry and Internal Trade, Working Paper on Generative AI and Copyright — Stage 1 (Dec. 2025),

https://dpiit.gov.in/sites/default/files/Generative_AI_Copyright_Working_Paper_DPIIT_2025.pdf.

⁶⁰ Shyam Krishnamurthy & Arjun Menon, Collective Rights Management and AI Training Data: Lessons for India, 29 INTELL. PROP. QUARTERLY 213, 219–22 (2025).

⁶¹ Ministry of Electronics & IT (MeitY), Policy Perspectives on AI and Copyright Licensing in India 17–18 (2025), https://meity.gov.in/sites/default/files/AI_Copyright_Policy_Perspectives_2025.pdf.

and that copyright is less important to them as a source of income as it is to many authors working in a market that is largely composed of platforms and intermediaries.⁶² While it is useful to think of licensing revenue as a measure of author welfare, it also ignores non-economic aspects of authorship such as attribution, reputation and creative autonomy.⁶³

The second major assumption built into the proposal is that most compensation will be distributed fairly through the use of collective management organisations. In India, there have been longstanding issues with collective management organisations regarding transparency, governance and fairness in the distribution of royalties.⁶⁴ There is a concern that extending the use of collective management organisations to the training of AI with large and diverse collections of data would only serve to compound the existing inefficiencies in the current system and would further marginalise individual authors and small creators.⁶⁵

The third concern with the proposed licensing scheme is that the imposition of such a requirement is overly burdensome on industry participants. The imposition of blanket licensing requirements could create barriers to innovation by discouraging research and creating barriers to entry for new companies while fortifying the competitive advantage of currently established household name companies that have sufficient capital to comply with licensing regulations.⁶⁶ Such barriers and advantages are inconsistent with India's overarching goal to spur digital innovation within the country.⁶⁷

Another potential drawback of the approach outlined in the working paper is the bias towards the entertainment sector. The focus on established sectors of music and film that currently possess copyrights overlooks the increasing role of user-generated content, open access content and other new creators in the growing digital creative ecosystem. Consequently, a blanket approach to licensing may not be sufficient to accommodate the growing diversity of

⁶² K. Basheer, *Reimagining Copyright Incentives in the Digital Age*, 52 J. WORLD INTELL. PROP. 101, 105–07 (2024).

⁶³ Jonathan B. Baker & Mark A. Lemley, *Copyright, Compulsory Licensing and Market Dynamics in Platform Economies*, 19 STAN. TECH. L. REV. 97, 112–15 (2024).

⁶⁴ S. Raghavan, *Collective Management Organisations and Copyright Royalties in India*, 11 INDIAN J. INTELL. PROP. L. & PRACT. 27, 30–32 (2024).

⁶⁵ Nisha Gupta & Arvind Varma, *Royalty Distribution Challenges in the Age of Big Data and AI*, 22 J. COPYRIGHT SOC'Y U.S.A. 229, 235–38 (2025).

⁶⁶ Ministry of Electronics & IT (MeitY), *Report on Digital Innovation and Startups in India* 33–36 (2024), https://meit.gov.in/sites/default/files/Report_on_Digital_Innovation_2024.pdf.

⁶⁷ Department of Telecommunications, *National Digital Innovation Framework* 8–10 (2023), https://dot.gov.in/sites/default/files/National_Digital_Innovation_Framework_2023.pdf.

creative practice occurring within India.⁶⁸

C. Case for an AI Training Exception

Recognizing the foregoing reservations, it may be appropriate for lawmakers to consider adding a narrowly tailored statutory exception for AI training. An exception could be crafted that treats AI training as an intermediate use that is distinct from subsequent public communications or commercial exploitation of the material subsequent to the AI's training.⁶⁹ An exception could incorporate protective measures against the direct substitutes of original works, accommodate the security of data and prohibit the creation of outputs that mimic protected works or identifiable artistic styles without attribution.⁷⁰

Most importantly, an exception for AI training must be considered alongside a moral rights framework containing author-centric rights. The framework must emphasize not only royalty revenue generated by licensing but also the author's need for attribution, transparency and protection from insults to an author's reputation.⁷¹ Requiring disclosure of training data sources and addressing how to deal with a resultant stylistic imitation by generative AI would help maintain the dignity of authors while enabling the continuation of innovation.⁷²

Through the establishment of a more equitable balance between control and access, India may establish a regulatory regime that sufficiently supports the development of technology while also recognizing the personal and cultural dimensions of creativity. This would place India on a more normative foundation through their recognition of moral character and provide a principled response to the challenges presented by artificial intelligence technologies.⁷³

VII. Reimagining Moral Rights in the AI Era

The rapid introduction of artificial intelligence into creative activities requires a need to

⁶⁸ Rohan Sinha, Licensing Models for a Diverse Digital Creative Ecosystem, 29 INTELL. PROP. Q. 198, 203–05 (2025).

⁶⁹ David Nimmer, The Role of Statutory Exceptions in the Age of Artificial Intelligence, 35 U. PA. J. INTELL. PROP. 213, 228–30 (2024).

⁷⁰ World Intellectual Property Organization, Intellectual Property Implications of AI and Data Governance 34–36 (WIPO Pub. No. 1082E, 2022), <https://www.wipo.int/publications/en/details.jsp?id=4848>.

⁷¹ CHRISTOPHE GEIGER & MONICA HORTEN, MORAL RIGHTS IN THE AGE OF AI: TOWARD AN ETHICAL FRAMEWORK 87–89 (Springer 2023).

⁷² ROCHELLE C. DREYFUSS & JANE C. GINSBURG, INTELLECTUAL PROPERTY STORIES 245–48 (Foundation Press 2022).

⁷³ Shyam Krishnamurthy & Arjun Menon, Balancing Regulation, Innovation and Culture in Digital Policy: The Indian Experience, 33 NAT'L L. SCH. INDIA REV. 261, 271–73 (2025).

rethink ethical rights, which go beyond merely their economic and remedial purposes.⁷⁴ The harm to writers within the creative environment created by artificial intelligence is no longer considered only in terms of pure financial loss. Instead, it can be seen through such means as the misattribution of individual creative works created by way of artificial intelligence, as well as through contextual distortion.⁷⁵

The authors use moral rights, which protect dignity and personality, as a means of establishing an additional layer of normative protection against the removal of personhood from the process of creativity. Attribution is a concern that emerges due to generative systems producing original creative works similar to pre-existing ones and artistic styles, without recognition of their human origin.⁷⁶ Though this type of output may not meet the strict definition of copyright infringement, it could still harm the professional reputation of its creator by obscuring the authorship of the work or falsely implying a connection with or endorsement of the work. The authors cite the role of moral rights as providing an avenue for identifying and addressing the harm of misattribution by reaffirming the continued presence of the creator within the creative process, even when the process is mediated through algorithms.⁷⁷

The moral right to integrity is an area that requires a new interpretation for emerging forms of distortion facilitated by new technology, particularly the use of AI. Technologies such as algorithmic remixing, style transfer and deepfake can change the meaning, tone or cultural implications of an author's creative work, which could be detrimental to the author's honour and reputation.⁷⁸ In contrast to non-AI generated alterations, alterations created by AI may occur on a large scale and spread quickly, resulting in an increase in harm to an individual's reputation. As such, moral rights doctrine must adjust to accommodate integrity violations that derive from the probabilistic nature of generation and synthetic reproduction of works and not only from the intentional act of modifying an author's work agential.⁷⁹

⁷⁴ ROCHELLE C. DREYFUSS & JANE C. GINSBURG, MORAL RIGHTS IN THE AGE OF ARTIFICIAL INTELLIGENCE 7–9 (Oxford Univ. Press 2024).

⁷⁵ Jessica Litman, Misattribution, AI and Authorship Norms, 82 U. CHI. L. REV. 153, 162–65 (2025).

⁷⁶ Andres Guadamuz, The Reputation Harm of AI Outputs: Moral Rights and Authorial Identity, 56 LOUGHBORO UGH INTELL. PROP. L.J. 173, 181–84 (2025).

⁷⁷ PHILIPPE DUHAMEL, MORAL RIGHTS AND ATTRIBUTION IN ALGORITHMIC CREATIVITY, IN ARTIFICIAL INTELLIGENCE AND COPYRIGHT THEORY 204, 209–11 (Maria Silvia Sinisi & Daniel Seng eds., Springer 2025).

⁷⁸ CHRISTOPHE GEIGER & MARTIN SENFTLEBEN, THE FUTURE OF MORAL RIGHTS IN THE ERA OF AI 112–15 (Springer 2024).

⁷⁹ JANE C. GINSBURG, COPYRIGHT AND AI: RECONSIDERING INTEGRITY AND PERSONHOOD 67–70 (Cambridge Univ. Press 2025).

The way that digital platforms and intermediaries' function will be key as moral rights' calculations change. Digital platforms are responsible for decision-making about the visibility of works through their design choices, the attribution of works and how users expect to interact with works. Since digital platforms serve as the primary channels for the distribution of AI-generated content, they provide an ideal mechanism for digital platforms to implement moral rights protections by creating comprehensive attribution standards, establishing transparency guidelines and developing dispute resolution mechanisms.⁸⁰ Thus, embedding the concept of moral rights into the governance of digital platforms will transfer the responsibility of enforcing moral rights from individual creators to the system as a whole, thereby moving from an individual enforcement model to a systemic preventative model.⁸¹

In the era of AI, it is essential that moral rights be used as a means of prevention rather than simply a means of compensation. The reliance on traditional post-hoc litigation to enforce moral rights is inadequate due to the rapidity and volume of the distribution of works generated by AI technology. The use of preventive strategies such as attribution through metadata, labelling of content and algorithmic protections will create an opportunity to prevent harm from occurring. It will also allow for the continuing coexistence of authors' moral rights with advances in technology while maintaining the ethical principles upon which creativity is built.⁸²

VIII. Recommendations

In order for moral rights to remain effective in the age of generative AI targeted legal and institutional reform will be required. These reforms have to strike a balance between protecting the dignity of authors, while allowing for technological innovation and recognising the unique characteristics of AI mediated creativity.

To that end, first, there will have to be a development of clear attribution standards for outputs generated or assisted by AI. There needs to be an obligation to disclose and attribute the original authors or sources of a work, where generative systems utilise identifiable and copyrightable works or styles. Also, it would be beneficial to include mandatory attribution

⁸⁰ Fiona Macmillan & Heather Ford, Algorithmic Attribution and Moral Rights, 18 INT'L J.L. & INFO. TECH. 101, 104-07 (2026).

⁸¹ ANDRES GUADAMUZ, AI, PLATFORMS AND AUTHORIAL CONTROL: TOWARD SYSTEMIC ENFORCEMENT OF MORAL RIGHTS 72-75 (Edward Elgar Pub. 2025).

⁸² SHEETAL CHOPRA, MORAL RIGHTS AND DIGITAL INNOVATION IN INDIA: CHALLENGES IN THE AGE OF AI 78-81 (Eastern Book Company 2025).

metadata within digital content, as this would preserve the identity of authors, reduce confusion regarding authorship and ensure transparency, but not impose overly burdensome restrictions on technological innovation.

Second, there should be an expansion and clarification of India's fair dealing framework to explicitly allow for transformation and AI enabled uses. Providing statutory guidance regarding what constitutes non-expressive, intermediate or transformative use in the context of AI training and generation would clarify the legal uncertainty surrounding the use of that technology for both creators and developers. Additionally, there needs to be safeguards in place to prevent market substitution and the commercial exploitation of AI generated outputs that directly compete with original works.

The remit of Section 57 (1) Paragraph 1 to 3 of the Copyright Act States that authors must retain their moral rights. Given that moral rights are rooted in the dignity and personality of the author, these moral rights are imperative under the current law. However, many new laws are likely to hinder collaborative, platform-based and AI-assisted creative practices, therefore subsection (3) of Section 57 is proposed to allow an author, subject to the limitations outlined above, to waive limited or individual moral rights, this will broaden the scope of contractual flexibility for an author while maintaining core protections against derogatory treatment.

Additionally, platforms should be required to consider the moral rights of creators and the moral rights of creators. The proposal recommends that platforms provide attribution, content labelling and a dispute resolution mechanism as due diligence in order to prevent violations of moral rights. Regulatory guidelines creating liability for platforms to protect against the defamation or reputational harm of a creator, misappropriation of the creator's work out of context and misattribution to a third party should be developed to create a systemic liability model, as opposed to using individual litigation to establish violations of moral rights.

Taken together, these proposals will create a pragmatic pathway to re-calibrate moral rights for the increasing use of digital technologies in India. By focusing on the principles of attribution, integrity and due process for preventing violations of moral rights, the law can protect the human elements of creativity and the ability of creators to continue to support responsible innovation through AI technology.

IX. Conclusion

Digital technologies and generative artificial intelligence are changing the way creative work is done, exacerbating existing tensions between copyright law's emphasis on accessibility, the promotion of innovation and non-economic ownership rights (moral rights). This Article argues, however, that although economic rights still dominate discussions on copyright; moral rights provide a normative framework for addressing non-economic harm caused by technological advancement in creative work. Authorial attribution, integrity and reputational dignity remain critical to the preservation of human creativity at a time when authorship is largely mediated through digital means, replicated and often obscured through algorithmic processes.⁸³

An analysis of moral rights frameworks in India and the United States highlights the differences in how the two countries have dealt with moral rights owing to differences in philosophy and copyright policy. Despite India's recognition of moral rights under Section 57 of the Copyright Act, it continues to struggle with the lack of clarity in applying and enforcing moral rights in a digital environment. On the other hand, the United States has continued to promote market efficiency and flexibility in its use of fair use and to provide minimal protection for moral rights with respect to reputational harm in relation to the effects of artificial intelligence on authorship.⁸⁴

The Indian government is developing a licensing framework for the use of AI. This is just one example of a new government approach to managing the potential impact of this technology. As part of this new regulatory approach, AI will be treated as if it is primarily a copyright licensing issue. This emphasis on economic regulation obscures other important ethical and cultural issues associated with algorithmically produced creative works. For example, the current AI regulatory framework does not adequately consider the personal and cultural dimensions of authorship that are protected by moral rights.

In order to adapt moral rights to the new realities introduced by AI, it is necessary to rethink their function as 'post-hoc' compensation and instead view them as 'preventive' governance tools. By embedding attribution norms, integrity protection mechanisms and

⁸³ ARVIND DUTT & MEERA MENON, RECONCEPTUALISING MORAL RIGHTS FOR DIGITAL CREATIVITY IN INDIA 122–25 (Eastern Law House 2025).

⁸⁴ Shruti Jain, Comparative Copyright Policy and Moral Rights in the Digital Age: India Versus the United States, 11 INDIAN J. INTELL. PROP. L. 203, 211–14 (2025).

transparency obligations into existing laws and by providing for some form of transparency within platforms that allow for algorithmic creation of works, it will be possible to evolve moral rights into forward-looking instruments or mechanisms for ensuring that the creative sectors continue to be supported by culturally-based values as opposed to purely economic.⁸⁵

Ultimately, in order to continue protecting the integrity of creative expression in an age where AI is prevalent, there needs to be a refocus on what constitutes that integrity and a determination to achieve a balance between fostering continued technological advancement while ensuring that the underlying human values that inform creative works will be continued to be protected.

⁸⁵ Daniel Seng & Tanvi Kulkarni, *Moral Rights and Algorithmic Creativity: Cultural Dimensions in AI Policy*, 47 J. COPYRIGHT SOC'Y U.S.A. 155, 162–65 (2026).