
EXAMINING THE USE OF GENERATIVE AI IN THE MUSIC INDUSTRY AND ITS LEGAL CHALLENGES

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ABSTRACT

The rapid advancement of generative artificial intelligence is transforming the music industry by enabling the creation of musical compositions, imitation of established musical styles, replication of artists' voices, etc. While these developments present significant opportunities for innovation and creative expression, they also raise complex questions concerning copyright, authorship, ownership, and the protection of existing creative works.

This article examines the use of generative AI in the music industry and the legal challenges arising from its increasing use. In particular, it analyses the copyrightability of a person's voice and AI-generated musical works, with reference to judicial developments such as *Midler v. Ford Motor Co.*, *John Facenda v. The*

National Football League, *Tech Plus Media Private Ltd. v. Jyoti Janda*, *Asia Pacific Publishing Pte. Ltd. v. Pioneers & Leaders (Publishers) Pte. Ltd.*, and *Thaler v. Perlmutter*.

The article discusses that although AI may serve as a powerful creative tool, the absence of clear statutory provisions governing AI-generated content creates uncertainty regarding authorship and ownership, particularly where AI systems replicate an artist's voice or draw upon existing copyrighted works. The article concludes by highlighting the need for a coherent legal and regulatory framework in India that safeguards intellectual property rights while facilitating technological innovation and ensuring that generative AI complements, rather than undermines, human creativity.

Introduction

The emergence of generative AI technology has revolutionized the music industry, offering unprecedented growth in music creation, composition, etc. However, this technological advancement brings forth complex legal questions, particularly in the realm of intellectual property rights. This being so for the reason that generative AI has become increasingly proficient at mimicking voices, composing original music while tailoring them to specific preferences and therefore challenges the traditional notions of ownership. For example, a TikTok user known as Ghostwriter977 garnered widespread attention when the said user released a track titled "Heart on My Sleeve," using AI trained on the works of renowned artists Drake and The Weeknd to produce the song¹. Impressively, the AI-generated track mimicked the voices and musical styles of the artists with uncanny accuracy². However, the euphoria surrounding Ghostwriter977's creation was short-lived, within days of its release, the song was abruptly removed from TikTok, Spotify, and other platforms following claims by the artists' record label, Universal Music Group³. The takedown raised significant questions and ignited a debate within the music community.

In light of these developments, it is evident that a regulatory framework tailored to the intersection of AI and the music industry is essential. This framework should address issues of ownership, and lay down clear guidelines and regulations that balance the interests of creators, consumers, and technology developers.

Meaning of Generative AI

Generative AI refers to deep-learning models that can generate high-quality text, images, and other content based on the data they were trained on.⁴ It denotes sophisticated deep-learning models capable of processing raw data, such as entire Wikipedia, the complete literary works of Shakespeare, etc and subsequently learning to produce probable outputs upon request. Essentially, these models encode a simplified version of their training data and utilize it to

¹ *AI created a song mimicking the work of Drake and the Weeknd. what does that mean for copyright law?*. Harvard Law School. (2023, May 2). <https://hls.harvard.edu/today/ai-created-a-song-mimicking-the-work-ofdrake-and-the-weeknd-what-does-that-mean-for-copyright-law/>

² Ibid

³ Supra Note 1

⁴ Martineau, K. (2024, February 14). *What is generative AI?* IBM Research Blog. <https://research.ibm.com/blog/what-is-generative-AI>

generate new work that closely resemble, yet differ from, the original dataset.⁵

Some notable examples of the use of generative AI are platforms like: “DeepArt” and “Artbreeder” enable users to create artworks using generative algorithms; Google’s “Magenta” and Sony’s “Flow Machines”, can compose original music pieces in various genres and styles.

Application of generative AI in Music Industry

Generative AI has found several applications within the music industry, revolutionizing the way music is created, composed, and even performed. The following are some notable ways in which generative AI is utilized:

Voice Mimicry: Generative AI can mimic the voice of professional singers with astonishing accuracy. By analyzing and learning from recordings of specific vocalists, these AI systems can replicate their singing style, tone, and nuances, allowing for the creation of entirely new vocal tracks that sound indistinguishable from the original artist's voice. For instance, a New York City based song-writer and music producer known as SIXFOOT5 showcased his ability to seamlessly replace his own vocals with those of Adele in his original song "The Cape"⁶. Utilizing Adele's vocal profile from a server, he transformed the track into one that sounded like Adele singing his lyrics⁷. However, SIXFOOT 5 clarified that he has no plans to release or sell the song; instead, he views it as a potential proof of concept for pitching the track to Adele in the future⁸.

Original Music Composition: Beyond imitating existing voices, generative AI is capable of composing entirely original pieces of music. For instance, Suno is an artificial intelligence (AI) music generator that can create original songs using a simple text prompt.

In India, the intersection between generative AI and the music industry could be seen in the Tamil film “Lal Salaam” where renowned composer, Mr. A.R Rahman, utilizes AI-generated voices of late singers Bamba Bakya and Shahul Hameed after taking permission from their

⁵ Ibid

⁶ Smith, N., Lippiello, E., & Pereira, I. (2023, November 3). AI songs that mimic popular artists raising alarms in the music industry. *ABC News*. <https://abcnews.go.com/US/ai-songs-mimic-popular-artists-raising-alarmsmusic/story?id=104569841>

⁷ Ibid

⁸ Supra Note 6

respective families for one of its soundtracks, *Thimiri Yezhodu*.⁹

Copyrightability of a Person's voice

The Copyright Act, 1957 protects original literary, dramatic, musical and artistic works and cinematograph films and sound recordings from unauthorized use¹⁰. Unlike patents, copyright protects the expression of ideas and not the ideas themselves. As regards, the question whether voice can be copyrighted, the answer would be no.

In the case of **Midler v. Ford Motor Co**¹¹, Ford Motor Company and its advertising agency advertised the Ford Lincoln Mercury with a series of nineteen 30 or 60 second television commercials. A number of popular songs of the seventies were sung on each commercial. The agency tried to get the original artist who had popularised the songs to sing them but failing to do so in ten cases, the agency had the songs sung by “sound alikes”. The Court of Appeal held that a voice is not copyrightable because vocal sounds are not “fixed,” but common law rights could be enforced since “the singer manifests herself in the song. To impersonate her voice is to impersonate her identity”. Therefore, Midler succeeded in advancing a claim that the use of her voice constituted appropriation of her right of publicity, however her copyright claim failed.

In **John Facenda v. The National Football League**¹², where in 2005, NFL Films produced "The Making of Madden NFL 06" about the soon-to-be released annual update of the video game that simulates NFL games. The program used sound recordings, taken from earlier NFL Films' productions, of three sentences read by Facenda who won national acclaim for his NFL Films work and his Estate credits that fame to the special qualities of his voice, it was held that “Facenda's voice is outside the subject matter of copyright.”

Therefore, while the voice itself may not be subject to copyright due to its ephemeral nature, the significance of the singer's identity and the manifestation of their persona in their vocal performance is recognised.

⁹ Mathi, S. (2024, February 2). AI is not a threat to music industry if used in the right way: AR Rahman. *MediaNama*. <https://www.medianama.com/2024/02/223-ar-rahman-ai-soundtrack-lal-salaam/>

¹⁰ Section 14, Copyright Act, 1957

¹¹ Midler v. Ford Motor Co., 849 F.2d 460

¹² John Facenda v. The National Football League , MC/07/00025

Copyrightability of AI Generated Music

The music produced by AI technology can either utilize the voice of a known artist or generate an original music from text prompts or mimic and transform already existing copyrighted music. Generally, in case of musical works, the first owner of the copyright is the composer of the work¹³ and are reserved for human authorship, based on the principles of originality and human creativity.

However, by virtue of the 1994 Amendment computer-generated works are recognized, and the person who causes the work to be created is said to be the author of that work.¹⁴ This raises questions about whether AI-generated music falls under this category and who holds the copyright - the AI programmer or the user generating the content. But in any case, it would not be the AI that is granted the copyright for the very reason that at present copyright laws recognise only natural persons as capable of holding copyrights. In the case of **Tech Plus Media Private Ltd. vs. Jyoti Janda**¹⁵ the Delhi High Court held that a juristic person is incapable of being the author of any work in which copyright may exist. In the case of **Asia Pacific Publishing Pte Ltd. v Pioneers & Leaders (Publishers) Pte. Ltd**¹⁶ it was held that copyrights are granted to natural persons rather than corporate entities, and legal rights are derived solely from human authorship. Moreover, the music generated by AI may not even meet the criteria of originality and creativity in as much as it is trained on existing musical works and merely mimics the same.

In 2023, the US District Court for the District of Columbia in the case of **Thaler v. Perlmutter**,¹⁷ wherein Stephen Thaler claimed copyright ownership for an AI generated visual work titled “A Recent Entrance to Paradise” on the basis of being the machine’s owner., the court held that copyright protection is reserved for works of human creation. Copyright is designed to adapt with the times¹⁸. Despite its adaptability, there's a steadfast recognition that human creativity is the essential element at the heart of copyrightability, even when it's expressed through new tools or mediums¹⁹.

¹³ Section 2(d), Copyright Act, 1957

¹⁴ Ibid

¹⁵ Tech Plus Media Private Ltd. vs. Jyoti Janda (29.09.2014 - DELHC) : MANU/DE/2438/2014

¹⁶ [2011] SGCA 37

¹⁷ Thaler v. Perlmutter, Case 1:22-cv-01564-BAH (D.D.C., Aug. 18, 2023).

¹⁸ Ibid.

¹⁹ Supra Note 17.

Thus, copyright in music generated using Artificial Intelligence requires human involvement, creativity, inputs etc. In such a case, the copyright would exist with the user of such AI tool who “causes the work to be created” and not in the owner of such tools.

Requirement for Legal Framework

As the use of generative AI in the music industry continues to proliferate, there is a pressing need for a comprehensive legal framework in India to govern its use and mitigate potential risks. At present, the Indian Patents Act, 1970 as well as the Copyright Act, 1957 are not well equipped to facilitate inventorship, authorship and ownership by Artificial Intelligence.²⁰ The Parliamentary Standing Committee in its 161st Report had suggested establishing a distinct set of rights specifically tailored for the protection of AI and AI-related innovations. Additionally, it recommended the Department of Commerce to review the current legislations, such as The Patents Act, 1970, and Copyright Act, 1957, for integrating the evolving technologies of AI and AI-related inventions within their scope.

However, the Minister of Commerce and Industry, Shri Som Prakash, stated that there is no requirement to create a separate category of rights for Artificial Intelligence and related inventions in the Indian IPR Regime in as much as while Artificial Intelligence (AI) and related innovations is an evolving stream of technology the current legal framework under the Patent and Copyright Act is well-equipped to protect Artificial Intelligence generated works and related innovations²¹. Yet, the determination of ownership of AI generated content remains a legal challenge as the Copyright Act 1957 does not address AI generated works and does not consider AI to be a creator/author of a work. Its use in the music industry has not been without controversy. AI companies like OpenAI, Microsoft, and Stability AI face lawsuits from artists, musicians, and authors accusing them of using their work without appropriate compensation.²²

Conclusion

Generative AI is promising as a tool for innovation and creativity in the music industry.

²⁰ Department related to Parliamentary Standing Committee on Commerce, Rajya Sabha, 161st Report on Review of the Intellectual Property Rights Regime in India, 2021

²¹ Answer to Unstarred question no. 845 Available at: <https://sansad.in/getFile/annex/263/AU845.pdf?source=pqars>

²² Michael (2023) *The Times sues OpenAI and Microsoft over A.I. use of copyrighted work*, *The New York Times*. Available at: <https://www.nytimes.com/2023/12/27/business/media/new-york-times-open-ai-microsoftlawsuit.html>

However, its use raises complex legal challenges that must be addressed to ensure the protection of personality rights of artists, to protect intellectual property rights and creative expression. By a proper regulatory framework, we can pave the way for a future where generative AI enhances, rather than undermines, the vibrant ecosystem of music creation and other art forms.