
GENERATIVE ARTIFICIAL INTELLIGENCE VIS-A-VIS INTELLECTUAL PROPERTY RIGHTS

Shubhi Jain, Amity Law School, Noida

ABSTRACT

Over the past couple of decades, technology has expanded at a previously unseen rate. In a span of a couple of decades, advancements that were so hard to imagine that it was only possible to call them science fiction have become reality. A significant moment in the twenty-first century has been the rapid growth of artificial intelligence (AI), which has revolutionized knowledge creation, communication, and conservation entirely. It is more than a technological revolution, as it has changed our concept of machines, thinking, creativity, and intelligence. The basic concepts of intellectual property rights (IPR) are being challenged, which is one of the most significant impacts of this shift.

The advent of AI systems capable of generating content—text, images, music, inventions, and so on—are doing so independently or with minimal human involvement—is increasingly placing pressures on the existing intellectual property rights (IPR) system, previously based on human creativity, ingenuity, and moral right.

The research explores the ways in which current legal structures define and distribute rights over creative and inventive works with a concentration on generative AI—software like language models, image generators, and computer-aided design software. The research finds a hidden tension: the majority of legal systems remain committed to withholding non-human actors authorship or inventorship status, even though AI tools exhibit unparalleled creative abilities. This generates legal vacuums, regulatory loopholes, and commercial uncertainty.

1. Introduction

Artificial Intelligence (AI), a revolutionary field of computer science that allows machines to simulate human intelligence, learn through experience, and make decisions independently, is perhaps the most revolutionary technological development of the times.¹

Besides being a scientific development, artificial intelligence (AI) has in recent decades become a potent force for social transformation. Its uses cover an extraordinary range of sectors ranging from research, medicine, law, money, education, production, and leisure.² The distinctive aspect of AI is its ability to simulate intellectual functions like perception, reasoning, language processing, imagination, and decision-making that were traditionally perceived to be the exclusive domain of humans. AI systems often tend to act like collaborators or agents on their own, capable of adapting to changing situations and operations with minimal aid from humans compared to previous technologies that acted more like tools.³

The advent of generative AI—systems designed to generate content such as writing, graphics, sound, and code—is perhaps the most important development in AI in recent times. The ability of tools such as Google's Gemini, OpenAI's GPT series, and image generators such as DALL·E or Midjourney to replicate human creativity with remarkable accuracy has mesmerized individuals all over the globe. Poetry, music, computer art, and even legal arguments can be generated by these tools.⁴

Algorithms learning from recent human work are more and more mirroring creativity, which was previously thought to be a human skill dependent on intuition, emotional intelligence, and experience.⁵ AI's capacity to recombine existing pieces into new entities defies traditional philosophical and legal conceptions of originality, even though it has no mind and intention. Can outputs ever be "creative" if it is possible for machines to create new works based on information collected earlier? And if so, to whom do they belong to—the user, the programmer, or the AI system itself, or nobody?⁶

¹ Stuart Russell and Peter Norvig, *Artificial Intelligence: A Modern Approach* (Pearson, London, 4th edn., 2020)

² M. Ryan Calo, "Artificial Intelligence Policy: A Primer and Roadmap" 51 U.C. Davis L. Rev. 399 (2017).

³ Luciano Floridi and Josh Cowls, "A Unified Framework of Five Principles for AI in Society" 1 Harvard Data Sci. Rev. (2019).

⁴ Niva Elkin-Koren and Maayan Perel, "Sneak Preview of Creativity: AI and Copyright," 37 Cardozo Arts & Ent. L.J. 591 (2019).

⁵ Annemarie Bridy, "AI Authors: Making Copyright Law Safe for Machines," 35 Berkeley Tech. L.J. 1 (2020).

⁶ Jane C. Ginsburg, "The Concept of Authorship in Comparative Copyright Law," 52 DePaul L. Rev. 1063 (2003).

In the artificial intelligence era, these are some of the concerns at the very heart of modern intellectual property right (IPR) debates. Human creativity and authorship have always been the pillars upon which IPR regimes, such as copyright, patent, and design rights, are established. Through granting writers exclusivity over their works, such legal mechanisms aim to stimulate original and inventive work. These foundations are challenged legally, though, when a computer autonomously creates a work of art in the form of a painting, music, or a patented innovation⁷.

This statutory uncertainty has far-reaching and consequential implications. The doctrine holds that the presence of a human author is generally required for protection in existing copyright regimes⁸. Works that are not authored by humans do not qualify for copyright protection, as per a uniform judiciary decision in major jurisdictions. Inventions made using AI are also not eligible in most legal systems because of patent limitations that require inventions to be credited to human inventors. This creates uncertainty and contradiction in global legal systems, particularly when goods made using AI spread and acquire market value.

Certain jurisdictions have already started exploring reform opportunities to encourage works generated by AI, such as by establishing sui generis regimes for machine-generated works or awarding rights to the human agents controlling the computers⁹. A global, concerted response remains elusive.

2. The Intellectual Foundation of Copyright Defense

The three essential principles of copyright protection are (i) originality of the work, (ii) fixation in a material form of expression, and (iii) authorship by a human creator. Besides being doctrinally significant, each of these principles is the foundation of domestic copyright law as well as international copyright law.

(a) The Work's Originality

Eligibility for a work's protection under copyright law is assessed through its originality, serving as a threshold criterion. This suggests that the piece should be self-created and reflect

⁷ P. Bernt Hugenholtz, "AI and the Future of Copyright," 42 EIPR 1 (2020).

⁸ U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* (3rd edn., 2021), § 306.

⁹ World Intellectual Property Organization, *Draft Issues Paper on Intellectual Property Policy and AI* (WIPO, 2020).

at least a degree of originality. Despite the diverse perception of this criterion across different jurisdictions, the overriding requirement remains that the work has to be original and have the author's own creative fingerprint.¹⁰

The "skill and judgment" criterion, which mandates the application of mental effort to the production of the work, has been reinforced by Indian courts.¹¹ In contrast, American law, particularly the Feist case, demands a "modicum of originality."¹² By making the work be the result of the author's own intellectual invention, the European Union is more personality-based.¹³

The issue of whether work created by AI can be "original" arises, especially when there is minimal or no human contribution. Can a machine that imitates probability distributions and patterns in data be original? Since the concept of uniqueness is inextricably linked to the human creative process, most legal structures give a negative answer.

(b) Attachment to a Material

The condition that a work must be fixed in a perceptible or concrete form that allows reproduction or communication is referred to as fixation. This requirement ensures that the work has indeed been conveyed in a concrete manner and is more than just an idea. For example, a painting must be actually made; a musical work must be written or recorded.

Fixation is normally fulfilled in the case of AI-based content, especially since most output—be it audio, text, or image—is stored digitally. But whether this fixation is derived from a creative act or not is the question. Fixation can be purely mechanical if an AI produces content independently. Fixation alone does not merit protection since courts have usually demanded both fixation and novelty.

(c) Human Creator Authorship

The requirement that the author is a human is perhaps the most controversial requirement in the context of AI. Traditional copyright law presumes that creativity and authorship are

¹⁰ R.G. Bisset, "Originality in Copyright Law," *Journal of Intellectual Property Law*, Vol. 18, 2013.

¹¹ *Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1.

¹² *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991).

¹³ *Infopaq International A/S v. Danske Dagblades Forening*, Case C-5/08, EU:C:2009:465.

inherently human traits. Authors are said to be sentient beings capable of expressing their thoughts, emotions, and intentions through their works.

There have been a number of judicial decisions upholding this premise. A monkey that snapped a photo was denied copyright by the court in the case of *Naruto* in the United States¹⁴. The basic argument was that only legal persons, either natural or juristic, could claim authorship.

Artificial intelligence (AI) machines have no legal persons, volition, or consciousness. For this reason, under existing law, they cannot be considered authors. Instead, where they exert sufficient control or creative input, proxies—like developers, users, or parties controlling the AI—have been examined by legislators and judges to act as the legal authors.

These three pillars—human authorship, obsession, and originality—come together to form the theoretical and legal basis for copyright protection. While they consistently satisfy obsession, AI-generated works typically lack originality and authorship unless there is substantial human contribution. Substantial ambiguity is created by this void, which has generated ongoing debates regarding the need to modify copyright laws to suit new technology.

3. The Legal Interpretation of Creativity and Originality

The foundations of copyright protection are originality and creativity, which are the keys to making a work distinct from uncopyrightable facts or ideas. As per legalese, originality is something that a work should be of the author's own and cannot be copied, while creativity is intellectual effort and expression that lends the work its own character.

Different jurisdictions have different conceptions of the originality requirement.

In *Feist Publications, Inc. v. Rural Telephone Service Co.* (1991),¹⁵ the United States Supreme Court held that originality requires "independent production" and a "modicum of innovation." The Court basically eliminated the "sweat of the brow" theory by making it clear that effort or labor is not enough.

Indian courts have historically fought a battle in finding equilibrium between innovation and labor. The Supreme Court applied the "skill and judgment" test in *Eastern Book Company v.*

¹⁴ *Naruto v. Slater*, 888 F.3d 418 (9th Cir. 2018).

¹⁵ *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991).

D.B. Modak (2008), deciding that originality requires mental effort beyond mere or mechanical processes¹⁶. The decision held that there has to be some innovation, however minute.

Under the decision in *Infopaq International A/S v. Danske Dagblades Forening*, the EU has embraced the standard of "author's own intellectual creativity."¹⁷ That would mean the work must reflect the personality of the author, which is a criterion that assumes human authorship in and of itself.

Originality is an issue that is complexified and problematized when considering AI. Even though AI systems do not have mind or intention, they can generate material that is as creative as, if not more creative than, human material. Therefore, work that is produced exclusively by AI may fail to meet the legally required standard of originality. One barrier against such work qualifying for protection based on existing criteria is the absence of human inventiveness. But the requirement of uniqueness may be partially fulfilled in case human input is utilized, like choosing prompts, selecting datasets, or optimizing results. Under this hybrid scenario, the human role takes precedence in legal conceptions of authorship and novelty, and the AI becomes a tool instead of an autonomous creator.

4. The Limit of Human Participation

The level of human contribution required for a work to be deemed protectable is perhaps the most debated issue in AI and copyright law. Courts are starting to question the legal concept that authorship can be shown only when there is substantial human intervention, more than mere initiation of a process.

Thresholds of human involvement have been specified by legal analysts and policymakers. Some posit that if a human provides the intellectual basis for what the AI is producing, authorship can be established. Others advocate for a more stringent test that requires complete human scrutiny and post-processing. The level of human imagination should dictate whether or not AI-authored works can be copyrighted, per regulations introduced by the European Parliament.¹⁸

¹⁶ *Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1.

¹⁷ *Infopaq International A/S v. Danske Dagblades Forening*, Case C-5/08, EU:C:2009:465

¹⁸ European Parliament Resolution of 20 October 2020 on intellectual property rights for the development of artificial intelligence technologies (2020/2015(INI)).

Ultimately, the boundary of human involvement will likely remain a subjective, fact-based query. The form of the AI tool, the complexity of the input, the creativity of the output, and the role humans have in determining the final result are some of the factors influencing it. Such reasoning could similarly be utilized to determine the value of AI-generated works in India, under whose jurisdiction there has been strong insistence on intellectual effort and skills as a means of gauging originality.

Jurisdictional regimes are therefore tasked with crafting sophisticated architectures that protect copyright's basic tenants—rewarding creative work—yet permit fresh expressions of inventiveness as AI technology continues to evolve with increased human-machine collaboration.

5. Strategies towards Copyright of AI Works across Jurisdictions

In an attempt to counterbalance AI-generated content with existing regimes of copyright, governments have adopted a range of approaches. Depending on legislative wording, judicial tradition, and administrative policy, substantial variations exist in the treatment of AI-assisted or AI-generated works, although most legal systems continue to ground copyright in the concept of human authorship.

A) UK

In terms of the copyrightability of computer-generated works, the UK has adopted a relatively liberal approach. Under Section 9(3) of the Copyright, Designs and Patents Act of 1988, "the author shall be assumed to be the person by whom the arrangements necessary for the creation of the work are undertaken"¹⁹ where a computer-generated literary, dramatic, musical, or artistic work is involved. Originally intended for software or computerized satellite photography, this provision has been interpreted more widely to cover works created by artificial intelligence. It effectively attributes authorship to the individual responsible for or in control of the AI system. Although this provision solves some attributional issues, it still leaves space for interpretation in the case of totally autonomous AI systems with minimal or no human intervention.

¹⁹ UK Copyright, Designs and Patents Act 1988, s. 9(3).

B) India

Just as in the UK, India's Copyright Act, 1957, attributes authorship to computer-generated work to the person "who causes the work to be created" [Section 2(d)(vi)]²⁰. There is no specific law in India relating to independent AI, and the term is often understood to mean the person who develops or controls the AI system. There is no court precedent in India that deals with authorship of work created by artificial intelligence currently. The courts are hampered due to this uncertainty, particularly where AI operates independently without direct human control. The judge can rely on the ideas of talent, intellectual effort, and causation to establish authorship if legislative reform does not take place.

C) US

As per the U.S. Copyright Office and federal courts, human beings are the only ones who can qualify to be considered authors under the Copyright Act. In the case of *Thaler v. Perlmutter* (2022)²¹, the Copyright Office upheld this position by denying registration for a work generated by the "Creativity Machine" artificial intelligence system. Authorship, says the Office, involves "a human being's creative input and intervention." The *Zarya of the Dawn* case (2023)²² left little doubt that pictures generated by AI tools such as Midjourney cannot be registered, though words written by a human author may be protected.

The U.S. courts have also buttressed this argument by invoking such cases as *Naruto v. Slater*,²³ which maintain that non-human animals, like computers and animals, do not have authorship rights. Such decisions uphold the traditional understanding that copyright is indelibly associated with human rights and reinforce a strict reading of the statute's language.

D) The European Union

Through the assistance of directives such as the InfoSoc Directive and the Copyright in the Digital Single Market Directive, the EU has a relatively harmonized approach to copyright. The condition of "the author's own intellectual production" has been repeatedly emphasized by

²⁰ The Copyright Act, 1957 (Act 14 of 1957), s. 2(d)(vi).

²¹ *Thaler v. Perlmutter*, Civil Action No. 22-1564 (D.D.C. 2023).

²² U.S. Copyright Office, Re: *Zarya of the Dawn* (2023).

²³ European Parliament, Resolution on Intellectual Property Rights for the Development of Artificial Intelligence Technologies, 2020/2015(INI)

European courts, particularly the Court of Justice of the European Union (CJEU). The CJEU held in the *Infopaq* and *Painer* judgments that a work should embody the author's individuality and artistic choices. Autonomous AI is excluded as an author by these rulings implicitly.

However, the European Parliament has shown a readiness to reconsider these criteria. *Sui generis* rights for AI-generated works and the establishment of human operators as derivative authors have been suggested in policy documents and committee reports. Yet, anthropocentric definitions of authorship remain the basis for EU law.

E) China

China has adopted a more flexible and pragmatic approach. In *Tencent v. Yingxun Technology*²⁴, a Chinese court held that a news report written by AI was eligible for copyright protection because training and operation of the AI system by human hands made a valid creative contribution. Rather than excluding machine-generated material outright, Chinese law academics and courts generally analyze the nature and degree of human intervention. This implies a broader definition of authorship that is aware of technological necessities while ensuring that the human operator working the computer is accountable.

Various policy priorities are embedded in each of these models. The stringent model eschews diluting human-centered creativity while upholding the moral rights of human producers. Market utility and legal certainty are prioritized above all else in the functional model. With the pace at which technology is being embraced, the pragmatic model focuses on economic relevance and workable enforcement.

6. Implications for India

While India's current position is closer to the UK's functional attribution model, legislative silence regarding autonomous AI remains problematic. With the increasing application of generative technology in creative sectors, India needs to consider amending its copyright law to:

A) Provide more specific definitions of authorship and ownership for works created and

²⁴ *Tencent v. Shanghai Yingxun Technology Company*, Beijing Internet Court Judgment, 2019.

assisted by AI.

B) Establish registration requirements for works with varying degrees of human intervention.

C) Discuss if sui generis protection can manage outputs that are fully independent.²⁵

A balanced solution would maintain the doctrinal coherence of copyright law while protecting innovation. This still demands recognition that, even when technology is utilized, the human is the ultimate creator of creative work.

7. AI Works and Moral Rights

In most nations, particularly those based on civil law, moral rights form an essential part of copyright law. They are supposed to safeguard the reputational and personal connections that an author has with his work, and they distinguish from economic rights. These typically comprise the rights of being acknowledged as the author (attribution), objecting to the work being dealt with negatively (integrity), and, in some instances, having the work withdrawn from circulation (retraction).

The conception that an artistic work is a prolongation of the personality of the author, an expression of their inner thoughts and emotions, is the intellectual foundation for moral rights. The Hegelian theory of personality of intellectual property and this conception go very well together. Moral rights are thus traditionally given only to natural human beings, not legal persons or non-human agents, and are held to be inalienable and non-transferable in most jurisdictions.

The exercise of moral rights in AI work becomes impossibly difficult. Regardless of how advanced and skilled they are, AI systems do not possess consciousness, intent, and personality. They cannot be offended in terms of their dignity or artistic vision, nor do they possess reputations to maintain. Consequently, legal frameworks have generally denied AI the claim to moral rights.

But the rise of cooperative human-AI undertakings creates difficult problems. Should a human

²⁵ Arul George Scaria, *Supra* note.

who monitors, chooses, or alters an AI system's product, for instance, have moral claim entitlement to the completed product? Judges and legal scholars have debated whether human input in these cases is sufficiently creative and expressive to justify protection of moral rights.

Section 57 of the Copyright Act, 1957²⁶, which grants the author the right to claim authorship and to prevent their work from being distorted, mutilated, or otherwise altered, safeguards moral rights in India. This provision is mum on how it applies to works partially or wholly created by machines and presumes a human creator. Yet, courts can be persuaded to extend moral rights protection to the human contributor in AI-generated works if the human contribution to the creation is preponderant and reflective of their intellectual contribution.

Just so, writers should be human, and such rights should be present independently of economic rights, based on Article 6bis of the Berne Convention²⁷, the cornerstone of protection for moral rights across the globe. Moral rights in international agreements are inherently irrelevant to AI given that it is not legally endowed with a persona.

In practical terms, disputes about attribution and modification of AI-generated work can create moral rights issues. A human creator of a digital painting using generative AI, for example, could assert the right to be named and protest if the artwork is modified in a manner that undermines their aesthetic vision. The human collaborator can recover in moral rights terms, even though the AI cannot protest or be harmed.

Legal regimes will likely have to establish more specific rules that distinguish between entirely autonomous and human-directed outputs when AI tools are integrated into creative processes. They will also have to rethink how moral rights may be preserved or altered in cases where humans take a facilitative rather than a direct role.

Even as the platforms of expression and means evolve, the maintenance of human dignity, identity, and artistic integrity will continue to be the kernel of moral rights in the age of AI.

8. The Debate on Sui Generis Rights

Sui generis rights have been proposed as a feasible legal solution by scholars and policymakers due to the increasing complexity of generative AI systems and the resulting ambiguity about

²⁶ The Copyright Act, 1957 (Act 14 of 1957), s. 57.

²⁷ Berne Convention for the Protection of Literary and Artistic Works, Article 6bis.

authorship and ownership. Legal protections which are particularly tailored to address situations that do not neatly fall within standard intellectual property paradigms are called "sui generis." These rights, designed to fill the conceptual and doctrinal voids created by traditional copyright law, would represent a new category of protection in the case of works created by AI.

Since established copyright regimes rely on the presence of a human creator, they cannot offer protection for works generated entirely by computers with little human input. Owing to the legal gap that this exclusion causes, valuable outputs—such as AI-generated music, images, and text—are not properly protected, which could discourage innovation and business investment in AI development.

As a temporary paradigm, sui generis protection would provide the parties involved in the production of AI-generated content limited rights. These entitlements can be extended to the person or entity responsible for producing, training, or operating the AI system. The aim is to circumvent the ethical and legal concerns that come with providing authorship to non-humans while still recognizing the human and monetary input given to AI systems.

The following is one proposed structure for sui generis rights:

- a) Reduced term: Sui generis rights may be limited to 10–15 years, balancing exclusivity with public access later on, as opposed to the lengthy protection periods under regular copyright (e.g., the author's life plus 60 years in India).
- b) Defined scope: Without extending moral rights, protection could be restricted to particular kinds of works or uses, including commercial reproduction or adaptation.
- c) Attribution to human or corporate actors: Depending on the level of control and engagement, the rights may belong to the AI system's developers, deployers, or financiers.
- d) Mechanism for registration: Enforcing a registration requirement could guarantee accountability and transparency in the use of AI-generated content.

One frequent example of a potential paradigm for works produced by AI is the European

Union's Database Directive²⁸, which grants database creators sui generis protection independent of the material's originality. This arrangement acknowledges the investment in data gathering and potentially serves as a precedent for protecting machine-generated outcomes in cases where large organizational or financial efforts have been expended but human creative input is limited.

Sui generis rights critics argue that such protection could lead to overreach and monopolies over unoriginal or culturally undeserving material. Furthermore, there is concern that establishing a competing system of rights might be in conflict with existing copyright legislation and complicate enforcement, especially in cross-border cases.

Despite this, sui generis protections are a compelling argument based on the requirements of legal certainty and the need to stimulate ethical AI research. Taking a bespoke route may be a pragmatic option for countries like India, whose AI and copyright law is still in the formative stages. It may provide developers with the assurance necessary to invest in AI functionality without significantly altering the human-oriented authorship principles that underpin current copyright law.

The argument over sui generis rights ultimately captures the larger conflict between preserving legal consistency and adjusting to technological advancement. Lawmakers must decide if current frameworks can be modified to allow for innovation or whether a new legal system is required to address the difficulties of the digital era as AI continues to transform the creative sectors.

9. Reform Proposals

- A. Codify AI-Generated Works in the Law: Indian intellectual property legislations' statutory language needs to include AI-generated outputs legally. AI-generated or AI-augmented works need to be defined and demarcated under a separate sub-classification of the Copyright Act as well as the Patents Act. The inclusion should specifically render the requirement of eligibility, such as the extent of human

²⁸ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases.

involvement.²⁹

- B. Establish Specialized AI Output Rights: Some AI creations may not fall under existing copyrights. In these cases, sui generis protection that is both limited in scope and term should be created. This category may encourage innovation while preventing monopolization by providing an economic protection but not all of the benefits associated with traditional intellectual property.³⁰
- C. Promote Harmonization via Bilateral and Multilateral Forums: India must take the lead to join international efforts, like those led by the WTO and WIPO, to develop model laws or treaties that will act as blueprints for the interfaces of AI and IPR. Regulatory uncertainty and forum shopping will be minimized with standardized definitions and procedures.³¹
- D. Redefine Legal language to Encompass Machine Contribution: Through redefinition of underlying vocabulary, the law can embrace contemporary reality. To facilitate dynamic identification of collaborative human-machine output, an added new sentence defining "AI-assisted works" with percentage or functional requirement could become part of the legal lexicon.³²
- E. Facilitate Courts to Set Precedent on New Issues: Courts must be encouraged to judicially notice global trends and must be able to interpret existing provisions in new and innovative ways. Courts will be able to efficiently and quickly create jurisprudence with the implementation of specialized AI-IP benches and technical expert testimony.
- F. Formation of an AI-IPR Task Force: The DPIIT or Ministry of Electronics and IT may form a special task force to track AI-IP interactions, recommend administrative

²⁹ Siva Vaidhyanathan, *Intellectual Property: A Very Short Introduction* 42 (Oxford University Press, New York, 2017).

³⁰ Paul Goldstein, *International Copyright: Principles, Law and Practice* 203 (Oxford University Press, Oxford, 2001).

³¹ WIPO, *Technology Trends 2019: Artificial Intelligence* (World Intellectual Property Organization, Geneva, 2019).

³² Rochelle Cooper Dreyfuss, "Law and the Emerging Role of Artificial Intelligence," 8 *Yale J.L. & Tech.* 227 (2006).

reforms, and ensure that IP offices are in touch with the concerned regulatory bodies.³³

- G. Promote Responsible AI Innovation by implementing government-funded funding competitions or awards for AI uses that adhere to ethical intellectual property principles. Criteria for evaluation may involve benefit-sharing with disfavored artists, compliance with the law, and transparency of documentation.³⁴

10. Conclusion

One of the largest ethical and legal concerns of the twenty-first century is the dynamic interplay between intellectual property rights (IPR) and artificial intelligence (AI). Conventional concepts of inventorship, authorship, ownership, and infringement are being examined in a major way as the creativity, inventiveness, design, and decision-making capabilities of AI systems increase exponentially. AI has revolutionized a range of disciplines, ranging from engineering to medicine, literature to music, but it has also prompted legal systems to reconsider traditionally held foundations.

The intellectual property field is experiencing a revolutionary change in the era of artificial intelligence. Legal systems can no longer be based on anthropocentric models as robots increasingly emulate—and in certain instances, excel—human abilities to imagine, invent, and design. Exclusion of AI-generated works from IPR protection is a philosophical and practical contradiction as well as a legal one. The legal system risks deterring innovation and jeopardizing the foundational principles on which intellectual property law exists if it does not recognize the economic and social value of AI-generated outputs.

Yet, granting legal personhood to computers too early is not the solution. Rather, the goal should be to recast liability, attribution, and ownership in a manner that safeguards human agency and responsibility while it also captures technology reality. Creation of flexible but ethical strategies safeguarding human creativity while accepting machine-enabled progress involves coordination among the court, parliamentarians, and global forums.

³³ Press Information Bureau, “Task Force on Artificial Intelligence for India’s Economic Transformation,” Government of India, February 2018.

³⁴ OECD, “Recommendation of the Council on Artificial Intelligence” (May 2019).

By taking such paths, the legal system in India can be modified to adopt new technological truths without compromising on the three overriding goals of intellectual property rights (IPR), namely innovation, protection, and the common welfare.