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# ANALYZING THE EVOLVING CONCEPT OF ORIGINALITY UNDER INDIAN COPYRIGHT LAW IN THE ERA OF ARTIFICIAL INTELLIGENCE

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## ABSTRACT

The concept of Intellectual Property Rights is an ever flourishing and ever evolving concept in today's era. Safeguarding one's own intellectual creation is of utmost importance not only to reap monetary benefits but for overall growth and development of nation. But, the advent of Artificial Intelligence has challenged this kind of intangible rights. This paper sheds light on the concept of Originality in the field of Copyright Law and how the concept is evolving and shifting from traditional human centric approach to encompass various aspects and technological advancements in the age of Artificial Intelligence (AI). This paper further highlights the need for intersection of Artificial Intelligence and Copyright law which would promote innovation and investment in AI powered creative industries.

**Keywords:** Intellectual Property Rights, Artificial Intelligence, Innovation, Investment, Copyright Law, Originality, and AI powered creative Industries.

## Introduction

The sine qua non of copyright is the principle of originality.<sup>1</sup> In India, the concept of originality has evolved from sweat of the brow doctrine to skill and judgement test. Still, the major question that remains unanswered is whether works generated by Artificial Intelligence (AI) can be considered original? Are they eligible for copyright protection? In Global scenario, originality entails that the work must be independent. Originality serves as a foundational basis to determine whether work qualifies for copyright protection or not. It essentially implies that the work must come from the author himself and must not be replica of other's work. The work must reflect author's imagination and ideas.<sup>2</sup>

A.M. Turing has defined Artificial Intelligence as, development of computer systems that can perform tasks requiring human- like intelligence.<sup>3</sup> Originality have evolved over time under Indian Copyright Law<sup>4</sup>. Before the advent of Artificial Intelligence, originality meant creative human output that is author's own intellectual creation rather than mere copy.

However, with AI's ability to generate music, art and literature, Indian Copyright law now faces new challenges in defining and protecting originality. The rise of AI has sparked a debate around the concept of originality. When AI generates work based on input from existing works, it challenges the traditional notion that originality stems from human imagination alone. This raises questions about the value and recognition of AI generated work. Can a piece of work be truly considered original if its creation is heavily reliant on pre-existing data and algorithms? This dilemma is reshaping the understanding of the terms creativity and originality.<sup>5</sup>

Therefore, the paper attempts to analyze the current status of Indian Copyright Law, the impact of AI on the concept of Originality and the possible suggestions that can be adopted to pace up with the new technological advancements in the field of AI. The paper will specifically

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<sup>1</sup> Feist Publications Inc. v Rural Telephone Service Co., (1991) 499 US 340

<sup>2</sup> Hafiz Gaffar and Saleh Albarashdi, 'Copyright Protection for AI- Generated Works: Exploring Originality and Ownership in a Digital Landscape' (2024), Asian Journal of International Law <https://www.cambridge.org/core/journals/asian-journal-of-international-law/article/copyright-protection-for-aigenerated-works-exploring-originality-and-ownership-in-a-digital-landscape/12B8B8D836AC9DDFFF4082F7859603E3>> accessed 20 February 2025.

<sup>3</sup> ibid

<sup>4</sup> The Copyright Act 1957

<sup>5</sup> <<https://www.linkedin.com/advice/3/what-implications-ai-your-artistic-originality-yqovc>> accessed 20 February 2025

analyze the provisions in Indian Copyright Law regarding originality and how can there be harmonious intersection between AI and Copyright Law in India. In a future when artificial creativity shapes creativity more and more, this study provides a basis for rethinking originality and copyright law. In an age where AI-driven creation is becoming more and more prevalent, the research aims to clarify the standards for originality, copyright protection, and ownership difficulties.

### Concept of Originality under Indian Copyright Law

*“In depths of soul, creativity blooms,  
A tapestry woven with passion looms.  
With words and brush, visions take flight,  
Imagination’s spark, a beacon of light.  
In each creation, a glimpse of our worth,  
Humanity’s art, an endless rebirth.”*

*- Robert Frost.*

The ability to produce distinctive, valuable, and original ideas, concepts, and objects has long been seen as a characteristic that is exclusive to humans. A variety of cognitive skills, such as problem-solving, divergent thinking, and the capacity to draw new connections between seemingly unrelated items, are frequently needed for this process. Making something valuable and significant in a particular context is what true creativity is all about, not merely coming up with something novel?<sup>6</sup>

Both domestic laws and international agreements have influenced the substantial evolution of copyright laws in India. The Copyright Act of 1957, a comprehensive law that describes artists' rights and governs how their works are used, serves as the cornerstone. India complies with international copyright norms as a signatory to the Berne Convention.<sup>7</sup>

In the complex landscape of Indian Copyright jurisprudence, the act of 1957 became an essential source of copyright law. Section 13 of the act defines the scope for protection of “original literary, musical. Dramatic and artistic work”.<sup>8</sup>

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<sup>6</sup> < <https://deepdreamgenerator.com/blog/ai-art-originality> > accessed 25 February 2025.

<sup>7</sup> Bhavya Saxena, ‘Intersection of Artificial Intelligence and Copyright Laws’ (2024) Vol 2 (Issue 16) White Black Legal International Law Journal, <<https://www.whiteblacklegal.co.in/details/intersection-of-artificial-intelligence-and-copyright-laws-by---bhavya-saxena> > accessed 25 February 2025.

<sup>8</sup> The Copyright Act 1957.

A key idea in copyright law is originality, which establishes what is eligible for protection. Even though originality isn't defined specifically under the Indian Copyright Act of 1957, it plays a significant part in determining whether a work deserves copyright protection. India's perception of originality has changed over time as a result of British and other influences. At first, originality was thought to be the product of effort, talent, or discernment; however, contemporary interpretations highlight creativity as the crucial component.

During the colonial era, Indian copyright law followed the British “sweat of the brow” doctrine, which focused on the effort put into creating a work. Under this approach, a work that involved labour, even without significant creativity, could qualify for copyright protection. For example, the mere compilation of data or the reproduction of existing material, if it involved skill or judgement, was considered original. This standard, while practical, allowed for the protection of works that did not necessarily embody creative expression.<sup>9</sup>

Indian courts initially followed the "sweat of the brow" concept, but the Copyright Act of 1957 ushered in a new era following independence. With the historic Supreme Court decision in *Eastern Book Company v. D.B. Modak* (2008), the standard shifted to require a "modicum of creativity" in order for a work to qualify as unique. The court ruled that there needs to be some creative spark and rejected the notion that effort alone was sufficient for copyright protection. This ruling brought Indian law closer to international norms, especially the American approach set forth in *Feist Publications, Inc. v. Rural Telephone Service Co.*, in which the Supreme Court decided that originality requires more than labour, it demands minimal creativity.

In order to be considered original, a work must be independently created, represent the author's intellectual decisions, and entail some degree of originality, no matter how small. Due to this development, Indian copyright law now complies with international standards, which place a greater emphasis on intellectual work and individual expression as the foundation of uniqueness. However, the traditional definitions of originality, grounded in human creativity, face new challenges in the digital age, especially with the rise of AI-generated works. AI systems can produce content that mimics human creativity, but they lack personal agency and

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<sup>9</sup> Taruna Jakhar, ‘Redefining Originality: Human Creativity vs. Artificial Intelligence’ (2023), Vol 31, Journal of Computational Analysis and Applications, < <https://eudoxuspress.com/index.php/pub/article/view/1739?articlesBySimilarityPage=2> > accessed 25 February 2025.

subjective thought. This raises complex questions: Can works created by machines truly be considered original if they do not involve human intellectual effort or expression? As AI continues to evolve, it forces us to reconsider whether our current legal frameworks, built on human centred definitions of originality, can accommodate these non- human creators.<sup>10</sup>

### **Impact of Artificial Intelligence (AI) on traditional notions of Originality**

Rapid development in AI has reshaped the definition of creativity and called into question conventional ideas of originality that have historically been based on human emotional and cognitive processes. Algorithms that analyse vast datasets to find trends and provide results are the foundation of AI innovation. Because AI systems lack the autonomous cognitive processes that characterize human creativity, their ability to produce is limited by their reliance on pre-existing data. AI functions mechanically and according to preset rules, in contrast to human creators who rely on their inner thoughts and feelings. Since AI generates by referencing and recombining preexisting data, the results, despite their apparent innovation or uniqueness, are really derivative. The question of whether AI-generated works can actually be regarded as original is raised by this mechanical approach.

AI-generated products frequently lack the human intellectual effort and inventiveness required by current copyright regulations. As a result, these products typically don't satisfy the requirements for copyright protection. AI creativity is primarily objective and algorithmic, driven by data manipulation and pattern recognition, whereas human creativity is fundamentally subjective and emotional. Legal institutions will need to reconsider how originality is measured if AI is able to produce really original works without only using pre-existing material.

AI's output generation processes don't fit this conventional definition of uniqueness. Although AI has significantly advanced in many domains, the arts are among its most fascinating uses. As algorithms get more complex, they can produce art that not just imitates current styles but also experiments in novel ways. This phenomenon calls into question the essence of originality and creativity. Is it possible for machines to be genuinely creative without mind or subjective experience? Or are they just instruments for reproducing and reassembling

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<sup>10</sup> *ibid*

human inputs?<sup>11</sup>

Since AI may generate responses without the need for creative works, there isn't enough "individual involvement" to provide it a sufficient originality threshold because the results it generates are unpredictable. Therefore, within the Indian framework, an AI-generated work cannot be granted copyright. Nonetheless, the Copyright Act of 1957 was amended in 1994 to include computer-generated works under its purview.<sup>12</sup>

Thus, the Copyright claim is predicated on the definition of "personhood" as defined by the Copyright Act of 1957, which restricts authorship to natural persons. A computer-generated work could be linked to human activity when the amendment was introduced in 1994.<sup>13</sup>

Works created by humans or having "human authorship" are protected by copyright under Indian law. The content produced by AI is fundamentally not covered by this since it becomes difficult to identify the work's true source. For Copyright protection to be granted under the Indian framework, it is pertinent to note that some criteria must be fulfilled –

- 1] The material produced in this way needs to have "human authorship."
- 2] The content must have sufficient human input to qualify as the exclusive result of individuals' constant labour.
- 3] The resulting work needs to be original in its true sense. Section 13 of the Indian Copyright Act 1957 makes it clear that if the works in question are "original literary, dramatic, musical, or artistic works," copyright protection may be awarded.<sup>14</sup>

AI-generated content, such as literary, musical, and visual arts work, challenges ideas of authorship that are often required by copyright law to be created by a human creator.<sup>15</sup> From the invention of the printing press to the rise of artificial intelligence, which stands out as a

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<sup>11</sup> < <https://deepdreamgenerator.com/blog/ai-art-originality> > accessed on 27 February 2025.

<sup>12</sup> The Copyright Act 1957, s 2(d) (vi)

<sup>13</sup> <<https://csipr.nliu.ac.in/miscellaneous/navigating-indian-copyright-framework-in-the-age-of-ai-generated-works/>> accessed 27 February 2025

<sup>14</sup> < <https://www.iplink-asia.com/article-detail.php?id=1209> > accessed 27 February 2025

<sup>15</sup> Aakib Khan, Prashant Vaishnav, 'Intellectual Property law in the era of Artificial Intelligence' (2024) Vol 6 Issue 2, International Journal of Law, Policy and Social Review <<https://www.lawjournals.net/assets/archives/2024/vol6issue2/6056.pdf>> accessed 28 February 2025.

crucial turning point in its history, the development of the copyright legal system has seen substantial changes. AI technology has advanced to the point that the content it produces is supposedly comparable to expressions, a skill that was previously only performed by humans.

### **Implications and Future Directions**

As legal institutions struggle to define and protect these distinctive outputs, the emergence of AI-generated works has significant ramifications for copyright law. A careful analysis of originality, authorship, and the larger legal framework is necessary to comprehend the circumstances in which AI-generated works may be eligible for copyright protection under present legal standards.

AI-generated works must exhibit originality in order to be eligible for copyright protection; this requirement has historically included the need for independent invention and individual intellectual effort. But AI functions very differently from human creators; instead of using emotions or personal experiences, it uses algorithms to synthesize and recombine pre-existing material. Therefore, giving AI-generated works copyright protection is severely hampered by current legal requirements.

It is crucial to investigate particular circumstances in which these works might be regarded as original in order to overcome this difficulty. The level of originality in the AI's output is one possible requirement. There might be a case for originality if an AI system produces a piece of work that uses data in a truly creative way or offers an unexpected combination of elements. The idea of "sufficient creativity" could be used to assess whether the final product goes beyond simple copying or altering of previously created works.

The role that human agency plays in the creative process is another factor to take into account. The case for uniqueness may be strengthened if a person actively affects the algorithm's output through careful input, guidance, or curation. A revaluation of authorship, wherein the AI and the human operator share credit in the creative process, may result from the interaction between human intent and AI-generated outputs.

A unique type of copyright protection designed especially for AI-generated content might be required. Such a category could acknowledge algorithmic results' novelty without rigorously following conventional ideas of human-centred creativity. Additionally, by

acknowledging AI's distinct contributions to the cultural environment, this paradigm may enable a more flexible interpretation of creativity.

The idea of "algorithmic authorship" ought to be included in copyright regulations. This would entail appreciating how algorithms produce results and assessing how creative they are. The legislation can state that the creative techniques used to create the final work are likewise protected by copyright. This change in viewpoint, which nonetheless takes into account the moral rights of the human creators involved, may pave the way for new legal precedents.

Another important change is the establishment of explicit rules for copyright ownership. The issue of who is the rightful owner of works created by artificial intelligence is still unclear. Whether the AI's creator, the person who used it, should have copyright is a crucial question. or the AI itself. Making ownership clear will guarantee that innovators and artists are properly acknowledged and protected for their work.

Lastly, any changes to copyright rules must take public policy into account. It's crucial to strike a balance between the necessity to safeguard artists and the goal of encouraging innovation. While protecting individual rights, legal frameworks should encourage cooperation between human and AI artists, fostering the investigation of novel artistic forms. In order to create a copyright environment that is flexible and pertinent to the changing nature of creation, this balance will be essential.

AI does not inherently have the right to copyrights, even if it creates truly original stuff. Because copyright and human authorship are inextricably intertwined, there are important legal and philosophical questions about how copyright laws should change to accommodate the complexity of works produced by artificial intelligence.

The concept of intellectual labour serves as the foundation for the first defence of assigning copyright rights to the AI's actual programmer or developer. The AI system is designed and trained by the programmer, who devotes a great deal of time, knowledge, and imagination to this process. They essentially shape the AI's creative process by developing the algorithms and setting the settings that direct its output. Ownership is transferred to the programmer in recognition of their crucial role in the production of AI-generated works, as copyright is designed to safeguard the creative output of human artists.



In a similar vein, copyright ownership should be taken into account for the investors who finance the advancement of AI technologies. Significant financial resources and smart decision-making are required for AI development investments. The development of new technology is greatly aided by the efforts of investors, who frequently assume significant risk. The legal framework recognizes investors' contribution to the innovation ecosystem and guarantees their ability to profit from the economic success of AI-generated works by granting them copyright rights.

In the ownership equation, prompt generators—the people who give the AI particular inputs or instructions—should also be acknowledged. These quick inducements have the power to greatly impact the AI's output, directing it to create works that might not have surfaced in the absence of that specific input. rights law can more accurately represent the collaborative character of AI-generated content by granting prompt suppliers rights, acknowledging that several participants may have an impact on the final product.

But giving AI itself copyright ownership presents serious legal issues. Treating AI as a legal person would be necessary if it were to be acknowledged as an entity with the ability to possess copyrights. This brings up a number of intricate problems: Can AI file a lawsuit or be sued? Could it enter into contracts or own property? To achieve such recognition, legal frameworks would need to be fundamentally rethought, and new laws that could outline AI's rights and obligations as a legal entity would need to be created. Such modifications would have far-reaching effects, affecting not only copyright law but also many other facets of the global legal system.

Furthermore, acknowledging AI as a legal person may raise important moral and philosophical issues regarding the nature of agency, responsibility, and creativity. It would make it harder to distinguish between humans and machines, which would raise questions about accountability and the possibility that AI could violate legal rights in ways that are today unthinkable. Therefore, the old legal understanding of copyright as a way to protect human creativity must be maintained even as AI's ability to create original works advances. Thus, even in cases when AI produces original works, the programmers, investors, and prompt givers who help create those works should retain copyright ownership.

## **Conclusion**

Significant complications that defy conventional definitions and frameworks are revealed by the investigation of originality in copyright law, especially in relation to AI-generated works. This essay has traced the evolution of the Indian Copyright Law's definition of originality, showing how it has moved from emphasizing skill and labor to emphasizing creativity and individual expression. Although the move to demand a "modicum of creativity" is a positive step, these criteria are made much more difficult by the rise of AI-driven creativity. The issue of whether AI-generated outputs that imitate human creativity but lack the necessary emotional and intellectual involvement may be considered original is still up for debate. Future research must address how these issues affect copyright law, especially as it relates to authorship and ownership of AI-generated works. Although this conversation offers a starting point for comprehending these problems, it ultimately emphasizes the need for constant communication and modification as our legal systems change to satisfy the needs of a creative environment that is becoming more digital and AI-driven.