
COPYRIGHT(-ING) ARTIFICIALLY INTELLIGENT CONTENT: A COPY OR RIGHT?

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ABSTRACT

The advancement of generative Artificial Intelligence at an exponential rate has transformed the creative landscape which raises legal-ethical concerns over authorship of work and awarding legal persona to the Artificially Intelligent Models. The paper examines the evolving relation between two diametrically opposite dimensions of Intellectual Property and Artificially produced content, particularly in terms of authorship, ownership, and infringement. Even though AI lacks legal persona, its capacity to replicate literary and artistic expression has sparked controversy over its ability to infringe copyrights. The debate has also brought within its ambit the responsibility of the persons who put prompts on the generative model. Beyond issues of Intellectual Property Rights, the paper explores questions of privacy and processes of data collection without knowledge or consent. It further delves into the impact of generative AI on human creativity and reproduction rights. A comparative analysis of multiple countries shows that there still does not exist a comprehensive legal framework to deal with such modern-day problems. There exists a clear-cut need for the development of legislation, standards, and greater international cooperation to strike a balance between encouraging technological innovation and safeguarding human creativity.

Keywords: Copyright, Artificial Intelligence, Legal Fiction, AI Generated Content, Intellectual Property.

I: Introduction

When Martin Heidegger was saying that it is not technology which is evil per se, but its abuse¹, it seems that he was talking of present-day Artificial Intelligence. In an era where technology is developing at an exponential rate, it becomes difficult to keep it under check and control. The machines should not, however, at any cost, come as conquerors rather than creators.² ‘Facilitative’ models or Artificial Intelligence (AI) models were made to assist humans in any possible way that it could do. However, humans had something else planned. Instead of just taking minor help, they have started using AI models to write entire texts or copy someone else’s writing style, or even replicate a famous art form. But where does one put the limit? Is there a mere question of ethics? How can one sue an AI model for a copyright infringement, if at all there is any?

The following paper is an attempt to correlate Cyberspace with Copyright, two diametrically opposite arenas to protect the author of literature or the creator of an artwork who is finding it difficult to balance the two parallel spaces. It discusses basic yet crucial questions of defining copyright and AI followed by the questions of AI being subject to Copyright and other ancillary queries such as the need of a legislation regulating AI-generated content while raking up of the right to privacy. In the present context, ‘Artificial Intelligence Models’ would mean ‘Generative AI’, i.e. “*a machine-learning model that is trained to create new data, rather than making a prediction about a specific dataset. A generative AI system is one that learns to generate more objects that look like the data it was trained on.*”³

II: Copyright Framework

A ‘copyright’, governed by the Copyright Act⁴, in common parlance, is a legal term used to describe the rights of the creator or author over his artistic or literary work. It gets even easier to understand when we break the compound word to ‘copy’ and ‘right’ which translates into – simply a right to copy. Such works can be paintings, books, music, computer programs, and

¹ Peter Alawa, *Martin Heidegger on Science and Technology: It's Implication to the Society* 12 IOSR-JHSS 1 (2013); Martin Heidegger, *The Question Concerning Technology and Other Essay translated by William Lovitt* NEW YORK: HARPER AND ROW PUBLISHERS, 1977 P. 4.

² WIPO, *Artificial Intelligence and Copyright* (Oct. 1, 2017), available at <https://www.wipo.int/web/wipo-magazine/articles/artificial-intelligence-and-copyright-40141> (last visited May 10, 2026).

³ Adam Zewe, *Explained: Generative AI*, MIT NEWS, (Nov. 9, 2023) available at <https://news.mit.edu/2023/explained-generative-ai-1109> (last visited May 19, 2025).

⁴ The Copyright Act, 1957 (Act 14 of 1957).

any other similar work requiring human skill. When a person acquires a copyright over a literary or art work, he can legally reproduce, communicate, adapt, or translate the given work.⁵ Section 17, Copyright Act defines who owns the right over a piece of work. For a literary work the ownership is of the author. In the most extensive terms, copyright is a bundle of given by the law to the creators of literary, dramatic, musical and artistic works and the producers of cinematograph films and sound recordings. A 'bundle' because there is not one but multiple rights given to the acquirer. Each of these rights differ in duration depending on the nature of the work over which the right is acquired. In case any person is found infringing a copyright over a protected work, he shall be punished by the court either by way of a civil or a criminal remedy.⁶ Civil remedies could range from injunctions to damages, or even accounts of profits. Meanwhile, Criminal remedies can be either a fine or imprisonment.

III: Persona of Generative AI Models

Typically based off an algorithm, Artificial Intelligence or AI models are covered under the '*broad field of computer science that focuses on creating systems capable of performing tasks that typically require human intelligence*'⁷. In a layman's language it can be understood as a system which works on the basis of data input by a programmer.⁸

Certain data sets and algorithms are fed into the system, which later run on the basis of specific prompts put into the model. The outputs so generated are, thus, largely based on what the prompt is and how well is it drafted to suit the needs of the person. In certain situations, a previous chat done with the AI model also acts as an input for the same. For example, in Chatgpt 4.0, previous chats with the model can later be analysed to know the preferences of the operator. In simpler terms, if 'X' has been regularly using Chatgpt for a while and puts a prompt like, 'On the basis of my previous conversations with the model, analyse what sort of person I am and what are my preferences', Chatgpt would go on to give a detailed analysis of the person.

But, one needs to keep in mind that '*while programmers can set parameters, the work is*

⁵ Section 14, The Copyright Act, 1957 (Act 14 of 1957).

⁶ Chapter XIII, The Copyright Act, 1957 (Act 14 of 1957).

⁷ GOOGLE CLOUD, *What is Artificial Intelligence (AI)?* available at <https://cloud.google.com/learn/what-is-artificial-intelligence> (last visited May 11, 2026).

⁸ HEWLETT PACKARD ENTERPRISE, *What are AI models?* available at <https://www.hpe.com/in/en/what-is/ai-models.html#:~:text=In%20essence%20AI%20models%20operate,act%20upon%20subsequent%20data%20inputs> (last visited May 11, 2026).

*actually generated by the computer program itself – referred to as a neural network – in a process akin to the thought processes of humans’.*⁹

Such running of algorithms thus raises the fundamental question – Whether AI holds ownership of copyright? This question is an extension of another important deliberating point – Whether AI has the status of a legal person?

Law has an inclination towards pretence in terms of Legal fiction. Sir Henry Maine classifies it as one of the three great agencies.¹⁰ The conferment of legal persona to AI, however, has always been a debatable question.¹¹ Since it has the abilities similar to that of humans, many argue that it should be seen equivalent to that of a legal person. Any creation, thus, shall be subject to a copyright. However, others advocate that since AI largely works on the basis of a computer algorithm, it cannot be rightly said that it has a persona. Presently, the latter view prevails, and therefore, AI lacks a legal persona. Hence, since AI has not yet attained the status of a legal person, any of its creation is not subject to a copyright.

American jurisprudence has made it very clear that AI could hardly be recognised an author to acquire a copyright because *‘authors are those who are responsible for the creation of the tangible literary form, that could be read by others, and could have claimed copyright for themselves as ‘authors,’ because they were responsible for the revelations appearing ‘in such a way as to render the work as a whole original.’*¹²

However, with the rapid development of AI based models, the scope of what they can do is ever increasing; which has led scholars to rethink the decision and confer the model a legal persona.

IV: Generative AI and IPRs

Now that one has a basic understanding of how an AI model works and whether it is a separate legal person, one might naturally question if a copyright can be attributed to AI generated

⁹ *Supra* note 3.

¹⁰ Alan Diamond, *Fictions, equity and legislation: Maine’s three agencies of legal change*, GMSR available at <https://www.gmsr.com/wp-content/uploads/2016/06/Fictions-equity-and-legislation-Maines-three-agencies-of-legal-change.pdf> (last visited May 20, 2026).

¹¹ MANUPATRA, *The Conundrum of Legal Personhood in the Realm of Artificial Intelligence* (Oct. 9, 2024) available at <https://articles.manupatra.com/article-details/The-Conundrum-of-Legal-Personhood-in-the-Realm-of-Artificial-Intelligence> (last visited May 12, 2026).

¹² *Fiest Publication Inc. v. Rural Telephone Services*, 499 U.S. 340 (1991).

content?

Such a question can take two forms and have two aspects –

One, ‘*Can one generate a work through AI which is similar to that of another’s work*’? And Two, ‘*Can one sue someone else who copied the former’s work, which was originally AI generated*?’.

A step-by-step breakdown of each of the questions would give us a better clarity on the issue. As far as the first question is concerned, the very recent case of the Ghibli art work¹³ is the perfect example. AI models are so powerfully coded that they can replicate any work with ease. If one knows how to correctly prompt the model, it would not be difficult for him to get an exact copy of someone’s work. For e.g., prompts like “*Replicate the Madhubani art style famous in India and make a painting of two cows*” and “*Analysing the writing style of Ruskin Bond from his existing works, imagine how he would write a short story on two children and their pet*” are strong enough to produce exact pieces in terms of art or literature. How, then, can one ensure a copyright?!

The recent Ghibli art controversy is the same. ‘Ghibli’ is a famous Japanese art form created by Miyazaki in a specific studio. After the AI model was programmed to generate images, Chatgpt was overloaded with requests from the entire world asking it to convert real time images into a Ghibli art work. The results were such that no one could distinguish between a real Ghibli art picture and the one generated by AI.

Such an algorithm was a direct target of critics where questions on creativity and ethics were put up. People asked if AI could truly capture the heart, soul, and life that the painter poured into every hand-drawn frame? ¹⁴ Even the original artist, Hayao Miyazaki was quick to say, “*I am utterly disgusted. I would never wish to incorporate this technology into my work at all. I strongly feel that this is an insult to life itself.*” Advocates in support of Miyazaki said that it would have been totally okay if AI was used to aid the artistic process. For instance, if it was

¹³ Govind Choudhary, *Explained: Studio Ghibli-Style controversy: Why the internet is divided over AI-generated art and what’s at stake*, MINT (Apr. 4, 2025) available at <https://www.livemint.com/technology/tech-news/explained-the-rise-of-studio-ghibli-style-ai-art-copyright-creativity-and-controversy-what-s-at-stake-11743690558170.html> (last visited May 13, 2026).

¹⁴ INDIA TODAY, *Is Ghibli-inspired AI art disrespectful to the original artist?* (Apr. 3, 2025) available at <https://www.indiatoday.in/lifestyle/what-s-hot/story/is-ai-generated-studio-ghibli-art-an-insult-to-both-the-art-form-and-the-artists-behind-it-2703312-2025-04-03> (last visited May 13, 2026).

used for brushing up frames or automating already drawn frames, it would have been ethical. However, a complete takeover is unethical and degrades the value of hand-drawn art. The Representative of the Japanese House of Representatives said, “*The use of styles and ideas is legal, but if [an AI-generated image] were recognized as being ‘Ghibli itself,’ then that would be a violation of law*”.¹⁵

Given the fact that AI is still not identified as a legal person, the artistic styles and ideas originally created and put up by AI cannot be subject to copyright, however, a creation which is an exact replica or substantially similar to an existing art form, should be subject to a copyright.

In order to prove a copyright infringement, the courts usually turn to what I like to call, the ‘substantial portion’ test. In simpler terms, the court checks if the work in question copies a substantial portion of the original art piece or text.¹⁶ If there is a mere reproduction of the general theme, it might not be an infringement, however, a manifestation of the central ideas or ‘*expressive elements*’ would be a direct copyright infringement.¹⁷ This is because, since an AI model frames its answers on the basis of the existing information available on the web, it is presumed that the AI model had an access to the original art form.

An additional point that needs to be kept in mind is that AI can generate content only after a suitable prompt is put in it, and the output is largely dependent on what the input is. It, thus, becomes obvious that it is highly unpredictable.¹⁸ However, there is another side to this argument – Whatever be the prompt, the basis of the output is the information available on the internet. Because the information is limited, AI may sometimes recreate or closely imitate those works or their distinctive features. It is now well accepted that operators commanding AI models to generate copyrighted works through well drafted prompts can also be held liable for such infringement.¹⁹ The liability is subject to increase if the prompt explicitly requested for

¹⁵ JAPAN TODAY, *Can Japanese government make AI-generated Ghibli images illegal?* (Apr. 20, 2025) available at <https://japantoday.com/category/crime/can-the-japanese-government-make-ai-generated-ghibli-images-illegal-1> (last visited May 14, 2026).

¹⁶ Celine Melanie A. Dee, *Examining Copyright Protection of AI-Generated Art*, 1 DELPHI 31 (2018).

¹⁷ Vondran Legal, *Proving “Substantial Similarity” in Copyright Infringement Actions* (Sep. 27, 2024) available at <https://www.vondranlegal.com/proving-substantial-similarity-in-copyright-infringement-actions> (last visited May 14, 2026).

¹⁸ A.S. Al-Busaidi, *et. al.*, *Redefining boundaries in innovation and knowledge domains: Investigating the impact of generative artificial intelligence on copyright and intellectual property rights*, 9 JIK 1 (2024).

¹⁹ *Id.*

an imitation or replication.

The prompt-based liability, takes us to the second question of whether one can sue someone else who copied the former's work, which was originally AI generated. Here, we would have to return to the basics of Intellectual Property Law. For an artwork to be protected under the copyright law, it needs to be produced by a human actor. However, since AI models have not been accorded personal status, there still looms a big question mark on the second query. For a copyright to exist, there should necessarily be human involvement in the creation process. Here, people might argue that an input or prompt is also human intervention, but that is merely an initiation of process rather than active efforts during the creative period. It could then be inferred that this is a grey area in law awaiting clarity.

The Indian and UK courts make it clear *that the author of the copyrightable work done by any AI or rather any computer would be the person who is necessary for the creation of the work.*²⁰

The exponential growth of technology in Artificial Intelligent models has also increased the amount of availability of artificial information on in the technological sphere. The intersection of AI and copyright is one combination which goes beyond imagination. Never had an author, let alone an artist thought that his work could be imitated with such ease. The creation of a space parallel to the physical world has not only widened the scope for creation but also opened the floor for more undesired activities. It has now become the focal point of legal, technological, and policy debate. This has led to raising of important questions like 'scope of copyright protection', the 'rights of creators', and the 'responsibilities of AI developers'.

As has also been discussed previously, for acquiring a copyright, the work must be a human creation. In absence of human expression, it would be difficult for the courts to accord a legal right to a piece of work. There needs to be certain human intervention, be it in terms of creation of idea or modifying the work or any other creative input.²¹ The fact of AI assistance also requires reiteration.²² If AI is used merely for the purposes of finishing touches or minor

²⁰ Vidhi Shah & Aishvi Shah, *Artificial Intelligence and Copyright Law: An Entreaty for Legal Framework with Special Reference to Trips Agreement* 1 IPRJMNLU 33 (2023); See also *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 58 (1884).

²¹ BAR AND BENCH, *Art is human: Are works devoid of human involvement eligible for copyright protection?* (Sep. 22, 2023) available at <https://www.barandbench.com/columns/art-is-humane-works-devoid-of-human-involvement-not-eligible-for-copyright-protection> (last visited May 13, 2025).

²² Geiger C., *Elaborating a Human Rights-Friendly Copyright Framework for Generative AI*, 55 IIC 1129–1165 (2024).

modifications, it shall not be a copyright infringement; however, a complete imitation of the work is a violation in terms of the originally protected work. Even though certain countries like that of China²³ have asserted that a copyright can be given to AI generated content in cases of ‘human intellectual contribution’, the general stance remains in disfavour of according copyrights.

While discussing ownership rights in Korea, there has arisen the question – ‘*Can AI-generated works still be regarded as “purely mechanical outputs” when they involve a meaningful degree of human creativity?*’²⁴

The discussion revolved around the same hypothesis as elaborated above. The arguments also remain more or less the same. This was in continuation of a discussion on AI-created images such as Ghibli Art. The end point was nothing but the assertion that *the legal definition of human-AI co-created works will be essential in determining how copyright is applied in the era of generative AI.*

V: Privacy Concerns

Another aspect which concerns this discussion is that of Privacy. The right declared to be fundamental to one’s existence²⁵, is a primary actor in the AI and Copyright debate. How does one protect his own pictures which he himself uploaded on the AI model to create an adaptation of? How does one sue the AI for privacy breach when there had been a consensual supply of data? To what extent is the AI model liable for safeguarding personal information? Such questions lurk in the cyberspace.

People often forget to read the privacy pop-ups on websites and AI models and give permission to use their uploaded data for enhanced training and operation of the websites. The situation is worse when there is no pop-up in the beginning and such a setting is hidden somewhere in the privacy settings awaiting attention, which usually is not paid. Such data collection without the user’s consent can be harmful in terms of unauthorised use, data breach, and loss of control

²³ BIRD & BIRD, *Copyright Protection for AI generated works – Recent Developments* (Feb. 09, 2024) available at <https://www.twobirds.com/en/insights/2024/china/copyright-protection-for-ai-generated-works-recent-developments> (last visited May 13, 2026).

²⁴ Jo He-rim, *Who owns AI art? AI-generated Ghibli selfies spark legal debate*, THE KOREAN HERALD, (Apr. 23, 2025) available at <https://www.koreaherald.com/article/10472005> (last visited May 13, 2026).

²⁵ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

over private content.²⁶

More often than not, these mechanical acts rake up ethical considerations. Even if a copyright is granted to AI generated content, is it not a clear disrespect to the original author or artist? Not only does it raise multiple rhetorics, but also give the law makers ample food for thought. It acts as a completely new field of legislation and regulation. Considering the fact that negligible discussion is available on the issue, we are sure that there would be near to no formal rule on the same. A closer look at the present-day scenario would lead to the inference that AI and AI-generated content is the hot tea. It is slowly making its space in the mainstream legal media. It is high time that it is regulated. A mere release of guidelines will not suffice. A well thought of law is the need. Not only will it help to regulate the unchecked content, but also help in reducing the subsequent filing of cases burdening the courts due to ambiguity in the extent to which they can be made. Additionally, given the wide scope of cyberspace, the jurisdictional aspects of the same would also have to be considered. It would be beneficial in answering crucial questions when an imitation of the artwork of one country would be reproduced in another.

VI: Conclusion

It is difficult to wrap up a discussion on an issue which is in its initial phase. A conclusion to thus paper would only be suitable if it summarises the entire debate and gives to the reader ample points to ponder upon.

Cyberspace has been always a confusing space. All it does to law is create ambiguities in jurisdiction. The parallel to a physical space has made available the existing literature to all. Here, literature takes within its ambit, not only textual but also artistic and cinematic masterpieces. The ease of access has presented a complex situation in front of the jury. Not in the wildest dreams had one thought that a human-fed but computer-run algorithm might create manifestations and replicas of artworks and literature so true that it would be difficult to distinguish between the original and the copy.

The intersection of the opposite axes of Intellectual Property and Artificial Intelligence has

²⁶ CYBER LAW CONSULTING, *AI and Data Privacy in India: Emerging Legal and Ethical Challenges*, available at: https://www.cyberlawconsulting.com/ai_and_data_privacy_in_india.php#:~:text=Role%20of%20AI%20in%20Data%20Privacy&text=Machine%20learning%20models%20can%20automatically,ensure%20compliance%20with%20privacy%20regulations (last visited May 14, 2026).

raised questions never thought of before. There have come up evolving landscapes among challenged traditional notions of authorship. The traditional discourse revolves around human intervention in the creation of an artwork. However, with the AI based models taking over, humans seldom put in effort to come up with novel ideas and creations. This makes it difficult for one to decide whether there is a copyright over the generated content. The existing laws do not effectively work in cyberspace leading to ambiguities and creation of a grey area in law.

None of the countries have been able to put in place a legislation to regulate the AI generated content. Though there have been guidelines by different agencies, they don't impose any penalty on non-observance.

This further raises ethical concerns and brings into the realm debates on the extent of replication that is allowed. The best example in contemporary times is that of the imitation of Ghibli art work by Chatgpt 4.0. Additionally, use of copyrighted materials to train AI models without explicit consent from original creators has led to legal challenges.

All of these concerns revolve around the focal point of the rapid advancement of AI as against the fundamental right to privacy.

In conclusion, the intersection of AI and copyright law presents multifaceted challenges that require a nuanced and forward-thinking approach. Legal systems must evolve to accommodate the unique characteristics of AI-generated content, balancing the protection of human creativity with the recognition of technological advancements. This entails not only legislative amendments but also the development of ethical guidelines and international cooperation to establish a cohesive framework that addresses the complexities of authorship, originality, and ownership in the age of artificial intelligence.