AI AND COPYRIGHT PROTECTION: UNDERSTANDING THE INDIAN LEGAL POSITION

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ABSTRACT

The rapid growth of artificial intelligence has transformed traditional notions of creativity and authorship, as machines increasingly produce literature, music, art, and code that rival human expression. This shift challenges the foundations of copyright law, which has always relied on the idea of human originality and intellectual contribution. In India, Section 2(d) of the Copyright Act, 1957 defines the author of computer-generated works as "the person who causes the work to be created," but its application to autonomous AI creations remains ambiguous. This uncertainty, combined with the "modicum of creativity" test established in *Eastern Book Company v. D.B. Modak*, leaves India's creative industries—spanning entertainment, publishing, and digital innovation—operating in a legal grey area that may discourage investment and innovation. Globally, jurisdictions diverge: the U.S. and EU firmly preserve human authorship, the U.K. adopts a more flexible "arranger" model, and WIPO continues to promote dialogue without reaching consensus. To move forward, India must craft a balanced legal framework that safeguards human creativity while recognizing the role of AI through hybrid or sui generis models, ensuring innovation thrives without eroding the core values of copyright law.

Keywords: Artificial Intelligence, Copyright Law, Authorship, WIPO, Intellectual Property

INTRODUCTION

One of the most distinctive characteristics of human expression has long been thought to be the act of creation. Creativity has always been seen as a uniquely human endeavor,[1] from classical literature and cave drawings to contemporary music and film. However, in recent years, the quick development of artificial intelligence (AI) has called into question this presumption. These days, artificial intelligence (AI) systems can write computer code with astounding detail, create visual art, compose music, and even produce poetry. In part, machines are now sharing what was formerly believed to be the sole purview of human creativity.

A significant legal and philosophical question raised by this technical advancement is whether or not AI-generated content is protected by copyright. The purpose of copyright law is to honor human authors by recognizing their hard work, talent, and inventiveness. Its foundation is the assumption of originality and human authorship. However, AI systems use algorithms and data analysis to create works without mind or intent. This raises questions about whether AI outputs may ever be referred to as "original works of authorship[2]" and, if so, who should be acknowledged as the author—the user who gave the prompts, the programmer who created the system, or neither.

The objective of this article is to examine how the law addresses these issues, paying special attention to India's legal system as it is defined in the Copyright Act of 1957. The Act does not specifically address works created by AI on its own, even if it defines authorship in connection to computer-generated works. This study investigates whether India needs new legal reforms or if the current rules are adequate. In the process, it contrasts India's stance with global strategies, such as those of the US, UK, and EU, as well as current discussions at the World Intellectual Property Organization (WIPO)[3]. The study uses this comparative lens to assess how India may develop a well-rounded strategy that promotes innovation while upholding the fundamentals of copyright law.

METHODOLOGY

This article relies on a doctrinal style of research, which means it looks closely at laws, cases,

[1] Copyright, Designs and Patents Act 1988.
[2] *Naruto v. Slater*, 888 F.3d 418 (9th Cir. 2018).
[3] World Intellectual Property Organization (WIPO), *WIPO Conversation on Intellectual Property and Artificial Intelligence: Revised Issues Paper*, WIPO/IP/AI/2/GE/20/1 (May 21, 2020)

and scholarly writings rather than using surveys or field studies[4]. Since the question of copyrighting AI-generated works is essentially a matter of how existing laws are read and applied, a doctrinal approach is best suited. The focus is on India's Copyright Act, 1957, especially the way "author" is defined in Section 2(d), and how the idea of originality has been explained by the Supreme Court in Eastern Book Company v. D.B. Modak[5]. By examining these provisions, the study asks whether India's current law can handle the growing reality of creative works made by or with the help of artificial intelligence.

At the same time, this article uses a comparative perspective. India does not exist in isolation, and the experience of other jurisdictions provides important lessons. The strict human authorship requirement in the United States, the more flexible "computer-generated works" model in the United Kingdom, the originality standard in the European Union, and the global conversations taking place under WIPO all serve as points of comparison[6]. Looking at these systems helps place India in the wider debate and highlights where its law might need to adapt.

The method here is largely analytical: reading the text of laws, reviewing judicial interpretations, and studying how scholars and policy reports have dealt with the subject. One limitation is that India does not yet have a court case or official policy directly addressing AI-generated content. This means the analysis must rely on interpretation, projection, and comparisons with foreign models. Even so, by weaving together domestic law and international practice, this article hopes to offer a clear picture of where India stands today and what changes might be needed in the future.

Literature Review

1. The Debate

In recent years, artificial intelligence has subtly transcended its role as a tool to become an active contributor to creative processes[7]. Machines that used to write poetry, compose music, or paint pictures are now commonplace, despite their initial futuristic appearance. Creativity is no longer limited to people, as demonstrated by platforms that create art from basic text

[4] Paul Chynoweth, "Legal Research" in Andrew Knight & Les Ruddock (eds), Advanced Research Methods in the Built Environment (Wiley-Blackwell 2008).
[5] *Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1
[6] *Naruto v. Slater*, 888 F.3d 418 (9th Cir. 2018).
[7] U.S. Copyright Office, *Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence*, 88 Fed. Reg. 16190 (Mar. 16, 2023).

prompts or software that creates original music[8]. This technological advancement has created new avenues for creativity and expression, but it has also caused uncertainty in the legal underpinnings of copyright law.

The foundation of copyright law is the notion that human intellect, imagination, and personality are expressed via creativity[9]. The method is predicated on the idea that each work has a distinct author whose rights should be upheld. This presumption breaks down when a machine creates a piece on its own: Who is the author? Who owns the creation— The AI, the user, the programmer, the business, or is the work just left unprotected? These are not just theoretical questions. They have real-world consequences for sectors that depend more and more on AI to produce content, as well as on people and companies who are marketing such creations.

Because AI is capable of creating, the question at hand is not whether it can, but rather whether copyright law can recognize and safeguard such works. Responses from various jurisdictions have varied; some have experimented with larger definitions, while others continue to argue the importance of human authorship. India is at a crossroads in this regard: its copyright law includes terminology that may apply to computer-generated works, but there isn't much advice on how it should be applied to artificial intelligence[10]. Given this ambiguity, it is imperative to review copyright concepts and consider how they ought to change in a time when human and machine creation are becoming more and more integrated.

2. The Human Authorship Principle

For centuries, copyright has been inseparable from human authorship. In the U.S., this principle has been firmly upheld. The landmark case Feist Publications v. Rural Telephone Service (1991) clarified that originality requires a "modicum of creativity," a standard grounded in human input[11]. More recently, in Thaler v. Perlmutter (2023), the U.S. Copyright Office refused copyright protection to an artwork autonomously produced by an AI system, reaffirming that copyright law does not extend to non-human creators[12]. Scholars defending this case argue that allowing machine authorship would dilute the philosophical basis of

[8] European Parliament Research Service (EPRS), *The Impact of Artificial Intelligence on the Creative Industries* (2020).
[9] *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991).
[10] Copyright Act, 1957, § 2(d)(vi) (India).
[11] *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991).
[12] *Thaler v. Perlmutter*, 1:22-cv-01564 (D.D.C. 2023).

copyright, which is tied to individual creativity and personality. Critics, however, worry that leaving AI works in the public domain may discourage innovation and investment in AI-driven creativity[13].

3. The U.K. Model: Computer-Generated Works

The United Kingdom takes a somewhat distinct and pragmatic approach to the question of authorship in AI-generated works. Section 9(3) of the Copyright, Designs and Patents Act, 1988, provides that the author of a computer-generated work is "the person by whom the arrangements necessary for the creation of the work are undertaken."[14] This clause is often seen as a forward-thinking acknowledgment of the technological realities of the digital age, where creative works can emerge from complex interactions between humans and machines. It ensures that such works do not automatically fall into the public domain, thereby protecting investment and encouraging innovation. However, despite its practicality, the provision raises an important and ongoing debate: who exactly is the "arranger"? Is it the user who inputs data and prompts the AI? The programmer who designs the algorithm? Or the company that owns and operates the AI system? Since courts in the U.K. have not yet provided a definitive interpretation, the law remains theoretically sound but uncertain in its real-world application[15]. This ambiguity highlights the broader global struggle to balance technological progress with established legal concepts of authorship and originality in the era of artificial intelligence.

4. European Union Approach: Originality Standard

The European Union has not designated a specific category for computer-generated works. As stated in Infopaq International v. Danske Dagblades Forening (2009), the Court of Justice of the European Union (CJEU) has instead continuously mandated that a work represent the "author's own intellectual creation.[16]" By excluding works that are solely machine-generated from protection, this standard obviously assumes human authorship. European scholars argue at the fact that AI might still be used as a "tool" in which humans have creative control, in which case copyright might still be in play. Creations that are completely autonomous, however, are not eligible. In order to balance encouraging investment with upholding human-

[13] Pamela Samuelson, "Allocating Ownership Rights in Computer-Generated Works," *University of Pittsburgh Law Review* 47 (1986).
[14] *Copyright, Designs and Patents Act 1988*, § 9(3) (UK).
[15] UKIPO Consultation Report, *Artificial Intelligence and IP Review* (2021)
[16] *Infopaq International A/S v. Danske Dagblades Forening*, Case C-5/08, EU:C:2009:465.

centric copyright standards, several European critics suggest sui generis protection for AI-generated works, which is similar to database rights.

5. WIPO and International Policy Discussions

Since 2019, the World Intellectual Property Organization (WIPO) has launched extensive global consultations on AI and intellectual property. According to its studies, there are two competing schools of thought: one supports a rigorous human authorship model, while the other supports alternatives like contracts or sui generis rights to provide limited protection for works created by AI. As AI-generated works spread over the world, the literature emphasizes that the lack of standardized international norms breeds ambiguity[17]. WIPO has so tried to encourage discussion rather than provide answers, keeping the discussion open-ended while acknowledging the need of tackling these issues collectively.

6. Indian Legal Framework and Scholarship

In India, the debate is still in its early stages. Section 2(d) of the Copyright Act, 1957 defines "author" differently depending on the type of work[18]. For computer-generated works, it attributes authorship to "the person who causes the work to be created." This wording could potentially be interpreted to cover AI outputs, but no Indian court has tested it. The Supreme Court in Eastern Book Company v. D.B. Modak (2008) adopted the "modicum of creativity" test for originality, indicating that minimal human creativity is necessary for copyright. Scholars remain divided—some argue that AI cannot qualify as an author due to lack of legal personality, while others suggest that programmers or operators could be recognised under Section 2(d). The absence of official guidance from the Indian Copyright Office adds to the debate.[19]

7. Identified Research Gaps

Even while the field of research on AI and copyright is expanding worldwide, India is still mostly left out of the discussion. India lacks judicial precedent and policy-level discussion, in comparison with the United States, where the Copyright Office and courts have made explicit statements, or the United Kingdom, which has statutory provisions. There is a shortage of

[17] OECD, *Intellectual Property Rights and Artificial Intelligence* (2021).
[18] Copyright Act, 1957, § 2(d)(vi) (India).
[19] Indian Copyright Office, *Annual Report 2022–23*.

academic literature on the topic, and what little that is written tends to draw from global debates rather than fostering local viewpoints[20]. This leads to a study deficit, especially when it comes to evaluating the legal concerns that Indian creative industries—like Bollywood, publishing, and the digital start-up sector—are facing and how they are really dealing with AI-generated works.

8. Limitations of Existing Literature

The existing body of work also suffers from certain limitations. Much of it focuses narrowly on the philosophical or doctrinal argument that copyright requires human creativity, without exploring hybrid models where human and AI contributions intersect. Few studies take into account the economic or industry perspective, such as how granting or denying protection affects incentives for innovation. Moreover, because different jurisdictions adopt different standards, the literature presents a fragmented picture, making it difficult to identify common ground for international enforcement[21].

9. Insights from Comparative Studies

Comparative research reveals the more broad trends. By adopting a strict human-only policy, the United States has basically made autonomous AI works available to the general public. Although there is a legal framework in the United Kingdom, its meaning is unclear. The EU forbids machine authorship and insists on originality linked to human intellectual creation. With its untested yet flexible Section 2(d), India stands in the middle, offering both potential and challenges[22]. WIPO's ongoing consultations show that there is little hope for immediate harmonisation, but also that the issue is of global importance. These insights are crucial for framing India's position within a rapidly changing international landscape.

10. Conclusion of the Literature Review

Overall, existing literature reveals that countries across the world are experimenting with different approaches to address the growing challenge of AI-generated works, even though copyright law was originally designed for human creativity. While the United States and the European Union have reinforced the necessity of human authorship, and the United Kingdom

[20] N.S. Gopalakrishnan & T.G. Agitha, *Principles of Intellectual Property* (2014).
[21] WIPO, *Revised Issues Paper on IP and AI* (2020).
[22] Copyright Act, 1957, § 2(d)(vi) (India).

has introduced a more flexible model for computer-generated works, India remains largely silent in this global dialogue. The lack of judicial decisions, policy direction, or substantial academic engagement has left India in a vulnerable and uncertain position. This absence of an authoritative framework not only exposes creative industries to legal ambiguity but also risks leaving the country behind in the evolving international copyright landscape. Hence, the importance of the present study lies in critically examining India's existing legal framework in comparison with global standards and proposing practical reforms that can help shape a balanced and forward-looking approach to AI and copyright protection.

RESULTS AND DISCUSSIONS

Reconciling Copyright's Human-Centric Foundations with AI Creativity

The first key finding from the review of literature is that copyright law, both in India and globally, was never designed to accommodate non-human authors. Its foundations rest on the assumption that creativity stems from the human mind. The Indian Copyright Act, 1957, by defining authorship in relation to "the person who causes the work to be created," implicitly assumes human agency. Similarly, U.S. law requires a "modicum of creativity" attributable to a human author, while the European Union insists on "intellectual creation" grounded in human expression[23].

The main issue is that this anthropocentric basis is being challenged by AI. Generative models are unquestionably capable of creating works that appear creative despite lacking consciousness, intentionality, and personal expression[24]. Thus, the challenge of determining whether copyright protection should be based on the nature of the creative process or the economic and social ramifications of protection faces courts and legislators.

The Risk of a Legal Vacuum in India

India currently stands in a highly vulnerable and uncertain position regarding the intersection of artificial intelligence and copyright law. Unlike the United States and the European Union, which have clearly upheld a human-only approach to authorship, and the United Kingdom, which provides a defined legislative framework for computer-generated works, India has yet

[23] *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991).
[24] U.S. Copyright Office, *Copyright Registration Guidance: Works Containing Material Generated by AI*, 88 Fed. Reg. 16190 (Mar. 16, 2023).

to address this issue in either policy or jurisprudence. The absence of such clarity creates a legal vacuum that could have far-reaching implications. For example, can an Indian publishing house claim copyright protection if it produces a children's book using AI-generated text or illustrations? The answer remains ambiguous. If the work is unprotected, competitors may freely use or replicate it, discouraging innovation. Conversely, granting protection without proper legal basis could distort the balance of rights under Indian copyright law and lead to inconsistent precedents. This uncertainty is not merely theoretical—it poses real challenges for industries like digital media, Bollywood, and tech-driven start-ups that are actively experimenting with AI in creative production. The lack of explicit legal or judicial guidance undermines investor confidence, limits innovation, and could hinder India's growth in the global creative economy[25]. It is therefore essential that India urgently establishes a coherent legal and policy framework to define ownership, liability, and authorship in AI-generated works, ensuring both creative progress and legal stability.

The Ownership Question: Who Holds the Rights?

Even if one accepts that AI-generated works could qualify for protection, the next question is ownership. Should rights vest in the programmer who designed the system, the user who provided prompts, or the company that owns the AI model?

- Programmer-as-author model: This treats AI as a mere tool, attributing creativity to the coder. Critics argue this ignores the user's input and risks granting disproportionate control to large corporations.

- User-as-author model: This recognizes the role of human prompts in shaping outputs. However, prompts may often be too minimal to qualify as genuine creativity.

- Corporate ownership model: Here, the entity behind the AI is deemed author. While practical, this approach risks monopolies by big tech firms, sidelining individual creators.

India's Section 2(d), which assigns authorship to the "person who causes the work to be created," could in theory support any of these interpretations.[26] Yet, without judicial precedent,

[25] NITI Aayog, *National Strategy for Artificial Intelligence* (2018).
[26] Copyright Act, 1957, § 2(d)(vi) (India)

the scope remains contested. The discussion highlights a clear gap: ownership rules must be carefully defined to avoid both under-protection and over-concentration of rights[27].

Public Domain and Innovation Concerns

What happens to AI-generated works if copyright is refused is another important concern that has been identified. In countries like the United States, these kinds of works automatically fall into the public domain. This prevents monopolization but discourages investment in AI-powered innovation. For example, a film studio may hesitate to use AI-generated scripts if competitors can freely copy them.

However, too much protection could overwhelm the market with exclusive claims to machine outputs, weakening the idea that copyright encourages human innovation. Copyright shouldn't be a "reward for machine efficiency," according to some scholars. Finding a midway ground that promotes technical innovation while avoiding monopolization is India's issue.

Possible Models for India

From the comparative study, several potential models emerge that India could adapt:

- Strict Human Authorship Model (U.S./EU approach): Only works with substantial human input qualify. AI-only creations fall into the public domain.

- Arranger Model (U.K. approach): The person making arrangements (e.g., programmer, user) is deemed the author.

- Hybrid Model: Copyright applies only where human and AI contributions are intertwined, with the human author retaining rights.

- Sui Generis Model: A new category of protection for AI-generated works, similar to database rights, with shorter duration and narrower scope.

The hybrid and sui generis approaches, which strike a balance between public interest and protection, seem to be the most appropriate for India. While sui generis protection may

[27] WIPO, *Revised Issues Paper on Intellectual Property and Artificial Intelligence* (2020).

encourage investment without going beyond the bounds of traditional copyright, the hybrid model guarantees that human creativity stays at the center[28].

Ethical and Policy Considerations

The discussion raises important ethical issues that go beyond legal doctrine. Does granting AI works copyright diminish human creativity? Could it result in cultural uniformity, with machine-generated art taking center stage due to its efficiency and speed? In India, where human expression is closely linked to cultural industries like literature, film, and traditional arts, these problems are especially crucial.

Overprotection also runs the risk of widening the gap between smaller Indian entrepreneurs and larger tech firms. Without protections, copyright for AI works could disadvantage individual artists while disproportionately benefiting companies with advanced AI systems. Therefore, while extending copyright in this situation, policymakers need to consider the social justice implications.

The Role of Contracts and Licensing

The increasing use of contracts in place of copyright protection is a significant finding from international practice. A lot of AI systems, such Adobe Firefly and OpenAI, use licensing conditions to control output ownership and use. Contract law in India could bridge the divide by enabling rights negotiations between developers and users. Although this gives flexibility, there is a chance that it will lead to a fragmented system in which private contracts take precedence over public copyright laws. India must therefore choose whether to treat contractual arrangements as short-term workarounds or formalize them into law.

Judicial Interpretation as a Driver of Reform

Indian courts have historically played an active role in shaping copyright doctrine, as seen in Eastern Book Company v. D.B. Modak. Given the lack of legislative clarity, judicial interpretation will likely be the first step in addressing AI authorship. Courts could adapt existing principles such as minimal creativity—to determine whether human involvement in

[28] U.S. Copyright Office, *Copyright Registration Guidance: Works Containing Material Generated by AI*, 88 Fed. Reg. 16190 (Mar. 16, 2023.

AI outputs is sufficient[29]. However, without legislative backing, piecemeal judicial decisions may create inconsistencies. The discussion suggests that a combined judicial-legislative approach is essential for coherent reform.

Long-Term Implications for Indian Creative Industries

The discussion also emphasizes how India's strategy will affect things in the long run. While protecting traditional producers, a rigid human-only paradigm runs the risk of underdeveloping AI-driven sectors. On the other hand, too wide protection can compromise cultural authenticity. India's ability to preserve its cultural legacy while establishing itself as a global leader in digital creation will depend on the balance that is struck. Because of this, the matter is not just legal but also strategically significant, as it is linked to India's larger goals in the global knowledge economy.[30]

Towards a Balanced Framework

Ultimately, the results and discussion point toward the need for a balanced framework. Such a framework would:

1. Preserve human creativity as the cornerstone of copyright.
2. Recognize hybrid works where human input is substantial.
3. Explore sui generis protection for autonomous AI outputs.
4. Prevent monopolization by large corporations.
5. Ensure that Indian creative industries have clarity and confidence in engaging with AI.

This balanced path acknowledges the realities of technological change without abandoning the principles of copyright law.

[29] U.S. Copyright Office, *Copyright Registration Guidance: Works Containing Material Generated by AI*, 88 Fed. Reg. 16190 (2023).
[30] World Bank, *The Global Knowledge Economy: Regional Challenges* (2020).

CONCLUSION AND SUGGESTIONS

The integration of artificial intelligence into creative industries in India brings both significant challenges and opportunities for copyright law. The existing legislation was not designed for a world where machines can generate works rivalling human output in creativity and complexity. While global jurisdictions like the United States and European Union continue to prioritize human authorship, and the United Kingdom has taken a more adaptable approach, India finds itself in a unique position. The choices made now will impact both innovation and the preservation of cultural values.

Maintaining a strictly human-centric definition of authorship could slow the adoption of AI in creative fields, discouraging investment and limiting growth in industries increasingly reliant on technology. At the same time, granting full copyright protection to purely machine-generated works poses risks of monopolization by large tech firms and could undermine the significance of human creativity, which remains central to India's cultural heritage. The lack of clear legislative and judicial guidance leaves artists, businesses, and courts in a state of uncertainty. Without action, this ambiguity could hinder progress and reduce confidence among creators and investors.

To move forward, India must aim for a balanced approach that safeguards human creativity while acknowledging the realities of technological evolution. This would allow India to protect its creative spirit and also lead the way globally in thoughtful copyright reform.

Policymakers should take steps to reform the Copyright Act, making explicit provisions for works generated through AI, especially in situations where both humans and machines make significant creative contributions. New legal categories—such as hybrid or sui generis protection—could support innovation while keeping the law in step with new challenges. Judicial interpretation will be crucial until new legislation is enacted; Indian courts can adapt existing principles like minimal creativity so that they remain relevant for AI-generated works. Involving experts, creators, and businesses in this lawmaking process will ensure that policy reflects the interests and needs of all stakeholders.

Any new system should balance incentives, rewarding individual creators and smaller entrepreneurs while preventing large corporations from unfairly dominating the market. Government and industry must also work together to educate the public about the intersection

of AI and copyright, so that everyone—artists, technologists, and consumers—understands their rights and responsibilities. With thoughtful, inclusive, and transparent reform, India can protect its cultural legacy and embrace future potential, setting an example in the global knowledge economy.

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