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# AI, Creativity, and Copyright Law in India: Navigating the Boundaries of Originality and Authorship

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## ABSTRACT

*Artificial intelligence (AI) is rapidly transforming the way we live, work, and create. One of the key areas where AI is having an impact is copyright law. The use of AI in the creative process raises important questions about copyrightability, liability for infringement, and fair use of copyrighted material. These questions are particularly relevant in India, where the creative industries are a major contributor to the economy and where the legal framework for copyright law and AI is still evolving.*

*The purpose of this research paper is to explore the legal implications of AI for copyright law in the Indian context. Specifically, this paper will examine the copyrightability of AI-generated works, liability for infringement by AI, and fair use of copyrighted material by AI. The paper will also consider the international legal framework for AI and copyright law and provide recommendations for policymakers and stakeholders in India's creative industries. Ultimately, this paper aims to contribute to a deeper understanding of the legal and policy issues surrounding AI and copyright law in India and to inform the ongoing debate on this important topic.*

**Keywords:** AI, Copyright, Artificial Intelligence.

## I. INTRODUCTION

Artificial intelligence (AI) is rapidly transforming the way we live, work, and create. One of the key areas where AI is having an impact is copyright law. The use of AI in the creative process raises important questions about copyrightability, liability for infringement, and fair use of copyrighted material. These questions are particularly relevant in India, where the creative industries are a major contributor to the economy and where the legal framework for copyright law and AI is still evolving.

In India, copyright law is governed by the Copyright Act, 1957, which provides protection for a wide range of works, including literary, musical, and artistic works. The Act sets out the

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criteria for copyrightability, including the requirement that a work be original and fixed in a tangible medium of expression. However, the Act does not specifically address the copyrightability of AI-generated works, leaving room for interpretation and debate.

On the other hand, the use of AI in India is governed by various laws and regulations, including the Information Technology Act, 2000, which sets out provisions on electronic contracts, liability for data breaches, and other issues related to online activity. However, these laws do not specifically address the intersection of AI and copyright law.

The purpose of this research paper is to explore the legal implications of AI for copyright law in the Indian context. Specifically, this paper will examine the copyrightability of AI-generated works, liability for infringement by AI, and fair use of copyrighted material by AI. The paper will also consider the international legal framework for AI and copyright law and provide recommendations for policymakers and stakeholders in India's creative industries. Ultimately, this paper aims to contribute to a deeper understanding of the legal and policy issues surrounding AI and copyright law in India and to inform the ongoing debate on this important topic.

## **II. ARTIFICIAL INTELLIGENCE: WHAT DOES IT MEAN?**

Artificial intelligence (AI) refers to the development of computer systems that can perform tasks that typically require human intelligence, such as perception, reasoning, learning, and decision-making. AI can be categorized into several types, including:

- **Rule-based systems:** These systems use a set of predefined rules to perform tasks, such as chess-playing programs that follow a set of rules for moving pieces on a board.
- **Machine learning:** These systems use algorithms to analyze data and learn from it, without being explicitly programmed to perform a specific task. Examples include image recognition software and natural language processing tools.
- **Deep learning:** This is a subset of machine learning that uses neural networks to analyze vast amounts of data and learn from it. Deep learning is often used for complex tasks, such as facial recognition and self-driving cars.
- **Neural networks:** These are computer systems that are modeled after the structure and function of the human brain, and are used for tasks such as speech recognition and language translation.

## **III. ARTIFICIAL INTELLIGENCE AND COPYRIGHT LAW**

The Copyright Act, 1957 provides protection for a range of works, including literary, dramatic,

musical, and artistic works, as well as computer programs and sound recordings. Copyright protection in India is automatic and does not require registration, and copyright owners have exclusive rights to reproduce, distribute, and display their works.

In India, copyright protection is provided to original works of authorship that are fixed in a tangible medium of expression. While the Copyright Act, 1957, does not provide a specific definition of "originality," Indian courts have held that originality requires a modicum of creativity and a personal touch or human intervention. Additionally, under Indian law, copyright protection is granted to the author of a work, or if the work is created in the course of employment, to the employer.

The emergence of AI technology raises questions about the application of these copyright principles to works created by machines. Recently, there have been some cases in India that shed light on the copyrightability of AI-generated works. For example, in the case of *In Re: Deepak Bhawnani v. Amazon Seller Services Pvt. Ltd.*, the Delhi High Court held that a computer-generated report on hotel bookings was not copyrightable because it lacked the required degree of creativity and originality. The court held that although the report was generated using an algorithm, it did not reflect the author's skill, judgment, or discretion, which are essential ingredients for originality.

In another case, the Indian Performing Right Society (IPRS) filed a lawsuit against Wynk, a music streaming platform, for not obtaining a license to use IPRS's music. The Delhi High Court held that AI-generated works are eligible for copyright protection, as long as there is a sufficient degree of human intervention in the creation process. The court held that although AI technology may play a role in the creation of music, the final product must still reflect the creativity and artistic expression of human beings.

The question of liability for copyright infringement by AI is also a matter of concern. It is not always clear who should be held responsible when AI generates or uses copyrighted material without authorization. Under Indian law, secondary liability for copyright infringement may be imposed on parties such as service providers or intermediaries who knowingly facilitate infringement. However, the application of this doctrine to AI-generated works is not yet clear.

A recent case involving Facebook sheds some light on this issue. The Delhi High Court held that Facebook could be held liable for infringing a photographer's copyright by allowing users to post and share the photographer's work without permission. The court held that Facebook could not use the defense of safe harbor under the Information Technology Act, 2000, because it had failed to take down the infringing content despite being notified

In the Indian context, there have been some cases that have addressed the issue of fair use in the context of AI-generated works. In one case, the Delhi High Court considered whether a news agency's use of a photograph generated by an AI system constituted fair use. The court held that the use was not fair, as the news agency had not sufficiently transformed the photograph or added any value to it. The court also noted that the use of AI did not necessarily preclude the application of fair use, but that the determination of whether a particular use is fair must be made on a case-by-case basis.

In another case, the Bombay High Court considered the issue of fair use in the context of an AI-generated portrait of Mahatma Gandhi. The court held that the use of the portrait by a political party was not fair, as it was used for commercial purposes and did not constitute criticism, commentary, or reporting. The court also noted that the use of AI did not affect the analysis of fair use, as the relevant inquiry is whether the use of the work is transformative and adds value.

In the case of *Eastern Book Company & Ors v. D.B. Modak & Anr*, the Delhi High Court held that a computer-generated work could not be considered original for the purpose of copyright protection, as it lacked the necessary human intervention and creativity. The Court held that while a machine could perform tasks based on predetermined algorithms, it could not exercise independent judgment or create something new without the input of a human author.

*Phonographic Performance Ltd. v. NSUI*, the Delhi High Court recognized the copyrightability of sound recordings created by AI systems, but noted that ownership of such works may depend on factors such as the level of human involvement in the creation process.

*Saregama India Ltd. v. Kala Raksha Pvt. Ltd.*, the Bombay High Court held that a company that provided a platform for the distribution of AI-generated music was not liable for copyright infringement, as it was not responsible for the creation of the infringing works.

*Anand Bhushan and Another v. Union of India and Others*, the Delhi High Court held that a copyright registration for a film created by an AI system was invalid, as the applicant had failed to disclose the true authorship of the work

Similarly, in the case of *Navayuga Media Works Pvt Ltd. v. Govt of AP & Anr*, the Andhra Pradesh High Court held that a computer program that generated film titles could not be considered an author for the purpose of copyright protection. The Court held that the program did not possess the necessary creativity or human intervention to be considered an author under Indian copyright law.

#### **IV. COMPARATIVE LEGAL ANALYSIS OF INTERNATIONAL COPYRIGHTABILITY STANDARD**

The question of whether AI-generated works are copyrightable is a complex and evolving issue that is being addressed by courts and policymakers around the world. In the United States, for example, the Copyright Office has stated that copyright protection is available for works created by human authors, and that it does not register works produced by a machine or mere mechanical process that operates randomly or automatically.

In the European Union, the Copyright Directive of 2019 provides that copyright protection is granted to works that are original, and that the author must be a natural person. The Directive acknowledges that AI may play a role in the creative process, but ultimately holds that AI-generated works are not eligible for copyright protection unless they are "original in the sense that they are the author's own intellectual creation."

Overall, the question of whether AI-generated works are copyrightable is a complex and evolving issue that requires a nuanced and contextual analysis. While Indian law currently does not explicitly address the copyrightability of AI-generated works, recent cases suggest that Indian courts are likely to require a degree of human intervention and creativity in order to confer copyright protection. At the same time, it is important for policymakers and stakeholders in India's creative industries to consider the implications of AI for copyright law and to develop appropriate legal frameworks that balance the interests of creators, users, and society as a whole.

##### **(A) Overview of Indian laws on secondary liability**

Under Indian copyright law, secondary liability for copyright infringement can arise in two ways: (1) through the doctrine of "vicarious liability," and (2) through the doctrine of "contributory infringement."

Vicarious liability arises when an entity has the right and ability to control the infringing activity, and derives a direct financial benefit from the infringement. In such cases, the entity can be held liable for the infringing activity of another party.

Contributory infringement, on the other hand, arises when an entity knowingly induces, causes, or materially contributes to the infringing activity of another party. In such cases, the entity can be held liable for the infringement even if it does not directly engage in the infringing activity itself.

##### **(B) Indian cases on liability for AI-generated works**

There have not been any recent cases in India that specifically address the liability for copyright

infringement by AI-generated works. However, a few cases have addressed the question of secondary liability in the context of online platforms that host user-generated content.

In the case of *MySpace Inc. v. Super Cassettes Industries Ltd.*, the Delhi High Court held that MySpace, a social networking platform, was not liable for copyright infringement by its users, as it had complied with the "safe harbor" provisions under Indian law. These provisions protect intermediaries from liability for user-generated content if they meet certain conditions, such as having a "notice and takedown" policy and not being involved in the creation or selection of the content.

Similarly, in the case of *Christian Louboutin SAS v. Nakul Bajaj & Ors.*, the Delhi High Court held that an e-commerce platform that facilitated the sale of counterfeit products was liable for contributory infringement, as it had knowledge of the infringing activity and materially contributed to it by providing a platform for the sale.

### **(C) Comparative legal analysis of international liability standards**

The question of liability for copyright infringement by AI is a complex and evolving issue that is being addressed by courts and policymakers around the world. In the United States, for example, secondary liability for copyright infringement can arise under the doctrines of "vicarious liability" and "contributory infringement," as in India. However, U.S. law also recognizes a third doctrine of "inducement liability," which arises when an entity intentionally induces or encourages infringing activity.

In the European Union, the liability of intermediaries for copyright infringement is governed by the E-Commerce Directive, which provides for a "hosting safe harbor" that shields intermediaries from liability for user-generated content if they meet certain conditions. The Directive also provides for a "mere conduit" exception that shields intermediaries from liability for the mere transmission of infringing content.

Overall, the question of liability for copyright infringement by AI raises a number of complex legal and policy issues that require careful consideration. While Indian law currently does not explicitly address the liability of AI for copyright infringement, recent cases suggest that Indian courts are likely to apply the existing doctrines of secondary liability in a manner that is consistent with international legal norms. At the same time, it is important for policymakers and stakeholders in India's creative industries to consider the implications of AI for liability standards and to develop appropriate legal frameworks that balance the interests of creators, users, and society as a whole.

### **(D) Policy Implications**

The rapid development of artificial intelligence (AI) technologies is presenting both challenges and opportunities for the copyright system in India. On the one hand, AI has the potential to enable new forms of creativity and enhance the efficiency of the copyright system, through technologies such as content recognition and automated licensing. On the other hand, AI also raises important questions around authorship, ownership, and liability for copyright infringement.

One key challenge is that the existing legal framework for copyright in India may not be fully equipped to deal with the unique features of AI-generated works, such as works that are created by machines or that involve multiple creators. This can lead to uncertainty and confusion around issues such as ownership, attribution, and liability.

At the same time, there are also significant opportunities for AI to enhance the efficiency and effectiveness of the copyright system in India. For example, AI can be used to facilitate the licensing of copyrighted works, to detect and prevent copyright infringement, and to enable new forms of creative expression.

## **V. RECOMMENDATIONS FOR POLICYMAKERS AND STAKEHOLDERS IN INDIA'S CREATIVE INDUSTRIES**

In order to maximize the opportunities of AI while addressing the challenges, policymakers and stakeholders in India's creative industries should consider the following recommendations:

1. Clarify the legal status of AI-generated works: The Indian copyright law should be amended to provide clear guidelines on the copyrightability of AI-generated works and the ownership of such works. This could involve creating a new category of "machine-generated works" or clarifying the existing rules on authorship and ownership.
2. Develop ethical and regulatory guidelines for AI in creative industries: As AI becomes more prevalent in creative industries, it is important to develop ethical and regulatory guidelines to ensure that AI is used in a responsible and transparent manner. This could involve developing guidelines on issues such as transparency, accountability, and bias in AI systems.
3. Encourage the development of AI-enabled copyright management systems: The Indian government and industry stakeholders should promote the development of AI-enabled copyright management systems that can facilitate licensing, content recognition, and infringement detection.



4. Foster collaboration between the AI and creative industries: Policymakers and stakeholders should promote collaboration between the AI and creative industries, to encourage the development of new forms of creative expression that can leverage AI technologies.

### **(A) Comparative analysis of policy approaches in other jurisdictions**

Other jurisdictions have also grappled with the policy implications of AI for copyright law. For example, the European Union has adopted a "copyright in the digital single market" directive that seeks to modernize and harmonize the copyright system across the EU. The directive includes provisions on issues such as online platforms, text and data mining, and the use of protected works in education and research.

In the United States, the Copyright Office has issued a report on "copyright and the music marketplace" that includes recommendations on issues such as licensing, ownership, and attribution of musical works. The report also recognizes the potential for AI technologies to enhance the music industry and encourages the development of new forms of collaboration between the music and technology industries.

Overall, the policy implications of AI for copyright law are complex and multifaceted, and require a collaborative and interdisciplinary approach that involves policymakers, industry stakeholders, and the broader public. By working together to address the challenges and opportunities of AI, India's creative industries can leverage this transformative technology to drive innovation and growth in the years to come

## **VI. CONCLUSION**

In this research paper, we have explored the intersection of AI and copyright law in the Indian context. We have provided an overview of the legal framework for copyright in India, as well as the key features of AI technologies and their implications for copyright law. Through an analysis of recent Indian cases and comparative legal analysis, we have identified key challenges and opportunities for the copyright system in India, particularly around issues of copyrightability and liability for AI-generated works.

Our research has highlighted the need for greater clarity and guidance on the copyrightability of AI-generated works and the ownership of such works. We have also identified the need for ethical and regulatory guidelines to ensure that AI is used in a responsible and transparent manner in creative industries. Finally, we have emphasized the importance of collaboration between the AI and creative industries to promote innovation and growth

The rapid development of AI technologies is transforming the creative industries in India and around the world. While these technologies present significant challenges and opportunities for the copyright system, they also have the potential to drive innovation and growth in the creative industries.

To fully realize the potential of AI in creative industries, it is essential that policymakers and stakeholders in India work together to address the challenges and opportunities of AI and copyright law. This includes developing clear guidelines on the copyrightability of AI-generated works and the ownership of such works, as well as promoting the development of ethical and regulatory guidelines for AI in creative industries.

Overall, our research highlights the need for a collaborative and interdisciplinary approach to addressing the implications of AI and copyright law for India's creative industries. By working together, we can ensure that AI is used in a responsible and transparent manner, while also driving innovation and growth in the years to come.

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