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Critical Analysis of Intellectual Property Law and Artificial Intelligence

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ABSTRACT

In the field of intellectual property law, one of the key areas of development which has gained popularity is the interaction between artificial intelligence and intellectual property rights. The main objective of intellectual property law is to encourage and promote innovation, creativity and investment in research and development. The ownership, protection and enforcement of intellectual property in artificial intelligence generated material and innovations are becoming more complicated as artificial intelligence tools create, analyse and manipulate massive volumes of data. Artificial intelligence generated ideas patentability involvement in the inventive process and inventorship requirements are all debated under patent law. Artificial intelligence created artworks, literature and music are difficult to identify and own under copyright law. Thus a pertinent question which arises is as to invention by artificial intelligence, who in the application for protection under intellectual property right should be named author/inventor, the artificial intelligence system or the user of artificial intelligence system or the company/person responsible for the development of artificial intelligence system? Policymakers, lawyers, legal scholars around the world face several difficulties and opportunities at the interaction of artificial intelligence and intellectual property rights. The paper aims to critically analyse the impact of artificial intelligence on innovation in the field of intellectual property rights.

Keywords: *Artificial Intelligence, Intellectual Property Rights, Copyright, Patent, Innovation.*

I. INTRODUCTION

Artificial intelligence is changing how organizations, governments, and individuals use technology. Artificial intelligence technologies like machine learning, natural language processing, and robotics have advanced rapidly, improving automation, decision-making, and problem-solving. However, these advances have complex legal implications, notably for Intellectual property right. Intellectual property like patents, copyrights, trademarks, and trade secrets protect innovations and confidential information. Innovation, research and development, and inventors and innovators' benefit from their creations depend on these rights. Policymakers,

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lawyers, scholars, and stakeholders face several difficulties and opportunities at the interaction. Artificial intelligence could improve Intellectual property right systems by speeding patent examination, copyright registration, and trademark enforcement.

According to legal language intellectual property can be defined as “*rights given to persons over the creation of their mind*”². In simple words it can be defined as rights given to protect the product (such as inventions, literary and artistic works, names, designs, pattern etc.) which are made by the use of human intellect, which should be safeguarded in the same way as physical properties are safeguarded. The main objective of IPR laws is to encourage and promote innovation, creativity, and investment in research and development. This is achieved by granting creators and innovators exclusive rights to their intellectual property assets. Through the provision of legal protection and exclusive rights, intellectual property right laws serve as a catalyst for individuals and organisations to dedicate their time, resources, and effort towards the advancement of new technologies, products, works.³

When the world of artificial intelligence and intellectual property right collide a sense of dilemma is faced by the legal scholars, national and supra national offices and multi-national offices. It is pertinent to note that the artificial intelligence still lacks to qualify as a legal entity because according to jurisprudential point of view for who may be treated as a legal entity, it says that the entity should be competent to enter into contracts, sue or be sued, artificial intelligence hence does not qualify as a legal entity in the eyes of law. So, when an artificial intelligence system creates an innovation, the point of debate arises as to who should be granted the intellectual property right over the innovation? The paper aims to critically analyze the interaction between artificial intelligence and intellectual property right, it would elaborate the interaction between artificial intelligence and copyright law and patent law.

II. ARTIFICIAL INTELLIGENCE AND COPYRIGHT

The field of copyright law plays a vital role in safeguarding the artistic creations of individuals, providing authors with exclusive rights to their unique works of authorship. Copyrights provide legal protection for original works of authorship, such as literature, art, and music. They grant authors exclusive rights to reproduce, distribute, and perform their creations. According to the Copyright Act of 1957, provides a clear outline of the various types of works that are eligible for copyright protection. These include literary works, dramatic works, musical works, artistic

² What are intellectual property rights available at https://www.wto.org/english/tratop_e/trips_e/intel1_e.htm (last visited on 11.01.2014)

³ Sharma, Manoj Kumar. Intellectual Property Rights: Judicial Perspective. New Delhi: Universal Law Publishing Co., 2019.

works, cinematographic films, and sound recordings. The Copyright Act of 1957 in India establishes a strong legal framework to safeguard the artistic works and intellectual property of authors, creators.

Artificial intelligence technologies have significantly transformed the process of content production, leading to a convergence of human and machine innovation. Artificial Intelligence generated works, encompassing a wide range of creative outputs such as music compositions, artwork, literature, and news stories, pose a significant challenge to the conventional notions of authorship and ownership within the realm of copyright law. In contrast to human producers, artificial intelligence systems are devoid of subjective creativity and purpose, hence prompting inquiries on the suitability of copyright protection for works created by Artificial intelligence. The issue of copyright ownership in Artificial intelligence generated works continues to be a subject of disagreement. Which party should be responsible for developing the Artificial intelligence algorithm: the programmer, the user, or the Artificial intelligence system itself? The absence of clear definitions adds complexity to the matters of copyright ownership and enforcement.

The attribution of authorship and the allocation of copyright ownership in artificial intelligence generated material give rise to intricate concerns pertaining to ownership rights. In situations when artificial intelligence systems independently produce works, inquiries emerge over the ownership of copyright in the resultant products. The attribution of authorship to human creators is a common practice in traditional copyright doctrines, which gives rise to difficulties over the legal standing of artificial intelligence generated works and the rights of stakeholders engaged in their creation.

When evaluating the usage of artificial intelligence generated material in transformative contexts like commentary, criticism, parody, or education, fair use issues become of utmost importance. Fair use is a copyright principle that allows for the restricted use of copyrighted work without obtaining permission from the copyright holder, subject to specific conditions. Nevertheless, the application of fair use standards to content created by artificial intelligence poses unique difficulties, including in ascertaining the transformative characteristics of artificial intelligence generated works and the degree to which they depend on legally protected material.⁴

In the case of Ankit Sahani, an application was filed for copyright protection in November 2020

⁴ Rao, Arvind. "Ownership Issues and Fair Use Considerations in AI-Generated Works." *International Journal of Intellectual Property Rights* 7.2 (2018): 89-104

with Indian Copyright Office in order to register a painting called “SURYAST” that was produced by artificial intelligence tool called “RAGHAV”. According to the application the painting’s co-author is the artificial intelligence tool “RAGHAV” and primary author was Ankit Sahani. The painting created by RAGHAV was given copyright protection for the first time by Indian Copyright Office. However the review board of United States Copyright Office rejected the application of Ankit Sahani’ claim and held that human originators are necessary for the registration.

Therefore, under the copyright law there is a presumption that work and author are two sides of the same coin as one cannot exist without the other. Work cannot exist without author and author cannot exist without work. The long-standing subject of whether artificial intelligence—which is non-human—should be allowed copyright for creative work is still one that national and supranational offices throughout the world need to address and provide definitive guidelines for. Different countries around the world have different approaches to tackle such question, some suggest that for protection under copyright law human touch is essential and other suggest that only requirement should be considered is whether the work is original and new or not.

III. ARTIFICIAL INTELLIGENCE AND PATENT

Artificial intelligence has significantly altered the domain of patent law, fundamentally reshaping the procedures involved in creation, exploration, and advancement. Artificial intelligence driven tools and algorithms have the capability to analyse extensive quantities of data, detect ideas that are eligible for patent protection, and even produce preliminary patent applications. The notion of inventorship has significant importance within the realm of patent law, since it mandates the granting of patents to those who actively contribute to the conceptualization of an invention. The non-obviousness requirement is a fundamental aspect of patent law, which mandates that innovations must be non-obvious to an individual with expertise in the pertinent domain. The generation of ideas by artificial intelligence algorithms, which rely on extensive datasets and intricate analysis, raises issues regarding the extent of human brilliance necessary to meet the non-obviousness criterion. The rapid advancement of invention fosters technical advancement and stimulates economic expansion.

The determination of whether artificial intelligence ideas may be patented is contingent upon their compliance with the legislative criteria for patent protection, which commonly encompass novelty, non-obviousness, and usefulness. A wide range of technologies is included by artificial intelligence innovations, including machine learning algorithms, natural language processing systems, autonomous cars, and medical diagnostic instruments. Patent offices throughout the

globe have been confronted with the inquiry of whether discoveries developed by artificial intelligence satisfy these requirements and warrant the safeguarding of patents.

One of the biggest challenges that one faces for obtaining patent on an invention which is created by artificial intelligence is to prove that the invention satisfies all three criteria. The question which can be derived from the above statements is how can one prove novelty in the innovation by artificial intelligence, as the artificial intelligence system rely on various dataset and algorithms to analyze and deliver. Therefore, while assessing the patent application for an invention by artificial intelligence many national and supra national offices point that the artificial intelligence system already has excess to various prior art and the invention thus can be obvious

AI technologies are increasingly being employed for the automated writing of patents. AI-driven systems have the capability to analyse extensive amounts of technical data, detect ideas that are eligible for patent protection, and even produce preliminary patent applications. This phenomenon possesses the capacity to optimise the method of patent prosecution and diminish expenses for inventors and patent practitioners.

The use of automated patent drafting tools has prompted inquiries regarding the involvement of human inventors and patent attorneys in the patenting procedure. Although the use of these tools can enhance the efficiency of patent application preparation, it is important to acknowledge that they may also introduce potential mistakes or oversights that might undermine the legitimacy or enforceability of patents.

Interestingly voice assistance system “SIRI” was granted patent by the United States Patent and Trademark Office for unconventional virtual assistant interaction, in the application Apple discuss usages and advantages of SIRI, it is pertinent to note that if the same voice assistance system i.e. SIRI invents something new then no patent shall be granted on the basis that it does not have human touch. Therefore, can one say that if the first step of Artificial Intelligence begins with human touch that is coding which requires human to type and think about the algorithms, then according why artificial intelligence cannot be granted patent for innovations because indirectly a human touch is involved.

Thus, it can be said that there are have been no clear guidelines by any of the national/supra national organization with respect to granting of patent to innovations made by artificial intelligence system. Some suggest that human touch is essential in all forms of intellectual property rights and some feel that innovation either made by humans or made by artificial intelligence should be safeguarded.

IV. CRITICAL ANALYSIS SHOULD ARTIFICIAL INTELLIGENCE BE PROTECTED UNDER INTELLECTUAL PROPERTY RIGHT LAW

(A) For the Motion

Providing legal safeguards for Artificial Intelligence technology through Intellectual Property Rights regulations may stimulate innovation, foster investment, and facilitate technical progress. Intellectual property rights protection provides legal protections that entice investors and venture capitalists to finance artificial intelligence initiatives, resulting in expedited progress and the creation of novel applications and solutions.⁵

1. Incentivizing Innovation

The preservation of Intellectual Property Rights acts as a significant motivator for fostering innovation within the realm of artificial intelligence. Intellectual Property Rights provide inventors and innovators with exclusive rights to their innovations and creations, enabling them to fully benefit from their labour. The sense of exclusivity fosters a feeling of safety, which serves as a driving force for inventors to dedicate their time, money, and energy to the development of artificial intelligence technology.

2. Encouraging Investment:

The protection of Intellectual Property Rights is crucial in promoting investment in artificial intelligence initiatives since it offers confidence to investors and venture capitalists. When evaluating potential investments in artificial intelligence start-ups, research efforts, or technology firms, investors prioritise the need for reassurance over the potential for substantial returns on their investments and the assurance that their contributions would be protected. Intellectual property rights protection provides a guarantee by allowing inventors and innovators exclusive rights, therefore safeguarding their intellectual property assets. Investors have a greater propensity to provide financial support for artificial intelligence initiatives when they see the possibility of significant returns on their investments and possess a sense of assurance regarding the security of their assets.

3. Accelerating Advancements:

The presence of Intellectual Property Rights protection is crucial in expediting progress in the realm of artificial intelligence. Companies may accelerate the process of introducing artificial intelligence technology to the market by having the guarantee of legal protection for their

⁵ Sharma, Rakesh. "Artificial Intelligence and Its Implications on Copyright, Patent, and Trademark Laws in India." *Indian Journal of Intellectual Property Law*, vol. 12, no. 3, 2019, pp. 45-60.

discoveries. Intellectual property rights protection inspires enterprises to invest in the commercialization of their artificial intelligence inventions, as they are assured that their property rights will be protected against unauthorised use or replication. The presence of this confidence motivates enterprises to spend resources towards the expansion of their operations, the promotion of their market presence, and the facilitation of the adoption of artificial intelligence solutions in diverse industries.

(B) Against the motion

The denial of Intellectual Property Rights protection to artificial intelligence technology serves to promote cooperation, mitigate the formation of monopolies, and guarantee accessibility. Excluding artificial intelligence from intellectual property rights regulations fosters cooperation and the exchange of knowledge among academics, stimulates fair competition, and stimulates innovation via collaboration and variety.

1. Fostering Collaboration:

The prohibition of AI from being subject to Intellectual Property Rights (IPR) legislation promotes cooperation and the exchange of information among scholars and creators by eliminating the limitations imposed by intellectual property safeguards. When artificial intelligence (AI) technologies are not bound by patents, copyrights, or trademarks, there is a greater propensity for individuals and organisations to participate in open collaboration, whereby they freely exchange ideas, data, and resources⁶. By excluding artificial intelligence from intellectual property rights rules, the sharing of ideas and data that are essential for the progress of artificial intelligence research and development is encouraged. Researchers have the ability to engage in open and transparent communication of their findings, techniques, and ideas, without being burdened by proprietary limitations.

2. Preventing Monopolies:

The exclusion of artificial intelligence from intellectual property rights regulations serves as a preventive measure against monopolistic behaviours, as it mitigates the risk of a small number of dominant corporations gaining control over crucial artificial intelligence developments. In instances when artificial intelligence technologies are not subject to patents, copyrights, or trademarks, the absence of legal constraints allows for unrestricted access and further development of these inventions by others. Without intellectual property rights protection for artificial intelligence many entities have the freedom to create and apply artificial intelligence

⁶ Gupta, Alok. "Intellectual Property Rights and the Intersection with Artificial Intelligence: An Indian Perspective." *Journal of Intellectual Property Rights*, vol. 25, no. 4, 2020, pp. 201-215.

solutions, which promotes variety and innovation.

3. Ensuring Accessibility:

The exclusion of artificial intelligence from intellectual property rights legislation serves to enhance the accessibility of AI technology by eliminating obstacles that may impede their uptake and use. The absence of patents, copyrights, or trademarks safeguarding AI developments allows for broader accessibility of these technologies to a diverse user base, including academics, developers, and entrepreneurs, regardless of their financial means or legal proficiency.

Thus, it can be said that the interaction of artificial intelligence and intellectual property rights is said to have negative as well as positive impact in both the industries. National and supra national offices are still trying to find common census between the two as in the end public interest should be considered and it should come first.

V. CONCLUSION

When examining the complex interplay between artificial intelligence and intellectual property rights, a number of significant themes have surfaced, each providing insights into various aspects of this sophisticated domain. The present study has undertaken an analysis of the patentability of artificial intelligence innovations, the safeguarding of copyright for artificial intelligence generated works. The rapid rate of AI invention frequently surpasses the pace of regulatory advancements, resulting in legal ambiguities and challenges related to compliance for both corporations and researchers. Nevertheless, within the context of these issues, there exist prospects for policymakers to modify and advance regulatory frameworks that facilitate innovation, while also protecting intellectual property rights and advocating for ethical development of artificial intelligence.

To summarise, the exploration of the convergence between artificial intelligence and intellectual property right law has been both illuminating and intellectually stimulating. This has emphasised the significance of working together, communicating, and including other fields of study in influencing the future of artificial intelligence innovation and intellectual property rights. By persistently examining these matters with meticulousness, compassion, and anticipation, we may establish a trajectory towards a fairer, more comprehensive, and morally upright artificial intelligence future for everyone.

To extrapolate from all the reasoning and critical analysis demonstrated above artificial intelligence may be of assistance to humans in creation of intellectual property right but it

cannot be the sole creator of an intellectual property right due to the fact any sort of malware, unethical hacking may jeopardize artificial intelligence wholly existence.
