

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 5

2024

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Indian Copyright Law and Artificial Intelligence: The Legal Challenges

ISHA¹

ABSTRACT

The article aims at discussing the challenges involved in granting copyrights to the AI generated works. It begins with highlighting the growing role of AI in creative fields such as music, arts etc. and briefly explains the copyright law in India. The article talks about the Indian as well as the international perspective over copyrightability of the AI generated works and also mentions various landmark judgments delivered by the courts of various jurisdictions in this respect. Lastly, this highlights the need to evolve the copyright law in order to resolve the confusion in relation to AI.

Keywords: Copyright law, Artificial Intelligence, Copyrightability.

I. INTRODUCTION

Artificial Intelligence (AI) is transforming the landscape of creativity and innovation. AI can now produce content that resembles human-created creativity from painting and music to a lot more. But this proliferation of AI-generated output has raised a host of legal and ethical issues, particularly in the sphere of copyright law. Copyright law (like much other law, depending upon the jurisdiction) in India is based on an ethos that human intellectual labour needs to be protected. This raises an important question: Can AI-generated works be protected under existing copyright laws?

This article delves into the intricacies of copyright law in India concerning AI-generated works, examining international perspectives, the copyrightability of AI work, and path-breaking decisions that have shaped our understanding so far.

II. THE COPYRIGHT LAW IN INDIA

The Indian copyright regime is primarily governed by the Copyright Act, 1957, which defines copyright as the exclusive right granted to creators of original works, whether literary, artistic, musical, or dramatic. The Act aims to protect the rights of authors, giving them control over how their works are used and allowing them to benefit financially from their creations.

For a work to be copyrighted under Indian law, it must fulfil the criteria of originality, which

¹ Author is a student at University Institute of Legal Studies, Panjab University, Chandigarh, India.

traditionally implies human authorship. The Section-17 of the Indian Copyright Act states:

*“The author of a work shall be the first owner of the copyright”*²

The term “author” means individuals (natural persons) and entities (juristic persons) who have been assigned the copyright by the individual. The copyright holder has the exclusive right to reproduce, distribute, perform, and adapt the work, along with the ability to assign these rights to others. However, the law makes no explicit provision for non-human creators, which raises significant issues when it comes to AI-generated works.

Therefore, as AI becomes more advanced and begins creating works autonomously, Indian copyright law faces the challenge of determining who, if anyone, should hold the copyright for such works. Should it be the AI itself, the developer, or the user who inputs the prompts for the AI's output? This ambiguity poses a serious challenge to the legal framework that needs to be addressed.

III. COPYRIGHTABILITY OF AI WORK : AN INDIAN OUTLOOK

The question of whether AI-generated works can be copyrighted completely depends upon the following two factors:

1. Originality
2. Authorship

Under Indian copyright law, a product of independent human intellectual effort is considered to be an original product and is eligible to be granted copyright protection. This requirement of human input is central to the idea of copyrightability because the law states that only humans can generate original and creative work and thus, only humans can hold copyrights. However, issues arise in case of AI because AI systems are more autonomous and can generate even without any human intervention.

As mentioned earlier, the Indian copyright law does not recognize AI or computer systems as author, thus, it does not grant AI any rights over its creations. As a result, a question arises as to who should be given rights over AI-generated works? Here, a dichotomy of opinion arises.

Some experts put up the "significant human input" approach, which provides that AI-generated works can be allowed copyright protection only if there is meaningful human intervention in the process of its creation. It is a simple test that seeks to check the extent of human involvement in the creation of an “original” product.³ This approach suggests that AI should be viewed as a

² The Copyright Act, § 17 (1957).

³ Harshal Chhabra, *Balancing Indian Copyright Law with AI-Generated Content: The ‘Significant Human Input’*

tool, much like a camera or a computer, where the human who operates or directs the AI would be considered the author.⁴ The test has two components that are required to be fulfilled in order to be granted copyright:

- A. Determining whether the AI-generated product is “original” and
- B. whether the extent of human involvement in the process is *significant* enough.⁵

In *Navigators Logistics Ltd. v. Kashif Qureshi*⁶, a copyright claim made on a list compiled by a computer was rejected due to a lack of human intervention. It was held that human involvement in the creation process is essential for the grant of copyright protection in India.⁷

However, according to others, AI-generated works should fall into the public domain since no human is directly involved in the creation of the same. This approach aims at preventing individuals or companies from exercising monopoly over the creations by AI and thereby ensures that such works are readily available to be accessed by general public.

Therefore, in the absence of clear guidelines in Indian law the copyrightability of AI-generated works still remains a grey area as to who holds rights over such creations.

(A) The International Perspective:

The laws surrounding the AI generated work and the treatment it receives is different in different jurisdictions with some nations that allow AI works to be hold copyrights while others oppose it since in most of the countries, including India, the copyright law requires a human creator for the work to be eligible for copyright protection.

For example, in the United States, the Copyright Act, holds that only works created by humans are eligible for copyright. The U.S. Copyright Office has rejected multiple copyright applications for works generated solely by AI, such as the famous case⁸ involving the "Monkey Selfie," where the court ruled that animals⁹ cannot hold copyright, and therefore, by extension of this rule, even AI generated works are not eligible for copyright protection.

Nevertheless, it is pertinent to mention here that in USA copyright office recognized protection for a graphic novel, namely *Zyara of the Dawn*, even though all the images were generated by

Approach, (Feb. 26, 2024), <https://www.ijlt.in/post/balancing-indian-copyright-law-with-ai-generated-content-the-significant-human-input-approach>.

⁴ *Ibid*.

⁵ *Supra*, at 2.

⁶ SCC OnLine Del 11321 (2018)

⁷ *Supra*, at 2.

⁸ *Naruto v David Slater*, 16-15469 (9th Cir.)

⁹ Susannah Cullinane, *Monkey does not own selfie copyright, appeals court rules*, (Apr. 24, 2018), <https://edition.cnn.com/2018/04/24/us/monkey-selfie-peta-appeal/index.html>.

AI and issued a formal policy statement stating that an AI-generated material may be granted copyright if it contains sufficient human authorship which is required under the copyright act to gain protection.¹⁰

Similarly, in *Acohs Pty Ltd v. Ucorp Pty Ltd*¹¹ case, the Australian court Australian Court had refused to grant copyrights to AI-generated work because it had not been produced by a human and ruled that AI-generated works should be protected only if based on the efforts of the human developers behind the AI¹²

However, China has been more accommodating toward AI-generated works since in a landmark case of *Tencent v. Yingxun*¹³, the Shenzhen District court granted copyright protection to an article generated by AI.¹⁴ Thus, this decision of the Chinese court highlights that it recognises the intellectual efforts involved in designing AI systems that can create valuable content.

These international perspectives reveal a fragmented approach to AI-generated works, with some countries considering limited protection while others, like India, are still bound by traditional notions of human authorship.

IV. CONCLUSION

Since the use of AI in creative industries is increasing rapidly, the legal framework behind copyright needs to be enhanced to order to deal with the complexities of AI created works. In India, the present copyright law is not prepared to deal with these complexities because Indian law only expects human beings to make original works.

Although, the idea of "significant human input" can serve as a potential way out but changes in the law are needed to clarify the rights pertaining to copyright and authors, or future developers and users, of AI systems. Thus, evolving clear guidelines is necessary in this respect.

¹⁰ Supra, at 2.

¹¹ FCAFC 16 [2012]

¹² Neha Raj, *Legal Implications Of AI-Created Works In India*, (July 28, 2023), <https://www.mondaq.com/india/copyright/1348418/legal-implications-of-ai-created-works-in-india>.

¹³ 2019

¹⁴ Susannah Cullinane, *Monkey does not own selfie copyright, appeals court rules*, (Apr. 24, 2018), <https://edition.cnn.com/2018/04/24/us/monkey-selfie-peta-appeal/index.html>.