

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 3

2024

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Redefining Authorship: Impact of AI and Future of Copyright

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ABSTRACT

A work needs to be original to get protection under copyright law. The work has to come from an identifiable author. Then what would be the stand of authorship rights in a situation where an author is a man-made intelligence or in other words an artificial intelligence? Who is the author of a work done by an AI? What is the assumption about creativity? This article discusses the copyrightability of a work done by AI and the copyright consequences of a third computer-enabled technological shift—in the means of creative and artistic production. How people are enabling computers to produce art and other creative works in new ways, virtually all by themselves creates ambiguities to the traditional notions of copyright law. This paper discusses how the concept of traditional authorship works in an artificial intelligent work in the context of the notion of originality. The paper is also looking into the eligibility of AI to be an author and the scope of authorship in the context of work created by AI.

Keywords: Artificial Intelligence, Copyright, Authorship, Originality, Ownership.

I. INTRODUCTION

The world is eagerly and curiously gazing at what's new happening in the field of AI. The development of AI technology was astonishing. It revolutionized almost all aspects of human life and it is still at its infant stage. The creative industry was no exception. AI is capable of creating any kind of creative work and it challenges the traditional notions of the copyright law. The current copyright law only addresses the protection of the human content creators. Author is considered as the heart of the copyright law². The intension of the copyright law is not solely to promote the dissemination of contents, it does protect the author and encourages their creativity. In the current scenario, with highly sophisticated AI system, the notion of author is getting defied. Not only the concept of authorship, the involvement of AI also challenges the concepts of originality and ownership. Throughout these years the copyright law has been subject changes. However, the influence of growth of the technology in the creative sector has

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² Jane C. Ginsburg, The Concept of Authorship in Comparative Copyright Law, 52 DEPAUL L. REV. 1063 (2003). Available at: https://scholarship.law.columbia.edu/faculty_scholarship/619

been huge the law is getting behind addressing the challenges posed by these unconventional deviations. The changing aspect of the concept of the authorship and originality also raises ambiguities in copyright law. This paper discusses how the concept of the traditional authorship works in an artificial intelligent work in context of the notion of originality. Paper is also looking into the eligibility of AI to be an author and the scope of authorship in context of work created by AI.

(A) What is Artificial Intelligence?

John McCarthy, the father of artificial intelligence defines it as “The science and engineering of making intelligent machines, especially intelligent computer programs”³. The term ‘Artificial intelligence’ was coined by McCarthy in 1956. It is the branch of computer science concerned with making computers behave like humans. Artificial Intelligence is a way of making a computer, a computer-controlled robot, or software think intelligently, in a similar manner the intelligent humans think. Currently, no computers with full artificial intelligence have been invented.

In 1950 English mathematician Alan Turing wrote a landmark paper titled “Computing Machinery and Intelligence” that asked the question: “Can machines think?” Further work came out of a 1956 workshop at Dartmouth sponsored by McCarthy. Now the concept of AI developed to a level that it can mimic any of the cognitive functions that the human mind can.

AI is always fascinating as well as controversial. With the development of AI, the Legal system has to pay attention to this field. The use of AI in the creative sector is growing. Currently majority use it as tool to create a work or to modify or to increase the quality of it but that is not the limit AI. Its presence and significance in the creative industry especially in gaming, film, music and television industry is promising as well as alarming. Development of AI messes with the legal regime and also raises ethical questions. The technologies like Deepfake raises concerns as it can create manipulative contents one’s likeness with another using deep learning techniques. AI can create music, at the same time using AI people can fake other person’s voice.

II. NON- HUMAN CREATOR AND COPYRIGHT

In IPR, particularly copyright there are so many questions arising with the advancement of technology of AI. The Main hurdle is that the ownership of copyright rests on the creation of it, i.e. there should be an author and creativity should be involved in it. In the case of an A. I the

³ John McCarthy, What is Artificial Intelligence? Computer Science Department, Stanford University(2007). Available at www-formal.stanford.edu/jmc/whatisai.pdf

contents generated are the results of pre-programmed instructions.

Copyright is intended to “promote the progress of Science and the useful Arts”. It grants a limited monopoly to authors over the production and dissemination of their creative expression with the aim of incentivizing creativity. Machines have no intention of creating novel works, nor do they consider incentives as such. Who is the author of the work if innovative or novel contributions were the work of a machine? Whether the work qualify to be copyrighted?

In 2014 there was a case in front of a US court, claiming the copyright ownership of certain photographs⁴. The photos in question were taken by a monkey. A photographer left his camera in the forest and the monkey took several selfies. The photographer and his company claimed the copyright ownership and published the photos that the monkey took. Wikipedia by stating that “this file is in the public domain, because as the work of a non-human animal, it has no human author in whom copyright is vested”, published it on their website. An organization challenged this and claimed that the monkey was the owner of the copyright and that the photographer and his company infringed the monkey's copyright. The claim of the organization was that the protection under the copyright act does not depend on the humanity of the author, but on the originality of the work itself and it is undisputed that the photos were taken by the monkey. Also claimed that the Copyright Act should be interpreted broadly and the scope of including the new forms of expression unknown at the time of its enactment should not be avoided. The judge dismissed the suit by saying that a non-human animal could not own a copyright as there is no indication in the Copyright Act. Copyright does not extend to animal protection. In light of this incident, the US Copyright Office released a statement on the meaning of “authorship” under the copyright act. They declared that to qualify as a work of “authorship” a work must be created by a human being”, animals cannot produce copyright, and giving as an example of non-copyrightable works a “photograph taken by a monkey”. And cited the Supreme Court case *Burrow-Giles Lithographic Co.*⁵

That was a case of a monkey which is a living organism but now machines are also able to create potentially copyrightable works with no need for human involvement. Companies are producing software that can compose music and songs and there are so many other innovations that are taking place in the creative sector such as data analysis programs that can produce original news reports, and artistic that create original paintings. The intention behind

4 The monkey selfie: copyright lessons for originality in photographs and internet jurisdiction; <https://policyreview.info/articles/analysis/monkey-selfie-copyright-lessons-originality-photographs-and-internet-jurisdiction>

5 1884 U.S. LEXIS 1757

developing such software is to expand the possibilities of humans and computers collaborating to create music and other arts.

“Artificial Intelligence impacts on copyright in two ways. First, human creators are increasingly assisted by intelligent technology, co-creating works with (partially) autonomous machines, or in some cases leaving the creative process entirely to software programs.

The refusal to give copyright to a non-human creator raises the same question who owns the creative work by a non-human? Most the people argue that the person who is in control of the non-human creator is the owner of the copyright. Some are in opinion that the works created by non-humans are not copyrightable and it is in public domain.

Are traditional copyright law concepts such as “originality” “creative authorship” still appropriate for such an environment?

Authorship and Creativity

Author is an inspired creator of works of arts has interacted with the legal notion of the ‘author’ as the bearer of portable rights in literary and artistic property.⁶ The author can be considered as an individual creative personality as he is the solitary originator of stylistically consistent works.⁷ The romantic author got privilege and monolithic position from the development of English legal system. Later the American legal framework also recognized the authors privilege. Authors got exclusive right on their writings as a part of this development. Lock’s economic theory of possessive individualism backed the legal construction of the author as proprietor. Gradually fixed a threshold required for authorship in terms of mind and intellect. Eligibility of the copyright limited to the works depend upon the work of brain. Originality and creativity should there in a work to get protection under the copyright law. Courts interpreted the criteria in their own way. Original does not mean startling, novel or unusual, it means a marked departure from the past.⁸

In *Feist Publication, Inc. v. Rural Telephone Service Co., Inc.*⁹, to fix the standard of originality court put forward a new test “modicum of creativity” and held that to get copyright protection the work must be original independent creation, which contains minimum creativity.

The term creativity is not defined. If creativity is defined in terms of human consciousness then machines will never be able to achieve it, no matter how sophisticated they become. A human

⁶ Peter Jaszi, On the Author Effect

⁷ Annemarie Bridy, Coding Creativity: Copyright and the Artificially Intelligent Author

⁸ Alfred Bell & Co. v. Catalda Fine Arts, Inc.

⁹ 1991 U.S. LEXIS 1856

author can write anything in his mind, it is not predictable. A.I can only write within the scope of whatever installed in the system. If predictability is the reason for denying the copyright protection, it is not impossible to programme it as unpredictable. Computer can be programmed to break the rules, disorder. But is this not enough for making it creative. The argument is valid that the human minds are also works as a computer, humans are meat machines but how can we put that element of romantic in a computer.

*Eastern Book Company v. D.B Modak*¹⁰ the Court held that a ‘minimal degree of creativity’ was required, that there must be ‘*there must be some substantive variation and not merely a trivial variation*’. As we discussed it is not difficult to bring unpredictability for an unexpected work from a A.I but there is no more than a ‘trivial variation’.

Under Section 2 (d) of the Indian Copyright Act, 1957, “(d) ‘author’ means,-

“...(vi) *in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;*”

The problem with this provision is that ‘The person who causes the work to be created’ need not be a natural or legal person.

It is difficult to determine the creativity involved in the work created by AI and the authorship issue.

III. CONCLUSION

Some may argue that the creators of such A.I should own the copyright in these works since very source of an A.I is the intellectual labour expended by its creator. The work created by such the software is a derivative work of the creator’s work, i.e. the algorithm which enables the software to create copyrightable works. This cannot be considered as a correct proposition because not all possible derivations and incidental works are subject to copyright protection. In any case, this would be undesirable since this would broaden the IP rights of an AI creator at the cost of the public’s opportunity to benefit from information created by such AI.

There are two options:

1. Allocate the ‘first authorship’ of the work to the human or legal person closest to the creation of the expression.
2. Declare the work in question to have no *first author*.

The above two choices will have to made on a case-by-case basis. If the works of AI are

10 (2008) 1 SCC

protected under copyright, we humans may be left with an unreasonably narrow space to think and express our own thoughts. The AI are not a legal person and it cannot enforce any kind of rights before the court. Therefore personally I would suggest that such works, i.e. those created by artificially intelligent non-human entities, should be available for non-commercial exploitation by the public whilst recognizing the robots' authorship in the work.

There should be provisions in the law to address the works created by non-human entities. Technological changes are rapid. In 19th century robots were only in literature, in this 21st century AI with creative qualities are invented. In near future we may witness the invention of human like robots.
