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The Role of Artificial Intelligence in Copyright Law: Are Machines the New Authors?

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ABSTRACT

The paper explores the evolving role of Artificial Intelligence (AI) in Copyright Law, focusing on the challenges and implications of recognizing AI-generated works. It traces the historical development of copyright protection in India from the colonial-1970s-based Indian Copyright Act of 1847 to today's landmark Copyright Act of 1957, and also highlights key legislative landmarks and amendments. The paper delves into transformation through technological advancement, particularly the rise of AI as a tool to produce creative, literary, and musical works even without direct human input.The central question addressed is whether can be considered "authors" under current copyright law and the potential legal and ethical ramifications of such a designation. By examining issues of authorship, ownership, and originality, the paper argues for a nuanced approach in adapting copyright laws to accommodate AI-generated content. It underscores the need for policymakers to carefully balance the rights of creators, developers, and AI systems in an era where machine-generated works are becoming increasingly prevalent.

Keywords*: Artificial Intelligence, Copyright, AI-generated Works, Authorship and Ownership, Indian Copyright Act, Intellectual Property*.

I. INTRODUCTION

(A) Evolution of Copyright Protection in India

The Colonial history, post-independence events, and technological advancements have all influenced the intriguing evolution of copyright protection in India. The Indian Copyright Act of 1847, which was passed during the British colonial era, is where Indian copyright law first emerged. This law, which was India's first official introduction to copyright protection, was simply an extension of the British Copyright Act of 1842. The legislation during the colonial era mostly benefited British interests by safeguarding British creations on Indian soil while providing Indian artists with very limited protection.

India's copyright laws underwent a dramatic change in the years following independence. A

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comprehensive copyright structure that would meet its distinct social, cultural, and economic interests was deemed necessary by the newly independent country. The Copyright Act, 1957[2], a historic piece of legislation that now serves as the foundation for India's copyright protection framework, was passed as a result of this recognition. The delicate balance between private rights and the public interest that defines Indian intellectual property law is reflected in the Act's dual goals of safeguarding creators' rights and guaranteeing public access to creative works. A number of innovative features that were ahead of their time were laid down in the Copyright Act of 1957. It created a strong foundation for safeguarding artistic, theatrical, musical, and literary works, among other kinds of creative expression. Section 2(d) of the Act's[3] definition of authorship was purposefully written to be comprehensive, acknowledging various forms of creative contributions. However, since the idea of machine-generated works was essentially nonexistent at the time it was enacted, this definition was essentially based on human creativity.

Over the years, the Copyright Act has undergone significant revisions. In response to developments in technology and India's responsibilities under international treaties, the 1994 modification brought Indian copyright law into compliance with international standards.[4] Section 2(d)(vi), a new clause added to the act by this amendment[5], makes it clear that the person who created computer-generated works is the rightful owner of those works. The 2012 amendment[6] addressed issues pertaining to the internet and added measures for managing digital rights, substantially modernizing the law. But neither of these revisions particularly addressed the special difficulties presented by machine-generated content and artificial intelligence.

Now, the modern evolution of Artificial Intelligence, as much as it has been beneficial, poses probably the greatest threat to lawyers and to intellectual property law in particular, - with more emphasis on copyright and patent law. First of all, works such as artistic, literary, and musical works can now be produced by innovative artificial intelligence systems bringing forth the issue of who is supposed to be evaluated as an “author” of such content. Traditionally, laws regarding copyright have existed with the aim of protecting creations which originate from the humans’ creativity, the majority of which are artistic, literary, architectural, and dramatic works. However, as works that are creative in nature are generated more often from AI, a legal vacuum

[2] Copyright Act 1957 Act No 14 of 1957.
[3] Copyright Act 1957 (India), s 2(d).
[4] James T and Department of Industrial Policy & Promotion, “Indian Copyright Law and Digital Technologies,” vol Vol 7 (2002) <http://docs.manupatra.in/newsline/articles/Upload/040BB5AA-DE9A-4895-AA66-C82590E7BFF2.pdf>
[5] *The Copyright (Amendment) Act, 1994 (Act No. 38 of 1994)*.
[6] *The Copyright (Amendment) Act, 2012 (Act No. 27 of 2012)*.

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has developed with regard to the ownership of such works produced by machines.

The Role of Artificial Intelligence in Copyright Law: Are Machines the New Authors? This paper analyzes the legal issues arising in the context of the works created by AI, addressing the most important issues such as authorship, ownership, and originality of the content. The critical aspect of such a discourse is whether it is appropriate to attribute authorship to a machine within the ambit of the copyright law and the consequences of doing so. Perspectives differ on whether authorship rights should belong to the AI developer, the individual who trained the system, or possibly the AI itself.

Policymakers must carefully consider whether changes to the copyright laws may provide extensive legal provisions for works created through artificial intelligence, given the speed at which technology is constantly developing. Given the growing number of AI-generated works, the issue of ownership—particularly with regard to copyright—becomes crucial. As a result, questions about copyright ownership in AI-generated works present a number of challenges that require serious thought. To guarantee that creators, programmers, and AI systems themselves are all adequately compensated for their contributions to these works, lawmakers must endeavor to draft legislation that takes into consideration the special characteristics of works created by AI.

II. THE CURRENT LEGAL FRAMEWORK AND ISSUES ON THE AUTHORSHIP OF AI-GENERATED WORKS

(A) Human-Centric Nature of Authorship Under Indian Copyright Law

When considering AI-generated works, the legal framework of authorship defined under India's Copyright Act, 1957, poses intriguing difficulties. Although the Act's Section 2(d) defines several types of authors, it is unclear how this provision applies to works that are created on their own. The Act classifies authorship according to the type of work: writers for literary or dramatic works, composers for musical compositions, and, most significantly, the person who started the creation process for computer-generated works. Although the Act does not specifically require human authorship or outline the legal personality requirements for authors, its underlying presumptions and operational provisions strongly imply a human-centric approach. This is a significant finding when examining the definitional framework of the Act. *This is especially clear when looking at the Act's provisions (section 2 d(iv)) on computer-generated works*[7]*, where it places more emphasis on the individual starting the creative process*

[7] Copyright Act 1957 , s 2(d)(iv).

than it does on the potential independence of advanced computational systems.

In the case of *Navigators Logistics Ltd. v. Kashif Qureshi*[8], the Delhi High Court examined the query of whether a list produced by a computer package that is devoid of human control can be copyrighted. Navigators Logistics Ltd. sought to own copyright over a list which was alleged to have been generated automatically although it was said to qualify for copyright safeguards by being original.

The Court dismissed this argument, pointing out that in accordance with the Copyright Act of 1957 enacted in India, protection against infringement can be granted to only those works which have been created with some employment of human creativity. The Court underscored the fact that in India's copyright law, 'originality' is understood as an element of human inventiveness and therefore the mere act of employing a computer program to organize information does not satisfy the law's originality requirement in the absence of further human involvement.

In the case of ***Rupendra Kashyap v. Jiwan Publishing House Pvt. Ltd***.[9], the Hon'ble Court explained the concept of authorship concerning examination question papers. It was ruled that the 'author' of an examination paper is the person who sets the questions. This is done by a human being and not an artificial one. Therefore, the organization Central Board of Secondary Education (CBSE) composed of people and not a single individual, cannot claim. Copyright, even if it is entitled to examination papers. To claim authorship over such question papers, CBSE would have to show that it was the one who hired people to do the compilations and signed agreements that made it clear that the ownership of the copyright would be belonging to the CBSE.

This rule is part of a more encompassing principle found in *other cases Tech Plus Media Private Ltd. Vs. Jyoti Janda*[10], where the courts have held the view that an author of a work with copyright protection can only be a living being because a legal person cannot independently produce creative work. In support of this, the Copyright Office Practice and Procedure Manual-2018 states that an author's name for the purpose of one's copyright must be that of only a **natural person.** This illustrates that the current state of copyright does provide for moral rights in the law only, it does so only to human beings who are directly involved in the making of any such work.

Instead of seeing computers as autonomous creative beings, the legal system seems to see them

[8] Navigators Logistics Ltd. v. Kashif Qureshi & Ors (2018) 254 DLT 307 : (2018) 76 PTC 564
[9] 1994 (28) DRJ 286.
[10] Tech Plus Media Private Ltd. Vs. Jyoti Janda, (2014) 60 PTC 121.

largely as instruments that support human creativity. This viewpoint leaves a significant vacuum in how to handle situations involving advanced artificial intelligence (AI) systems that are able to carry out autonomous creative processes. The current legal framework does not address the issue of whether such systems can have independent creative rights. Even examining Chapter V of the Copyright Act, in particular Section 22[11], which deals with copyright duration, makes this legislative goal more clear. The terminology used in this section is telling; it refers to copyright terms in terms of the author's "lifetime" and provides protection for sixty years after the author's "death."[12] It is clear from these allusions to mortality that the legislators considered authors to be mortal beings, most likely humans.

Given that AI systems are theoretically immortal, there are significant concerns over the application of this temporal framework, which is based on human life spans. It is up for debate whether this restriction represents a conscious decision or just the technology constraints of the time the Act was written. Nonetheless, the existing legal system unambiguously places authorship within the purview of individuals, whether they are natural persons or legal entities. When taking into account contemporary AI systems that can function with little assistance from humans, the legislative gap is very noticeable. Advanced artificial intelligence (AI) systems are capable of creative processes that are more akin to human cognitive processes than standard computer programs, which operate only as tools under human guidance.This evolution in technology challenges the Act's fundamental assumption that computer-generated works necessarily involve substantial human intellect.

Similarly, under the United Kingdom Copyright Act[13], computers do not receive copyright ownership. In the case of literary, dramatic, musical, or artistic works generated by a computer, the author is considered to be the person who undertakes the necessary arrangements for the creation of the work.

a. Can AI be given a status of a Legal entity

It is important to note that granting Artificial Intelligence (AI) a legal personality - which is necessary for holding Intellectual Property Rights (IPR) - poses various challenges. According to the definition in most law dictionaries including Black's Law Dictionary- *Legal entities are organizations capable of taking legal action, having the capacity to make contracts with other individuals or the legal entities, incurring liabilities, and can be sued for its illegal or wrongful*

[11] Copyright Act 1957 , s 22.
[12] Pamela Samuelson, *Allocating Ownership Rights in Computer-Generated Works,* 47 PITT L. REV. 1185 (1985-1986). [*hereinafter* "**Samuelson**"]
[13] Copyright, Designs and Patents Act 1988, c. 10. §178 (U.K.).

activities. In India, the legal standing as a person has always been accorded in the real sense to the individuals and companies while others called 'persona ficta' could be referred to as a legal arrangement allowing a number of persons as a group or as a single entity to use the courts as one person with no regard for the individual members. Globally, AI has not been synonymous with being a legal person, but there have been events where for instance, Saudi Arabia gave citizenship to the robot Sophia while Ai Shibuya Mirai was given residence in Japan. These are in the first place, empty gestures, for the simple fact that tangible AI has not yet attained the level of rights that natural persons and companies enjoy over their ownership.

In the context of India, jurisprudence has made provision for every non-human to attain a certain scope of recognition as a person. To illustrate, there are legal traditions that treat religious idols as legal persons owning property and participating in lawsuits through human agents. This sets precedents for considering AI under the same circumstances. The idol does not have the capacity to think, however, this is adequately solved by the law which allows for representation of the said idol by certain persons.

In much the same way, non-human entities like animals have been given rights in India and have also at times been recognized as existing. It may be argued that legal personhood is independent of the levels of intelligence witnessed in reaching that conclusion; for instance, a young child and the cognitively challenged person where none can be said to fit within the embracing definition of rational and sane adults but still they are considered as a legal person.

Still, granting such a status for legal purposes to AI would mean that AI has to exhibit a level of agency, responsibility, and answerability on par with that of natural persons which is difficult because AI does not have feelings nor does it have moral reasoning by itself.

The Indian legal system could be modified to include AI as a legal being competent to hold copyright and patents in the same way as the law on juristic persons provides considerable weight to inter alia the balancing factors involved. This would however require considerable changes to the law as well as respect for AI's ability to "possess' and execute its rights in a way that enhances creative development while ensuring that accountability is present.

(B) The Question of Originality in AI-Generated Works

In Indian copyright laws, the term originality is not defined as being new but rather as a showing of skill, judgment and a little bit of creativity, as held in the case of Eastern Book Company v D.B. Modak[14] (2008) by the Supreme Court of India. In this instance, the Supreme Court

[14] Eastern Book Company v. D. B. Modak, (2008) 1 SCC 1.

researched and compared the different aspects of legal originality across different jurisdictions and dismissed the Illusionistic visualisation of creativity – which simply awards non creative effort to creative endeavor. Instead, relying on consistency, The Court found the Canadian "skill and judgement" test applicable as one that would work for them since it calls for a certain level of intellectual exertion but does not expect a great deal of creative or novel aspects.

The dispute arose as **Eastern Book Company (EBC)** the pioneer organization known for printing and adding other features like paragraph numbering, and head-notes to the Supreme Court case reports filed a suit for copyright infringement against its competitors who replicated these so-called “original” features. The Court stated that EBC’s additions – which were emanation out of an application of legal knowledge, skills and judgement – deserve protection under copyright law because they were created not just as a mechanically added feature, instead involved attendant intellectual effort. This case set in India, the precedent which suggested that even a modicum of original intellectual creative activity is more important than mere content based originality.

Applying this to AI-generated works, the argument that AI lacks “originality” because it combines pre-existing material holds weight, as AI lacks independent thought or judgment. However, if an AI-assisted work involves a degree of human skill and decision-making in its development, it could meet India's originality standard, albeit this remains a developing area in Indian copyright jurisprudence.

(C) The Sweat of The Brow Theory

The "Sweat of the Brow" theory is a principle in copyright law that justifies granting copyright protection based on the effort, skill, and labor expended in creating a work, rather than the originality of the work.

Under this theory:

- Copyright is awarded not because a work is highly original or creative but because the creator has put in substantial effort or "sweat of the brow" to produce it.
- It focuses on the industriousness of the creator rather than the intellectual creativity of the work.

It could be argued that granting copyright ownership to AI serves no meaningful purpose. AI cannot protect its own creations, as it lacks the ability to sue, has no financial incentive like human creators to safeguard its works, and can generate countless creations in an instant. The enforceability of copyright law with regard to AI remains unclear.

The primary goal of copyright law is to protect the interests of the author. The Copyright Act is designed to safeguard the moral and economic rights of creators. Legal scholars such as Samuelson and Miller have pointed out that the rationale behind copyright is to provide authors with incentives to produce copyrightable works. Arthur Miller, in particular, believes that since "software and machines" currently do not need such incentives, there is no basis for awarding copyright to these entities. The law aims to encourage creators to develop more original content, benefiting society while also allowing them to profit from their creations. Copyright protection ensures that authors have the assurance that their work will not be copied without permission, thus motivating further creation.

In contrast, AI does not require financial or social incentives to generate content. It can produce work at the press of a button in an instant. Therefore, granting copyright to AI does not serve a meaningful purpose. The likelihood of AI requiring incentives or having the awareness to protect its creations from infringement is extremely low. AI operates based on its programming, without any need for financial reward.

Unless there is extreme anthropomorphism, and AI evolves to the point of becoming self-aware and self-motivated to seek financial incentives, there is no need to grant exclusive ownership rights to machines. Instead, developers could be granted copyright over computer-generated works, as this may provide them with the motivation to continue developing advanced AI systems. Milde argues that offering such incentives to computer manufacturers can encourage investment in innovative AI design and technology.

III. POTENTIAL COPYRIGHT HOLDERS IN AI-GENERATED WORKS

In the introduction, we identified the possible individuals or entities who might be eligible to hold the copyright for AI-generated works. In this section, we will explore the legal framework in India concerning AI-generated content to determine who, under current law, can claim copyright ownership.

(A) Chatgpt as author?

ChatGPT cannot be considered an author under Indian copyright law, as it mandates that the copyright holder must be a natural person. According to Section 17 of the Indian Copyright Act, only "persons" can be authors, and while this generally refers to individuals, companies can be assigned copyright under Section 18 through an agreement for a specified duration. Additionally, Section 17 establishes that unless there is a contractual arrangement to the contrary, the human creator will always hold the initial copyright. The structure of the Act is clearly focused on human authorship, as evidenced by the copyright registration application

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(Form-XIV), which requires details like the claimant's name, nationality, and address. Though the debate over whether authorship is limited to natural persons or can extend to entities falls beyond the scope of this paper, the primary focus here is to examine the copyrightability of works created by humans using generative AI.

(B) Or, Is it the AI's Developer?

The developers' claim to copyright would largely hinge on their 'Terms of Use' policy. If a developer specifies that they retain rights to the work generated by their AI, they could hold the copyright unless there is a pre-existing agreement stating otherwise. However, the 'Terms of Use' for widely used AI platforms like ChatGPT and BingChat do not assert ownership over the content produced by users. From a logical perspective, it also seems unreasonable for developers to be granted copyright over AI-generated works. A similar situation can be compared to creating a painting using **Microsoft Paint—Microsoft would not reasonably** claim copyright over the artwork created, despite the significant tools Paint provides for the process, such as color filling and shape creation. The final creative output is a product of the user's individual effort and thought. Likewise, in the case of OpenAI, it offers a service, but the final outcome is shaped by how the user employs that service.

(C) But, can the prompt giver be granted the copyright?

This is where the intersection between law and generative AI becomes particularly intriguing. In 1994, the Indian Copyright Act was amended to address situations where artistic works are generated by computers. *The amendment added Section 2(d)(vi), which specifically states that the authorship of computer-generated works is attributed to the person responsible for initiating their creation.*

At first glance, one might assume this settles the legal stance in India, as the 'prompt-giver' appears to be the one causing the work to be generated. However, merely providing a single-line prompt does not automatically qualify a work for copyright protection.

Copyright is only granted if the author's work meets the required standard of 'originality.' *One of the lowest standards for granting copyright, although not recognized in India, is the 'sweat of the brow' doctrine, which allows copyright based solely on the effort and diligence of the author.* The case of *University of London Press Ltd v. Tutorial Press Ltd*[15] is particularly relevant here. In this case, the publisher compiled question papers from the University of

[15] Sinha A, "World Leaders in Legal Education and Research - Legal Wires" (*Legal Wires - World Leaders in Legal Education and Research*, October 11, 2018) <https://legal-wires.com/case-study/case-study-university-of-london-press-v-university-tutorial-press/>

London, and the university contested it, claiming copyright infringement on behalf of the professors who invested time and skill in creating the papers. The publisher argued that the papers were derived from pre-existing knowledge and thus not "original" enough to be copyrighted. However, the court ruled that despite using existing knowledge, the effort and time put into creating the papers were sufficient to warrant copyright protection. This standard of 'originality' grants copyright based on effort, without requiring creativity. In contrast, a work generated from a simple prompt—regardless of how unique the result may be—is not copyrightable due to the minimal effort involved in providing such a prompt.

IV. CONCLUSION

The concern regarding the safeguarding of the work created without the supervision of humans in the international arena is getting more and more challenging. The discussion is focused on whether the existing copyright laws need to be amended to allow protection of these creations or a different, separate protection scheme should be developed setting these works apart from the copyright provisions. Many people are using artificial intelligence (AI) and in the near future, its usage will increase. As AI is now being used to perform many creative functions, the question of who owns the rights to materials created by AI has become a vital problem. Decisions of this nature are likely to affect revenue generations in such sectors as publishing, payment for artistic work, or even film production.

Deciding who should possess these rights is a challenging task: whether it ought to be the developer of the AI, the AI itself, or the public. The granting right to the Developer under the current intellectual property law may be problematic as the creator’s rights will be for the person who is responsible for the originality of the content. In the case of the software, the developers who created the software, however, even they do not have any command over the original outputs generated by the AI system. On the other hand, bestowing ownership rights on an AI system is fraught with certain challenges. This would call for the development of a law that allows AI to be viewed as a legal entity, but this would defeat the goal of copyright law, which is aimed at the protection and encouragement of human authors and humanly created work. Since AI can create new things without being motivated, it might skew the understanding of intellectual property rights.

Putting works created by AI in the public domain may enhance the interests of consumers, but it does create some practical concerns. For example, the absence of exclusivity over AI works would affect the market orientation of such works for the short-term sustainability of the developers who want to recover and earn profits from their creations.

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The field of artificial intelligence is still in its infancy and still has many untapped opportunities, it is clear that even the existing copyright law cannot comprehensively solve the problems raised herein. While it might be impossible to completely abandon the existing system, the law can also evolve in a way that introduces principles which accept the creative process which is the "closest human agency".

Alternatively, an amendment could allow AI to be an "author" in a manner similar to corporate authorship, assigning ownership accordingly. AI advances at such a pace that it is necessary to conduct additional studies to identify practical approaches that ensure both development and protection of intellectual property.

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