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NAVIGATING THE INTERSECTION FROM CREATION TO REGULATION: GENERATIVE AI AND THE FUTURE OF COPYRIGHT LAW

Dr. Paramita Choudhury[1], *Dr. Sayan Das*[2]

ABSTRACT

Artificial Intelligence (AI)-generated literary, artistic, and musical content presents significant problems with copyright and ownership under Copyright Law. This study examines how AI advancements affect copyright and the difficulties encountered by intellectual property legal protection systems. This research aims to gauge the impact of AI-generated works within India's copyright regime. One topic that comes up is whether artificial intelligence can be regarded as a work's originator and owner. According to the Copyright Act of 1957, the term "author" refers to the individual who causes a computer-generated work to be made. Who should be regarded as the creator of work when it is generated by artificial intelligence? Can it be asserted that no one is responsible for creating the work? Another issue is that the output generated by an AI tool may closely resemble copyrighted items. The issue arising from the ubiquitous usage of generated AI is the potential liability faced by individuals and businesses when the AI produces results that violate copyright regulations. The paper discusses these issues in the context of Indian copyright law and the justification for the passage of copyright laws, briefly touching upon the state of affairs in other jurisdictions such as the USA, the UK, and China. The best methods to handle the issue of the creator and a stake in AI-generated works are to either make the work publicly available, seek out a mandatory license to use it, acknowledge that AI is not an individual, have humans participating work together as creators, or recognize that AI-generated works have unique privileges. The paper also analyses the relevance of technology safeguarding copyright, like, utilizing blockchain and other digital technologies to uphold copyright rights. The text also addresses new methods and guidelines for clearly marking AI-generated

1. Assistant Professor, School of Law, Woxsen University.
2. Assistant Professor, ICFAI Law School, The ICFAI Foundation for Higher Education (IFHE).

content to distinguish it from information created by humans. Safeguarding copyright for AI-generated content involves complex issues that require cooperation on different levels among politicians, technologists, and content creators, since AI blurs the line between individual and machine-generated content. The paper provides an overall vision to handle issues of copyright in the AI era through innovation and the protection of intellectual property, maintaining ethical conduct in the digital space.

Keywords: Artificial Intelligence (AI), Generative AI, Machine Learning (ML), Creativity, Regulatory Challenges.

INTRODUCTION

In the age of AI and the widespread presence of digital information, the ideas of creativity and authorship are significantly changing. These AI systems, using various advanced algorithms combined with large datasets, create everything from creative works of music and literature to visual arts and journalistic articles. The shift in content generation has led to a new era of digital expression, blurring the distinction between human and machine-generated content. During this transforming wave, problems arise. Securing the digital frontier and safeguarding copyright for AI-generated work have become increasingly intricate and challenging.[3]

Traditional systems of copyright, intended to protect human creations of authors and artists, will have to adapt to a situation in which the originator will be an algorithm, not a human being. Discussions on AI-generated content are pertinent to questions of authorship and ownership as there is no conventional human element. The issue of whether AI may be recognized as an author and determining the rightful holder of copyright on AI-generated content is a significant matter. Moreover, the legal intricacies and the ambiguous distinction between human and AI authorship pose issues in identifying AI-generated work apart from human-generated content. This obstacle impedes the efficient enforcement of copyright claims and may result in problems such as plagiarism, misattribution, and unlawful use. These problems highlight the necessity of distinct identifiers or techniques to distinguish AI-generated material, safeguard the rights of human authors, and inform consumers about the content's source. Ethical considerations abound in the time of AI-generated content because deepfakes are becoming widely used and will afford a wide latitude for misinformation and manipulation.

This article considers the complex issues of protecting copyright for AI-created works in a rapidly changing digital environment. It explores the legal, technology, and ethical dimensions of the problem, emphasizing the need for innovative and detailed solutions to protect the rights of creators, ensure ethical standards are maintained, and foster a symbiotic relationship between human creativity and artificial intelligence in the digital age.

AI, functioning autonomously from human creative input, is generating content that would be eligible for copyright protection if produced solely by humans. AI-generated work closely resembles human-created work, making it difficult to tell them apart. AI has produced various types of work, including books, news pieces, paintings, portraits, and music compositions.[4] The AI-generated human-like work samples pose significant Copyright Law problems. Is AI-generated content seen as creative? Is it possible to credit AI as the work's creator? According to copyright law, the original creator of a work is usually considered its owner. Can it be considered an owner if it is regarded as an author? If AI is not recognized as the creator or lawful owner of a work, then who should be? At what level should the AI be influenced: by the user, by the programmer, or by those who provide the data? The present study adds to the ongoing

3. Rory Cellan-Jones, "Stephen Hawking warns artificial intelligence could end mankind," BBC News, December 2, 2014, available at: https://www.bbc.com/news/technology.

4. Bernard Marr, *Can Machines and Artificial Intelligence Be Creative?* (Jul. 20, 2024, 09:35 PM), https://www.forbes.com/sites/bernardmarr/2020/02/28/can-machines-and-artificial-intelligence-be creative/?sh=7afccf0e4580

debate by examining the topic from various AI standpoints.

AI systems are currently involved in producing creative art, literature, poetry, music, and more. In contemporary times, utilizing digital tools and techniques is essential for producing any type of art. It is inconceivable to create artistic or literary pieces without the aid of the digital realm. In the near future, automated technologies will replace artists, creators, and producers. The significance of AI extends beyond this point, with notable applications of autonomous systems such as Machine Learning (ML) computer learning refers to a computer's ability to learn and enhance its performance based on experience without explicit programming.

The development and growth of AI have raised some very fundamental questions relating to copyright law, namely, questions of who owns the copyright for works created by AI. Who will hold the copyright for a work produced by a computer that has acquired human-like learning and thinking abilities and operates independently without human involvement? The paper explores within the Indian Copyright Law, while conducting a critical analysis of the copyright law of 1957, section 2(d)(vi)". Focusing on ideas from Copyright Law, the text investigates the problem of content ownership from the perspective of both the AI developer and the AI user base.

The influence of science on human rights is the greatest glaring example of the tense interplay between legislation and technological advances, which has been identified by numerous. Innovations in technology offer wonderful opportunities to increase our capacities and, by extension, our rights as human beings, but they simultaneously pose risks to our "conventional and pragmatic freedoms," as described by Roger Brownsword. In the first, we can observe how innovation affects our freedom and liberties by looking at how well it follows the law. For example, novel technology may be acceptable so long as it complies with established standards, such as those prohibiting the endangerment of others. In the second, we can evaluate the technological effect on freedoms by looking at the way it has altered the possibilities we have for actually exercising our rights. In this case, the regulation does not forbid individuals from using cutting-edge innovation; yet their ability to do so might be limited by other criteria or pragmatic considerations. The illustration given illustrates the way particular regulatory frameworks permit novel stem cell work but reject patenting, reducing the financial incentive to pursue it.[5]

Because of this, a lot of people have been weighing in on the question of the manner in which law enforcement ought to react to the threats that the development of new technologies poses to our freedoms and rights. The judiciary has also recognized similar difficulties, with judges highlighting the inappropriateness of precedent and the need for multidisciplinary governance and dialogue.[6] To provide an appropriate regulatory framework for numerous advances in technology, it is thus impractical to evolve the common law via judicial decisions. It is the responsibility of government officials and legislators in our nations, with the assistance of experts, to write the necessary laws; courts have long been acknowledged as having the responsibility of creating bridging laws.[7]

Some have pointed out that when it comes to reforming the law, conventional legislative frameworks along with procedures proceed at a slower speed than advancements in technology. This paper primarily addresses the substantial disagreement that can arise between technological

5. A. Luk, *The relationship between law and technology: comparing legal responses to creators' rights under copyright law through safe harbour for online intermediaries and generative AI technology. Law, Innovation and Technology* (Aug. 23, 2024, 10:40 PM), https://doi.org/10.1080/17579961.2024.2313800.

6. *Law and technological change British Irish Commercial Bar Association Signet Library,* Edinburgh Lord Hodge, Justice of The Supreme Court of the United Kingdom 4 April 2019, (Aug. 01, 2024, 10:20 PM), https://www.supremecourt.uk/docs/speech-190404.pdf.

7. Ibid.

advances and legislation, although it does raise concerns about this. What this means is that regulation by law can either impede technological growth or undermine or degrade legal entitlements so that innovation can meet their demands.[8]

It is not necessarily necessary to undergo quick legislative changes, according to many who have stressed the dissimilarity in the "pace" of legislation and innovation. So, although laws can indeed be a real roadblock to useful technological advances, it's important to be wary of assuming that "scientific as well as clinical research is permitted to be at ease in the harnesses of the regulations." (Supreme Court Chief Justice Warren Berger, 2018).[9]

If legislation is to continue serving as a balancing device to limit the tremendous transformation brought about by individual dynamism and desire for change, it needs to respond effectively. Even if this does not mean that legislation has to alter significantly to keep up with technology developments, it does mean it has to keep thinking about the desire for modification as quickly as possible.[10]

ARTIFICIAL INTELLIGENCE (AI) — WHAT DOES IT REFER TO?

The field of artificial intelligence (AI) combines computer science with large information to help computers solve situations. Additionally, it encompasses the often-discussed AI subfields of deep understanding and the machine intelligence. Intelligent methods that can use input data to make judgements or categorization are the goal of several artificial intelligence (AI) algorithmic fields.[11]

What is Generative AI all about?

Generative AI is a segment of artificial intelligence focused on building models for generating new material that reflects already existing data. Generative AI can create new data by learning from previous examples, without repeating patterns, unlike conventional machine mining algorithms, which are limited to analyzing data that already exists. This might include the generation of completely original content, such as photographs, videos, music, speech, text, software code, and product designs.

Generative AI offers diverse applications for agencies, including creating graphic and audiovisual materials, copywriting, designing bots for client service, and producing personalized advertising material. It will undoubtedly redefine and provide new opportunities for enhancing agency-client engagement.[12]

Innovation in AI-Generated content

An essential requirement for a creation to be considered innovative is that it is not plagiarized from another source.[13] Does AI generate its output without replicating? The common belief is that "there is nothing novel beneath the radiance of the sun." Everything is derived from something. Humans depend on previous efforts to generate fresh creations.[14] According to Copyright Law, it is not possible to allege that someone copied your work. Distinguishing between simply copying

8. *The Growing Gap Between Emerging Technologies and Legal-Ethical Oversight: The Pacing Problem*, DOI:10.1007/978-94-007-1356-7, Publisher: Springer Netherlands Editor: Gary E. Marchant, Braden R. Allenby, Joseph R. Herkert, ISBN: 978-94-007-1355-0, (Jul. 25, 2024, 11:01 PM), https://www.researchgate.net/publication/304380335_The_Growing_Gap_Between_Emerging_Technologies_and_Legal-Ethical_Oversight_The_Pacing_Problem.
9. Supra Note 5.
10. Ibid.
11. AI and copyright: Unveiling the legal challenges, (Jul. 25, 2024, 10:30 PM), https://eaca.eu/wpcontent/uploads/2023/10/EACA_AI_Copyright.pdf.
12. Ibid.
13. Rupendra Kashyap v Jiwan Publishing House 1996 PTC 439 Del.
14. Daniel J. Gifford, *Innovation and Creativity in the Fine Arts: The Relevance and Irrelevance of Copyright,* (Jul. 28, 2024, 10:20 PM), https://scholarship.law.umn.edu/faculty_articles/347/.

and drawing inspiration from earlier work to produce new work is essential. When AI produces something, it is not considered copying even though it may draw on existing work. Similar to how humans can not generate work in full isolation without building upon past effort, AI also needs existing work to produce output. AI utilizes data input and processes it using intricate algorithms to generate output. Work generated by AI is considered original if it is not replicated from existing work.

Does the work generated by AI meet the criteria for a "bare minimum amount of innovation"? A study has suggested that innovation in labor can be evaluated by examining either the finished outcome or the method of the invention.[15] By examining the result, one can realistically determine if the piece has a "requisite level of originality." When evaluating the production procedure, it must be arbitrarily determined if the piece of work was produced with a "requisite level of inventiveness." When assessing creativity without prejudice, AI-generated work meets the requirement of "requisite level of originality" because the creative standard is inadequate, and AI-produced labor, which is identical to human-made work, satisfies this criterion.[16] To evaluate the originality of a piece of art, it is necessary to consider if innovation had a role in its making. A connection can be drawn between individual inventiveness and the functioning of AI.[17] Individuals are supposed to possess creativity. Does the equivalent apply to AI?

Marvin Minsky, a pioneer in the field of artificial intelligence, once stated that humans are essentially biological machines.[18] Viewing human thought processes as algorithmic.[19] If human thought is considered mathematical, it could be considered similar to the mathematical computation of artificial intelligence (AI). The AI-generated work should meet arbitrary standards of creativity. If creativity is considered a distinctively human trait, artificial intelligence would not meet the subjective standards of creativity.[20] If AI is deemed creative, then it meets the requirements for creativity. A clear differentiation ought to be established among the use of machine learning and various other forms of AI that operate using algorithms derived from pre-existing models. While the former may lack creativity, Machine Learning, which is capable of learning to make autonomous decisions, could be deemed creative. Assessing creativity based on objective standards, AI-generated work would be considered original. Evaluating creativity based on subjective criteria will differ depending on the type of AI and the point of view adopted regarding whether AI possesses creativity.

Legal Challenges Around Generative AI

Generative AI depends on large datasets for training its algorithms, leading to regulatory concerns such as intellectual property rights violations, privacy concerns, safeguarding information issues, and multimedia content assurances. Copyright laws establish a legal structure to encourage the advancement of artistic and scientific endeavors by motivating creators and safeguarding their works from unauthorized use. Generative AI advancements have prompted a reevaluation of current copyright laws, which

15. Edward Lee, Digital Originality, (Jul. 28, 2024, 11:10 PM), https://scholarship.law.vanderbilt.edu/jetlaw/vol14/iss4/5/.
16. Eva E. Subotnik, *Originality Proxies: Toward a Theory of Copyright and Creativity*, (Jul. 29, 2024, 09:42 PM), https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1181&context=blr.
17. Anna Shtefan, *Creativity and artificial intelligence: a view from the perspective of copyright,* (Jul. 29, 2024, 10:12 PM), https://www.researchgate.net/publication/352117219_Creativity_and_artificial_intelligence_a_view_from_the_perspective_of_copyright.
18. Condé Nast, *Marvin Minsky's Marvelous Meat Machine*, (Jul. 30, 2024, 09:25 PM), https://www.wired.com/2016/01/marvin-minskys-marvelous-meat-machine/.
19. Annemarie Bridy, *Coding Creativity: Copyright and the Artificially Intelligent Author*, (Jul. 29, 2024, 10:35 PM), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1888622.
20. Ibid.

are expected to adapt to keep pace with technical progress in this area.

Recent court decisions have focused on the complications with generative AI and copyright. In February 2023, Getty Images filed a lawsuit in the United States against Stability AI for allegedly copying over 12 million images from its database. The suit claimed that Stability AI delivered output which included a manipulated Getty photos watermark, showing a direct link between the original photos and the final product. Three artists combined to sue several generative AI platforms in late 2022 for using their creative works without permission to train their AI systems. The plaintiffs argue that users can create pieces that are not significantly altered from their original protected works, which could be considered illegal derivative works.[21]



***Figure 1*:** From the complaint in the Getty Images litigation, the Getty image (left) and the Stability AI image (right)[22]

The original photograph from the 2023 U.S. Supreme Court case was taken in 1981. After a span of three years, Licensees of the photograph from Vanity Fair were Andy Warhol, who used it as an illustration for an article called "Purple Fame." Warhol created more than a dozen images, including this silkscreen, although there are restrictions on the permit. Goldsmith was paid $400 for the right to use the photograph in the magazine, but only once. Aftermath the death of Prince in 2016, the remaining illustrations and a pair of sketching, collectively called the "Prince Series," were featured in and released in a different periodical that belongs to Condé Nast, Vanity Fair's the underlying organization.



21. Getty Images (US), Inc v Stability AI, Inc, Case 1:23-cv-00135-UNA
22. Ibid, (Aug. 01, 2024, 09:50 PM)

Figure 2:[23] (i) A monochromatic portrait image of Prince captured in 1981 by Lynn Goldsmith; (ii) a purple silkscreen portraiture of Prince made in 1984 by Andy Warhol for a paper in Vanity Fair; (iii) an orange silkscreen portraiture of Prince featured on the encompass of a unique version journal released in 2016 by Condé Nast

Originality is a prerequisite for copyright protection.[24] AI-generated work can be assessed for originality to determine its eligibility for copyright protection. What constitutes an original creation is vague under the Indian Copyright legislation. One can examine the varying perspectives on originality by comparing the doctrines in different legal jurisdictions, including the United Kingdom, the United States of America, and Canada. The criteria in these cases encompass criteria such as "sweat of the brow," "creativity," "modicum of creativity", and "independently created." The "sweat of the brow" threshold is deemed low, whereas the "modicum of creativity" standard is considered high.[25] Indian uniqueness standards are well-balanced.[26] This benchmark in India does not fall within the categories of "sweat of the brow" or "creativity." According to Indian law, a work is considered original if it demonstrates "skill and judgement" and a "minimum degree Copyright will exist in original literature, visual, dramatic in nature, and songs according to Section 13 of the Indian Copyright legislation."[27] The requirement is not about innovation in terms of being new or not evident.[28] Merely providing capital or labor does not meet the requirement.[29] The requirement is that it should show skill and judgment. This section considers whether a work created by artificial intelligence could meet the requirements of originality.

The fair dealing regime in Section 52 of India's Copyright Act, 1957, is significantly narrower than US fair use, with important uncertainties on the use of copyrighted works as training data for Generative AI models. Indian fair dealing explicitly covers personal use, research, criticism, review, and reporting, but does not incorporate a general, open-ended "transformative use" test, so that large-scale TDM for training AI models is ambiguous. Internationally, the question of whether the use of copyrighted works by AI models is permissible as fair use has been at the heart of landmark litigation, such as Getty Images Inc v Stability AI Inc and Doe v GitHub Inc, which contests whether model training on large corpora is reproduction or constitutes non-expressive, non-substitutive, analytical use. A close analogy in India is in the Supreme Court's ruling on fair dealing in *Civic Chandran* v *Ammini Amma* and *R G Anand* v *Deluxe Films*, where it held that what constitutes lawful use depends on the purpose, extent and impact of the use upon the market of the original work. Using this reasoning, training AI models could be a non-expressive "intermediate use", where the output is not a substitute for the original, but the absence of a statutory exception for TDM makes this legally untested. As a result, India may have to revise Section 52 to include an explicit TDM exception at least for non-commercial research, or adopt a conditional expansion of fair dealing combined with transparency and licensing arrangements, putting India in alignment with emerging global regulatory standards and resolving one of the most important legal issues in generative AI governance.

23. Ibid
24. Copyright Act, 1957, s 13(a).
25. Eastern Book Company vs D. B. Modak (2008) 1 SCC 1.
26. Ibid
27. Ibid
28. Ibid
29. Ibid

Importance of monitoring

Human creators are aware of how to reject requests to create stuff that infringes copyright. Can AI businesses incorporate comparable safeguards into generative AI? No defined methods exist to include such protective measures in generative AI, and there are no publicly available tools or databases for users to reference to determine copyright infringement. Although such technologies may be accessible, they could impose an overwhelming load on both users and content suppliers. Naive users may not be able to understand and adhere to best practices to avoid copying intellectual material, therefore, policymakers and regulations play a crucial role. Utilizing a combination of legal and regulatory norms is necessary to achieve optimal copyright safety practices.

Companies developing exciting AI renderings can adopt filtering practices or restrict models' output to mitigate copyright infringement risk. It may take legislative initiatives to guarantee that generative AI model programmers develop databases and train machines in such a way as to minimize the possibility of their output infringing on the copyright of creators.[30]

ARTIFICIAL INTELLIGENCE AND COPYRIGHT REGULATION

The use of computer programs in generating copyrighted works has been widely practiced since the 1970s. In the early stages, ownership of such works did not pose major issues over copyright ownership. Computer programs were seen as tools that assisted creative tasks, requiring human involvement for genuine work output. They were similar to stationary objects that required human participation in the development of labour. The landscape has significantly changed. AI integration has elevated computer programs from tools to autonomous decision-makers capable of independently creating tasks. Artificial intelligence can produce a large amount of work quickly and with few resources. AI-generated outputs may qualify for copyright protection in certain regions because of their intrinsic originality. The requirement of showing "skill and judgment" in proving originality can be met by the programming and parameters used by the AI to compile and generate the product. However, in the context of AI-generated work, there is no discernible author. Human participation is present in AI-assisted creations.[31] Therefore, in the second scenario, the person who helped create the work using artificial intelligence may claim authorship. However, this is not the case when the work is created exclusively by AI without any human involvement. Authorship in these cases has presented a global difficulty.This may lead to problems like defamation, obscenity, instigation of violence based on criteria such as caste, creed, or religion, or other negative outcomes. It is difficult to establish civil and criminal liability for AI because AI is not recognized as a legal entity. Rectifying the harm produced by the job in such cases may be challenging, with the possibility of lasting damage. If an AI-generated piece closely resembles a current copyrighted work, the issue arises of how the AI could be liable for infringement. Furthermore, if AI is identified as the creator, it cannot assign control over the work because it does not possess personality.[32]

Ascribing authorship to AI for AI-created works can lead to a host of complications. AI output could be flawed and might contain words or phrases that are biased or offensive. Possible issues that could arise might include defamation, obscenity, incitement to violence based on factors like caste, creed, or religion, and other negative consequences. It is not easy to fasten civil and

30. Anjana Susarla, *Generative AI could leave users holding the bag for copyright violations,* (Jul. 30, 2024, 11:05 PM) https://theconversation.com/generative-ai-could-leave-users-holding-the-bag-for-copyright-violations-225760.

31. Lucy Rana and Meril Mathew Joy, *India: Artificial Intelligence and Copyright – The Authorship*, Mondaq, December 18, 2019, (Aug. 02, 2024, 09:43 PM), https://www.mondaq.com/india/copyright/876800/artificial- intelligence-andcopyright-the-authorship.

32. Vishnu S., *Navigating the Grey Area: Copyright Implications of AI Generated Content,* Journal of Intellectual Property Rights Vol 29, March 2024, (Jul. 29, 2024, 11:02 PM), https://or.niscpr.res.in/index.php/JIPR/article/view/1205/2743

criminal liability on AI since it is not a legally recognized separate entity. The damage caused by the work created in this manner might not easily be curtailed, and the damage could be irreparable. If the AI-created work is found to be sufficiently similar to any existing copyrighted work, then the question arises as to how the AI can be held liable for copyright infringement. Also, if AI is found to be the author, it cannot be said to have transferred ownership of the work because it has no personhood.[33]

AI AND COPYRIGHT INFRINGEMENT: FROM THE LENS OF JUSTICE SYSTEM

With the introduction of generative AI technologies in the market, their utilization poses important legal considerations within current copyright regulations. The complicated issue of ownership of AI-generated works, as well as issues like infringement and rights of use, are now being resolved in court as to how these regulations should be applied to AI-generated content. The question regarding if individuals should be able to use AI technologies to make unlicensed references to protected and branded works is a significant one.

The legal system is responsible for determining the boundaries of what qualifies as a "derivative work" according to intellectual property regulations. Interpretations of this phrase can vary by jurisdiction, resulting in diverse opinions by federal circuit courts. The interpretation of the equitable use concept will probably to determine the outcomes of these cases. Using copyrighted content is made possible by this doctrine minus who owns it authorization for specific reasons, including critiques, remarks, information documenting, imparting academic achievement, studies, and transforming uses that alter the original material's vocation.[34]

Authors Guild v. Google, Inc.

The convergence of technologies and copyright legislation is not a recent occurrence. In Authors Guild v. Google, Inc.,[35] Google successfully defended its actions by arguing that revolutionary usage justified the process of extracting content from publications to enhance its searchable system. This judgement sets an instance in the juridical field.

Doe et al. v. GitHub, Inc. et al.

Microsoft, GitHub, and OpenAI have been hit with a unique class action lawsuit alleging large-scale software theft through their AI-driven coding tool, GitHub Copilot. First filed in November 2022, the case may have wide ramifications for the AI industry in how corporations use copyrighted material to train their software.

GitHub Copilot is trained on code from public repositories that it downloaded from the internet. The plaintiffs argue that the defendants infringed the legal rights of thousands of developers by training their AI systems on public GitHub repositories whose code was made available under specific open-source licenses. The MIT license, GPL, and Apache license all require acknowledgment of the copyright concerns and title of the creator. The lawsuit alleges that the defendants have breached attribution requirements, violated GitHub's terms of service and privacy policies, deleted copyright-management information in violation of DMCA § 1202, violated the California Consumer Privacy Act, and committed other lawful violations.[36]

Andersen v. Stability AI et al.

In January 2023, three graphic designers filed a class-action litigation against several generative

33. Abhimanyu Bhargava, Copyright Law and Artificial Intelligence Generated Works: Ownership and Liability, (Aug. 03, 2024, 10:12 PM), https://heinonline.org/HOL/LandingPage?handle=hein.journals/injlolw11&div=189&id=&page.

34. Michael Dilworth, *AI & Intellectual Property: Artificial Intelligence Legal Implications,* (Aug. 04, 2024, 10:25 PM) https://www.dilworthip.com/resources/news/artificial-intelligence-and-intellectual-property-legal-issues/.

35. 804 F.3d 202 (2015)

36. Case No. 22-cv-06823-JST.

AI services. The suit alleges that the portals took advantage of the artists' creativity without sufficient permission to train their AI systems about their respective genres. Users can generate artworks that would closely resemble already pre-existing secured work and would eventually come up with unlawful copyrighted pieces.

The suit alleges that the parties involved have used duplicates of the instructional photos to create electronic copies and additional materials that are based only on these instructional images, devoid of incorporating significant novel elements. The plaintiffs allege that this unauthorized taking has diminished and weakened the worth of their artistic creations in a marketplace saturated with AI-generated visuals.[37]

Silverman et al., v. OpenAI Inc. et al.

Sarah Silverman, a comedian and author, is involved in a group action suit targeting OpenAI and an additional complaint against Meta for alleged copyright violation. The complaints allege that these businesses have replicated and utilized her copyrighted work to educate their computerized intelligence systems.

The complaint against Meta particularly mentions the company's study on "LLaMA," its large-language paradigm utilized to tutor chatbots. The claimants claim that their intellectual items were included in the instruction procedure, as numerous of their titles were found in databases obtained from "shadow repositories" recognized by Meta.

The judicial procedures have faced certain obstacles. Silverman's other assertions were mostly rejected, but the primary allegation of blatant copyright violation has advanced to the verification phase. On February 12, 2024, more obstacles arose when further claims were dismissed, such as accusations of secondary copyright violation, contraventions of the "Digital Millennium Copyright Act", recklessness, and unfair advantage. Recognizing that the federal copyright statute might trump the unfair rivalry assertion, the court allowed it to proceed. The copyright legislation forbids state law assertions that assert the identical violation as a defense based on copyright.[38]

THE CONCEPT OF ORIGINALITY: PREVALENT IN DIFFERENT LEGAL SYSTEMS

According to US law, a work is considered unique if it works autonomously and possesses a minimal level of inventiveness. According to UK law, a work is considered original if it demonstrates "authorial intellectual creation" or "skill, labour, and judgement." The assessment conducted in the preceding sections regarding whether AI-generated work is plagiarised and possesses a "minimal level of creativity" is also relevant to these regions.

The paper will examine the legal issues related to data reuse and copyright protection in generative AI tools. The analysis will initially focus on the impact of the input data, which refers to the data used for training AI models, before examining the implications concerning the output data, which involves the legal safeguards applicable to creations generated by generative AI tools.

Using generative AI for graphic software, like text-to-image, image-to-image, or conceptual image-to-photo, raises legitimate concerns about the authorization of AI-generated information for commercial purposes. The legal considerations vary depending on the pertinent legitimate arrangement in the EU, the US, and the UK.

In the Union of Europe and the United Kingdom, AI technologies require input data that can be commercially reused, which must not be copyrighted to be legally trained. Commercial reuse in this regard pertains to the specific objective for which the computations are utilized.

37. Andersen v. Stability AI Ltd., (Aug. 05, 2024, 08:48 PM), https://www.loeb.com/en/insights/publications/2023/11/andersen-v-stability-ai-ltd.

38. Savan Dhameliya, *Partially Dismissed: Tremblay, Sarah Silverman v. Open Ai*, (Aug. 03, 2024, 10:20 PM), https://iprmentlaw.com/2024/03/18/partially-dismissed-tremblay-sarah-silverman-v-open-ai/.

In the US, the legal system includes one significant exception: the fair-use principle.

The fair-use theory permits the usage of protected content without seeking authorization from the owner for certain purposes like critiques, remarks, news reporting, classroom teaching, scholarship, research findings, and transformative use. One limitation of copyright is necessary to create a balance between the rights of copyright holders and the public benefit.

- In this case, it is no coincidence that most generative AI tool mechanisms are being created and trained in the US. Tech companies are relying on the fair use theory to defend the repetition of copyrighted source information to train their programs. The applicability of fair use to generative AI feed facts, especially in business use, has yet to be determined.
- It includes a copyright exception for text and data mining, within the framework of the 2019/790 'DSM' Directive in Europe. The DSM regulation permits textual and database processing for profit-making usage in two instances.
- If the content can be legally accessed for text and data mining, and
- If the copyright owner has not explicitly secured the right to receive information and metadata and has instead relied on the opt-out method.[39]

Position in the USA: No possession

Copyrights for artistic creations are automatically granted to the author upon creation under US law (17 US Code §201). US copyright law has been consistently interpreted to mandate individual creation for being owned. This was exemplified in the matter of *Naruto v. Slater*,[40] commonly referred to as the "monkey selfie" instance. In 2018, the United States Court of Appellate Appeals for the Ninth Circuit ruled that an ape cannot claim ownership of copyrights over an image it took of its own. In 2023, the US District Court for the District of Columbia confirmed in *Thaler v. Perlmutter*[41] that there is no title for works created by a tool for artificial intelligence created by the plaintiff, Stephen Thaler. Thaler deliberately restricted human imagination and highlighted the machine's contribution to this case. The conjunction of rulings and recommendations from the US Copyright Office clarifies that, according to present US law, there is no existing control over pieces produced by AI by the creators of the AI tool, the application itself, or the person who goes into prompts to produce the piece of work. These creations are presently in the general public's realm and do not have copyright safeguards.

Additional guidance from the US Copyright Office clarifies that works that incorporate content generated by AI will still have individual authorship that can be used for backing copyright claims. This includes cases where a creator has creatively arranged artificial intelligence-generated pieces or created significant changes to AI-generated functions. The copyright protection in these instances, yet, is limited to the parts of the work that have been created by humans; the AI-generated content itself will not be affected by or "devoid of" this protection. Since the US Copyright Office will only award security for creations that are human-authored, it is necessary to distinguish between AI-generated and human-generated content when submitting publications for certification. For instance, the US Copyright Office's authorisation choice for the comic strip Zarya of the Dawn did not grant safeguards for the visuals generated via the generative AI art framework Midjourney. However, the written content, as well as the choice and arrangement of visuals and written content, were permissible to be registered, as Kris Kashtanova, the person

39. Supra Note 5.
40. No. 16-15469 (9th Cir. 2018).
41. Civil Action No. 22-1564 (BAH)

submitting the application, claimed sole liability for those aspects. Even when technical techniques improve upon fundamental original content, coverage for these types of works continues, according to the US Copyright Office's guideline document.

The Copyright Office of the United States stated that it will keep track on these cutting-edge technologies and perhaps provide additional guidelines later on. The present guidelines on "an adequate personal originality" could potentially lead to protection from copyright being granted for AI-generated succeeds, or parts or modifications of them. Currently, there is no guarantee of legal defence for AI-generated creations in the United States.

Owning is an option in the UK.

In the UK, copyright legislation necessitates a creative work to reflect the author's unique intellectual input as well as their style. Copyright is established when a human creator utilizes tools like word processors or pens to generate a work. If the creative process solely occurs within an AI system, it is likely that content produced by generative AI would not be safeguarded under UK copyright laws, aligning with other nation's regulations.

The UK's copyright legislation, the Copyright Designs and Patents Act 1988, grants copyright protection to computer-generated works. Various theorists have been skeptical as to whether a non-human computer is capable of creating a copyrightable work with creative skill. Section 9(3) of the CDPA, nonetheless, confirms that the individual who has arranged the necessary arrangements for the creation of the work is the person regarded as the creator of the resultant licensed work. The government of the United Kingdom and the UK Intellectual Property Office have recently given affirmation to the support of the position regarding the possibility of extending Section 9(3) to generative AI following an open consultation throughout 2022. Accordingly, while it remains unclear as to who the individual is who is making the essential preparations in execution, it seems clear that, in the UK, copyright exists in generative AI outputs.[42]

The regulatory structure in the UK is expected to evolve in the years to come. The House of Commons Science, Innovation, and Technology Select Committee organized a forum in May 2023 at the Parliament of the United Kingdom to discuss the effects of AI on creative sectors due to the increasing prevalence of generative AI technologies. Specialists proposed that the CDPA's treatment of "computer-generated" compositions is outdated, as AI is now seen more as the creator of artworks opposed than merely the instrument used in their generation.[43]

Position in China

In China, copyright protection is granted to innovative creative works under the Copyright Law of the People's Republic of China. The CL does not explicitly discuss the copyrightability of AI-generated information, but two recent legal rulings offer guidance and could be applied as a fundamental paradigm in several nations as well.

In 2019, the Shenzhen Nanshan District Court in China ruled that generative content from machine learning might meet the qualifications for protection under copyright. The court granted that AI-generated content created using Tencent's Dreamwriter composing AI software can be qualified for protection as intellectual property

42. Copyright, Designs and Patents Act 1988, s 9(3); UK Intellectual Property Office, Consultation Outcome: Artificial Intelligence and Intellectual Property—Copyright and Patents (2022), (Aug. 05, 2024, 03:15 PM), https://www.gov.uk/government/consultations/artificial-intelligence-and-intellectual-property-call-for-views

43. House of Commons Science, Innovation and Technology Committee, Governance of Artificial Intelligence: Interim Report (HC 2022–23, 176) published 31 August 2023; see evidence session on 'AI and the Creative Industries', May 2023 (Aug. 05, 2024, 04:45 PM), https://committees.parliament.uk/work/6907/governance-of-artificial-intelligence/publications/

in the case of *Shenzhen Tencent* v. *Shanghai Yingxun*.[44] The court determined that the piece of work in dispute was not solely created by artificial intelligence, as creative thinking was involved in its creation due to Tencent's contributions in information layout, decision-making, and trigger scenario setup. The court easily determined that numerous entities inside Tencent were responsible for the creation of Dreamwriter, even though it did not possess "personhood," leading to Tencent owning the copyright to it.

Since the user created an intellectual involvement by supplying rapid materials and embarking parameters, the Beijing Internet Court decided the fact that a picture created by Stable Diffusion satisfied the "intellectual accomplishment" and "innovative" standards. This was due to the fact that the AI-generated picture conveyed a tailored communication of the individual. This decision was rendered in a more current scenario. Due to the fact that the creator of the system did not possess the intention to produce the picture and did not explicitly specify the ingredients, the court decided that the user was the holder of the copyright to the picture that was created by the artificial intelligence system.

The verdicts raise the concern of if a creation created "solely by AI" could potentially be considered protected by copyright. However, the rationale about the "layout and choice" of resources can offer a way for certain users of generative AI techniques to obtain protection under copyright laws.[45]

Position in India

The standard of "skill and judgement" provided by Indian law stipulates that a work for copyright must reflect human intellectual effort, consistently articulated through a line of landmark judgments. The case of *University of London Press* v *University Tutorial Press*,[46] which has a strong influence on Indian jurisprudence, held that originality requires the author's independent application of skill and judgement, but does not require novelty. This was further deepened in the case of *Walter* v *Lane*,[47] where the House of Lords considered reporters to be authors since the labour, skill and editorial judgement of the reporters transformed spoken words into a fixed expression. The doctrine was refined by the Supreme Court of India in the case of *Eastern Book Company* v *D B Modak*,[48] wherein it was held that for a work to be original, a "modicum of creativity" is required in addition to the intellectual input of the author, thereby excluding works created purely by mechanical or automated processes. The Indian courts have further explained this requirement of human transformative input: the Kerala High Court held that substantial creative transformation distinguishes original expression from derivative copying in *Civic Chandran* v *Ammini Amma*,[49] while *R G Anand* v *Deluxe Films*,[50] among others, have stated that only the expression of the idea and not the idea itself may be protected under law. Similarly, *Burlington Home Shopping Pvt Ltd* v *Rajnish Chibber*,[51] recognized copyright in compilations where selection and arrangement result from human judgement. Taken together, these cases explain that under Indian law, the meaning of authorship is inextricably linked with human

44. Zhe DAI & JIN, *The Copyright Protection of AI Generated Works under Chinese law,* (Aug. 06, 2024, 11:22 PM), https://www.tribunajuridica.eu/arhiva/An13v2/5.%20Dai%20Zhe%20and%20JIN%20Banggui.pdf.
45. Cooley alert, *Copyright Ownership of Generative AI Outputs Varies Around the World*, (Aug. 08, 2024, 10:38 PM), https://www.cooley.com/news/insight/2024/2024-01-29-copyright-ownership-of-generative-ai-outputs-varies-around-the-world.
46. [1916] 2 Ch 601.
47. [1900] AC 539 (HL).
48. (2008) 1 SCC 1
49. AIR 1996 Ker 263.
50. (1978) 4 SCC 118.
51. 61 (1995) DLT 6.

creativity, and hence AI outputs produced through algorithmic prediction without human intellectual effort cannot independently meet the originality threshold; only where a human contributes meaningfully by way of conceptualisation, selection, editing, or arrangement would the work meet the threshold of a human-authored work.

ARE THERE ANY LIMITATIONS ON USING COPYRIGHTED DATA TO TRAIN AI MODELS?

When it comes to artificial intelligence and copyright, another of the biggest worries is how these neural networks are trained using datasets. In most cases, AI algorithms acquire knowledge through massive volumes of data found online, which can include images, coding, and language.

The ethical usage concept is frequently invoked by researchers studying artificial intelligence, new businesses, and IT titans, especially in the US, to rationalize their utilization of such licensed information. The purpose of establishing fair use is to facilitate the usage of work that are copyright safeguarded in order to uphold the privilege of unfettered communication. But there are a lot of obstacles to overcome when you try to walk the line between fair usage and unjust use. Decisions made by the courts can go either way depending on several variables, such as the information, significance, and result types.

Section 52 of India's Copyright Act of 1957 lays forth the usual grounds for avoiding legal action for copyright infringement. Nevertheless, since the Copyright Act names "person" being the entity who infringes, assigning control over intellectual property to AI units could result in copyright infractions. Current regulations might not be sufficient to handle such breaches. The particular facts and regulatory issues of every instance play a significant role in deciding what constitute legitimate usage. Since there currently is no existing precedent in law that recognizes the usage of copyrighted material for AI development as fair use, the situation gets much more complicated when it pertains to AI. The instruction mechanism of artificial intelligence algorithms is greatly affected by this ambiguity. The advancement and usefulness of massive amounts AI algorithms would be severely hindered if judges ruled that copyrighted information cannot be utilized for instruction. But if the legal system were to rule that these algorithms can be developed on any information, licensed or not, it might have serious ramifications for anybody whose work is utilized to train the algorithms.[52] To find one's way around the crossroads of copyright as well as AI instruction, one must examine current regulatory structures, changing case law, and the necessity for thorough guidance. In light of the lack of established norms, it is critical to resolve these concerns in order to set an example for the generations.

CONCLUDING REMARK

Generative AI utilizes methods and machine learning techniques to produce novel content, including visuals, clips, and writing. This technology has the ability to transform the imaginative industry by allowing quicker and more cost-effective media creation. However, it also brings up worries regarding its effect on human imagination and the possibility of artificially intelligent content diminishing the worth of human-created pieces. A comprehensive approach is crucial when considering the various impacts of generative artificial thinking on rights to intellectual property in the age of digital media. An urgent priority is to provide thorough ethical guidelines and industry norms to regulate the responsible usage of generative AI in the creative industries.

Engaging with the general public and pertinent sectors is similarly essential. Engaging a variety of perspectives in discussions about AI-generated information can help guarantee that the creation and utilization of creative AI are in harmony with social norms and inclinations. Open criticism is essential in shaping an AI environment that aligns in accordance with the shared values of society.

52. Krishna Ravishankar & Parul Anand, *AI Judges: The Question of AI's Role in Indian Judicial Decision-Making*, (Aug. 08, 2024, 09:43 PM), https://www.calj.in/post/ai-judges-the-question-of-ai-s-role-in-indian-judicial-decision-making.

In order to traverse the globalized environment of AI-generated material, it is crucial to prioritize global cooperation. By fostering collaboration among nations, we may establish uniform norms and accords. This multinational collaboration ensures that legislative frameworks are aligned to provide uniform safeguards for intellectual property interests globally. This holistic strategy efficiently manages the varied consequences of creative AI on the protection of intellectual property rights, enabling creativity whilst maintaining the authenticity of innovative outputs.

The regulatory issues related to AI's involvement in document generation highlight worries concerning its influence on individuals' inventiveness and the possible depreciation of human-made functions, as seen in contemporary court cases such as Getty Images, INC. v. Stability AI, INC. along with Doe v. Github, INC. These judgments highlight the necessity of adjusting current regulatory regimes to address the unique issues presented by AI-generated output.

A harmonized global framework for the regulation of generative AI requires strong international coordination, and the best-suited body to lead this harmonization has to be the World Intellectual Property Organization (WIPO) due to its treaty-making powers under the Berne Convention, WCT and WPPT, and its ongoing multilateral initiative on "WIPO Conversation on Artificial Intelligence and Intellectual Property." UNESCO, the OECD, the TRIPS Council of the WTO, and the G20 Digital Economy Working Group can also play supportive roles in the process, but WIPO remains the principal institution capable of formulating model laws, soft-law standards and cross-border norms governing AI-generated works. The relevant legal reforms for India may include amending Section 2(d) of the Copyright Act, 1957 by providing that AI systems cannot be authors and only a human who has exercised "skill and judgement" can qualify as an author, introducing a new statutory definition of "AI-assisted works" differentiating between human-shaped outputs and fully autonomous machine outputs; revising Section 13 to confirm that copyright can subsist only when it is demonstrably evident that human intellectual creation is involved, and amending the Copyright Rules, 2013 to insist on mandatory disclosure of the involvement of AI, inclusive of prompt logs, model identification, and human contribution declarations in the course of registration. India can go a step further and create transparent obligations for AI developers through a separate chapter on responsible use of training data, compensation mechanisms for rights-holders, and limited safe-harbour provisions based on ethical compliance. Expanding the scope of Section 52 to cover text-and-data mining will contribute to adequately balancing innovation with the rights of creators by permitting non-commercial TDM, while requiring licences for commercial model training. These reforms along with WIPO-spearheaded international cooperation, will provide India with a forward-looking, balanced, and enforceable regime regarding AI-generated content regime that will protect human creativity, ensure accountability, and allow for the responsible development of generative AI within the global intellectual property ecosystem.

The discussion revolves around intellectual property rights, with questions of ownership and compensation becoming more complex as AI creates material on its own. Fair recompense for data producers and the need to clarify authorship in AI-generated works are necessary. It is extremely difficult to strike a balance between the needs of data providers and those of creators. The public, creators, lawmakers, and business moguls must work together for AI-generated content's future in a way that respects intellectual property rights. In order to keep the principles of innovation, creativity, and intellectual property protection alive in the AI era- while also realizing the promise of Generative AI- clear ethical guidelines, education, and awareness campaigns, hybrid collaboration models, and international cooperation are all essential.

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