

ETHICAL CONSIDERATIONS IN COPYRIGHT IN INDIA IN THE AI ERA

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ABSTRACT

India's academic and artistic contributions are acknowledged across the world. With changing times, the copyright law has been amended. The Arrival of Artificial intelligence and its infiltration into the world of creativity is comparatively newer and its acceptability is also limited. In this paper, the focus is on trying to differentiate between human contribution and digital contribution and the rights conferred therein. In due course, we do further study cases across the world to understand the impact of AI and thus its contributions. Judicial response presence for the same across the world is still very limited as the fact that there needs to be a proper reference for the same or limitations regarding the same is still not common knowledge. The paper debates the fact that to create AI-generated

data there is a need for Human intervention is a case-to-case basis. Thus, studying similar legislation there is a need to understand that the Copyright Law of India also needs to change and include AI by considering or limiting the use and terms for the same. Be it DABUS, Next Rembrandt, or Everyday: 5000 days the need for the use of AI entangled with the human brain creates a complex situation for the Copyright Act of India

Keywords: AI, Copyright Act, Intellectual Property, Artificial Intelligence

INTRODUCTION

The Copyright Act in India governs the protection of intellectual property rights related to literary, artistic, and musical works. The current Copyright Act is the Copyright Act of 1957, this act has undergone amendments to keep pace with technological advancements and international developments. The main objective of this act is to protect the rights of authors, creators, and owners of intellectual works. The word intellectual property includes a wide range of creative works, including literary, musical, artistic, and cinematographic works.

The author is usually the first owner of the copyright. Copyright becomes conditional in the case of employment contracts and the intellectual property generated there within. Depending on the type of employment contract. The duration of copyright protection depends on the type of work. For literary, dramatic, musical, and artistic works, copyright generally lasts for the lifetime of the author plus 60 years. In the case of posthumous works,

cinematographic works, sound recordings, and government works, the duration may differ. The copyright owner has exclusive rights to reproduce, communicate to the public, perform, and adapt the work. These exclusive rights are subject to certain limitations, such as fair use and educational use. The Act recognizes the moral rights of authors, including the right to attribution and the right to integrity of the work. Unauthorized use or reproduction of copyrighted works constitutes infringement.

Remedies for infringement include damages, injunctions, and accounts of profits. The Act provides for certain exceptions, such as fair dealing for purposes like research, private study, criticism, review, and news reporting. India is a party to various international conventions related to copyright, including the Berne Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The Copyright Act has been amended over the years to address emerging challenges, including those posed by digital technologies. The Act plays a crucial role in protecting the rights of creators and fostering a conducive environment for the growth of the creative industries.

The major concern arises with the issue of the use of Artificial Intelligence. Worldwide the use of Artificial intelligence is being considered as a source and the need for proper reference and citation for the same is being considered in the international legal fraternity. The objective of our research paper is to understand the legal concerns and suggest a balance for the copyright act with the integration of the AI system as one of their stakeholders.

The Emergence of AI and its Impact on Copyright

A. Overview of AI technologies

Computer algorithms and learning machines have become a source of creativity and are in rampant use across the world. Though slowly the US Intellectual Property Office is in the process of integrating the system, India is yet to acknowledge the same. The US focuses more on the hire doctrine than the authorship principle in this regard. In the case of AI if the person has access to software, then the use of it, if licensed should be counted as an equivalent to an expert user. But with the development of the new software, the need for change in Intellectual property laws is uncontested. The research regarding the same is also very vast.

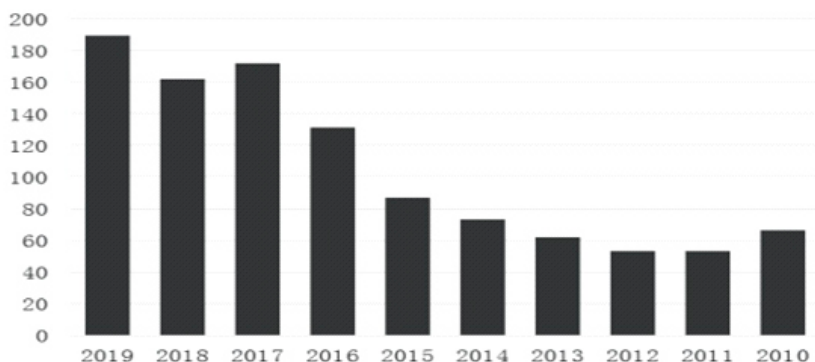


FIGURE 1. Papers in Web of Science and Google Scholar in the last ten year with key words "AI" and "Education".

The above numbers are a pictorial representation given by Chen, L., Chen, P., & Lin, Z. (2020) citing the number of papers that have been in the Web of Science and Google Scholar with the keywords AI and education.

The current education system has greatly evolved, and educators and researchers are applying AI techniques to provide deep learning, and data mining, for research and innovation in teaching methods for individual students.

B. AI-generated content and copyright ownership

The ultimate goals of AI researchers can roughly be divided into two non-exclusive parts. One group of Artificial Intelligence investigators uses computers in attempts to simulate, and thereby understand, human behaviour. The other group of researchers uses AI principles to make computers perform tasks unsuited to human capabilities, thus extending the power of man in his environment. Both groups use AI machines as tools to achieve their respective goals.

Intellectual property law is a constantly changing and intricate field that encompasses the matter of copyright ownership within the context of AI-generated content. As artificial intelligence technologies advance, questions arise regarding who holds the rights to creative works produced by AI systems.

III. Traditional Copyright Framework

In traditional copyright law, the creator or author of a work is granted copyright ownership.

Copyright protection is contingent upon human authorship and creativity. The creation and intellectual contribution grants the right to ownership. Making the creation a property. However, the fact that the intellectual property is self-created itself indicates the time and

effort that is currently being converted into property and thus has a lot of intellectual effort into the creation. The moment the creation becomes machine-generated, the question of effort and time both become negligible. Thus, the concerns. The meaning of copyright as iterated under Sec 14 of The Copyright Act focuses on the production/different reproduction of the work.

IV. AI as a Tool

Artificial Intelligence is often viewed as a tool or instrument used by human creators to enhance their creative processes. In today's world AI is viewed as a tool that supports human creators with their creativity by enhancing their intellectual capacity. The best example to understand this is by referring to Netflix's campaign “The Next Rembrandt”

Rembrandt was a very famous painter whose paintings to date fetch as high as \$33 million in auctions. His paintings were recreated as a 3D image by a Global Marketing Agency J. Walter Thompson. ING and Walter Thompson teamed up with Microsoft and set up a team of 20 scientists who worked for the next 18 months to study more than 300 paintings of Rembrandt under high resolution and recognized more than 67 different features. The algorithm- Convolutional Neural Network was used for image processing.



Thus, though a recreation the amount of effort and intellect involved is unquestionable.

In this context, the person who uses the AI system may be considered the author and, therefore, the copyright owner. Sec 2d of the Copyright Act of India in the context of the work that is being copyrighted, the whole idea of considering the legal personality of the author was not considered

V. AI as a Creator:

With the increasing sophistication of AI systems, we witness instances where AI spontaneously creates innovative works without human intervention. The concern arises whether AI itself can be considered the author and, consequently, the copyright owner.

If a robot equipped with artificial intelligence is regarded as the creator of a literary, artistic, or musical piece, it shall be deemed to have generated a copyrighted work, and should it endure, this

copyright may potentially be everlasting until the robot's termination. Thus, places like India and Malaysia where the copyright subsists on a work for the life of the author plus 50 years becomes invalidated and subsistence becomes never-ending. DABUS is the best example of the same. An applicant applied with AI as an author emphasizing that it autonomously created 2 works at USPTO and EPO. In both places, the application was rejected. Considering AI as an inventor would pose concerns regarding the duration of rights under the law.

VI. Legal Perspectives:

The legal perspective on Copyright is similar across the globe but considering AI-generated content, the legal perspective greatly varies. The cause of such vast dissimilarity can be attributed to the fact that some countries strictly require human authors for copyright and consider that AI cannot be an Autonomous creating entity.

AI poses a very serious legal dilemma in the upcoming times with the persistent use of AI in education. The Next Rembrandt is the best example of this. The fact that 20 scientists have clocked out hours of laborious intellectually challenging technically enhanced work for 18 continuous months to create more than 150 GB-sized Databases in this project, though no cases are there, analyzing the creation from a copyright point of view poses great concerns.

Be it DABUS, Next Rembrandt, or any other case, the concern regarding the grant of rights is still debatable.

Authorship and Creativity Criteria:

Creativity is the pillar of copyright law and the focus is on bearing fruits for the intellectual efforts of creativity. Concerns about AI's

creativity process are not easy as it depends on the amount of human involvement in the process of generating the IPR is vastly debatable and cannot be outrightly rejected based on a law. European Union does not outrightly reject AI as author/creator. EU in DIRECTIVE (EU) 2019/790 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC acknowledges that digital technologies permit new type of use and thus the right to intellectual property. Though it does not exclusively talk about AI, digital technology is a representation.

VII. Contractual Arrangements:

Many times, Copyright ownership may also be determined by contractual agreements between the creators, AI developers, and other stakeholders.

Clear contractual terms can help define the rights and responsibilities of each party involved in the creation of AI-generated content.

VIII. Case Laws:

A. DABUS Case in the United States and Europe:

DABUS is an AI system. It had attracted a lot of legal attention. DABUS supposedly created two works autonomously. The applicant then sought copyright in the name of DABUS. This application was filed at both, the United States Patent and Trademark Office and at European Patent Office. Currently considering the patent rights on Copyright in both USPTO and EPO, In the US the Copyright subsists for the Life of the author plus 70 years, and for the EU also it is for the

life of the author plus 70 years. Both the offices declined authorship. The concern that arose in this case was concerning the duration of rights that can be bestowed and the amount of human intervention in the process of AI-generated content is also debatable. The fact that AI alone has created something is also a subject to be proven.

B. NFT Art and Beeple's "Everyday: The First 5000 Days":

Mike Winkelmann pseudo name Beeple sold a digital art, a collage of 5000 of his work at the NFT platform for a whopping \$69.3 Million, though not explicitly AI-generated, it is a collage of his own 5000 works from the Everyday series. This was bought by Vignesh Sundaresan, founder of Metapurse NFT Project. The copyright could not be bought, but the right to display is with Metapurse and is displayed in the digital museum. Though it was not explicitly focussing on AI-generated content, the sale of digital art as non-fungible tokens (NFTs) has raised concerns about copyright ownership. This case highlights the changing nature of digital art. The use of AI-generated content flags the need for new legislation in the changing times.

C. Netflix's "The Next Rembrandt" Campaign:

Although not a legal case, Netflix's "The Next Rembrandt" campaign involved using AI to analyze and recreate a painting in the style of Rembrandt. While this campaign was more of an artistic experiment, it highlights the intersection of AI and creative works, raising questions about authorship and ownership.

It's important to note that legal decisions in this field are still in their early stages, and precedents are limited. As AI technology continues to advance, it is likely that more cases will emerge, shaping the legal

framework around AI-generated content and copyright ownership. Legal professionals, policymakers, and industry stakeholders are closely monitoring these developments to address the unique challenges posed by AI in the realm of intellectual property.

IX. Indias' Take on AI and Copyright

The Digital era has reigned and not amending to changing times would be of great concern. Citing ChatGPT as a reference has been acknowledged in the academic world. Particular citation styles are mentioned for the same. The academic publications have also changed their policies

Table 1. Updated authorship policy of publishers regarding LLMs, AI, and ChatGPT

Publisher	Updated authorship policy	Remark
Springer-Nature (2023)	LLMs, such as ChatGPT, do not satisfy the authorship criteria. However, if the researchers uses these tools, s(he) must mention their use in the appropriate section of their academic paper, such as the "methodology" or "acknowledgment" section.	ChatGPT cannot be an author or co-author.
Taylor & Francis (2023)	Authors must be accountable for their research work per the publishing agreement. As AI tools do not take this accountability, thus; AI tools cannot be co-author in an academic paper. However, if a researcher uses these tools, s(he) must mention their use in the appropriate section.	ChatGPT cannot be an author or co-author.
Elsevier (2023)	Though AI and AI-assisted technologies help you to enhance the quality and readability of the language of the work, they do not replace key researchers. Thus, the researchers are not allowed to list AI and AI-assisted technologies as an author or co-author nor cite AI as an author.	ChatGPT cannot be an author or co-author.

Source: ChatGPT and Academic Research: A Review and Recommendations Based on Practical Examples Md. Mizanur Rahman1, Harold Jan R. Terano2, Md Nafizur Rahman3, Aidin Salamzadeh4, and Md. Saidur Rahaman, Journal of Education, Management and Development Studies March 2023*

The fact that academically the use of AI-assisted tools is so rampant makes the situation less debatable and more concerning as the rights for each entity merge and vary greatly due to the co-dependency that subsists. In India *Gramophone Company of India Ltd. v. Super Cassettes Industries Ltd.* (2011), the Delhi High Court observed that computer-generated music produced by a computer program lacks human creativity and, therefore, is ineligible for copyright protection. This case clarifies the copyrightability of AI-generated content in India. The EU Copyright Directive, which was adopted in 2019, includes provisions addressing liability for online platforms and certain copyright exceptions. While not explicitly focused on AI-generated content, these regulations have broader implications for digital content, including AI-generated works.

With changing times India also needs to bring about changes.

X. Conclusion

The key ethical concern for India is the lack of human intellect-borne creativity, if given copyright, then the whole purpose of the Law and its definitions are getting violated. On the other hand, if the rights are given to the AI or the digital generator forgoing the fact that it only can be given to humans then the term of copyright becomes highly questionable. So, India too like the EU, needs to bring in a very similar discourse to counter this issue as with time it is only going to increase exponentially.

Be it the Digital world, the Scientific World, or the Artistic world, the creation of new intellectual property is an ongoing process and will be never-ending, The AI that is currently creating havoc in our

academic world was also created by humans and the patents for the same are in thousands. As of date, India needs to change its copyright law for better applicability. “Changing Times need changing measures”

REFERENCES

1. Abbott, R., Matulionyte, R., & Nolan, P. (2021, September). A brief analysis of DABUS, Artificial Intelligence, and the future of patent law. In *Intellectual Property Forum: journal of the Intellectual and Industrial Property Society of Australia and New Zealand* (No. 125, pp. 10-16).
2. Chakraborty, A. (2018). Authorship of AI Generated Works under the Copyright Act, 1957: An Analytical Study. *Nirma ULJ*, 8, 37.
3. ChatGPT and Academic Research: A Review and Recommendations Based on Practical Examples Md. Mizanur Rahman^{1*}, Harold Jan R. Terano², Md Nafizur Rahman³, Aidin Salamzadeh⁴, and Md. Saidur Rahaman, *Journal of Education, Management and Development Studies* March 2023
4. Chen, L., Chen, P., & Lin, Z. (2020). Artificial intelligence in education: A review. *Ieee Access*, 8, 75264-75278.
5. Gramophone Company of India Ltd. v. Super Cassettes Industries Ltd. (2011) I.A.NO.7050/1999 IN C.S. (OS) NO.1625/1999
6. Hutson, M. (2022, November). Could AI help you to write your next paper? *Nature*, 611(7934),192–193. Retrieved 2023-03-28, from <https://www.nature.com/articles/d41586-022-03479-w> doi: 10.1038/d41586-022-03479-w
7. In the fields of research, innovation, education and preservation of cultural heritage, digital technologies permit new types of uses that are not covered by the existing Union rules on exceptions and limitations. In addition, the optional nature of exceptions and limitations provided for in Directives 96/9/EC, 2001/29/EC and 2009/24/EC in those fields could negatively impact the functioning of the internal market. This is particularly relevant as regards cross-border uses, which are becoming increasingly important in the digital environment. Therefore, the existing exceptions and limitations in Union law that are relevant for scientific research, innovation, teaching and preservation of cultural heritage should be reassessed in the light of those new uses. Mandatory exceptions or limitations for uses of text and data mining technologies, illustration for teaching in the digital environment and for

preservation of cultural heritage should be introduced. The existing exceptions and limitations in Union law should continue to apply, including to text and data mining, education, and preservation activities, as long as they do not limit the scope of the mandatory exceptions or limitations provided for in this Directive, which need to be implemented by Member States in their national law. Directives 96/9/EC and 2001/29/EC should, therefore, be amended.

8. Israel, S. (1983). Copyright in India: National and International: The 1983 Amendment of the Indian Copyright Act, 1957. *Economic and Political Weekly*, 1983-1988.
9. Office, U. C. (n.d.). The Lifecycle of Copyright | U.S. Copyright Office.
<https://www.copyright.gov/history/copyright-exhibit/lifecycle/>
10. Palace, V. M. (2019). What if artificial intelligence wrote this: artificial intelligence and copyright law. *Fla. L. Rev.*, 71, 217.
11. Paul, B. (2021). Artificial Intelligence and Copyright: An Analysis of Authorship and Works Created by AI. *Issue 5 Int'l JL Mgmt. & Human.*, 4, 2345.
12. Questions on your rights in the EU? Or your obligations? - Your Europe. (n.d.). Your Europe.
https://europa.eu/youreurope/business/running-business/intellectual-property/copyright/index_en.htm
https://europa.eu/youreurope/business/running-business/intellectual-property/copyright/index_en.htm
13. Sovhyra, T. (2021). Artificial Intelligence and Issue of Authorship and Uniqueness for Works of Art (Technological Research of the Next Rembrandt). *Kult. I mystetstvo u suchasnomu sviti*, (22), 156-163.
14. The exceptions and limitations provided for in this Directive seek to achieve a fair balance between the rights and interests of authors and other rightsholders, on the one hand, and of users on the other. They can be applied only in certain special cases that do not conflict with the normal exploitation of the works or other subject matter and do not unreasonably prejudice the legitimate interests of the rightsholders.
15. The Next Rembrandt - Digital Innovation and Transformation. (2020, April 21). Digital Innovation and Transformation. <https://d3.harvard.edu/platform-digit/submission/the-next-rembrandt/>Mezei, P. (2020). From Leonardo to the Next Rembrandt—the need for AI-Pessimism in the age of algorithms.