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## A LEGISLATIVE ANALYSIS OF LAW RELATING TO COPYRIGHT IN THE ERA OF ARTIFICIAL INTELLIGENCE

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KEYWORDS	ABSTRACT
Artificial Intelligence, Copyright Law, Computer Programming, Ownership, Protection	As artificial intelligence (AI) develops, copyright law faces new and exciting challenges. The technologies related to the AI is in air these days, from youngster to the old people everyone is using this new and advance form of technology like a child's play. It has been advertised such a high scale, that it will transform the world for the coming advance generation. AI is that advance computer technology which behave like a human, think like a human and which behave like a human being with the help of the computer programming with in its bots. This legislative analysis explores how copyright laws have changed in relation to works created by artificial intelligence. In an era where literary, artistic, and musical creation is done by robots, copyright laws must be reviewed and modified in order to preserve the rights of creators while also encouraging innovation. These important aspects are examined in this study. This study also includes that the possibility that AI systems could be regarded as writers for the purposes of copyright law, and if not, the consequences for copyright ownership and protection. The study examines who owns what and to what extent when it comes to content created by AI. This study also includes the legal framework pertaining to the copyright law in relation to the content created by the artificial intelligence in India. This study sheds light on the legislative adjustments needed to address the issues posed by artificial intelligence-generated content and guarantee that copyright laws continue to be applicable and efficient in the age of AI.

### I. INTRODUCTION AND BACKGROUND

The technologies related to the AI is in air these days, from youngster to the old people everyone is using this new and advance form of technology like a child's play. It has been advertised such a high scale, that it will transform the world for the coming advance generation. It gave us advanced cars like the self-driving motor vehicles, grammar

software, household gadgets, customer service robots like catboats many other new and advanced programs that have ability to think and learn, almost many things, by their own programming. It is a more advanced sub- field of the computer science. Although science has fulfilled many goals in which it has programmed computer to learn something new, which could be accomplished by

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simulating “intelligence” (like a human learn many things). This form of intelligence is created artificially, with the help of computer programs which are advance hence the term “Artificial Intelligence”. Till date there is no universal definition of the term artificial intelligence, but John MaCarthy has tried to define this as “Science, computer science and engineering of making intelligent machines, especially the intelligent computer programs and other computer related programs.”<sup>1</sup> AI in simple way could be defined in which, by the help of use of computer technology, human intelligence is being mimicked, followed in an explained and detailed way which could be expansive and exhaustive in the process, and then creating as well as applying many algorithms and using a dynamic technological environment within the computing.<sup>2</sup> So, AI is that advance computer technology which behave like a human, think like a human and which behave like a human being with the help of the computer programming with in its bots. A computer bot, is short for the robot, which is a computer software application, which is programmed to execute many tasks or some specific tasks and that, as a part of another computer program, which will simulate human activities. Bots are specifically designed to automate tasks without human intervention. Thus, it will eliminate manual processes. These tasks are basically predefined and highly repetitive so that they can be done far more quickly, repeatedly, reliably and accurately more than a human.<sup>3</sup>

The Artificial intelligence has the ability to produce and generate content, inventions, technologies, information, which has raised an

alarming question and challenges which is concern with the legal liability of AI. Therefore, in many countries sufficient and accurate laws are not in existence which can deal with the liabilities arising due to actions and decisions of the AI system.

Though, in India, there are dearth of AI regulations which can establish the liability related to the damages caused by AI to be ascertained. Otherwise, this problem and its impact is not indigenous but globalized. Many cases The absence of a regulatory framework in the field of AI is an issue for the worldwide community, including common law and civil law states. In the AI models training, then the use of the material which is copyrighted is a fair game. Under copyright of law faire use that permits the use of that particular material under various conditions. The AI has in many ways significantly changed the way we work and create. Consequently, AI-generated text or music or dialogues has given many complicated questions. All these questions are challenging the understanding of ownership, faire use and the nature of the creativity.

On the other hand, copyright is an exclusive right which is giving protection to the creator of the work related to the literature, artistic work and various other works. So, fundamentally it is giving protection to the creations coming out from the human mind and intellect. Copyright is giving protection to the expression of the idea in different form but not to the ideas itself. The logic is that same idea can come out from many minds, so it is the mode of expression which make it unique and novel. In India, the Copyright act has defined the term “Copyright” in section 14, in a very

expressive manner, which says that it is an exclusive right which is excluding the others from doing any act such as reproduction, further publication, adaptation and translation which can infringe his right to use.<sup>4</sup> Whereas, section 17 of Indian law on copyright is in consonance with the above provisions stated that the author of the any type of work weather creative, dramatic shall be the first owner of the copyright subject to other conditions given under this particular section.<sup>5</sup>

**Here are the conditions in which the author may be different other than the original author:**

Provision	Owner
Where the works is created or generated in the course of employment or by the employer, it may be under any kind of written contract, or contract of service)	Employer
Work done for a valuable consideration (Painting, Portrait making, engraving, movie making)	Person at whose instance the work or art is created.
Speech delivered in public	Person who is delivering.
Any kind of speech delivered in the public or in any social gathering on any important topic, on behalf of some other person.	Other Person will be the owner on whose behalf the speech is delivered
Governmental work	Any Government weather state or centre
Any art made or book first published by or under the direction public undertaking	The Public Undertaking

Any kind of Work which may be of International Organisations where the provisions of section 41 of Copyright Act 1957 shall be application.	International Organization on world platform.
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**Source: Primary<sup>6</sup>**

**II. SCOPE AND OBJECTIVES**

It is very well settled under the Indian laws<sup>7</sup> and through the various case laws<sup>8</sup> that only the natural person can be the author of the work.<sup>9</sup> There are several logical reasoning given by the courts time to time about why only the natural person can be the owner and not any artificial or juristic person. As per the table given (Section 17) above author is the very first owner<sup>10</sup> except him nobody in the world cannot claim the fruit of his labour and skill devoted in that particular work. He himself has devoted his hard work in the selection, coordination and arrangements of the available material for a perfect and complete art or other work with a view to gain appreciation from the public and to show his skill.<sup>11</sup> The ability of the protection under the copyright act is tested whether work is original and the person has devoted his skill and labour judgement in that creativity.<sup>12</sup>

Currently, artificial intelligence is not independent, somewhere or other it is dependent on human, but soon it will become independent due to technological advancement. Absence of authorship will not allow the protection of the AI generated work. This may leave many works unprotected, that would otherwise be copyrightable. The first part of this research paper focuses on whether at international level this AI generated copyright framework can be accommodated. For that purpose, researcher will examine and compare the

various requirements of authorship in Europe, the US and Australia, Berne Convention. Then analyse the current legal provisions that exclude non-human. The second part of the paper enquires whether copyright should protect AIs as creators.

### **III. CAN AI ART OR LITERATURE BE COPYRIGHTED**

#### **A. International Perspective**

In many cases it was argued that the copyright ownership should be given, where the work is originally and completely produced by the intellect of computer. But they could not succeed because of two reasons, first, sole ownership will create many issues like, in a direct way AI would become the legal personality. And second, legally copyright could be given to the human activity only and AI is not a human. Copyright right can be assigned and licenced and in case of AI generated work, who would be having the authority to such transfers. And if some company has put their money in that, then the company cannot make any profit.

As per the U. S. Copyright office<sup>13</sup> that there will be no copyright protection for those works which are created by the activities done by the non-humans, which includes machines also. Thus, the production of any art form or literature of a generative AI model should not be copyrighted. The reason behind that is the way in which AI system are trained, like by identifying and replacing the patterns in data and machine learning. While in order to generate an art form or written literature, learning should be from the real work which is performed by the actual human. For example, if the AI generator is writing in the style of the Toni Morrison, then it should be given

training with the actual words written by the Toni Morrison. So, legally many Ai systems like image generators, chatbots which includes ChatGPT and LaMDA cannot be considered the actual author of the work produced. The work generated by them is simply a culmination of human made work. And this work is extracted from the internet and in one way or other is copyrighted protected. Work created by the artificial intelligence has a very important implication for the laws related with the copyright. In earlier period ownership was not an issue because at that time computers were using as a tool that supported the creative process like a pen and paper. Human author is required for any creative works qualifying for copyright protection but they must be original.

In the jurisdictions of Spain and Germany<sup>14</sup> only works created by a human could be protected by their Copyright Laws. But the complication arises when in the latest types of artificial intelligence, the AI generator is not using as a tool but actually it is making many of the decisions the process of creation and that too without human intervention.

*“There are two ways in which copyright law can deal with works where human interaction is minimal or non-existent. It can either deny copyright protection for works that have been generated by a computer or it can attribute authorship of such works to the creator of the program.”*<sup>15</sup>

#### **i. The lines get blurry when humans and AI collaborate**

In the United States of America, it has been already held that they will register those works in which there are human interventions or there are human

work and skills are involved.<sup>16</sup> Similar decision is also given by the Australian Court where they refused the copyright protection work of an AI generated application.<sup>17</sup> The European Court of Justice in the landmark case has held that where the use of the human intellectual mind is not present any work cannot be registered under the copyright laws.<sup>18</sup> Let's talk about the other option that is of giving authorship to the programmer which is evident in a few known countries which are Hong Kong (SAR), India, Ireland, New Zealand and the U.K. And also, this kind of option is encapsulated in UK copyright law, section 9(3) of the Copyright, Designs and Patents Act (CDPA)<sup>19</sup>

*"In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken."*

Now comes the complicated issue where there some artistic or literary work is result of the human and machine or computer programme. The well-known professor Dr. Daniel Gervais, of Vanderbilt Law School, South Nashville, Tennessee has said that if there is combination of the machine and human work and they are separable then the copyright will only focus on the human part only.

"If in a given case human contribution is more than the eligibility would be the amount of control and influence on the machines output. Then the machine work would not exclude the copyright protection," Gervais said.

Recently on September, 2022, U.S. Copyright Office granted the first registration of a literature work which was produced by the help of "text-to-

image generator Midjourney" a graphic novel titled "Zarya of the Dawn". The text of the comic book and the selection, coordination and arrangement of the written words and visual representations, remained protected. The images did not get protection because they were not the product of human authorship.

If we talk about the Berne Convention<sup>20</sup> then the definition provided under Article 2 is very wide which covered every production in the literary, artistic and scientific work, mode of expression may be different. In this definition it is clearly mentioned that the fundamental tenet of copyright is that the author of the any work must be human mind and this fact has been adopted through various international, regional and national legal provisions. The Copyright law refers the intellectual creation of the author which many a times reflect the personality, behaviour and thoughts of the author. The author poured down his feelings, expression, pain and happiness in the literature, in the form of songs, poems, which a computer cannot feel and nor it can express. It is very much settled that the non-human cannot be the author of the work, which is held by the U.S. Court in Naruto's case.<sup>21</sup> Another reason is that copyright ownership can be transferred to any legal entities, which a non-human cannot do with wisdom. Basically, if we grant copyright to the non-humans or the AI then it will devalue the fundamental aspect of copyright, which was for the protection of human endeavour and spirit.<sup>22</sup>

### III. POSITION IN INDIA

In India, the Copyright Act, 1957, section 2 (d) provides the definition of the author. And this is

the only section which is putting restrictions on granting the protection to an AI generated works. If any person wants to claim the authorship, he/she has to fall under the domain of the conditions given under this above section. AI is not a legal person nor a human under section 2(d). Here in the definition, it is written that the person who causes the work to be created, and here person is a human and not the AI system. So, the authorship of the AI would be indecisive under Indian laws. Apart from the personality related issues there is a second issue would economically issue.

connected fundamentally. Whereas in “Sweat of the Brow doctrine” minimum degree of creativity will be checked. The modicum of creativity doctrine, says that, any kind of work should possess at least minimum degree of creativity. The last examination is of skill and judgment on the work which has been created by the author.<sup>26</sup>

*“To claim copyright in a compilation, the author must produce the material with exercise of his skill and judgment which may not be creativity in the sense that it is novel or non-obvious, but at the same time it is not a product of merely labour and capital. The derivative work produced by the author must have some distinguishable features and flavour.”<sup>27</sup>*

The next debatable issue is “Who will be held liable for any infringement”. As per section 51<sup>28</sup> only the “person” can infringe the copyright. Since there is no legal status of the AI, so infringement may become a serious issue in this case. There is an inability in fixing the liability of the AI where it causes harm to the public emotion through its content, because there is no one who can be put behind the bars. AI cannot claim moral rights as it is not a human. It is in cable to ascertain the harm to the reputation and honour of the original author. There will be various issues regarding the fixing and claim of the royalty. So, in crux the accountability of the AI is very difficult to ascertain if we provide authorship to the AI.

**IV. CRITICAL ANALYSIS OF AI RELATED COPYRIGHTABLE WORKS**

By virtue of various programming and many parameters, the work created by the AI qualify as original work. However, the skill and judgement are still debatable. Another thing is that AI is made by the human only, all the bot programming is

Author	Type of Work
Author of the Work	Literature or Dramatic Work
Composer	Musical Work
Artist	Artistic Work
Photographer	Photographic Work
Producer	Sound Recording, Cinematographic Film
Person who causes the work to be created	literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created

Source: (Section 2(d)) Secondary<sup>23</sup>

In a case decided by the Delhi High Court it was held that plaintiff being a juristic person, thus he is incapable to hold a copyrightable material, and as he is not the author of the copyrightable work in which the protection under copyright may subsist.<sup>24</sup> As per section 13, the work must be original, originality in terms of what measures is not defined in the act.<sup>25</sup> The various court has been time to time given certain parameters like doctrine of merger, Sweat of the Brow doctrine, Modicum of Creativity doctrine, Skill and judgement test. Under the doctrine of merger, the court will apply the test whether the idea and expression are

done the human and human mind, programming on which the original work is developed. At the international level that work has been recognized where the human interference is more than the AI otherwise not. In the opposite case a separate class of work can be made by the legislature. Or they can provide separate categories like owner can be human and author can be the AI in the AI generated works. Here, the owner of the AI will always be responsible for any kind of work generated by AI, and will also be liable for the purpose of any infringement caused by the AI generated work.

So, at the end it is advisable to say that due to advancement in technology, providing recognition to AI is not a bad idea. Law always play a pivotal role which will maintain the balance of the any type of AI generated work and other work which is copyrightable. So timely, we should identify the rights and limitations of the AI related works.

## **V. CONCLUSION**

Truly, AI generated works are now copyright nightmare for the companies using AI and advanced technologies. The use of AI is very common by the artists and common public. As soon as this technology will reach to the population at large it will become more powerful, sophisticated and independent. It will shed away the difference between the work of human and non-human. As for Indian position, copyright laws should make more inclusive, in which AI specific copyright laws could be recognized. By granting AI a legal personality thus making it capable of holding its rights. In conclusion, we can say that, the need of hour is that an international convention

should take a step so that all the countries who wants to give the protection, can come together. These AI specific laws on copyright can prevent future complications for the future generation as it is going to be even more complex.

If we talk about the Indian laws, so they are insufficient to equipped the rights of AI and its creativity. It has been clearly defined the definition of the author, in which AI does not fit. So, the alternate approach is to amend the laws related to the copyright, and to include the AI related works. Or they can legislate a new legislation of the specific matter. However, it is not possible in near future, because the issue is still debatable at the international level.

## **Endnote:**

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- <sup>4</sup> The Copyright (Amendment) Act, 1992, No. 13, Acts of Parliament, 1992 (India).
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- <sup>7</sup> The Practice and Procedure Manual of the Copyright Office (2018)
- <sup>8</sup> Rupendra Kashyap Vs. Jiwan Publishing House Pvt. Ltd. (1994) (28) D.R.J. 286 (India).
- <sup>9</sup> Navigators Logistics Ltd. vs Kashif Qureshi & Ors. (CS(COMM) 735/2016) (India).
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- <sup>14</sup> (Sept. 24, 2023, 10:44 PM), [https://www.wipo.int/wipo\\_magazine/en/2017/05/article\\_0003.html](https://www.wipo.int/wipo_magazine/en/2017/05/article_0003.html).
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- <sup>17</sup> Acohs Pty Ltd v Ucorp Pty Ltd 2012 FCAFC 16.
- <sup>18</sup> Infopaq International A/S v Danske Dagbaldes Forening 2012 BUS LR 102.
- <sup>19</sup> The Copyright, Designs and Patents Act (CDPA), sec. ss. 3
- <sup>20</sup> The Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979)
- <sup>21</sup> Naruto v. Slater, 2018 WL 1902414.
- <sup>22</sup> The Universal Copyright Convention (UCC), was first created in 1952
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