

DEVELOPMENT OF AI AND ISSUES PERTAINING TO COPYRIGHT- A CRITICAL STUDY

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ABSTRACT

Artificial intelligence can be defined as one of the best gifts of science and technology to the mankind. These emerging technologies plays an important role in “revolutionizing the modern world”. Artificial intelligence has made life easy as it has been used and is still in use in different spheres of the evolving human life. Can AI be considered as a “legal person”? Currently, various countries including the UK and USA consider the fact that AI is still dependent on some amount of human input. The extensive usage of generative AI programs leaves us with the question of who, if anyone, may hold the copyright to content created using these programs, notwithstanding the fact that the AI's programmer as well as it's user, and the AI program itself all together play an important role in the creation of these works. One of the main reasons why it's very challenging to copyright AI-generated works is the vagueness in relation to human involvement and intentions and various other questions regarding ownership. There are chances of a model creator to be accused of “vicarious liability” for the said infringement. Another issue is that, in

jurisdictions, like the US, any output generated solely using a machine is not eligible for copyright protection, as most jurisdictions tend to give protection to only the original works, those having a "human author". This research paper tends to give reasons on the questions of "whether AI generated works are eligible for copyright protection".

KEYWORDS: Artificial Intelligence, Intellectual property, innovation and technology, copyright law, dataprivacy, legal person, AI generated works, digital jurisdiction, liability of AI, copyright infringement.

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AI PROTECTION AND COPYRIGHTS ISSUES

Introduction

AI will probably most likely lead to the end of the world, but in the meantime, there'll be great companies.

- Sam Altman

Artificial intelligence (AI) has become a transformative technology with a major impact on many industries, including all aspects of law. The intersection of intellectual property and law in India gives rise to legal issues and complex issues. This article provides you with intelligence and law information in India. Artificial intelligence is the ability of machines to perform tasks generally related to human intelligence and is considered "thinking beyond human limits." The law is the law given to the creator of the work.

Artificial Intelligence has the ability to create original works without direct human intervention, which raises the question of who should be considered the creator and owner of the works. Although the truth is that there are currently no legal structures to strictly control intellectual property in any country, the current approach seems to concern people with the origin of intellectual creation³.

As AI becomes more effective, concerns arise about its impact on privacy, security, and business. Many countries have recognized the need for "intellectual property law" that covers activities created by intellectual property. The benefits of intelligence to people's lives are still recognized. A McKinsey report estimates that AI will contribute \$13 trillion to the global economy by 2030, accounting for 16% of the total. Despite the real-world and financial advantages, AI still has many shortcomings and problems that

hinder its widespread use. Intellectual property issues include issues with unemployment, security, trust, and computing power ⁴.

³ World Intellectual Property Organization, https://www.wipo.int/wipo_magazine/en/2017/05/article_0003.html (last visited Sept 3, 2023, 1.48 pm)

⁴ Copyright.gov [NewsNet Issue 1017 | U.S. Copyright Office](#) (last visited Sept 5, 2023, 11.23pm)

Objective of the study

The purpose of this research paper is to investigate and analyze the development and legal issues of intellectual property.

- Investigate whether laws can lead to intelligence.
- Discuss the legal problems of businesses created by artificial intelligence
- Immediately solve the problem of treating artificial intelligence as a "legal person" according to the law.
- Explore important topics related to ownership, debt and liability.
- Find out if producers are eligible for copyright on the work, if they can prove they only employed the same people.

Artificial intelligence and Copyright

All issues related to creative work ultimately require a legal debate. "Copyright" means the legal right granted to the author and owner of a creative work to enable them to profit from that work and to protect others against unfair use of labor. Copyright protects art, traditional music, film, text, and more. However, the rapid advancement of technology has allowed artificial intelligence to create original works without direct human intervention, and has raised questions about who will be considered the creator and owner of these works⁵.

There are two cases in this:

- Jobs created by AI based on human actions: In these cases, human creativity helps to be responsible and can be held liable.
- Works created by artificial intelligence without human guidance: When artificial intelligence works without human input, the writing problem becomes difficult.
- Enabling licensing of intellectual property requires careful consideration of law and strategy.

- For legal protection reasons, the work must be done in accordance with the original standards. It should be the result of the writer's skill, determination and creativity.

⁵ Great Kashmir, [Artificial Intelligence in the modern world \(greaterkashmir.com\)](http://greaterkashmir.com) (last visited Sept 5, 2023, 5.32 pm)

When it comes to works created by artificial intelligence, the originality of the intelligence is questionable because they are based on existing data and algorithms programmed by humans.

Who owns the copyrights for an AI-generated work?

The right to recognize programmers' or users' contributions to services? In the analog world, this is equivalent to asking whether the producer or the composer needs permission. So why is uncertainty now so dangerous for the digital world? Consider the example of Microsoft Word. Microsoft created the Word computer program, but it obviously doesn't own all the content created with it. The User, i.e. the author of the work created using the Application, is the owner of the right.

However, when it comes to smart algorithms that can create work, users who enter the creative process of the application will simply click a button and let the computer do its thing. Many types of machine learning currently exist, and as research in this area continues, the results can be significant.

Nova Productions v Mazooma Games [2007] EWCA Civ 219 ⁶

According to some laws, the problem will be solved on a case-by-case basis. UK Court of Appeal to rule on licensing of computer games in, is not inherently an art, has no art or art. "Taking user action may be the solution to the problem, depending on the situation.

Can copyright vest in an AI?

Intellectual property law is primarily concerned with safeguarding the rights of those who create intellectual property. The primary objectives of copyright laws are to:

- encourage and incentivize the creation of original works by granting them the sole right
- to exploit them for financial gain for a specified period; and
- to protect the creators of those original works from unauthorized reproduction or

⁶ Nova Productions v Mazooma Games [2007] EWCA Civ 219

- exploitation of their works.

Determining the ownership or author of a human-made work is typically straightforward, however, this is not the case with AI-created works. In order to protect the copyright of AI-created works,

- Countries may altogether deny any copyright protection to works created by AI;
- Countries may accredit authorship of works created by Artificial Intelligence (AI) to the AI itself;
- Countries may accredit authorship of works created by AI to the creator(s) of the program.

In India, only a natural individual can be considered to be the author of a work that is subject to copyright. According to the Delhi High Court, an artificial person (as in the case of the CSE) would only be eligible to claim copyright in such a work if it could demonstrate that it had employed natural individuals under a contract specifically for the creation of the work. Therefore, there is a need to provide protection to the works created with intellectual skills of the people in India. To encourage innovation in India, particularly in the context of the government's 'Make in India' initiative, amendments to the Indian Copyright Act are being proposed to protect works created by intelligence, in particular. In India, only one person can be considered the author of a copyrighted work⁷. According to the Delhi High Court's decision in the CSE case, a liar can claim a business only if he can prove that a real person worked for specifically under the contract: the purpose of doing business. Work. Therefore, the preservation of any work created by intellectuals in India should be attributed to the people. The proposed amendment to the Indian Constitution aims to promote innovation in India, especially under the government's 'Make in India' initiative.

“AI models require human beings to keep feeding it for these AI models to get better, so unless there is cooperation, you can only do so much to cannibalize your own data source”

- Zhao

⁷ Artificial Intelligence And Copyright – The Authorship, <https://www.mondaq.com/india/copyright/876800/artificial-intelligence-and-copyright--the-authorship> (Last visited on 19th Sept, 2023, 10.57pm)

Who is a legal person?

As time passed, workers' resources and laws expanded. One person starts creating an organization for his business, and some people have to do it on their own. However, this creates problems when organizations are sued. The concept of "legitimate person/fake person" was introduced in order to solve this problem. A legal entity is called a legal entity that can only be sued and sued in court. For example, a legal entity can be a company, a state, a person, a god or a union. The law has the power to turn a person into a liar of rights and values. The law does this by clarifying the identity of the accused or defendant. This is done by law, meaning the person becomes a "legal person" in law. Therefore, the law gives rights and obligations to legal entities.

To understand the concept of legal identity, it is important to remember that all people are considered legal persons, but not all legal entities are. For example, a person based in Mumbai is considered a legal entity, while a business located in Chennai is considered a legal entity simply because it means having legal personality. Furthermore, legal personality is not limited to businesses; it also encompasses the legal positions of individuals, such as those held by a President or a Deputy Officer. This implies that, regardless of who holds the position, the obligations to be fulfilled will remain the same. Consequently, a person who holds a legal position may be subject to legal action for the actions they have undertaken while in that position. Corporate personality is also a concept developed by the law, and is characterized by a greater range of rights and obligations than other legal persons.

- **Whether an AI can be termed as a legal person?**

There is no legal framework in any jurisprudence which considers an "AI to be a legal person". Legal personhood is implicitly linked to individual autonomy. Currently, many countries that are advanced in technological development, such as the European Union, the United Kingdom, and the United States, argue that artificial intelligence still relies on some human investment. For this reason, artificial intelligence cannot be called a legal person.⁸

⁸ Generative Artificial Intelligence and Copyright Law , <https://crsreports.congress.gov/product/pdf/LSB/LSB10922> (last visited on Sept 15,2023, 8.43pm)

AI don't qualify as a legal person under existing laws

There is no law determining "artificial intelligence to be a legal person" in any case. Legal behavior is about personal autonomy. Currently, many countries that are advanced in technological development, such as the European Union, the United Kingdom, and the United States, argue that artificial intelligence still relies on some human investment. For this reason, artificial intelligence cannot be called a legal person. According to the current law, intellectual property has no legal nature. Legal quality is created by law. A legal entity is an entity with rights and responsibilities. **Salmond** has stated that,

“As far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties”.

The question of whether intelligence gives character to a legal entity makes it possible to be legal and responsible. A cursory reading of my country's Intellectual Property Law will show that there is a difference between humans and others. You may also observe this: “No one other than the individual can claim copyright”. Thus, the natural person who knows his skill, skill or knowledge regarding the innovation and the first person who produces the product follows the criteria for recognition as a manufacturer⁹.

Consequently, a natural person who is true and first to invent, and who contributes his originality, skill, or technical knowledge to the innovation meets the criteria to be acknowledged as an inventor.¹⁰

- **Who will be held responsible for breaches of copyright by Artificial Intelligence?**

Currently the law does not mention liability for infringement of intellectual property and any liability for infringement must rest with individuals. Generally speaking, if a work is infringing, "the

¹⁰ AI generated content and copyright law <https://builtin.com/artificial-intelligence/ai-copyright> (last visited on Sept 16, 2023, 3:07pm)

author is generally responsible". Therefore, if an AI creator is held liable for copyright infringement, the AI creator will also be held liable. It will also be difficult to maintain human responsibility for all the work created by AI because there is no basis for it.

For example, if an AI project created in India is deemed offensive, obscene or against public morality, neither the author nor the AI will be responsible. The consequences of viewing a person as the author of a fraudulent invention are almost unlimited. However, international and national law do not provide legal rights to members and, more importantly, do not limit liability for crimes that may arise from work created through intelligence. Therefore, intellectual property cannot be blamed for violation of law.

Challenges and difficulties

The implementation of Artificial Intelligence (AI) in the context of copyright law presents a number of challenges,

❖ **Transfer of ownership:**

The Indian Copyright Act - Section 17 states that the original author of the work is generally recognized as the original owner. However, changing ownership of AI-created work will be difficult because AI cannot control or authorize changes. Therefore, it is difficult to clearly determine the change of ownership.

❖ **Special rights of the author:**

In Article 57 of the Privacy Law, authors have special rights called the right to justice.

These rights include rights regarding their work

and the right to manage their affairs. It may not be appropriate to manage these rights through intellectual property because it is not possible to assess the impact on the author's reputation or reputation.

❖ **Royalty determination:**

The author has a non-negotiable right to payment. If the author of the work is artificial intelligence, determining the cost and transitioning to artificial intelligence becomes difficult. Questions will arise about who should decide on compensation and whether compensation should be proportionate.

❖ Lack of accountability for Artificial Intelligence:

The difficulty of holding artificial intelligence (AI) accountable for its results is a critical issue. If the content created by artificial intelligence is offensive, pornographic or contrary to public morality, it will be difficult to judge the intelligence directly. While corrections may include removing content or terminating the AI, acknowledging the AI as an author can be problematic without clear accountability.

These complexities of AI-based works necessitate the development of a comprehensive framework to address the unique difficulties associated with them. As the field of Artificial Intelligence develops, it is essential to assess and adjust copyright legislation to balance the promotion of innovation with accountability in the era of the digital age.

Major difficulties

There are three major difficulties regarding the copyright issue, when it comes to an AI generated work,

- There are many problems with the use of artificial intelligence (AI) in law. First, how will the copyright owner's rights be protected if his work is used by a third party? This is especially important for works of art and other forms of creative expression; because authors may not want their works to be used without permission or modification.
- The second problem is how to ensure that the works created by artificial intelligence do not violate existing laws. This is a difficult problem because it is difficult to distinguish between works created by humans and works created by intelligence. If a work created by AI violates the law, the question arises as to who is responsible for the violation: the intellectual or the person who created the work?
- Finally, how to solve the "orphan work" problem that the owner cannot decide. This problem is becoming more serious because more and more AI jobs are emerging. New exemptions or licenses are required to facilitate the use and distribution of such works without harming others.

Infringement and liability:

It is difficult to detect fault in intellectual works. The role of AI developers, users, and the AI system needs to be understood. Both authors and users of AI-generated content are responsible for ensuring legal compliance. However, when artificial intelligence systems work without human intervention, it is more difficult to determine the beneficiary. In the case of copyright infringement caused by artificial intelligence, problems arise because artificial intelligence does not have legal personality. Although forgery is not considered a legal crime, individuals are often subject to prosecution under the Criminal Code.

To solve the liability issue, you must establish clear accountability for allocating responsibility to AI developers, owners, or employees. Many countries, especially India, Ireland and New Zealand, provide legal protection to artificial intelligence programmers. This view recognizes that an intellectual benefit derives from the intelligence of programmers. Recently, India has been more tolerant by allowing AI RAGHAV to co-own the production of "Suryast" and allow other writers to be its creators.¹¹

Based on this, it was recognized that if the AI system creates certain tasks on its own, it should be considered an author and have a certain ownership. To support this idea, in 2016 Japan included a short story written by a computer program in its selection for the National Literature Award. The boundaries between art created by humans and art created by computers may be broken. It will become blind as more artists use artificial intelligence and machines become more efficient at creating creative works.

When you give a machine the ability to learn patterns from big data, it gets better at imitating humans. Due to the tremendous growth in computing and now more computing power, this distinction may become meaningless. Also, once we have enough power, eventually we won't be able to tell the difference between human- and machine-generated data.

¹¹ AI Art and Indian Copyright Registration , <https://spicyip.com/2022/10/ai-art-and-indian-copyright-registration.html> (last visited on Sept 18, 2023, 01.23am)

While we may not have reached that point yet if we do, we must decide what protection (if any) should be paid for the resulting work generated by intelligence algorithms with little human interaction¹². Although the law is slowly moving away from the old model that rewards labor, work and effort, perhaps we can make an exception to this difference when it comes to product intelligence. The other option seems incompatible with the principles of protection of creative work in the first place. Many experts in the field worry that if developers' use of intellectual property in creating models is not controlled, this could lead to serious problems for technology and people themselves. "When this AI model starts to harm the people who create the data it is based on, the artists, it destroys the future of AI modeling and model design. This leads to a steady cycle of creativity and standards development".

Literary copyright

Copyright protection granted specifically to books and other written works is often called "literary copyright". The author or creator of the book has the right to copy, copy, create the written work, including the right to create it. is a type of intellectual property protection (IP) that gives the right to distribute, display, and perform. working as a patron. book. Copyright documents allow creators to control the use and development of their works and provide legal protection against their books being copied, distributed, or modified Literary copyright provides legal protection against unauthorized copying, distribution, and modification of books and allows authors to maintain control over the use and benefits of the work.¹³

In the past, people governed by law expanded. People formed organizations for their own work began, and some natural people were also forced to work for them. However, this creates problems when organizations are sued. To solve this problem, the concept of "legitimate person/fake person" has been proposed.

¹² India recognises AI as co-author of copyrighted artwork , <https://www.managingip.com/article/2a5czmpwixyj23wyqct1c/exclusive-india-recognises-ai-as-co-author-of-copyrighted-artwork> (Last visited on Sept 18,2023, 10.16am)

¹³ literary copyright <https://www.legalserviceindia.com/copyright/copyright-literary-book-lyrics-screenplay.html> (Last visited on Sept 18,2023, 11.56am)

“When these AI models start to hurt the very people who generate the data that it feeds on — the artists — it’s destroying its own future.”

India’s Legal Scenario towards copyrights

The Copyright Act, 1957 governs the content of creative activities in India. India is no exception when it comes to projects developed by AI. The law defines “author” as the person who causes the work to be performed; This person may be a natural person or legal entity. According to this concept, artificial intelligence systems are not allowed to write. Indian courts have supported this view in judicial decisions, saying that AI cannot be considered the creator of copyrighted works. The concept of fair use, a law of the United States, allows the use of illegal content in certain circumstances. To determine whether an AI-generated activity is fair use, examine variables such as purpose, type, value, and content. The Intellectual Property Act, 1957 regulates the content of intellectual property in India. India is no exception when it comes to projects developed by AI. The law defines an “author” as a person who works to create a product, which can be a natural or legal person. According to this concept, artificial intelligence systems are not allowed to write. Indian courts also support this view in their judicial decisions, stating that artificial intelligence cannot be considered the creator of copyrighted works. In some cases, the concept of fair use (a legal system in the United States) allows the use of illegal content to be prohibited. To determine whether an AI-generated activity is fair use, examine variables such as purpose, type, value, and content.

Artificial intelligence cases in China

FEILIN V. BAIDU

TENCENT SHENZHEN V. SHANGHAI YINGXIN

In 2019, two Chinese courts' opinions on intellectual property law attracted international attention. Baidu and the Internet Court in Beijing did not recognize that intellectual property was copyrightable; However, in the Tencent Dream writer case, the Shenzhen Nanshan District People's

Court recognized intellectual property rights. However, both cases are similar in that they recognize that written law is aided by wisdom rather than wisdom, and that they recognize that the works are the products of legal entities.

The difference between the two decisions is that the Internet Court considers the importance of freedom and evaluates it according to objective criteria, while the Shenzhen Nanshan District People's Courts refer to human creation as part of special laws. In response, the Internet Court in Beijing ruled more favorably on projects created by artificial intelligence.

Facing the legal consequences

Several efforts might be made to address the legal consequences of AI-generated creative works in India:

- **Intellectual Property rules Should Be amended:** Intellectual Property Code should be updated to reflect AI technology. Part of this includes recognizing and addressing the unique challenges of intellectual property, copyright ownership, and fair use in the digital age.
- **Separate Criteria for AI-Generated Works:** Even if AI is not legalized, its work can be recognized using different standards than traditional laws. This can make a difference while still complying with existing laws and regulations.
- **Information use and management policies must be implemented:** Artificial intelligence managers must comply with clear information use and management policies. These policies should include monitoring and follow-up procedures to ensure responsible and ethical use of copyrighted content throughout AI training.
- **Appoint a compliance officer:** AI companies should establish a compliance officer responsible for legal protection, investigation and resolution control. These employees will be responsible for ensuring that intellectual property products comply with prohibitions and detecting violations.

AI and copyright act, 1957

The Indian Copyright Act, 1957 does not recognize "artificial intelligence systems" as copyrighted works. However, the fair use doctrine allows limitations by prohibiting the use of documentary evidence in certain cases. Whether a work created from intellectual property falls within the scope of fair use depends on factors such as purpose, quality, quantity and results of use. A change of use that adds new meaning or expression to a copyrighted work is often significant in fair use analysis.¹⁴

The objectives of copyright law

The primary purpose of copyright is to promote scientific and artistic value while also compensating authors for their efforts.

- To this end, copyright protects the author's creative expression while allowing others to freely express the ideas and information provided in the process work.
- The law has two purposes. First, the country created laws to safeguard the leadership of writers, writers, designers, painters, and other creatives, as well as video and audio producers who risk their money to give them work¹⁵.

Conclusion

The combination of intellectual property crime and creative work based on intellectual property creates legal problems in India. As AI technology advances, it is important to find a balance between protecting the rights of business owners and supporting AI innovations. Correcting the laws, recognizing fair use in the context of intellectual property and establishing a good governance system

¹⁴ a hand book of copyright law (The Copyright Act of 1957)

<https://copyright.gov.in/documents/handbook.html#:~:text=The%20Copyright%20Act%2C%201957%20protects.no%20copyright%20in%20an%20idea>

¹⁵ Objectives of Copyright Act, 1957 <https://www.lexology.com/library/detail.aspx?g=e963324a-4b62-49ab-bd90-aeddb1aee2b0>

are important steps to resolve these legal issues and promote skills development and advancement in India.

In 1957 India did not talk in detail about skill development. This can create problems in determining who owns rights in AI-generated works and how to protect them. One way to address these issues is to amend the Privacy Policy to address AI-generated activities. Another way is to use existing law to compare it with other laws. The best way to solve the problems raised by AI-generated work is still being debated.