

AI and Authorship: Unravelling the Legal Paradox of Machine Creativity

Riya Virdi¹

ABSTRACT

“The creation of something new is not accomplished by the intellect but by the play instinct acting from inner necessity.” - Carl Jung²

The concept of creativity has been transformed by Artificial the Artificial Intelligence AI. It is able to paint, compose, write and design and even to invent with a great ability. Nonetheless, one must wonder who is a copyright holder to what AI produces. Is it possible to consider a machine as an author? These queries are fundamental to the intellectual property (IP) law, which typically acknowledges human creativity as the symbol of authorship.

The paper will examine the legal quandary of AI-generated works, addressing the way different jurisdictions address the issue of authorship and ownership. It tends to look at case law such as *Thaler v. United States Perlmutter (2023)*¹, where the copyright of an artwork produced by an AI system was unregistered and United Kingdom, Copyright, Designs and Patents Act, 1988³, which assigns copyright to whoever made the required arrangement to bring it into being. Another criterion that the study reviews is the Indian approach to view the Copyright Act, 1957¹, and the author is any individual who causes the coming up of the work.

The absence of transparency in regards to AI in India also provokes the question of innovation and protection. With the ongoing development of AI, the legal systems that regulate it will also have to change. The study stresses that not only human creators ought to be covered by copyright law but also they ought to be adjusted to technological reality by acknowledging human-machine cooperation.

The paper then ends by suggesting a hybrid model of law - according to which ownership of the AI-generated works should belong to human agents, participating in programming or

¹ Student of LLM at Lovely Professional University.

² Jung, C. G. (1971). *The Portable Jung* (J. Campbell, Ed.). Penguin Books.

³ Copyright, Designs and Patents Act, 1988(UK)

functioning of AI, with the sui generis (unique) right to safeguard AI-aided creations. This market strategy is the best way to strike a balance between innovation, ethics and commercial fairness.

Keywords: Artificial Intelligence, Copyright, Authorship, India, Intellectual Property, Legal Framework, Sui Generis Protection.

INTRODUCTION

The Artificial Intelligence has not acted as an instrument at all but has become a co-creator in various creative sectors. Since DALLE learns to draw the art, the ChatGPT is going to write the essay and the scripts, AI is now involved in creative actions which were viewed as the exclusive privilege of humans. This rise of machine authorship upsets traditional ideas of writing originality, expertise and rights.⁴

Recent research builds upon the three pillars of the traditional foundation of copyright e.g. originality, creativity, and human authorship. However, AI, as an algorithmic data processing, does not know or even think it should know that one is lawfully connected to the notions of consciousness and intent. Therefore the contradiction arises from the possession of creative output by a non-legal or individual person.

To illustrate this contrast:

Aspect	Conventional Works of Copyright	AI-Generated Works
Author	Human being	No human creator involved
Creativity	On individual competence and discretion.	Grounded on algorithmic training and data.
Ownership	Vested in creator automatically.	Uncertain - programmer, user, or none.
Legal Status	Recognized by existing laws	Most jurisdictions have not defined it.

⁴ Samuelson,P(2019).Copyright and Creativity in the Age of Artificial Intelligence. Columbia Journal of Law & the Arts, 42(3),343-374.

According to the Indian law, Section 2(d) of the Copyright Act continues to associate authorship with human intervention. Nonetheless, this definition cannot be acceptable when the AI systems create content independently. Though AI policy of the Indian government acknowledges innovation in machine learning, it is yet to tackle the issue of ownership, as well as the issue of liability.

It is even more complicated when the pieces created by AI are put on sale. Who gets the royalties in case a movie engages the use of AI music? Unrecognized, conflicts might increase on ownership, profits and moral rights.⁵

The paper is therefore discussing the way the law can change to adapt to AI without eliminating human input. This is meant to create a balance of fairness and moral and commercial balance of creativity.

RESEARCH QUESTIONS

1. Is it possible to copyright AI generated works under the existing laws?
2. Who is supposed to be considered the owner of AI-generated works the programmer, the user, or AI?
3. To what extent does the Indian legal system stand in terms of the international standard of handling AI authorship?
4. What changes or new structures should be made towards India in order to close this legal gap?

HYPOTHESIS

Under the current legal framework, AI-generated works will not be eligible to obtain copyright protection due to the characterization of authorship, originality, and creativity based on the human agency. A modified or sui generis structure can however provide some level of balance to such works.

LITERATURE REVIEW

⁵ Lemley, M. A., & Casey, B. (2020). Fair Learning and the Law of Machine Creativity. *Stanford Law Review*, 72(4), 1021–1072.

The debate surrounding whether Artificial Intelligence (AI) qualifies as an author as regards intellectual property law has spanned an extensive policy swamp in scholarly circles in the last twenty years. The discussion started with some initial speculations about machine creativity, which first gained wide usage in the early 2000s, as the archetypes of autonomous decision-making started to emerge in AI systems such as Deep Blue and subsequent IBM Watson. Some scholars, including Pamela Samuelson (2019)¹, have stressed the point that copyright protection is only possible to compensate human intellectual work. She claims that machines have no intent, judgment and moral personality whom she says are three pillars of authorship in law.

There are, however, contradictory opinions. In their article, Fair Learning and the Law of Machine Creativity (Stanford Law Review, 2020)⁶, Mark A. Lemley and Bryan Casey say that whether AI-generated work will be excluded under the authority of the law would deter investment in AI-based tools of creativity. They suggest granting copyright to human operators or those operators, who are behind the AI and positioning them as constructive authors.

Hybrid frameworks have been postulated by different scholars internationally. The copyright laws of the United Kingdom, section 9(3) of the Copyright, Designs and Patents Act, 1988 consider the computer-generated work as authored by the individual who made the arrangements to generate such work. Though it is not a perfect model, it gives a compromise between complete exclusion and complete recognition. The position adopted by the U.S. on the contrary has been stern and fortified in *Thaler*, the U.S. copyright office said it would not grant copyright to an AI-generated artwork, Perlmutter (2023) reiterates that human authorship is a cornerstone requirement.

The legal systems in Asia are more dynamic. In *Feilin v.*⁷ According to Baidu (2019), a Chinese court admitted that AI-generated output has limited copyright protection with human participation in the design and supervision of the output. The Copyright Office has also investigated the guidelines that delineate the difference between the AI-generated and the AI-assisted works in Japan. Such changes indicate that legal perception of authorship is changing with technology.

⁶ Lemley, M. A., & Casey, B. (2020). Fair Learning and the Law of Machine Creativity. *Stanford Law Review*, 72(4), 1021–1072.

⁷ *Feilin v. Baidu*, Beijing Internet Court, China (2019).

According to the Indian perspective, the copyright law in India is personality-based according to the statement made by Dr. N. S. Gopalakrishnan, which says that creativity has to be the result of human intellect. Nevertheless, more recent reports indicate that India is starting to take into account the wider scope of the issues of machine learning in law and governance, including the AI for All (2021) and AI Responsible (2023) frameworks published by NITI⁸Aayog.

Immanuel Kant¹ and his moral philosophy are also mentioned as the subject of legal theorists, as the creativity can be regarded as an outcome of autonomy, which machines do not possess in the first place. In contrast, utilitarian views, including those which Jeremy Bentham espoused⁹, argue in support of holding works under copyright in order to promote invention and social service, without requiring the author to be of good character. Such a conflict between ethical and economic reasons will precondition the current conflict regarding the legal status of AI.

The available literature therefore narrows down to a single point, the necessity of having a subtle legal change that will balance technology and human morals. Although none of the jurisdictions are fully prepared to accept AI as a writer, most of them are aware of the fact that they need to be prepared to face this possibility.

FINDINGS

The results of the current research indicate that the face-off of technologies, legal regulation, and ethical issues has brought to the fore one of the intricate problems of the 21st century. The fast development of Artificial Intelligence (AI) has long since ceased being a tool of human convenience. It can now make independent decisions, learn through data and generate texts, images and music that is creative. This broadening of the creative agency of AI has raised significant alarm to the historical international borders of the intellectual property law especially to the copyright sector that traditionally depends on the human mind as the only source of originality and creativity.

- **The Anthropocentrism of the authorship-**

⁸ NITI Aayog. (2021). Responsible AI for All: Operationalizing Principles for Responsible AI. Government of India.

⁹ Bentham, J. (1789/2007). An Introduction to the Principles of Morals and Legislation. Dover Publications.

Jurisprudence on copyright still remains on the humanistic conception of creativity around the globe. The actual legal notion of authorship requires human minds, emotional outpouring and awareness of originality.¹ In contrast, AI is linked to algorithmic reasoning and prediction by probabilities instead of human intuition or feeling of beauty. In *Thaler v. The court* repeated that the protection of copyright is based on the human authorship (*Perlmutter U.S. 2023*)¹⁰. On the same note, the Delhi High Court in *Tech Plus Media Pvt. Ltd. v. Jyoti Janda (2014)*¹¹ reemphasized that the author should be an individual who applies a creative skill and judgment. Therefore, AI can support human creativity, but with the current legislation, it will not be able to substitute human authorship.

- **The Legislative Muddiness in Indian Case-**

Indian Copyright Act, 1957 never specifically considers the authorship of non-humans and/or automated authorship. Section 2(d)¹¹ defines the author as the individual who creates the work, however, it does not give any guidance in situations whereby the work being created is produced by the use of a machine and not by a human being. This exclusion has resulted in a gap in legislation, especially because AI works are increasingly being utilized in the fields of advertising, entertainment, journalism and design. There is no definite legal position, ownership is questionable, and the courts are ill-equipped to deal with future conflict of AI-generated creativity.

- **Dilemmas of Accountability and Ownership-**

Artificial intelligence creation creates overlapping claims of ownership. Authorship or ownership may be asserted by the developers that write an AI model, the companies that feed the AI model with data, and the end-users that control the AI product. An example is that when an opinion is drafted with the help of AI software in a law firm, who has copyright, the law firm, the AI company, or the individual lawyer? The absence of the formulated statutory clarity endangers to set up an atmosphere prone to lawsuit and disputes. Moreover, it makes it more challenging to hold the responsible party in case AI recreates the copyrighted version or biases that the training data encompasses accidentally.

- **Ethical and Moral Complexities-**

¹⁰ *Thaler v. Perlmutter*, 2023 WL 5333236 (D.D.C. 2023).

¹¹ Indian Copyright Act, 1957. (1957). Government of India.

The inception of AI as a creative force also creates profound ethical issues¹. In case an AI-created work of art is plagiarism of an existent work of art or an AI-generated song is similar to an existing tune, responsibility identification is problematic. Conventional concepts of moral rights (guaranteeing the reputation of an author and his integrity) become insignificant when it is a non-human creator. Additionally, social issues such as transparency, plagiarism, and authenticity are more acute in the spheres like journalism and media, where AI will be capable of creating artificially human-like information.

- **Economic and Innovation Implications-**

Indirect impact of uncertainty in legal protection has got direct impact on innovation and investment. The businesses that create inventive AI systems will evade jurisdictions such as those in India, whereby, intellectual property rights are either undefined or ambiguous. Such unwillingness to innovate domestically may create a so-called law chill, killing the digital economy, serving as a deterrent to startups, and forcing innovations to countries with less flexible IP protection systems. The desire of India to be the world hub of digital innovation demands that legal changes be made in accordance with technological facts.

- **International Comparative Practices-**

There are diverse approaches taken by countries around the world in response to AI authorship. The copyright, design and patents Act (CDPA) 1988 of the U.K.¹², asserts the authors of computer-generated works as the individual who made the arrangements leading to the creation of the work. China¹ does not permit the protection of human-AI collaboration too much and focuses on the human input to the creativity. U.S. is stuck in its demanding of human authorship whereas Japan has taken a more lenient stance regarding promoting the use of AI in creative industries. The status quo in India has been closest to that of the U.S. yet, there has not been a statutory exposition which makes creators and policymakers in the country uncertain.

- **Cultural Concerns and Public Policy-**

Not having a legal take on AI-generated creativity also poses a threat of weakening human creators. Uncontrolled AI may mass-create the content and dismiss human artists, authors, and designers economically and creatively. An effective policy framework is important not only to

¹² Copyright, Designs and Patents Act, 1988 (U.K.). (1988).

the safeguarding of economic interests but also to the safeguards of cultural integrity, authenticity and equity.

To sum it up, the results show that AI at the moment cannot be considered an author on its own, however, its growing involvement in the creative process indicates that India needs to establish a hybrid legal system that would allow human-AI cooperation, hold AI accountable, and be just in creating innovations.

SUGGESTIONS

These results make it clear that to address the issue of AI generated works in India, a comprehensive approach to establish a related legal and ethical framework is urgently required. There should be an integrated strategy where authorship is upheld, innovation safeguarded and creative integrity ensured. The ensuing recommendations are a guide to reform and governance.

- The Copyright Act, 1957 was amended.
- The first step that can be taken the soonest is to make some amendments to the Indian Copyright Act, which should explicitly define AI-assisted and AI-generated work.
- Works based on the AI assistants should also involve the work in which the human influence and the ability of judgment are considerable.
- The works that are produced by AI are to be called AI-generated works in case AI acts independently.
- This differentiation will contribute to the increased fairness of the punishment as courts determine the extent of human participation and assign the authorship and responsibility.

1. Introducing a Sui Generis Legal Framework-

India can have an advantage by creating a sui generis regime, such as those found in the database protection laws of the European Union, to provide special protection to the works created by AI. ¹³Such a system would be able to acknowledge ownership rights to the entities or individuals that start (then train or control) AI models, even in cases where the creative process is automated. This would ensure the safety of a necessary investment and encourage innovation without eroding the idea of human creativity.

¹³ Gervais, D. J. (2022). The Machine as Author. *Iowa Law Review*, 107(5), 2051–2105.

2. Awareness of Entropic Pagoda in authorship-

The fundamental notion behind the authorship must be human. The law needs to acknowledge the centreboard as an author the person who makes conceptual or operational contributions to the output of an AI. As an example, when a movie editor relies on AI in order to create a new visual effect, or the designer creates a prototype using AI, they should be covered as the author. This guarantees that human creativity is the basis of protection of intellectual property.

3. The Compulsory AI Disclosure and Transparency-

Accountability should include transparency. The legislation must compel generators and organizations which operate with AI to reveal the extent of AI engagement, comprising of the datasets, algorithms, or models themselves. This disclosure would circumvent copyright infringements, minimize plagiarism, and develop trust in consumers. Also, the identification of the AI generated works might serve to make a distinction between the human generated ones, and the creative markets would be transparent.

4. Design of an AI and Creativity Governance Board-

Specialized AI and Creativity Board might be introduced within the Ministry of Electronics and Information Technology (MeitY). It may have the following duties:

- Checking and rating works produced by AI.
- Solving the issue of ownership and authorship.
- Tracking the practices in regard to ethical and copyright principles.
- Helping Parliament with the reforms it needs.
- Such a board would resemble a quasi-judicial regulatory body of Competition Commission of India (CCI) that governs it effectively.¹⁴

5. Acquiring experience with International Jurisdictions-

India can learn some lessons of other countries. The pragmatic nature of the U.K. has made sure that it places the authorship on the human controllers in order to hold them accountable. The partial-recognition of AI-assisted authorship in China can promote innovation and retain human control. The balanced and flexible model that Japan has achieved can be a perfect

¹⁴ Ministry of Electronics and Information Technology (MeitY). (2023). IndiaAI Mission: Strategy and Guidelines for Responsible Artificial Intelligence. Government of India.

example to follow in India as the focus on technological advancements and creativity is not different.

6. Advocacy of Moral AI Use-

Creative industries call upon AI should be promoted by education, recommendations, and codes of conduct. Coming up with AI Ethics and Law in the curriculum of universities, law schools, and media institutions should equip upcoming professionals. Moreover, the industry associations may create voluntary AI ethics charters to assist in reasonable use of generative tools in advertising, journalism and art.

7. Economic Strategy and Public Policy-

The government should acknowledge that the law of AI authorship clarity is not a legal and economic imperative but is an economic one as well. Explicit policies would bring foreign capital to the booming AI market in India, as well as national entrepreneurs, and promote confidence in digital transformation. A balanced paradigm will make guaranteed that the development of human creativity and technology is not conflicting but is cooperative.¹⁵

Likewise, AI is set to enter the world of the creative industry, yet, without a flexible legal framework, India will fall behind the rest of the digital economy. Transforming the copyright law, establishing specific governance, and instilling moralism in innovations will make India become a frontrunner in responsible AI-enhanced creativity, as well as make sure that the progress is legally safe and ethically sound.

CONCLUSION

“One must keep up with the times or law, since justice is always several steps behind when it never travels.”

The idea of creativity as a human activity has been changed by Artificial Intelligence to a hybrid mode of reasoning, information, and layout. It has erased the line between creation and computation.¹⁶ But this development has also exposed the ineffectiveness of the existing legal systems which are still based on anthropomorphic definitions of authorship.

¹⁵ European Commission. (2021). Artificial Intelligence Act – Proposal for a Regulation Laying Down Harmonised Rules on Artificial Intelligence. COM(2021) 206 final. Brussels: European Commission.

¹⁶ Perlmutter, S. (2023). Statement on Human Authorship Requirement. U.S. Copyright Office, Washington D.C.

The issue of the paradox of AI-generated works is not only the question of the law but also the question of morality and philosophy. Creativity that was perceived as the manifestation of a human soul is being aped with algorithms. However, machines do not experience emotion, passion and moral responsibility - things that make art meaningful. Hence, the task of AI should not be to steal human creativity but rather enhance it.

The Indian setting demands reform which is inevitable. India needs to reform its copyright system to consider AI-generated content, but keep human authorship as its fundamental value. Copyright act of 1957 cannot afford to be silent anymore on issues of algorithm authorship. The policymakers have to strike the right balance between supporting innovation and safeguarding against abuse.

Harmonization is of importance worldwide. As digital trade and AI ventures grow internationally there is a need to build international consensus to prevent contrary claims. AI consultations under the WTO and other methods of treaties such as TRIPS could offer a basic blueprint on cohesive standards.

Creativity will become a human imagination and machine intelligence in the future. The legislation should be changed to appreciate this partnership without the need to water down accountability. AI cannot be assumed to be a moral entity but only can be seen as an augmentation of human ability.

The responsibility of the law is to bring justice, not only to human beings, but also to the civilizations that they create with the help of technology. ¹⁷The AI productions make us pause and consider answers to eternal questions: What is it to create? Who shall be praised on account of creation? And what about the law and innovation and integrity?

“In the symphony creation, man tunes the melody, and the mechanism is the keeper of the rhythm. The future is a coming thing together: they must know the song of the law.”

¹⁷ WIPO (2022). Global AI and IP Dialogue – Policy Challenges and Opportunities.