

AI-Generated Works and the Human Authorship Requirement: A Comparative Study of Indian Copyright Law And The Thaler v. Perlmutter Line of Cases

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ABSTRACT

Generative Artificial Intelligence (AI) has evolved from a specialist technology into an everyday creative tool capable of producing text, images, music, and software. This development has forced copyright systems to confront a basic question: when a machine generates expressive content, who, if anyone, is the author? This paper examines that question through a doctrinal and comparative analysis of Indian copyright law and the United States' Thaler v. Perlmutter line of cases. It argues that Section 2(d)(vi) of the Copyright Act, 1957 gives Indian law a distinctive statutory hook by identifying, for computer-generated works, the person who causes the work to be created as the author. Yet the provision was enacted before contemporary generative AI and does not establish a clear threshold for human creative contribution. The RAGHAV episode illustrates the resulting uncertainty, while Thaler demonstrates the United States' clearer rule that an autonomously generated work cannot be authored by a machine. The paper concludes that India should distinguish AI-assisted from fully AI-generated works and define the level of human creative control required for copyright protection, rather than leaving the question to inconsistent administrative practice.

KEYWORDS

Generative AI; Copyright; Human Authorship; AI-Generated Works; Originality; Copyright Law.

I. INTRODUCTION

Generative AI tools have become remarkably sophisticated. ChatGPT can produce essays, image-generation systems can produce detailed visual works, and other generative systems can create music, software, and audiovisual material from comparatively limited human

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instructions. The legal significance of this development is considerable because copyright protection ordinarily depends on identifying an author and determining whether the resulting expression satisfies the applicable originality requirement.

The difficulty is that traditional copyright statutes were drafted on the assumption that creative works originate in human agency. Generative AI challenges that assumption because a system may generate expressive elements that were not directly selected or created by the person who initiated the process. The central legal problem is therefore not simply whether AI was used, but whether the human contribution is sufficiently connected to the expressive elements for the resulting work to be treated as human-authored.

India and the United States offer useful points of comparison. Indian law expressly refers to computer-generated works in Section 2(d)(vi) of the Copyright Act, 1957, whereas the United States Copyright Act does not contain an equivalent provision. The Indian Copyright Office's handling of the RAGHAV registration and the later Delhi High Court proceedings concerning Stephen Thaler's Indian application demonstrate that the Indian position is still developing.² In the United States, the D.C. Circuit's 2025 decision in *Thaler v. Perlmutter* established that a machine cannot be the author³ of a copyrightable work, and the Supreme Court declined review in March 2026.

This paper therefore asks three related questions: first, what does Indian copyright law presently require for authorship of computer-generated works; second, what does the Thaler line of cases establish about machine authorship and AI-assisted creation; and third, what legal framework would best distinguish protectable AI-assisted works from works generated autonomously by AI? The paper uses a doctrinal and comparative method, relying primarily on statutory provisions, judicial decisions, official copyright-office materials, and the Indian government's recent policy work on AI and copyright.

The argument advanced is that India should not treat every AI-assisted work as either fully human-authored or wholly unprotectable. Instead, legislation should establish a workable human-contribution threshold. Meaningful human selection, arrangement, modification, or other creative control should support protection for the human-authored elements, while

² Espie Angelica A. de Leon, *Delhi High Court to Copyright Office: Decide on Thaler Application for AI Artwork in Eight Weeks*, Asia IP (Apr. 20, 2026), <https://asiaiplaw.com/section/cover-story/delhi-high-court-to-copyright-office-decide-on-thaler-application-for-ai-artwork-in-eight-weeks>.

³ *Thaler v. Perlmutter*, 130 F.4th 1039, 1049-50 (D.C. Cir. 2025).

outputs in which the expressive choices are made autonomously by the system should not receive copyright merely because a person initiated the generation process.

II. THE HUMAN AUTHORSHIP REQUIREMENT: STATUTORY BASIS

A. Indian Copyright Act, 1957

The Copyright Act, 1957 defines “author” in Section 2(d) by reference to the category of work involved. For literary, dramatic, musical, and artistic works, the statute generally identifies the human creator; for a photograph, it identifies the person who takes the photograph; and, importantly for this paper, Section 2(d)(vi) provides that in relation to a computer-generated literary, dramatic, musical or artistic work, the author is “the person who causes the work to be created.”

Section 2(d)(vi) is significant because it gives Indian law an express statutory mechanism for assigning authorship in computer-generated works. On one reading, a person who prompts, directs, selects, or otherwise orchestrates an AI system could fall within the phrase “the person who causes the work to be created.” The difficulty, however, is that the provision was introduced in 1994⁴, before contemporary generative AI systems capable of producing complex expressive outputs with limited human direction. The statute therefore does not expressly answer how much human intervention is enough.

The originality requirement adds a further layer. In *Eastern Book Company v. D.B. Modak*, the Supreme Court held⁵ that originality requires the work to originate from the author and contain at least a minimal degree of creativity; a purely mechanical or trivial contribution is insufficient. The decision is not an AI-authorship case, but its emphasis on the author’s independent skill and judgment is relevant when assessing whether a person’s contribution to an AI-generated output is sufficiently creative to support copyright.

Accordingly, Section 2(d)(vi) should not be read as automatically granting copyright to every person who presses “generate.” The stronger interpretation is that the provision identifies the person who causes the work to be created only where that person’s role involves sufficient human authorship to satisfy the Act’s substantive requirements. This interpretation preserves

⁴ Copyright Act, No. 14 of 1957, § 2(d)(vi) (India).

⁵ *Eastern Book Co. v. D.B. Modak*, (2008) 1 SCC 1, 13-16.

the usefulness of Section 2(d)(vi) without converting every automated output into a copyrightable work.

B. The RAGHAV Registration Episode

The RAGHAV episode provides an important illustration of the uncertainty surrounding AI-generated works in India. Ankit Sahni created an artistic work titled “Suryast” using the RAGHAV Artificial Intelligence Painting App.⁶ The work involved a human photograph and AI-assisted transformation using a Van Gogh-inspired style. Sahni initially sought registration while identifying both himself and RAGHAV in relation to the work.

The Indian Copyright Office initially granted registration in November 2020, but subsequently issued a withdrawal notice in 2021⁷ after questioning the legal status of the AI application and the extent of human involvement. The episode is significant not because it constitutes a judicial precedent it does not but because it demonstrates the absence of settled administrative standards for determining when AI involvement leaves a work sufficiently human-authored.

The episode also illustrates why the distinction between AI-assisted and AI-generated works matters. If a person supplies an original photograph, makes creative choices about style and composition, selects and arranges outputs, and substantially modifies the result, the human contribution may be identifiable in the final expression. By contrast, where an AI system independently determines the expressive elements and the human contribution is limited to initiating the process, attributing authorship becomes considerably more difficult.

The Indian position is now also being tested by Dr. Stephen Thaler’s Indian application for “A Recent Entrance to Paradise,” an artwork generated by his DABUS system.⁸ In April 2026, the Delhi High Court directed the Registrar of Copyrights to decide the pending application expeditiously, preferably within eight weeks from the scheduled hearing.⁹ The court’s order did not itself decide whether an AI system can be an author; it required the administrative authority to decide the pending application. The eventual administrative decision may therefore become an important development in Indian copyright practice.

⁶ Sukanya Sarkar, *Exclusive: India Recognises AI as Co-Author of Copyrighted Artwork*, Managing IP (Aug. 5, 2021), <https://www.managingip.com/article/2a5bqo2drurt0bx17ab24/exclusive-india-recognises-ai-as-co-author-of-copyrighted-artwork>.

⁷ *Eastern Book Co. v. D.B. Modak*, (2008) 1 SCC 1, 13-16.

⁸ The Indian Express, *Delhi High Court on AI-Generated Artwork and Copyright Authorship Rights* (2026), [Indian Express article](#).

⁹ *Dr. Stephen L. Thaler v. Union of India & Anr.*, W.P. (C)-IPD 15/2026, Apr. 9, 2026 (Delhi H.C.).

III. THE US POSITION: THALER V. PERLMUTTER

A. Facts and Procedural History

Dr. Stephen Thaler developed an artificial intelligence system known as the “Creativity Machine,” which autonomously generated an artwork titled “A Recent Entrance to Paradise.” In 2018, Thaler applied to the U.S. Copyright Office¹⁰ and identified the Creativity Machine as the sole author while identifying himself as the owner. He maintained that the system generated the work autonomously and that he had not made the relevant creative choices in producing the final image.⁷

The Copyright Office denied registration on the ground that copyright protection requires human authorship. The U.S. District Court for the District of Columbia affirmed that decision in 2023, holding that human authorship is a fundamental requirement¹¹ of copyright protection and rejecting Thaler’s work-made-for-hire argument because the work was not copyrightable in the first place.

B. The D.C. Circuit’s Decision

On March 18, 2025, the U.S. Court of Appeals for the District of Columbia Circuit unanimously affirmed the district court. In *Thaler v. Perlmutter*, (D.C. Cir. 2025)¹², the court held that the Copyright Act requires a human author and that an AI system cannot itself be an author.

The court’s reasoning was textual rather than technological. It examined the statutory concept of “authorship” and concluded that the Act’s references to authorship, originality, and human creativity presuppose a human author. Importantly, however, the decision was narrow. The court expressly did not resolve the separate question of how much human involvement is required¹³ when AI is used as a tool in creating a work. Thaler had listed the Creativity Machine as the sole author, so the court did not need to establish a general test for all AI-assisted works.

¹⁰ Thaler v. Perlmutter, 687 F. Supp. 3d 140, 145-47 (D.D.C. 2023).

¹¹ *Id.*

¹² *Id.* at 146–49.

¹³ *Id.* at 1049–50

C. Supreme Court Denial of Certiorari

On March 2, 2026, the U.S. Supreme Court denied Thaler's petition for a writ of certiorari¹⁴ in No. 25-449. The denial left the D.C. Circuit's judgment in place, but it should not be described as a Supreme Court ruling that all AI-assisted works are unprotectable. The Supreme Court did not issue an opinion on the merits; the binding appellate decision remains the D.C. Circuit's holding that a machine cannot itself be the author of a copyrightable work.

The U.S. Copyright Office's January 2025 Copyright and Artificial Intelligence Report¹⁵, Part 2, provides further guidance on AI-assisted works. The Office concluded that copyright can subsist in outputs where a human author determines sufficient expressive elements, including through the incorporation of human-authored material, creative selection or arrangement, or substantial modification. It also concluded that prompts alone generally do not provide sufficient control over the expressive elements of the output.

IV. COMPARATIVE ANALYSIS

The Indian and U.S. approaches reveal an important contrast. The United States has reached appellate-level clarity on one question as to whether an AI system can itself be an author while India has a statutory provision specifically addressing computer-generated works but has not yet established a comparable judicial test for generative AI.

A. Statutory Flexibility

The most significant textual difference lies in the statutes. The U.S. Copyright Act contains no express provision assigning authorship of computer-generated works. The D.C. Circuit therefore derived the human-authorship requirement from the Act's broader statutory structure. India, by contrast, expressly provides in Section 2(d)(vi) that the author of a computer-generated literary, dramatic, musical, or artistic work is the person who causes the work to be created. This gives Indian law greater textual flexibility, although the provision still requires interpretation in light of modern generative AI.

¹⁴ Thaler v. Perlmutter, 130 F.4th 1039 (D.C. Cir. 2025), cert. denied, No. 25-449 (U.S. Mar. 2, 2026).

¹⁵ U.S. Copyright Office, *Copyright and Artificial Intelligence, Part 2: Copyrightability*, at 14-16 (2025).

B. Administrative Versus Judicial Clarity

The U.S. position is clearer with respect to autonomous machine authorship because the D.C. Circuit has provided a binding appellate rule. India does not yet have an equivalent judicial decision squarely deciding whether a generative AI system can be treated as an author. The RAGHAV episode instead reflects administrative practice, while the Delhi High Court's 2026 order concerning Thaler's Indian application was procedural¹⁶ and directed the Copyright Office to decide the application.

C. AI-Assisted Versus AI-Generated Works

Both systems increasingly recognise that the legally important distinction is between the use of AI as a tool and the autonomous generation of expressive elements by AI. In the United States, the Copyright Office applies a case-specific approach¹⁷ that AI assistance does not automatically defeat copyright, but the claimant must be able to identify sufficient human authorship in the protected expression.

Indian law does not yet prescribe an equivalent threshold. Section 2(d)(vi) can potentially accommodate a human who meaningfully causes a computer-generated work to come into existence, but the statute does not tell courts or the Copyright Office how to measure the relevant contribution. The better approach would be to interpret "causes" alongside the Act's broader authorship and originality principles rather than treating the phrase as an automatic grant of authorship.

D. The "Person Who Causes" Provision

Section 2(d)(vi) creates the possibility of a middle path. A human who makes substantive creative choices about the expressive output could potentially be treated as the author even where an AI system performs the mechanical or generative steps. This resembles, at a high level, the United Kingdom's treatment of computer-generated works under Section 9(3) of the Copyright, Designs and Patents Act 1988¹⁸, which identifies as author the person by whom the arrangements necessary for creation are undertaken. The comparison is useful, but the UK provision should not be treated as a direct answer to India's AI problem because it too was designed for an earlier technological environment.

¹⁶ *Id.* at 9.

¹⁷ U.S. Copyright Off., *supra* note 15, at 14-20.

¹⁸ Copyright, Designs and Patents Act 1988, c. 48, § 9(3) (UK).

V. CRITIQUE AND RECOMMENDATIONS

The principal weakness in India's current framework is not the absence of any statutory language; it is the absence of a clear standard for applying that language to generative AI. The RAGHAV episode illustrates how uncertainty can arise¹⁹ when administrative practice changes without a published test for the degree of human creativity required.

First, Indian law should distinguish expressly between AI-assisted and fully AI-generated works. Where a human contributes original expression or exercises meaningful creative control through selection, arrangement, composition, or substantial modification, the resulting human-authored expression should remain capable of copyright protection. Where the expressive elements are generated autonomously and cannot reasonably be attributed to a human author, copyright should not arise merely because a person initiated the process.

Second, Section 2(d)(vi) should be clarified for generative AI. The phrase "person who causes the work to be created" should not be interpreted to mean that any prompt, click, or instruction automatically makes the user an author. Instead, legislation or authoritative guidance should identify relevant indicators of human creative control, such as the specificity and originality of human input, iterative selection among outputs, creative arrangement, substantial editing, and the extent to which the final expressive elements reflect identifiable human choices.

Third, the law should avoid both over-protection and under-protection. Granting copyright to outputs involving minimal human creativity risks creating artificial monopolies over material that should remain available to the public. Conversely, treating every work touched by AI as unprotectable would ignore the reality that modern creative workflows routinely involve software and automated tools. A balanced approach should protect identifiable human expression while leaving genuinely autonomous machine-generated expression outside copyright protection.

Finally, the issue should be addressed through transparent rule-making rather than case-by-case administrative uncertainty. The Indian government has already taken steps in this direction: DPIIT constituted an eight-member committee on April 28, 2025 to assess the adequacy of existing law in addressing generative AI and copyright, and a working paper reflecting the

¹⁹ See *supra* note 6.

committee's recommendations was published in December 2025. This policy work provides an opportunity to develop a coherent statutory or regulatory framework.

VI. CONCLUSION

The question of whether AI-generated works can attract copyright protection exposes a fundamental tension between technological capability and the human-centred foundations of copyright law. The Indian framework is unusual because Section 2(d)(vi) expressly addresses computer-generated works and identifies the person who causes the work to be created as the author. Yet the provision predates contemporary generative AI and does not establish a workable threshold for human creative contribution.

The comparison with Thaler is instructive but must be drawn carefully. The D.C. Circuit has established that an AI system cannot itself be the author of a copyrightable work, and the Supreme Court's March 2026 denial of certiorari left that holding undisturbed. The decision does not, however, establish that every work created with AI assistance is unprotectable. The U.S. Copyright Office's separate guidance instead focuses on whether a human determined sufficient expressive elements.

India therefore has an opportunity to develop a more precise framework before the issue becomes further entrenched through inconsistent administrative practice. Section 2(d)(vi) can provide the statutory foundation, but it should be clarified through legislation or authoritative guidance that distinguishes meaningful human creative control from mere initiation of an automated process. The appropriate objective is not to grant copyright to machines, nor to exclude AI-assisted creativity altogether, but to preserve copyright's connection to identifiable human authorship while allowing creators to use increasingly sophisticated technological tools.