

## GENERATIVE AI AND THE CROSSROADS OF ARTISTIC INTELLECTUAL PROPERTY IN THE CONTEMPORARY ERA: AN INDIAN LEGAL PERSPECTIVE

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### ABSTRACT

The rapid ascent of generative artificial intelligence (AI) has transformed the creative sector by allowing machines to generate images, music, and literature that closely replicate human expression. This advancement has prompted significant enquiries regarding the scope, applicability, and enforcement of intellectual property (IP) laws, particularly in jurisdictions such as India, where digital jurisprudence is still developing. This article analyses the convergence of generative AI and artistic intellectual property rights, emphasising the legal, ethical, and commercial ramifications in the modern context. This analysis of the recent Studio Ghibli AI controversy examines deficiencies in existing copyright and trademark protections, evaluates the applicability of fair use, and underscores the necessity for legislative reforms to confront these emerging issues.

### I. Introduction

Artificial Intelligence has evolved from a theoretical interest to a significant disruptor in various industries, with generative AI at the forefront of creative domains. Instruments like DALL-E, Midjourney, and Stable Diffusion have enabled users to generate visually original content exclusively from textual prompts. This phenomenon has transformed authorship and obscured the distinction between human and machine creativity.

The recent flashpoint of controversy arose when AI-generated art emulating the distinctive style of Studio Ghibli circulated online. The studio's founder articulated revulsion, sparking an international discourse on artistic ownership, cultural appropriation, and the ethical limits of machine-generated content. This case illustrates the urgent necessity to assess the applicability of current intellectual property frameworks specifically copyright and trademark law in light of emerging AI technologies.

This article will examine these issues in relation to Indian IP law, referencing international

frameworks such as the Berne Convention, EU Directives, and the recent Artificial Intelligence Act. This paper enhances the ongoing discourse on the necessity for legal regimes to adapt in order to safeguard human creativity amidst the era of artificial reproduction through doctrinal and comparative analysis.

### II. The Nature of Generative AI and Its Creative Outputs

The emergence of generative artificial intelligence (AI) has fundamentally altered the realm of creative production. AI systems are now capable of generating content, including digital paintings, photorealistic imagery, musical compositions, and literary prose, that rivals and frequently imitates the aesthetic sophistication of human-created art. This development poses a significant challenge to conventional notions of creativity, authorship, and intellectual property law. In India, where copyright law is based on human originality and authorial intent, the outputs of generative AI present new legal and philosophical challenges.

### ***Understanding Generative AI***

Generative AI refers to a type of machine learning system, particularly those that use deep learning and neural networks to generate new content based on patterns and features discovered in existing data. Some notable examples include OpenAI's GPT series for text generation, Stability AI's Stable Diffusion for image synthesis, and Google DeepMind's Music LM for audio creation. These models are trained on large-scale datasets made up of human-created works, texts, images, and audio files scraped or curated from the internet and other sources.

The core functionality of these models is probabilistic prediction. By analysing large datasets, generative AI systems can predict the likelihood of a specific visual element, word, or sound appearing in a given context and reproduce it accordingly. Importantly, the outputs are not simply reproductions or collages, but rather novel arrangements created through algorithmic interpretation of training data. However, the "newness" of such outputs is frequently ambiguous, particularly when AI-generated art mimics stylistic choices, compositional structures, or thematic elements unique to specific human creators.

### ***Creative Autonomy and the Question of Authorship***

One of the fundamental pillars of copyright law is the attribution of creative works to an identifiable author. Indian copyright jurisprudence, influenced by common law traditions and international treaties like the Berne Convention, centers around the concept of **originality** defined not merely as novelty but as a product of independent intellectual effort. In **Eastern Book Company v. D.B. Modak (2008)**, the Supreme Court of India held that a minimum degree of creativity is essential for a work to be protected by copyright.

Generative AI systems, by contrast, lack consciousness, intention, or personal expression. They do not engage in the creative process with any aesthetic or cultural purpose.

Consequently, the authorship of their outputs becomes ambiguous. Is the "author" the AI developer, the end-user who input prompts, the rights holders of the training data, or the machine itself?

Indian copyright law currently does not recognize non-human entities as authors. Under Section 2(d) of the **Copyright Act, 1957**, the author of a literary, dramatic, musical or artistic work is necessarily a human person or a recognized legal entity like a corporation. This presents a lacuna in the law when addressing AI-generated content, as none of the existing authorial categories neatly apply.

### ***The Mimetic Nature of Generative Outputs***

Generative AI outputs often blur the boundary between inspiration and imitation. Text-to-image generators, such as Midjourney or DALL-E, can replicate the visual language of specific artists—even when not trained on their work explicitly—by learning from broader stylistic datasets. This capacity raises significant concerns regarding the **unauthorized replication of artistic styles**, which may not be copyrighted per se under Indian law, but could be protected under moral rights and other doctrines.

A particularly illustrative case emerged in the global backlash against the use of Studio Ghibli's art style in AI-generated animations. The model, trained on thousands of Ghibli-like images, produced animations that captured the iconic aesthetic of Hayao Miyazaki's films. While this raised questions globally, its implications in India are equally salient. Many Indian artists, particularly illustrators and digital creators, have begun reporting that their works are being absorbed into AI datasets without consent—only to find their distinctive styles emulated in AI outputs.

In a jurisdiction like India, where **style** is not a standalone category for copyright protection, the implications are profound. Although Indian copyright protects "artistic works" under Section 2(c), the law traditionally does not guard the

abstract concept of an "artistic style." Nonetheless, the unauthorized use of an artist's identifiable manner of expression may still violate **moral rights**, especially the right of attribution and the right to integrity, recognized under Section 57 of the Copyright Act.

### ***Originality in the Age of Algorithmic Creation***

The standard of originality under Indian law was clarified in *Modak*, where the Supreme Court adopted the "modicum of creativity" test, replacing the older "sweat of the brow" doctrine. Under this test, mere labour or investment of effort is not sufficient; the work must reflect some creativity. This standard becomes difficult to apply in the context of AI-generated content, where the "creativity" lies not in the machine but arguably in the programmer or prompt engineer.

For example, a visual artwork generated using prompts that carefully curate composition, style, and tone might exhibit originality from the prompt engineer's perspective. However, whether this effort meets the threshold of creativity under Indian law remains unsettled. Unlike jurisdictions such as the United Kingdom, where certain AI-generated works can be protected under Section 9(3) of the UK Copyright, Designs and Patents Act 1988 (with the programmer considered the author), Indian law is silent on non-human or computational authorship.

This silence creates a vacuum in which AI-generated works may fall outside copyright protection altogether—rendering them part of the public domain by default unless judicial innovation or legislative reform intervenes.

### ***The Role of Human Input: Mere Tool or Creative Co-Author?***

Some scholars propose that AI should be treated as a tool, much like a camera or a paintbrush. Under this analogy, the human who employs the AI model and determines the inputs should be considered the author. This view finds tentative support in Indian case law on computer-generated works, where courts

have recognized copyright in outputs involving significant human control and judgment.

Yet, this analogy may falter when AI systems independently determine outputs based on autonomous data processing. The more sophisticated the AI model, the more difficult it becomes to argue that the user exercised sufficient creative control. A prompt like "draw a landscape in the style of Van Gogh" may not meet the legal standard for human authorship—even if the resulting output appears original. Without clear doctrinal guidelines, courts in India may have to adjudicate such matters on a case-by-case basis, leading to unpredictability.

### ***Philosophical and Ethical Implications***

Beyond legal doctrine, generative AI also raises broader philosophical questions about the nature of creativity and the role of machines in cultural production. If art is a reflection of human emotion, intention, and experience, can algorithmic processes truly generate "art"? Or are these outputs mere simulations—technically impressive but ontologically vacant?

This debate has profound implications for how Indian law should evolve. Should copyright remain a bastion of human-centric creativity, or must it adapt to recognize the new modes of authorship and originality introduced by AI? Moreover, how do we balance innovation with the moral and economic rights of human artists who feel threatened by algorithmic mimicry?

These questions are not merely academic. They strike at the heart of what it means to be a creator in the 21st century and how society should value—and protect—different forms of creativity.

### **III. Copyright Law in India: Applicability to AI-generated Content**

The Indian Copyright Act, 1957 defines a "work" under Section 2(y) and a "author" in Section 2(d). Copyright protection is extended to original literary, dramatic, musical, and artistic works. Notably, originality in Indian law follows the **modicum of creativity** standard as

interpreted in *Eastern Book Company v. D.B. Modak* [(2008) 1 SCC 1].

However, Indian law presumes a human author. In Section 2(d)(vi), the author of a photograph or artistic work is the person “who causes the work to be created.” This anthropocentric language raises immediate problems when considering AI-generated art.

Who, then, owns the copyright in a work generated entirely by a machine based on a user’s prompt? Is it:

- The developer of the AI?
- The end-user?
- No one at all?

Indian courts have yet to answer this definitively. Globally, most jurisdictions—including the U.S. and EU—have leaned towards denying copyright protection to works generated **entirely** by AI, as they lack the requisite human authorship.

In India, the most plausible legal interpretation under current law is that such works are **not protected** unless substantial human input (or curation) can be demonstrated, effectively qualifying the user as the author. This leaves many AI-generated outputs in a legal grey zone, vulnerable to free exploitation.

#### IV. The Studio Ghibli Controversy: A Case Study in Style Mimicry

In late 2022, a short AI-generated animation surfaced on social media, strikingly reminiscent of the iconic visual aesthetics of Studio Ghibli—the Japanese animation powerhouse renowned for films such as *Spirited Away* and *My Neighbor Totoro*. Though the short was not produced by the studio nor involved any of its artists, it replicated the distinct stylistic elements that define Ghibli’s work: painterly backdrops, fluid character motion, muted pastel palettes, and whimsical fantasy motifs. The animation was created using a generative AI model trained on images scraped from across the internet—many of which closely resembled, or were directly derived from, Ghibli’s visual language.

This sparked immediate backlash. Not only from Studio Ghibli itself, whose director Hayao Miyazaki publicly condemned the use of AI in art as “an insult to life itself,” but also from the broader artistic community, which decried the lack of consent, attribution, and ethical oversight in the creation of such AI-generated media. The case became emblematic of the growing unease surrounding generative AI and its propensity to *mimic* creative styles without direct copying—raising legal, moral, and philosophical questions about what constitutes infringement in an age where imitation is generated at scale.

#### ***The Limits of Copyright Protection Over Style***

The controversy highlighted a critical gap in global copyright law: **style**, as a mode of expression, is not typically protected. Copyright statutes in most jurisdictions—including India—do not extend protection to abstract elements such as genre, technique, or artistic “feel.” Section 13 of the Indian Copyright Act, 1957, protects “original literary, dramatic, musical and artistic works,” but courts have consistently interpreted this to mean *specific expressions* rather than *ideas or styles*.

This distinction between idea and expression, codified in Section 2(y) and reinforced through judicial precedents such as *R.G. Anand v. Delux Films* (1978), ensures that only the *tangible form* of expression is protected, not the aesthetic or conceptual style that informs it. Thus, the replication of the Studio Ghibli “style” by an AI model—even one trained on works derivative of that style—may not amount to copyright infringement under Indian law unless there is direct copying of protected frames, characters, or sequences.

#### ***Style Mimicry and Moral Rights in India***

Where Indian copyright law does offer some relief is under the umbrella of **moral rights**. Section 57 of the Copyright Act grants authors the right to claim authorship of a work and to restrain or claim damages in respect of any

distortion, mutilation, or other act prejudicial to their honour or reputation.

Although Indian courts have interpreted this provision broadly in cases such as *Amarnath Sehgal v. Union of India*, its application to AI-generated mimicry of style remains uncertain. Could the replication of an artist's distinctive aesthetic by an AI model be viewed as a distortion or misrepresentation of their artistic identity? If an AI output is misattributed or widely mistaken for the artist's actual work, could this amount to reputational harm? These are unsettled questions, but the Studio Ghibli incident suggests that moral rights might become a significant legal battleground in the age of algorithmic art.

### **Implications for Indian Artists**

The Ghibli case also mirrors the growing concerns of Indian digital artists, illustrators, and animators whose works are increasingly being fed into training datasets for generative AI without their consent. Given that India lacks a statutory framework mandating transparency or opt-out mechanisms for dataset construction, artists are left vulnerable to algorithmic appropriation. Many report that their styles have been mimicked in AI-generated works, leading to confusion among audiences and a dilution of their creative identities.

Unlike traditional infringement, which involves unauthorized copying of specific protected content, **style mimicry** operates in a grey zone: no specific copyrighted work is copied, but the *aggregate essence* of an artist's oeuvre is simulated. This complicates enforcement and challenges the doctrinal boundaries of copyright protection.

In the absence of legislative safeguards, Indian artists may be compelled to rely on softer mechanisms—such as social media pressure, ethical guidelines in AI research, and licensing strategies—to push back against unauthorized stylistic replication. However, these informal responses are inadequate substitutes for a

robust legal framework that balances innovation with artistic dignity.

### **The Need for Doctrinal Innovation**

The Studio Ghibli controversy underscores the limitations of current copyright doctrines in dealing with the **indirect appropriation** facilitated by AI. As generative models become increasingly proficient at simulating not just content but *creative identity*, the line between inspiration and infringement will continue to blur. This calls for doctrinal innovation within Indian IP law—potentially through the recognition of **style as a protected interest**, or through **new sui generis rights** that acknowledge the distinct harms posed by algorithmic mimicry.

Lawmakers and courts may need to reimagine the boundaries of originality, authorship, and expression in the context of machine-generated content. Comparative legal developments in countries such as Japan, the United States, and the European Union can offer useful insights, but India's approach must be grounded in its own legal traditions, economic realities, and cultural landscape.

### **V. The Role of Fair Use and Data Mining Exceptions**

AI models are trained on datasets scraped from the internet, often including copyrighted images. Developers claim that this constitutes "fair use," a doctrine recognized in India under Section 52 of the Copyright Act. However, fair use is not a blanket license. One of the most complex legal conundrums at the intersection of generative artificial intelligence and artistic intellectual property lies in the scope and application of fair use doctrines and data mining exceptions. As AI systems increasingly rely on vast datasets for training—including works protected under copyright—there arises a pressing question: to what extent can such usage be justified under existing exceptions and limitations to copyright law?

### ***Fair Use Under Indian Copyright Law***

In India, the concept analogous to the U.S. "fair use" doctrine is referred to as "fair dealing." Enshrined under **Section 52 of the Indian Copyright Act, 1957**, fair dealing provides for specific exceptions to copyright infringement, notably for purposes such as private or personal use, including research, criticism or review, and reporting of current events.

Unlike the open-ended "four-factor" test in U.S. jurisprudence, Indian law delineates the scope of fair dealing more narrowly. This becomes crucial when considering the legality of training generative AI models on copyrighted content. Since most training datasets include thousands or even millions of images and texts collected through automated scraping, the practice seldom aligns with the specific purposes prescribed under Section 52.

Importantly, Indian courts have shown a relatively conservative approach toward expanding fair dealing to encompass newer technological uses. In **Super Cassettes Industries Ltd. v. Hamar Television Network Pvt. Ltd.**, the Delhi High Court clarified that fair dealing must not adversely affect the market for the original work. Given that generative AI models can replicate stylistic elements that may compete with original artworks, such use would likely fall outside the permissible scope of fair dealing in India.

### ***Text and Data Mining (TDM) and the Absence of Explicit Provisions in India***

While the European Union has begun to address the issue of **text and data mining (TDM)** through legislation like the **Directive (EU) 2019/790 on Copyright in the Digital Single Market (DSM Directive)**, India presently lacks a distinct legal framework regulating TDM activities. The DSM Directive introduces two exceptions that legalize TDM for scientific research and commercial purposes, provided certain conditions are met—most notably, that the material is lawfully accessed and not expressly excluded by rights holders.

In contrast, Indian copyright law does not currently acknowledge TDM as a specific exception. Therefore, any use of copyrighted content for training AI systems must rely on either explicit licensing or claim protection under Section 52. The lack of a legislative basis for TDM implies that scraping copyrighted artworks, such as those in Studio Ghibli's oeuvre or contemporary Indian illustrators' digital portfolios, without permission likely constitutes infringement.

As AI developers in India and abroad increasingly integrate global datasets into their models, this legislative gap may become a point of tension between technology providers and rights holders, especially in artistic domains where style replication is commercially exploitable.

### ***Comparative Insights: Fair Use in the United States***

In the U.S., the concept of fair use, codified under **17 U.S. Code § 107**, involves a multifactorial analysis: the purpose and character of the use (including whether it is transformative), the nature of the copyrighted work, the amount used, and the effect on the potential market. In cases such as **Authors Guild v. Google, Inc.**, U.S. courts have found that large-scale digitization of books for search and indexing purposes could qualify as transformative and fair use.

This interpretation has emboldened some AI developers to claim that training models on copyrighted artworks is similarly transformative. However, the **2023 class-action lawsuits** against Stability AI and Midjourney challenge this assumption, asserting that the models replicate distinctive visual styles in a manner that competes with original artists, thereby undermining the fourth fair use factor related to market harm.

While Indian courts may take cues from global jurisprudence, they are not bound by U.S. interpretations. Moreover, the Indian IP ecosystem tends to prioritize moral rights and the protection of artists' reputations—elements

that could tilt judicial reasoning against expansive claims of fair use in the context of generative AI.

### **Implications for Artists and AI Companies**

The ambiguity surrounding fair use and data mining creates a precarious situation for both artists and technology developers in India. On one hand, artists face the risk of their work being scraped, stylized, and reproduced by AI tools with no recourse under existing copyright law. On the other, AI companies may find themselves operating in legal gray areas, vulnerable to litigation or statutory reform that could retroactively alter the legality of their training methods.

To mitigate such risks, some Indian artists and organizations have begun watermarking or licensing their digital content with restrictive terms. Meanwhile, AI firms are increasingly pressured to adopt transparency obligations—such as publishing datasets and training sources—to ensure they are not infringing upon protected works.

The **Artificial Intelligence Act** adopted by the European Parliament in 2024 (to be fully enforced by 2026) presents an instructive precedent. Although it does not directly legislate copyright, **Recital 107** mandates providers of generative models to supply a **detailed summary of training data**, thus indirectly enhancing enforcement mechanisms for IP holders.

India may benefit from adopting a similar framework, either through amendments to the Copyright Act or the enactment of a new **Digital IP and AI Regulation Act**, to specifically address the challenges posed by data mining in AI training.

### **Toward a Balanced Framework**

As generative AI continues to evolve, Indian copyright jurisprudence must navigate the fine line between encouraging technological innovation and protecting the legitimate interests of creators. A possible roadmap involves:

1. **Statutory Recognition of TDM:** Introducing an explicit TDM exception in the Copyright Act, with safeguards ensuring that creators retain the right to opt out.
2. **Transparency Obligations:** Mandating AI developers to disclose the sources of their training datasets to facilitate enforcement by rights holders.
3. **Transformative Use Test:** Developing judicial guidelines for interpreting whether AI-generated outputs constitute transformative use, akin to fair use, but adapted to the Indian context.
4. **Harmonization with International Norms:** While maintaining sovereignty, Indian law could benefit from aligning certain digital IP norms with those of major jurisdictions like the EU, especially in transnational use-cases of AI.
5. **Artist-Centric Remedies:** Expanding the moral rights framework to explicitly cover algorithmic mimicry of style and non-attributive uses of visual art.

### **VI. Trademark Law: Protection of Visual Identity**

While copyright fails to protect style, trademark law may offer an alternative. Under the Trade Marks Act, 1999, a visual mark or trade dress associated with a brand can be protected from unauthorized use.

If AI-generated art leads consumers to believe it is associated with Studio Ghibli, it may amount to **passing off** or **trademark infringement**, especially if used in a commercial context. This is analogous to the Indian case *Cadbury India Ltd. v. Neeraj Food Products* [(2007) 35 PTC 95 (Del)], where similar packaging was found to cause consumer confusion.

In the digital age, where AI can easily replicate logos, fonts, or trade dresses, this becomes a potent risk. Indian law permits both **registered and unregistered** trademark protection, thereby providing a potential recourse to

creators whose **artistic styles** are commercially misused by AI-generated replicas.

### VII. Ethical and Economic Implications

Generative AI raises broader concerns beyond legality:

- **Economic Displacement:** If companies use AI to generate content that mimics human-created styles, illustrators and designers may lose work opportunities.
- **Cultural Dilution:** Iconic art forms like Ghibli's may be commodified and lose their uniqueness.
- **Erosion of Trust:** Consumers may be unable to distinguish between authentic and AI-created works, creating confusion and eroding brand trust.

While these issues are ethical in nature, they should inform legislative and policy choices. India's IP policy must evolve to not only protect rights but to preserve cultural integrity.

### VIII. The Way Forward: Recommendations for India

1. **Amend Copyright Law:** Introduce provisions recognizing and regulating AI-generated content. Define the role of human authorship in collaboration with machines.
2. **Training Dataset Transparency:** Mandate disclosure of training data sources. AI developers should obtain licenses or use public domain content only.
3. **Sui Generis Protection for Style:** Consider introducing a new form of IP protection for artistic style, especially for culturally significant works.
4. **Mandatory AI Labelling:** Require content generated by AI to carry a digital watermark or label.
5. **Stronger Trademark Enforcement:** Empower rights holders to challenge AI-generated replicas that cause consumer confusion.

### IX. Conclusion

Generative AI is a potent creative force that can replicate, remix, and redefine artistic expression; it is no longer a novelty. But the legal framework established to safeguard human ingenuity faces significant obstacles as a result of this technological marvel. The time is right for a thorough review of copyright and trademark laws in India, where IP jurisprudence is still developing in the digital sphere, in light of AI's innovative potential. The Studio Ghibli scandal is a sobering reminder that we run the risk of undervaluing human creativity and obfuscating the distinction between innovation and imitation in the absence of appropriate legal and ethical protections. Our laws must not only catch up, but also look ahead as we stand on the brink of a new artistic era. Then and only then can we guarantee the protection of creators' rights, even in a world increasingly influenced by algorithms.

**Keywords:** Generative AI, Intellectual Property, Copyright, Trademark, Studio Ghibli, Artistic Style, Fair Use, AI Ethics, DSM Directive, AI Act, Creative Industries, Legal Reform

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