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GENERATIVE ARTIFICIAL INTELLIGENCE AND COPYRIGHT LAW IN INDIA: CHALLENGES UNDER THE COPYRIGHT ACT

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Abstract

The rapid evolution of generative artificial intelligence (AI) presents complex challenges for India's copyright regime under the Copyright Act, 1957, which was enacted in a pre-AI era. This paper examines key legal questions concerning authorship, ownership, originality, and liability in relation to AI-generated works. It argues that while the Act recognises "computer-generated works," it presupposes human authorship and creative input, making purely AI-generated outputs fall into a legal grey zone. The study analyses issues surrounding training of AI models on copyrighted data, potential infringement, and the adequacy of existing statutory provisions. It also reviews comparative international approaches and evaluates India's official stance that current laws are sufficient. The paper concludes that legislative clarification or policy guidelines are essential to ensure a fair balance between human creativity, innovation, and intellectual property protection in the age of AI.

Keywords: Artificial Intelligence, Copyright Law, Authorship, Originality, Intellectual Property, Indian Copyright Act, 1957

Introduction

The rapid growth of artificial intelligence (AI) — especially generative AI systems capable of producing text, images, music and other creative output — poses significant challenges for existing intellectual property frameworks. In India, the primary statute governing copyright is the Copyright Act, 1957 ("the Act"), which was enacted in a pre-AI era and does not explicitly contemplate works generated by autonomous machines. This gives rise to a number of pressing questions: Who is the "author" of an AI-generated work? Who owns the copyright? Does a work created entirely by an AI tool qualify for protection? How does the law deal with training of AI on copyrighted materials? What reform may be required to respond to this new paradigm? This article explores these questions in the Indian legal context.

1. The Legal Framework: Authorship, Ownership and Originality in the Act

To begin, it is essential to summarise the relevant provisions of the Copyright Act, 1957 and how they apply (or struggle to apply) to AI-generated works.

Authorship and definition of "author"

Under Section 2(d) of the Act, the term "author" is defined in relation to different kinds of works: for example, for a literary or dramatic work, the author is "the person who creates the work"; for a photograph it is "the person who takes the photograph"; for a cinematograph film it is "the producer"; and for a computer-generated work it is defined to be "the person who causes the work to be created".[415]

[415] https://csipr.nliu.ac.in/miscellaneous/navigating-indian-copyright-framework-in-the-age-of-ai-generated-works/

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The concept of "computer-generated work" was inserted by amendment in 1994, to cover works "generated by a computer programme or device, where no human author by name appears".[416] In respect of such works, Section 2(d)(vi) states that the author shall be the person who causes the work to be created.[417]

Ownership

Section 17 of the Act prescribes that, subject to any agreement to the contrary, the author of a work is the first owner of the copyright. In the case of a work made by an employee in the course of employment, or under a commission, or by Government or international organisation, special ownership rules apply.[418]

Originality and subsistence of copyright

Section 13 of the Act provides that copyright subsists in original literary, dramatic, musical and artistic works. The concept of originality has not been defined in the Act; Indian jurisprudence treats it to require a minimal degree of creativity and human intellectual effort, beyond mere mechanical reproduction or slavish copying.[419]

Protection of computer-generated works

As noted, the Act explicitly contemplates "computer-generated works" but the term "computer programme or device" was likely drafted with conventional computer generation in mind — not generative AI systems producing novel creative output with little or no human intervention. This raises interpretive difficulties when it comes to AI-generated works.[420]

In short: classical copyright doctrine in India assumes a human author, human creativity, and recognises ownership accordingly. The question is how this regime adapts when a generative AI system produces a work.

2. AI-Generated Works: What Are the Key Issues?

When we speak of "AI-generated works" we mean creative output (for example text, image, music, code) produced by a generative AI model such as a large language model (LLM), image-generating neural network, or other machine learning system. The key issues for Indian copyright law are:

1. **Authorship**: Can an AI be the "author"? If not, who should be the author?
2. **Ownership**: If an author is identified, who owns the copyright? The user, the AI developer, the programmer, the owner of the AI system?
3. **Originality / subsistence**: Does a work generated by AI satisfy the requirement of originality and human authorship?
4. **Liability and enforcement**: Who is liable for infringement if the AI output copies or is substantially similar to a protected work? What about training data?
5. **Adequacy of existing law / need for reform**: Is the Indian framework sufficient or are amendments / new rights required?

Let us examine each in the Indian context.

3. Authorship and AI in Indian Law

AI as author?

The Act does not explicitly recognise AI (or a machine) as an author. The definition of "author" uses the term "person" (for computer-generated works, "the person who causes the work to be created"). Indian courts have consistently held that authors must be natural persons (humans) or in limited cases legal persons (companies) but not non-natural entities such as AI systems.[421]

[416] https://www.businesstoday.in/technology/news/story/chatgpt-ai-content-all-about-legal-challenges-pertaining-to-copyright-under-indian-law-399393-2023-09-22?utm

[417] https://csipr.nliu.ac.in/miscellaneous/navigating-indian-copyright-framework-in-the-age-of-ai-generated-works/

[418] https://ijirl.com/wp-content/uploads/2025/07/GENERATIVE-AI-AND-THE-CINEMATIC-UNIVERSE-COPYRIGHTS-BATTLE-AGAINST-SYNTHETIC-ACTORS-AND-SCRIPTS.pdf?

[419] https://www.legalserviceindia.com/legal/article-18157-artificial-intelligence-and-copyright-ownership-in-india-legal-challenges-and-future-directions.html?utm

[420] Compliance Calendar LLP " https://www.compliancecalendar.in/learn/computer-generated-works-and-copyright-protection-in-india?utm "

[421] NDTV " https://www.ndtvprofit.com/law-and-policy/can-ai-own-copyrights-what-does-indian-law-say-about-it?utm "

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For instance, the Indian government's statement noted that while Section 2(d)(i)-(v) and (vi) may appear to allow non-humans, the courts have interpreted authorship to rest with a natural person.[422]

Human involvement and causation

The key question becomes: Who "causes" the work to be created in the case of AI? Is it the developer who built the model? The user who provided the prompt? The AI system itself (which is not legally a person)? The person who curates, edits or selects from the AI output? Indian commentary suggests that where human involvement is significant (for example prompt engineering, editing, curating output), the human may be considered the author; whereas purely autonomous generation without human creative input may fall outside protection.

In the context of computer-generated works generally, the law desired that some human causation exist. Section 2(d)(vi) was designed for works generated by a computer programme or device "where no human author by name appears" yet still the "person who causes the work to be created" is the author. But generative AI challenges that baseline because the level of human input may be minimal.[423]

Case example

A well-discussed example is the Indian artwork created with an AI tool called "RAGHAV". The attempt to list the AI as the sole author was rejected by the Indian Copyright Office; subsequent application listed a human and the AI as co-authors, but even that was later withdrawn.

Thus, Indian practice suggests that **an AI cannot be treated as an author** under current law; authorship remains tied to a human or legal person. The uncertainty lies in how much human involvement is sufficient for authorship, and how courts will interpret that in future.

4. Ownership: Who Owns AI-Generated Works?

Assuming authorship is established in a human (or persons) who contributed, the next question is ownership of copyright.

Under Section 17, the first owner is the author, unless otherwise agreed. However, when multiple persons collaborate (as is often the case when AI is used), or when an AI tool is used by a user under a service agreement, the ownership question becomes complex.

Possible claimants

In the AI context, claimants might include:

- The **developer/programmer** of the AI model (who created the algorithm)
- The **user/operator** who fed prompts, curated and edited output
- The **owner** of the AI infrastructure or tool
- In some instances, the "person who causes the work to be created" under Section 2(d)(vi) — arguably the user or the developer

Indian commentary identifies these possibilities, and notes that mere use of an AI tool may not automatically lead to ownership unless human creative input is present.

Situations of human-operator via prompt engineering

If a human user prompts an AI tool and then selects from multiple outputs, refines them, edits them, adds human creative modifications, then that human may qualify as the author and first owner. Indian commentary suggests that when an AI is used as a tool and the human has significant "creative control", copyright protection may subsist in the result with the human as author.[424]

Situation of minimal human input / fully autonomous AI

If the work is generated solely by the AI without meaningful human creative input (for example

[422] Asia IP " https://www.asiaiplaw.com/sector/copyright/indian-govt-says-countrys-existing-ip-regime-can-protect-ai-generated-works?utm "
[423] csipr.nliu.ac.in

[424] Drishti IAS " https://www.drishtiias.com/daily-updates/daily-news-analysis/generative-ai-and-copyright-issues "

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the user simply presses a button with minimal selection/curation), then Indian law suggests protection may not subsist. This is because authorship is premised on human creativity and causation.[425]

Training of the AI and ownership of output

Another dimension is whether the owner of the AI tool (or the data provider) could claim ownership of AI outputs because they own the model or the underlying data. Indian commentary notes that mere development of the algorithm or owning the hardware may not suffice unless the person exercised creative control over the specific output.

5. Originality, Subsistence and AI Output

Even if authorship and ownership are settled, the question remains whether the AI-generated work qualifies for protection by meeting originality.

As noted earlier, Section 13 requires originality. Indian courts have emphasised that the work must originate from the author and involve some intellectual effort or creative input — a "spark" of creativity.[426]

Challenges for AI-generated works

- **Lack of human creative input**: If the machine alone generates the output, the human author contribution may be insufficient.
- **Derivative nature**: Many generative AI outputs rely on large datasets of existing works; they may thus resemble or derive from prior protected works, potentially reducing originality. Indian commentary notes this as a core risk.[427]
- **Mechanical reproduction**: If the AI output is deemed to be mere mechanical reproduction or selection without human taste or judgment, it may fail the originality test.
- **Computer-generated works clause**: While the Act includes "computer-generated works", the jurisprudence suggests that human authorship remains required. The clause was perhaps not designed with generative AI in mind.[428]

Therefore, for AI-generated work to be protected under Indian law, it is safer if a human intervened sufficiently (by selecting, curating, editing, prompting in a way that required creative decision-making) to meet the originality threshold and to qualify as the author. If not, the work may fall in a legal grey zone.

6. Infringement, Training Data and Liability

Another dimension arises from how AI systems are trained (often on massive collections of copyrighted works) and how their outputs may resemble existing works, raising issues of infringement and liability.

Training data and infringement

There is a question of whether training a generative AI model on copyrighted works without authorisation constitutes infringement under the Indian Act. Commentary suggests yes: if protected works are used without permission and not covered by any exception, that may amount to infringement under Section 51 (which deals with the rights of copyright owners) or Section 52 (which provides for exceptions).[429]

Although Section 52 allows "fair dealing" (termed "fair use" in some jurisdictions) for purposes like research, the limits of that in relation to large-scale AI training are untested in India.

[425] Mondaq " https://www.mondaq.com/india/patent/1653344/generative-ai-copyright-law-in-india-who-owns-machine-made-works "

[426] Legal Service India " https://www.legalserviceindia.com/legal/article-18157-artificial-intelligence-and-copyright-ownership-in-india-legal-challenges-and-future-directions.html "

[427] https://legal.rfkn.legal/rfkn-legal-ai-generated-art-and-indian-copyright-law/

[428] CNLU https://csipr.nliu.ac.in/miscellaneous/navigating-indian-copyright-framework-in-the-age-of-ai-generated-works/

[429] Mondaq https://www.mondaq.com/india/patent/1653344/generative-ai-copyright-law-in-india-who-owns-machine-made-works

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Liability of AI system itself?

Since AI is not a person under current law, the system cannot itself be sued. Liability would attach to human actors — the user, the developer, the owner of the system — depending on the facts and contractual arrangements. Indian commentary emphasises this limitation.[430]

Registration and remedies

While registration of copyright in India is voluntary (the copyright exists by operation of law), registration can serve as evidence of ownership. Remedies for infringement include injunctions, damages or profits, criminal penalties in certain cases.[431]

Thus, in the AI context it is critical for users, developers and owners to understand potential exposure — both from unlicenced training use of copyrighted works and from outputs that may infringe.

7. Indian Policy Approach and Recent Developments

Government stance

In March 2024, the Indian government (via the Ministry of Commerce and Industry) stated that the existing IP regime (including the Copyright Act) is capable of protecting AI-generated works and related innovations, and that no separate rights are currently needed.[432]

However, commentary notes that this statement rests on assuming existing definitions of "person" and "author" can adapt to AI cases — which remains ambiguous.

Legal commentary and academic work

Recent law-journal articles highlight the legal vacuum around AI-generated works in India, discussing ownership, authorship and the need for reform.

Grounded cases

There are limited Indian judicial decisions directly on generative AI and copyright. As mentioned earlier, the RAGHAV case was a registration attempt. Also, the government's consultation document observes the Indian Copyright Office is "unsure how to deal with such applications".

8. Comparative Aspects: How Other Jurisdictions Tackle AI-Generated Works

While this article focusses on India, it is helpful to briefly note how other jurisdictions treat the issue, to draw comparative insights.

- In the UK, under the Copyright, Designs and Patents Act 1988, Section 9(3) states that in the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person who made the arrangements necessary for the creation of the work — thus effectively the person who set up the machinery and directed it.
- In the US, the United States Copyright Office has taken the view that works generated by AI without human authorship are not copyrightable; the US Office rejected applications listing an AI as author and emphasised that human authorship remains a requirement.[433]
- In Canada, the law (Copyright Act) requires human authorship, and the Canadian Intellectual Property Office has refused to register works where only a machine was author.

These jurisdictions reveal a common theme: AI assistive works may be protectable if human authorship is present; purely autonomous machine output remains problematic. India appears aligned with this global trend but lacks specific statutory guidance.

[430] Asia IP " https://www.asiaiplaw.com/sector/copyright/indian-govt-says-countrys-existing-ip-regime-can-protect-ai-generated-works "
[431] Lawful Legal " https://lawfullegal.in/copyright-issues-for-ai-generated-work/ "
[432] Asia IP " https://www.asiaiplaw.com/sector/copyright/indian-govt-says-countrys-existing-ip-regime-can-protect-ai-generated-works "
[433] The Verge " https://www.theverge.com/news/602096/copyright-office-says-ai-prompting-doesnt-deserve-copyright-protection "

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9. Key Challenges and Unresolved Questions in India

Threshold of human input

How much human creative input is required for copyright protection of an AI-generated work? At present, Indian law lacks clear tests or guidelines.

Moral rights and attribution

Under Section 57 of the Act, authors have moral rights (right to claim authorship and to prevent distortion). If the author is a human using AI, how does attribution work when AI contributes heavily? If no human qualifies as author, moral rights may be thwarted.

Duration and term of protection

Section 22 states copyright lasts for the lifetime of the author plus 60 years. If a work is generated by AI, when does "author's lifetime" count? If no natural person is author, this creates anomalies. Indian commentary flags this issue.

Liability for training datasets

AI training often uses large copyrighted datasets. Indian law has no clear statutory exception for reproduction for model training; the applicability of "fair dealing" is uncertain. Proving use of copyrighted material may be practically difficult.

Ownership of output and contractual frameworks

When AI tools are provided via platforms or services, the terms of service often dictate ownership of output. Indian copyright law does not directly regulate such contracts; however, user beware: if the platform retains rights or the user's prompt/data is shared, ownership may reside elsewhere.

Impact on creators and business models

The availability of generative AI tools may reduce demand for human creators, prompting concerns about fair remuneration, attribution and licensing. Indian commentators note the risk of "systematic theft" of creative labour and dilution of human authorship.

Need for reform vs existing law

While the Indian government says the existing regime is adequate, many experts argue that specific amendments, clearer guidelines or even a new class of rights specific to AI are required. The question is whether to modify the Act, issue policy guidelines, or rely on case law.

10. Recommendations and the Way Forward

Given the current state of law and the evolving nature of AI, the following recommendations may be relevant for India:

1. **Clarify definitions and criteria**
   - Amend or issue guidelines to define human authorship threshold in AI-assisted works.
   - Clarify the meaning of "person who causes the work to be created" under Section 2(d)(vi) in the AI context.
   - Address term of protection when the author is not a natural person.
2. **Introduce a graduated approach**
   - Distinguish between: (a) works generated entirely by AI with minimal human input (b) works created with significant human creative input using AI.
   - In (a), exclude from copyright or provide a special regime; in (b), treat as human-authored for copyright. This is similar to approaches internationally.
3. **Training data licensing regime**
   - Require AI developers to obtain licences for copyrighted works used in training (or ensure that training datasets only contain public domain or appropriately licensed content).

- Clarify the scope of "fair dealing" for research/training use of copyrighted works by AI models.

4. **Contractual and platform transparency**
   - Encourage clear terms of service for AI platforms regarding ownership of output, rights assignment, liability, and what happens if the output incorporates third-party protected works.
   - Ensure users are aware of ownership and licensing implications before commercialising AI output.
5. **Moral rights and attribution frameworks**
   - Devise mechanisms to ensure human creators retain moral rights when using AI assistance (for example attribution, integrity of work) and define how these apply when AI plays a role.
6. **Policy-based consultations and stakeholder engagement**
   - The government should conduct broad consultations with creators, AI companies, legal practitioners, academia and civil society to craft a balanced regime.
   - A future-proof regulatory or legislative roadmap should be developed to ensure India remains competitive in AI while protecting creative rights.
7. **Judicial guidance and precedent building**
   - Encourage test cases to clarify how courts will interpret AI-generated works in India. Early decisions will provide much-needed legal certainty.
   - The judiciary may develop criteria for determining human involvement, originality and ownership in the AI context.
8. **International alignment**
   - While local law must reflect India's context, international harmonisation (with WTO/TRIPS obligations, Berne Convention rights) may be desirable. India could consider lessons from UK, US, Canada and EU regulatory debates.

11. Conclusion

The advent of generative AI challenges established copyright paradigms in India. The Copyright Act, 1957 remains the primary legal instrument for creative works, but it was not drafted with autonomous AI in mind. Key issues that emerge are: whether an AI can be considered an author (currently no); who owns a work generated by AI; whether originality and human creativity requirements are met; how infringement and training datasets are regulated; and whether reform is needed. Indian practice to date suggests that works created with substantial human creative input using AI tools may qualify for copyright protection with humans as authors/owners; whereas purely AI-generated works remain in a grey zone and may lack protection. The government has indicated that the existing law is adequate, but legal commentators and industry stakeholders believe clearer rules and possibly legislative amendments are required to provide certainty and protect both human creativity and innovation in AI. As India pushes ahead in AI development, striking the right balance between facilitating innovation and preserving the rights of creators will be critical.

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