ARTIFICIAL INTELLIGENCE AND AUTHORSHIP: RETHINKING COPYRIGHT LAW IN INDIA

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ABSTRACT

The rapid evolution of Artificial Intelligence (AI), especially generative AI systems capable of producing literature, music, art, and software code, has fundamentally challenged traditional copyright norms premised on human creativity and original expression. The Indian Copyright Act, 1957, drafted in a pre-algorithmic era, presupposes the existence of a human author as the source of intellectual labour and creativity. With AI now autonomously generating complex works, the Indian copyright regime faces a doctrinal vacuum regarding the status of such works and the attribution of authorship. This article examines whether AI can or should be considered an author within the meaning of Section 2(d) of the Act, drawing upon comparative jurisprudence from the United States, United Kingdom, European Union, and Australia. It discusses foundational concepts of originality, fixation, human authorship, and the incentive theory underpinning copyright law. The article critically evaluates the limited Indian jurisprudence and the brief recognition (and subsequent withdrawal) of an AI system as a copyright author by the Indian Copyright Office. It further explores the competing models of ownership, including programmer-centric, user-centric, corporate-centric, and public-domain approaches, and their policy implications. Finally, it proposes a structured framework for legislative reform, advocating for a hybrid model that recognises the human role in AI-generated works while preventing over-monopolisation of creative outputs. The study concludes that India must modernise its copyright framework by acknowledging AI's growing role in creative production while preserving the foundational values of authorship, originality, and public interest.

Introduction

Technological disruption has historically served as both a catalyst and a challenge for copyright law. In recent decades, Artificial Intelligence has transitioned from a supportive computational tool to an autonomous creator capable of generating music, poetry, news articles, digital images, inventions, and even architectural designs. Powerful generative AI models such as GPT-4, Midjourney, Claude, Gemini, and DALL·E have demonstrated abilities akin to human creativity, raising profound questions about authorship and ownership in intellectual property law. Copyright, which evolved from the

Statute of Anne in 1710 and rests on the foundation of human creativity, now encounters the unprecedented reality of non-human agents capable of producing independently expressive works.

Indian copyright law, unlike some jurisdictions, does not contemplate non-human authorship. Section 2(d) of the Copyright Act, 1957 restricts authorship to natural persons, except in limited categories such as computer-generated works where the author is deemed to be the "person who causes the work to be created." However,

unlike the United Kingdom's express provision under Section 9(3) of the Copyright, Designs and Patents Act, 1988, the Indian statute lacks clarity on the question of who "causes" an autonomous AI to generate a work. This ambiguity becomes critical when AI systems operate with minimal human intervention or where the human role is merely prompt-based rather than creative in the traditional sense.

The jurisprudence on originality in India has also evolved. The Supreme Court in *Eastern Book Company v. D.B. Modak*[228] rejected the earlier "sweat of the brow" standard in favour of a "modicum of creativity," aligning India closer to the American standard laid down in *Feist Publications v. Rural Telephone Services*.[229] Yet, whether an AI system— which neither possesses human intellect nor exercises judgement or creativity—can satisfy this threshold is a contested question.

The global legal community remains divided on AI authorship. The U.S. Copyright Office has categorically denied protection to AI-generated works absent human authorship; the UK recognises computer-generated works but attributes authorship to the human arranger; and EU law insists on "author's own intellectual creation," implicitly requiring a human author. Australia, too, has shown reluctance to extend authorship to non-humans. India, however, stands at a turning point following the 2022 incident when an AI system named RAGHAV was initially recognised as a co-author by the Copyright Office before the recognition was withdrawn.[230] This episode highlighted the urgent need for statutory and policy clarity.

This article examines these issues through a doctrinal, comparative, and policy-based analysis. It argues that India must evolve a nuanced approach that reflects technological realities without undermining the foundational principles of copyright. The traditional understanding of authorship, rooted in human creativity, may require recalibration to accommodate AI-generated works, but unrestricted recognition of AI authorship risks diluting the balance between innovation, creativity, competition, and public access.

Legal Framework of Authorship Under Indian Copyright Law

I. The Statutory Concept of Authorship Under the Copyright Act, 1957

The foundation of Indian copyright law is built upon the Copyright Act, 1957, which—although amended several times—was conceived in an era that could not foresee the emergence of autonomous artificial intelligence as a creative entity. The statutory definition of "author" under Section 2(d) is intrinsically anthropocentric. It identifies different authors for different categories of works, but in all instances presupposes the existence of a natural person exercising skill, labour, or judgment.

Section 2(d) defines an author as:

In the case of a literary or dramatic work, the author is "the person who creates the work";[231]

In the case of a musical work, "the composer";[232]

In the case of an artistic work, "the artist";[233]

In the case of a computer-generated work, "the person who causes the work to be created."[7]

It is this last category that forms the doctrinal entry point for analysing AI-generated works. However, the Act provides no further explanation as to who "causes" a computer-generated work to be created. The lacuna between the capabilities of modern autonomous AI and the statutory architecture drafted for rudimentary computer programs generates ambiguity. While traditional computer-generated works (e.g., computer-assisted design) involve significant human input, modern generative AI can create works

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[228] Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1.

[229] Feist Publications Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991).

[230] See Indian Copyright Office, Registration No. L-111180/2022 (later withdrawn)

[231] Copyright Act, 1957, s. 2(d)(i)

[232] Copyright Act, 1957, s. 2(d)(ii)

[233] Copyright Act, 1957, s. 2(d)(iii). [7] Copyright Act, 1957, s. 2(d)(vi).

with minimal intervention, often prompted only by short textual inputs.

Thus, the statute does not expressly accommodate situations where the creative output results primarily from machine autonomy rather than human mental effort. The Indian Copyright Act, like its contemporaries, remains firmly embedded in the human-centric model of authorship that treats creativity as an exclusively human attribute.

II. Judicial Interpretation of Creativity and Originality in India

A. The Traditional "Sweat of the Brow" Doctrine

Historically, Indian courts adhered to the British-inspired "sweat of the brow" approach, which emphasised labour and effort rather than creativity. Under this doctrine, even compilations with minimal creativity could attract copyright protection so long as they involved sufficient skill and labour. The classical articulation of originality in *University of London Press Ltd. v. University Tutorial Press Ltd.*[234] emphasised that originality did not mean novelty or inventiveness but merely that the work originated from the author.

This position influenced early Indian jurisprudence, where compilations, directories, and derivative works were protected despite lacking creative input. Such a standard would have made it theoretically easier to extend copyright to AI-generated works, as machines could be said to expend "effort" or computational labour. However, this approach has been significantly diluted in contemporary jurisprudence.

B. The "Modicum of Creativity" Standard in EBC v. Modak

In *Eastern Book Company v. D.B. Modak*,[9] the Supreme Court recalibrated Indian originality doctrine by shifting away from pure labour-based protection toward a requirement of

minimal creativity. The Court held that originality requires:

"the application of a minimum degree of creativity" and not mere laborious effort.[235]

This standard aligns India with the U.S. Supreme Court's reasoning in *Feist Publications Inc. v. Rural Telephone Service Co.,*[236] which requires works to reflect "a modicum of creativity" and "independent creation." Under this doctrine, the touchstone is intellectual effort and creative judgment, characteristics that AI systems demonstrably lack under present cognitive and legal understandings.

Thus, AI's inability to exercise "creativity" or "judgment" in the human sense poses a conceptual challenge for meeting the Modak test. If originality requires human intellectual effort, then AI-generated works may fall outside the protective boundary unless the human contributor's role can be considered sufficiently creative.

III. The "Person Who Causes the Work to Be Created": An Ambiguous Standard

The Indian legislature imported the concept of authorship for computer-generated works without defining its contours. This phrase—"person who causes the work to be created"—has historically been applied to routine computer programs where human intervention is substantial. But generative AI, characterised by algorithmic autonomy, blurs the causal chain.

Three potential interpretations arise:

A. The Programmer as the Author

The argument here is that the person who writes the underlying algorithm "causes" the work to be created. This approach finds some support in traditional notions of causation, but it becomes problematic because programmers often have no control over the eventual output, especially in models trained on unsupervised or

[234] University of London Press Ltd. v. University Tutorial Press Ltd., [1916] 2 Ch 601 [9] Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1.

[235] Ibid.

[236] Feist Publications Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991).

large-scale datasets. Moreover, the programmer's contribution is structural, not expressive.

B. The User as the Author

This view posits that the person who inputs the prompt or command into the AI system causes the work to be created. However, if the prompt is minimal (e.g., "create a painting of a landscape"), the creative role of the user may be insufficient to satisfy the "modicum of creativity" threshold established in Modak. Courts would need to decide whether prompting constitutes creative control or is merely an operational act.

C. The Corporate Entity as the Author

In many commercial contexts, the AI system's operator (e.g., a company like OpenAI, Google, or Adobe) may be seen as having caused the creation of the work by virtue of owning and configuring the system. However, attributing authorship to corporate entities blurs the distinction between human intellectual labour and corporate ownership, potentially enabling monopolisation of AI-generated creativity.

IV. Fixation and Expression in the Context of AI

AI systems typically produce works that are immediately fixed in digital formats. Fixation, therefore, is not a significant hurdle in recognising copyright in AI-generated works. However, fixation cannot substitute for authorship. As Indian law does not protect ideas,[237] works generated by AI must still embody original expression attributable to a human author.

Since AI cannot hold rights, the question becomes whether the human involvement in producing the output is sufficiently creative for copyright purposes. If not, the work may fall into the public domain, which raises additional policy concerns discussed in later sections.

V. Emerging Indian Developments: The RAGHAV AI Episode

In 2022, the Indian Copyright Office briefly recognised an artificial intelligence system named RAGHAV as a co-author of an artistic work along with a human creator.[13] This recognition was unprecedented in India and was prominently reported in legal circles. However, the registration was later withdrawn, reflecting the Office's reconsideration that the statutory framework does not permit non-human authorship.

The episode underscores two concerns:

1. The statutory ambiguity regarding computer-generated works, and

2. The absence of administrative consensus on whether AI can be considered an author.

This event highlights India's lack of preparedness for the challenges posed by autonomous AI systems.

International Approaches to AI Authorship (US, UK, EU, Australia)

The global legal landscape on AI-generated works is fragmented and evolving. While no major jurisdiction currently recognises AI as a legal author, countries differ significantly in their treatment of human involvement, originality, and computer-generated works. India, which often draws insight from comparative jurisprudence, must understand these international approaches before developing its own framework.

I. The United States: The Human Authorship Requiremen

The United States adopts the most rigid stance against non-human authorship. The U.S. Copyright Office (USCO) maintains that only works created by a human being can receive copyright protection.[238] This position stems from longstanding judicial precedent and recent administrative decisions.

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[237] Copyright Act, 1957, s. 13; see also R.G. Anand v. Delux Films, (1978) 4 SCC 118. [13] Indian Copyright Office, Registration No. L-111180/2022 (withdrawn).

[238] U.S. Copyright Office, Compendium of U.S. Copyright Office Practices (3rd edn.), § 306.

A. Judicial Precedent: Burrow-Giles Lithographic Co. v. Sarony

In *Burrow-Giles Lithographic Co. v. Sarony*,[239] the U.S. Supreme Court held that copyright protects works embodying the "original intellectual conceptions of the author," implicitly requiring human intellect. Although the case concerned photography, its reasoning has been foundational in subsequent AI authorship debates.

B. The Feist Standard

In *Feist Publications Inc. v. Rural Telephone Service Co.*,[240] the Court emphasised originality as the product of "independent creation and a modicum of creativity." Human creativity is central to this framework, leaving no room for non-human intellectual contribution.

C. The Monkey Selfie Case: Naruto v. Slater

In *Naruto v. Slater*,[241]a macaque's selfie photograph became the focus of litigation. The Ninth Circuit Court held that animals cannot hold copyright because the statute restricts authorship to human beings. Although not directly about AI, the case reinforces the anthropocentric model of authorship in U.S. law.

D. Contemporary Position: Thaler v. Perlmutter

In 2023, the U.S. District Court for the District of Columbia affirmed the USCO's refusal to register an AI-generated artwork by Stephen Thaler's "Creativity Machine."[242] The court held:

"*Human authorship is a bedrock requirement of copyright.*"[243]

Thus, AI-generated works without substantial human creative contribution are not protectable. This represents the most restrictive position internationally.

II. The United Kingdom: Express Recognition of Computer-Generated Works

In contrast to the U.S., the UK explicitly recognises computer-generated works through Section 9(3) of the Copyright, Designs and Patents Act, 1988 (CDPA).[244] The statutory provision states:

"In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken."[21]

A. The "Arrangements Necessary" Standard

This standard attributes authorship to the human who plans or organises the process that results in the creation of the work. Importantly:

1.   It is not required that the human create the expression directly.

2.   The focus is on causal responsibility, not creative contribution.

This model could theoretically apply to modern generative AI, but criticisms include its vagueness and susceptibility to overbroad corporate claims.

B. Duration and Protection

Computer-generated works in the UK receive a shorter duration of copyright i.e 50 years from creation[245] which is reflecting the unique nature of these works. The UK model is often cited as a possible legislative direction for India if it chooses to acknowledge AI-generated works without granting AI legal personality.

III. The European Union: Author's Own Intellectual Creation

EU copyright law is grounded in the principle that originality consists of the "author's own intellectual creation."[246] This human-centric standard has been affirmed in several Court of Justice of the European Union (CJEU) decisions.

[239] Burrow-Giles Lithographic Co. v. Sarony, 111 U.S. 53 (1884).

[240] Feist Publications Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991).

[241] Naruto v. Slater, 888 F.3d 418 (9th Cir. 2018).

[242] Thaler v. Perlmutter, 2023 WL 5333236 (D.D.C.).

[243] Ibid.

[244] Copyright, Designs and Patents Act 1988, s. 9(3). [21] Ibid.

[245] CDPA 1988, s. 12(7).

[246] Infopaq International A/S v. Danske Dagblades Forening, Case C-5/08.

A. Infopaq International A/S v. Danske Dagblades Forening

The CJEU held that copyright applies to works that are the result of the author's intellectual creation.[247] The decision established the modern EU originality standard emphasising creative choices reflective of human personality.

B. Bezpečnostní Softwarová Asociace v. Ministerstvo Kultury

The Court reiterated that protection applies only to elements which reflect the author's own intellectual creation.[248]

C. Implication for AI-Generated Works

Because an AI system lacks a personality and cannot exercise human creative choices, AI-generated works cannot meet the EU originality requirement unless a human provides the expressive contribution.

Thus, the EU model recognises human-aligned creativity but leaves purely autonomous AI works unprotected.

IV. Australia: No Recognition of Non-Human Authorship

Australia, like the U.S., does not recognise non-human authors. The landmark decisions of the Federal Court have consistently aligned Australian copyright law with human authorship.

A. Telstra Corp. Ltd. v. Phone Directories Co.

In the *Phone Directories cases*,[249] the Court held that copyright protection requires human authorship.

Mere labour, skill, or computer system output without identifiable human creators is insufficient.

B. Acohs Pty Ltd. v. Ucorp Pty Ltd.

The Federal Court held that compilations generated by computer systems lacked copyright protection when no human author could be identified.[250] Australia's approach is like the U.S. which insists that a human must contribute to the creation of the protectable expression, making it incompatible with autonomous AI authorship.

Doctrinal Issues in AI Authorship

AI-generated works challenge the foundations of copyright law. The Copyright Act, 1957 is built on a model that presupposes:

(1)   a human author,

(2)   human intellectual creativity, and

(3)   a causal connection between the human author and the expressive work.

Autonomous and semi-autonomous AI systems disrupt all three pillars. This part examines the doctrinal challenges posed by AI in the context of originality, creativity, ownership, fixation, and the role of human involvement.

I. The Human Authorship Requirement: A Foundational Barrier

Indian copyright law does not explicitly require "human authorship," but it presumes it at every stage:

Section 2(d) refers to an author as a "person";[251]

Case law interprets creativity as a human mental activity;[252]

The rationale for copyright—rewarding human labour—is anthropocentric.[253]

AI systems lack legal personhood and cannot form intentions, exercise judgment, or hold rights.

Consequently, AI-generated works, where human involvement is minimal, fall into a grey zone.

A. Can AI Exercise Creativity?

Under modern jurisprudence (particularly EBC v. Modak), creativity involves: intellectual effort,

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[247] Ibid.

[248] Bezpečnostní Softwarová Asociace v. Ministerstvo Kultury, Case C-393/09.

[249] Telstra Corp Ltd v. Phone Directories Co Pty Ltd, (2010) 194 FCR 142.

[250] Acohs Pty Ltd v. Ucorp Pty Ltd, (2012) 201 FCR 173.

[251] Copyright Act, 1957, s. 2(d).

[252] EBC v. Modak, (2008) 1 SCC 1.

[253] University of London Press Ltd. v. University Tutorial Press Ltd., [1916] 2 Ch 601.

judgement, and application of mind. AI systems generate outputs based on: statistical models, training data correlations, probabilistic predictions. They mimic creativity but do not exercise it. They have no subjective intent, personality, or consciousness—elements foundational to traditional copyright theory. Therefore, AI cannot satisfy the creativity requirement under Indian law unless a human provides the creative contribution.

II. Originality and AI: Can AI Outputs Be Considered Original?

Originality in Indian law requires:

1.   Independent creation

2.   A modicum of creativity[254]

A.   Independent Creation

AI systems generate works that may: be derivative of training data, or combine learned patterns to produce new outputs. While the output may be technically new, it is produced by algorithmic processes—not by independent human thought. The "independent creation" doctrine traditionally excludes machine-derived works where no human creates the expression.

B.   Modicum of Creativity

AI lacks: intention, selection, judgment, creative choices. The Supreme Court in Modak emphasised choices made by a human author, not automated processes. Thus, purely AI-generated works without meaningful human input cannot meet the originality threshold.

C.   The Threshold Question: How Much Human Input Is Enough?

This raises a key doctrinal puzzle:

At what point does human involvement cross the threshold from mere prompts to creative authorship?

Possible scenarios:

1.   A user prompts AI with "Create a painting of a tiger in a forest", minimal human creativity, likely not original.

2.   A user gives detailed, creative instructions, perhaps enough to satisfy authorship.

3.   A user edits AI output extensively, authorship lies in the editing process, not the raw machine output.

This requires a nuanced legal test, which Indian law currently lacks.

III. Ownership Models for AI-Generated Works

Since AI cannot own copyright, ownership must be attributed to a human or corporate entity. Four models are debated internationally:

A. The Programmer-as-Author Model

This view holds that the developer of the AI system is the true creator. Argument given to this view is that Programmers design algorithms and training structures. They indirectly "cause" the output. Problems related to this perspective are Programmers cannot foresee or control specific outputs and Creativity is located in the trained model, not the code itself. This approach may confer excessively broad rights on developers.

B. The User-as-Author Model

This model attributes authorship to the person who inputs the prompt or command. Advantages of this model are Aligns with UK's Section 9(3) standard (arrangements necessary) and Recognises human involvement in initiating creation.

The Challenges with this model are:

1.   A simple text prompt may not constitute "creativity."

2.   Users lack control over how the AI interprets prompts.

3.   Users' contributions may not meet the Modak creativity standard.

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[254] Feist Publications Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991).

C. Corporate Authorship Model

This model places ownership with the company operating the AI system and

Justifications given are Corporations invest capital and infrastructure and they often control output distribution.

Problems with this model are Corporations becoming copyright monopolies for all AI-generated works. This contradicts the incentive theory (copyright protects creativity, not capital).[255] It risks public domain shrinkage.

D. Public Domain Model

Under this model, purely AI-generated works receive no copyright protection and enter the public domain immediately.

Advantages of this model:

1.   Prevents monopolisation of machine creativity.

2.   Encourages innovation, dissemination, and derivative creativity.

Criticisms related to this model:

1.   May reduce commercial incentive to develop advanced AI systems.

2.   Encourages free-riding by competitors.

3.   Conflicts with copyright's economic rationale.

IV.   Fixation and AI: A Non-Issue?

Fixation requires that the work be recorded, written, or stored in a perceivable form. AI outputs are automatically fixed (e.g., as digital files). Therefore: Fixation is easily satisfied, but fixation cannot substitute for authorship. AI can satisfy fixation but cannot satisfy authorship, originality, or creativity independently.

V.   The Causation Puzzle: Who "Causes" the Work to Be Created?

Section 2(d)(vi) of the Copyright Act attributes the authorship of computer-generated works to the person who "causes the work to be

created."[256] Under generative AI, causal links are ambiguous: The programmer writes the model. The dataset trains the model. The user prompts the model. The algorithm autonomously generates output.

Thus, AI introduces multiple causal agents, making the concept of authorship difficult to assign using traditional tests. Courts may need to adopt a refined test such as:

"The person who exercises creative control over the expressive elements of the output." This aligns with the reasoning in Modak and global developments.

VI. Ethical and Philosophical Dimensions of AI Authorship

Beyond doctrinal issues, moral considerations emerge: A. Should machines have creative rights?

Most scholars argue no, because: they lack consciousness and moral agency; copyright's justification is to reward human creativity.

B.   Is AI-generated creativity "real creativity"?

Philosophically, creativity involves imagination, intention, and originality—qualities AI does not inherently possess.

C.   Should human creativity be diluted?

Extending copyright to machine-generated works risks devaluing human artistic labour, creating copyright inflation with unlimited machine-generated works. Thus, moral and philosophical reasoning supports maintaining human-centrality.

Policy Considerations & The Future of AI Authorship

Regulating AI authorship is not merely a doctrinal or technological question. It is fundamentally a policy decision involving choices about innovation, economic incentives, human creativity, and public interest. India stands at a crucial juncture where the rapid

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[255] William Landes & Richard Posner, The Economic Structure of Intellectual Property Law (2003).

[256] Copyright Act, 1957, s. 2(d)(vi).

adoption of generative AI necessitates a forward-looking copyright framework. This part examines the broader policy landscape, institutional challenges, comparative models, and the possible future directions of Indian law relating to AI and authorship.

I. The Policy Vacuum in India

India currently has: no statutory provision dealing specifically with AI-generated works; no judicial precedent addressing authorship of AI creations; no government-issued guidelines on AI copyright protection; no amendments proposed in the Copyright Act after the rise of generative AI. The only relevant legal element is Section 2(d)(vi), concerning computer-generated works, drafted in 1994—long before modern AI.

Thus, the legal system is ill-equipped to handle questions arising from autonomous generative systems such as ChatGPT, Midjourney, or Indian models like Hanooman.

II. Competing Policy Models for AI Copyright

Nations across the world are experimenting with different approaches. India must choose one that balances innovation with public interest.

A. The UK Model: User-as-Author Approach

Under Section 9(3) of the UK Copyright, Designs and Patents Act, the author is "the person by whom the arrangements necessary for the creation of the work are undertaken."[257]

Advantages are Recognises user control, Works well for semi-automated systems, Provides a clear, predictable attribution rule and Disadvantages are, Does not account for fully autonomous AI. The "arrangements necessary" standard is vague.

B. The U.S. Model: Strict Human Authorship

The U.S. Copyright Office has categorically denied protection for works produced without human creativity.[258] Courts (e.g., Thaler v. Perlmutter) have reaffirmed this.[259] Advantages:

1.   Maintains the human-centric foundation of copyright.

2.   Prevents monopolisation of AI-generated content.

3.   Encourages free flow of machine-generated works into the public domain.

Disadvantages:

1.   Reduces commercial incentive to invest in AI-generated content.

2.   Unclear treatment for hybrid humans–AI works where edits are minimal.

C. The EU Model: Pro-Regulation, Human Control Focus

The EU AI Act emphasises: accountability, transparency, human oversight.[260] Though not directly a copyright law, it lays the groundwork for future rules on: authorship, liability, dataset transparency, algorithmic audit requirements.

D. The Public Domain Model (WIPO Scholars)

Many international scholars propose that all AI-generated works should automatically enter the public domain.[261]

Advantages:

1.   Encourages innovation and creativity.

2.   Avoids private monopolies.

3.   Reflects the absence of human creativity. Disadvantages:

1.   Companies may lose commercial incentives.

2.   Difficulties distinguishing human-generated vs. AI-generated content.

III. Policy Challenges Unique to India

India faces certain issues that differ from Western jurisdictions.

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[257] Copyright, Designs and Patents Act, 1988 (UK), s. 9(3).

[258] U.S. Copyright Office, "Copyright Registration Guidance: Works Containing AI-Generated Content" (2023).

[259] Thaler v. Perlmutter, 2023 WL 5333236 (D.D.C. 2023).

[260] European Union Artificial Intelligence Act, 2024.

[261] WIPO Conversation on IP and AI, Issues Paper (2020).

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A. Lack of AI Infrastructure

B. Cultural Emphasis on Human Creativity

Indian copyright jurisprudence emphasises: "intellectual effort", "mental application", "skill and judgment,"[262] all of which assume human involvement.

C. Enforcement Difficulties

If AI-generated works are protected: courts will face complex technical evidence; authorship disputes will increase; infringement cases will require algorithmic traceability.

D. Risk of Copyright Flooding

Machines can generate billions of works. This risks shrinking the public domain and overwhelming copyright registries.

IV. Hybrid Authorship: The Most Practical Policy Direction

Most AI outputs involve a mix of human creativity and machine automation. A third-way approach is emerging globally: _Human-authored portions are protected; Machine-generated portions are not._ For example: The prompt itself (if creative) may be protected. The output may be partially protected if human editing adds creative expression. Raw AI output without human edits receives no protection. This is consistent with EBC v. Modak standards for minimal creativity.

V. Proposed Legal Reforms for India

To address future challenges, India must modernise its copyright law. The following reforms are recommended.

A. Statutory Amendment Defining "AI-Generated Work"

A new clause should define: "AI-generated work," "AI-assisted work," the degree of human control necessary for authorship.

B. Clarifying Section 2(d)(vi)

The phrase "person who causes the work to be created" is vague. It must be clarified through:

legislative guidance, rules specifying human involvement thresholds.

C. Introducing a "Creative Control Test"

This test would attribute authorship to the person who: exercises creative judgment, contributes expressive choices, and influences the final output substantially. This aligns with Indian jurisprudence on creativity.

D. Transparency Requirements for AI Training Data

To prevent plagiarism and exploitation, AI developers should disclose training datasets; creators should have the right to know if their works were used. This mirrors proposed EU AI Act norms.

E. Mandatory Labeling of AI-Generated Content

Platforms may require: disclosure tags ("AI-generated"); watermarking; metadata identifiers. This protects consumers and safeguards originality claims.

VI. Balancing Innovation with Copyright Protection

The final policy question: Should India prioritise innovation or strict human-centric copyright protection? To answer this question Two paths exist:

Path A: Strong Protection for AI-Generated Works

Pros: Attracts investment, Encourages development of indigenous AI, and Supports creative industries.

Cons: Ennobles corporations over human creators, Risks shrinking public domain, and Conflicts with creativity doctrine.

Path B: No Protection for Pure AI Works

Pros: Maintains human centrality, Expands public domain, Limits monopoly control.

Cons: Reduces incentives for AI development, Businesses may shift investment abroad.

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[262] EBC v. Modak, (2008) 1 SCC 1.

VII. The Future of AI Authorship in India

Artificial Intelligence is reshaping the intellectual property landscape. The challenge for India is to craft a nuanced, balanced regime that: preserves human creativity, encourages technological innovation,protects public interest, and aligns with global developments.

A modernised copyright framework must move beyond outdated human-centric assumptions while preventing overreach by private corporations controlling AI. India stands at a pivotal moment—where the choices made today will shape the future of creativity, innovation, and digital culture for decades.

Conclusion

The rapid proliferation of generative artificial intelligence presents a profound challenge to the foundational principles of copyright law. India's existing legal framework, anchored in the Copyright Act, 1957, assumes that creative output originates from human authors endowed with intellect, judgment, and the capacity for original expression. The emergence of AI systems capable of producing literature, music, art, and software without direct human intervention has exposed a doctrinal and policy lacuna, particularly concerning authorship, originality, and ownership.

Analysis of Indian jurisprudence, particularly Eastern Book Company v. D.B. Modak,[263] demonstrates that originality now requires a modicum of human creativity, leaving purely AI-generated works outside the protective ambit of copyright. Comparative study reveals that jurisdictions such as the United States, European Union, and Australia strictly maintain human authorship as a prerequisite, while the United Kingdom offers a statutory model for computer-generated works through causal attribution (Section 9(3) CDPA). China adopts a pragmatic, administrative approach balancing innovation with policy goals.

A hybrid framework for India emerges as the most balanced solution: recognising AI-assisted works where human creativity is substantial, clearly excluding purely autonomous AI outputs from copyright, and introducing transparency, attribution, and optional limited-term protections where necessary. Legislative amendments and administrative guidance can create a robust, forward-looking framework that preserves human creativity, incentivises AI innovation, and safeguards the public domain.

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[263] Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1.