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THE AI AUTHORSHIP PARADOX: NAVIGATING COPYRIGHT LAW IN THE AGE OF GENERATIVE SYSTEMS

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ABSTRACT

Artificial intelligence (AI) systems, and generative AI in particular, are expanding exponentially, posing unprecedented challenges to the premises of copyright law. Modern AI can independently produce literary works, music, computer-generated art, screenplays, and even complicated computer code, which are almost indistinguishable when compared to human-generated expression. Postmodern trends interfere with the conventional concept of copyright that has traditionally been based on human authorship, intellectual labour, and individual creative expression. With the increasing involvement of AI in the process of creating expressive works, the fundamental principles of the field, including authorship, originality, ownership, infringement, moral rights, and liability, are on the urgent agenda.

This paper critically analyses the effect of AI on the copyright law based on the doctrinal, comparative, and policy analyses. It examines how the human authorship requirement has been embedded into the big copyright regimes and whether AI-generated works can meet the set originality requirements. The paper goes further to discuss the controversial question of AI training datasets, whether the massive replication of copyrighted materials to feed machine learning algorithms is infringement or falls under the fair use or text and data mining exception of the current statutory frameworks. Moreover, the paper deals with the liability distribution in cases when AI systems produce results that are similar to copyrighted works, as well as evaluating the possible liability of developers, users, and companies.

With comparative analysis of legal strategies in the United States, the United Kingdom, the European Union, and India, the paper shows that there are no harmonized global reactions to AI-driven creativity. Whereas certain jurisdictions focus on rigorous human authorship qualification, others are trying to find statutory accommodation of computer-generated works, which creates doctrinal conflicts and regulatory vagueness. The paper insists that the current copyright regimes are structurally unsatisfactory to deal with autonomous generative systems in the absence of legislative clarification.

Finally, the present paper suggests a moderate model of reform that does not hinder the incentive system of human inventors but encourages responsible technological innovations. It proposes the legal recognition of human creative input of meaningful value, more explicit control of AI training activities, proportional liability, and increased international collaboration. Copyright law can be adjusted to our times by balancing innovation and protection to keep its essence, which is to facilitate creativity to the advantage of our society.

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Introduction

The fast adoption of Artificial Intelligence (AI) in the creative, commercial, and cultural sectors has fundamentally destabilized the structure of the conventional system of copyright. The copyright law, which was traditionally intended to safeguard human authors and to encourage creative expression, now faces an unprecedented dilemma on how to control autonomously or semi-autonomously produced works of art created by machines. With the increasingly advanced AI systems, including generative text models, image generators, software to compose music, and code-writing systems, the line between human authorship and machine input has become unclear. The emergence of such a phenomenon poses philosophical questions on originality, authorship, ownership, liability, and the future of creative industries.

The copyright law is based on the concept of the intellectual labor of humans. The need for originality has been construed in various jurisdictions as the product of human creativity. The Supreme Court in the United States in Feist Publications, Inc. v. Rural Telephone Service Co[325] pointed out that originality must possess an independent creation and a modicum of creativity. Equally, in India, the Supreme Court in Eastern Book Company v. D.B. Modak[326] adopted the standard of a modicum of creativity, and the traditional "sweat of the brow" doctrine was rejected. These values assume the existence of human agency. Nevertheless, when an AI model alone creates a poem, painting, or piece of music, based on an enormous training set, the human input can be indirect or insignificant. This brings out the main question of doctrine: can a machine-made work qualify under the demands of originality, and who will be the author?

The authorship issue has already become a part of judicial language. In the United States, the Copyright Office denied registration to those works that were entirely generated by AI[327], and courts have affirmed that copyright exists in works that are generated by human beings. Other jurisdictions have done the same thing and strengthened the anthropocentric basis of the copyright law. However, in other countries, e.g., the United Kingdom, computer-generated works receive only partial statutory protection, and authorship is attributed to the individual who put the required conditions of creation in place. However, even this strategy is being challenged because modern AI systems have a certain level of autonomy, which is more than can be imagined by legislators.

In addition to authorship, AI is a problem at the input side, i.e., the utilization of copyrighted resources to train machine learning models. Generative AI systems are generally trained using large collections of text, images, music, and audiovisual data, most of which have copyright. This raises questions about infringement, fair use, and the data mining exemption. The conflict between creators and innovations is evidenced by the legal proceedings in the United States and policy discussions in the European Union. The Copyright in the Digital Single Market Directive of the European Union provided certain exceptions in the area of text and data mining, but they are debatable in situations when the holder of the rights demands the possibility of opting out or compensation.

The matter is of particular concern in the Indian context due to the emerging digital economy in the country, as well as its dual investment in the interest of innovation and safeguarding of creative labor. The Copyright Act, 1957, was passed in a non-digital era and later amended to keep up with the technological changes, such as digital broadcasting and the rights of performers. Nevertheless, it does not specifically cover the case of entirely autonomous AI-generated works. Section 2(d)[328] describes the meaning of the author as it pertains to

[325] *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991).
[326] *E. Book Co. v. D.B. Modak*, (2008) 1 S.C.C. 1 (India).
[327] U.S. Copyright Office, *Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence*, 88 Fed. Reg. 16,190 (Mar. 16, 2023).
[328] Copyright Act, 1957, No. 14 of 1957, § 2(d) (India).

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computer-generated works as the individual who has brought the work into being, but the application and meaning of the same is not clear in the case of more sophisticated machine learning systems. With India now becoming a world technological centre, transparency in this field will be paramount to legal and economic stability.

Besides, AI-generated works provoke more general normative issues. The copyright law is not just a technical structure; it reflects the equality between the private and the public interest. The copyright of the AI-generated works can contribute to over-protection of the copyright and monopolization of machine-created content, and erosion of human creativity. On the contrary, a total protection denial can de-incentivize AI innovation and cause commercial uncertainty. The policy dilemma is deciding whether the purposes of copyright to foster creativity, compensate work, and further dissemination are enhanced or compromised by extending protection to AI outputs.

The given research paper analyzes the effects of Artificial Intelligence on the copyright law based on the doctrinal, comparative, and policy analysis. It begins by examining the conventional basis of copyright, the element of originality, and authorship. It subsequently examines the problem of AI-produced works and AI training practices, referring to the case law and legislative changes in the countries, including the United States, the United Kingdom, the European Union, and India. Current controversies on ownership models, liability systems, and reforms are also assessed in the paper. Finally, it claims that even though the current copyright principles have had a certain ability to address the problems of AI-related conflicts, a measured and progressive legislative reaction is needed to ensure the sanctity of copyright law in the era of intelligent machines.

The Philosophical underpinnings of copyright.

The copyright law has its philosophical grounding in general theories of property, personality, work, and social welfare. It is important to understand these theoretical justifications, first of all, before examining how Artificial Intelligence (AI) upends the framework of copyright. The copyright is not merely a statutory right, but a normative promise about creativity, property, and the relationship between the individual and society.

The labor theory of property is one of the oldest and most vital justifications of copyright, which was closely linked to John Locke[329]. Locke had believed that people attain property rights by combining their labor with resources in the common field. When applied to copyright, this theory holds that when an author invests his/her intellectual effort in an original work, the work becomes the author's property because it reflects that effort. Copyright protection is, therefore, a natural right-rewarding and protects the fruits of intellectual labor. Nevertheless, the moral restriction that Locke also set consisted in the fact that appropriation is only allowed as long as there is enough and as good left to the rest. Such a limitation is inherent in the balance between the private property in copyright and the public domain.

While related, a conceptually distinct approach is the personality theory, most famously linked to Georg Wilhelm Friedrich Hegel[330]. Hegel argues that property is a continuation of the personality as well as the self-expression. Novels, music, and paintings are creative works that do not simply result from labour but from the personality of the creator, the will, and independence. In this sense, copyright safeguards the moral and personal relationship between the work and the creator. This philosophical basis is also especially evident in civil law systems, which acknowledge so-called moral rights, such as the right of attribution and

[329] Peter S. Menell, *Intellectual Property: General Theories*, in Encyclopedia of Law and Economics (Boudewijn Bouckaert & Gerrit De Geest eds., 2000).
[330] Stanford Encyclopedia of Philosophy, *Intellectual Property* (entries on personality theory justification).

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the right to integrity. These rights underline that the expression of creativity has personal value over monetary worth.

Unlike natural rights and personality-based theories, the utilitarian theory presents a more practical justification[331]. The utilitarian approach, which is influenced by the works of Jeremy Bentham, John Stuart Mill, and others, perceives copyright as a tool to foster the maximum good for the maximum number of people. According to this theory, copyright is not a natural right but a policy instrument to encourage creativity and distribution. Allowing the holder of the copyright to enjoy the exclusive right over the work during a finite time, society makes investment in creative production more viable within the society, and ultimately, the works are put into the public domain. The instrumental logic is manifested in the constitutional foundation of copyright in such jurisdictions as the United States, where copyright exists to encourage the advancement of science and the useful arts.

The economic incentive theory is also another theoretical approach that perceives copyright in light of market efficiency[332]. Creative works are public goods: they are non-rivalrous and can be easily copied. In the absence of legal protection, creativity will not readily have an adequate monetary benefit to create works since another group can copy and misuse them. Copyright is one solution to this market failure, bringing temporary monopolies, thus extending the creative industries' capability to replenish the investment of creators.

Collectively, these philosophical underpinnings demonstrate that copyright has assumptions of human creativity, intentionality, and moral agency. Labor theory follows a set of presumptions of human work; personality theory follows a set of presumptions of emotional and intellectual attachment; utilitarian theory takes into consideration the incentive of human innovation; and the economic theory examines market failures concerning man. These premises are directly challenged by the creation of works by AI. When creativity is not created alone by humans, it is unclear where a normative foundation of the right to exclusive privilege is gained. Therefore, it is necessary to reconsider the philosophical roots of copyright to determine whether traditional arguments can apply to machine-produced works or if these theories must be rethought for the AI era.

Human Authorship of Requirements.

A. Judicial Recognition of Human Authorship.

The copyright law has always been grounded on the belief that authorship is human nature. The US courts have been steadily using the term original works of authorship to presume the intellectual creation by a human being.[333]

This principle was affirmed in the case of the Burrow-Giles Lithographic Co. v. Sarony.[334] When the U.S Supreme Court also confirmed the protection of the copyright of a photograph on the ground that the photograph represented the intellectual conception of the photographer, the creative composition, and the artistic judgment. The Court restated that the work was created because it was the product of human creative decision-making as opposed to being simply a duplication of reality.

The interpretation of the copyright that is human-centered was also affirmed in Naruto v. Slater.[335]A case involving a monkey that was in the Ninth Circuit of Slater saw the monkey have the potential to enjoy the benefits of a photo that it took and was considered to own the copyright of the photo. The court made a ruling according to which animals are not entitled to statutory standing in the Copyright Act, and in this regard, the claim of copyright belongs to human authors. Although it was not an AI case, but an animal case, its arguments have become prominent in AI arguments. As

[331] Neil Wilkof, *Theories of Intellectual Property: Is it Worth the Effort?*, 9 J. Intell. Prop. L. & Prac. 257 (2014).

[332] Peter S. Menell, *Intellectual Property: General Theories*, in Encyclopedia of Law and Economics, pp. 129–188 (Boudewijn Bouckaert & Gerrit De Geest eds., 2000).

[333] *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345–47 (1991).

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

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

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mentioned in the case, the Copyright Act presumes that authors are human beings with a right and a duty to possess a copyright.

Administrative practice still supports this interpretation. The U.S. copyright office has, on multiple occasions, denied registration to the works created by artificial intelligence systems without a human input of notable significance to the same work.[336] It becomes clear through its advice that copyright only provides protection to the fruit of human intellectual labour, and not to the work of a machine that is operated independently. The need for human authorship in the United States judicial history and administrative decision-making policy is very strong and entrenched together.

B. United Kingdom Approach

In the United Kingdom, a slightly different statutory model is adhered to. Under that section, in the Copyright, Designs and Patents Act 1988 section 9(3), It is stated that where the computer-generated work lacks a human author, then the author shall be a person who makes the arrangements that result in the creation of the work.[337] This provision appears to accept the fact that it was non-humans that were created, although the authorship is of human beings.

The provision was, however, passed when computer programs were deterministic tools that executed a set of instructions. These generative AI systems are very much autonomous, and outputs are also not specifically what programmers or end users intended them to be. That it is the developer who makes the necessary arrangements in such cases is not very clear in the legal text, as is what the end user who inputs prompts, or rather, the corporate body that implements the system. As the AI systems get more advanced, the reasonability of such a legislative fiction is questionable.

C. Indian Position

The Indian copyright law is also humanistic. The definition of author in literary, artistic, musical, and dramatic work is furthered in the Copyright Act, 1957, in a manner that assumes that the author is a human being.[338] The Act has an allusion to the computer-generated works, but it does not exactly address the entirely autonomous AI systems. The Indian courts have continuously been concerned with originality, which is anchored on human capability and discretion. In the Eastern Book Company vs. D.B. Modak case, the Supreme Court of India adopted a skill and judgment test in which the usage of human intellect surpassed the mere physical effort.[339]

At present, in India, the established law explicitly lacks a particular statutory provision that deals directly with the autonomous AI-generated works. This may then require that the Indian courts have to be creative in interpreting the provisions available, or they wait till reforms are made in the legislation. The absence of clear direction gives the creators and developers, as well as investors of the fast-growing digital economy in India, uncertainty.

Artificial Intelligence and Novelty.

Originality is the sine qua non of copyright protection. In Feist Publications, Inc. v. Rural Telephone Service Co., the U.S Supreme Court expounded that the originality should be independently created, and that it must possess a modicum of creativity.[340] It is a low criterion that must have some human intellectual input.[341] The Indian jurisprudence, particularly in the case of Eastern Book Company v. D.B. Modak, is not as lenient and has more rigour in the skill and judgment approach under which the doctrine of prior sweat of the brow is denied further application.[342]

[336] U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* § 306 (3d ed. 2021).
[337] Copyright, Designs and Patents Act 1988, c. 48, § 9(3) (UK).
[338] Copyright Act, 1957, No. 14 of 1957, § 2(d) (India).
[339] *Eastern Book Co. v. D.B. Modak*, (2008) 1 S.C.C. 1, P.p 32–42 (India).
[340] *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991).
[341] *Id.* at 345–46.
[342] *Eastern Book Co. v. D.B. Modak*, (2008) 1 S.C.C. 1, P.p 32–33 (India).

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The originality test, as developed by the European Union, the Court of Justice of the European Union, has come to entail that the work should be an artistic expression of the intellectual work of the author.[343] This theory is a direct reference connecting originality to the intellectual character of the author.[344]

These standards are complicated by the works created by AI. AI products can be produced autonomously on the one hand and may be imaginative in their shape and composition.[345] On the contrary, they lack intellectual resolve or the calculated outpouring of human beings. Should such originality be interpreted as meaning that it must be through the human mind, the work produced by AI may not pass the test. Conversely, in one of the cases where originality merely requires independent production and creative expression regardless of the origin, such works can be qualified.

Such a paradoxical situation in the doctrine proves the inadequacy of traditional principles of originality in the confrontation with non-human creators. The law must address the problem of whether originality is an objective quality of a work that is objective or the quality that is directly associated with human cognition.

Data on Training and Infringement of Copyright.

In addition to authorship and originality, AI creates serious issues about the use of copyrighted content to train machine learning models. AI systems are usually trained using large amounts of data containing copyrighted text, images, music, and audiovisual data. In the common copyright law, the infringement of the copyrighted material is the reproduction of the copyrighted content in an unauthorized manner.[346]

In America, the developers of AI often use the doctrine of fair use to defend massive data ingestion. In Authors Guild v. The Second Circuit, Google, Inc., considered that the digitization of millions of books to enable them to be searched involved transformative use, which did not replace the original works and therefore, fair use was a matter of fact.[347] The AI companies state that the training models based on copyrighted content are also transformative and have a new technological use.[348]

The European Union has responded to this problem at the legislative level, enacting the Directive (EU) 2019/790 on Copyright in the Digital Single Market, which presents certain exceptions on text and data mining.[349] Nevertheless, the right holders are still in the position to make an opt-out choice under some conditions, especially when applied in commercial purposes. Continuing legal actions against the developers of AI in various jurisdictions will determine the outlines of the allowed training regimens to a considerable extent.

AI-Generation Infringement Liability.

In a situation where the outputs produced by AI systems are similar or close to the original copyrighted works, it becomes tricky to decide if the systems bear any liability. The copyright law has historically acknowledged direct, contributory, and vicarious liability.[350] But AI systems put the two worlds together in terms of the tool and actor.

In Sony Corp. v. Universal City Studios, the U.S. Supreme Court stated that technology providers are not liable as contributory infringement when they can effectively serve other substantial non-infringing purposes.[351] AI developers can invoke the *Sony* safe harbor

[343] Case C-5/08, *Infopaq Int'l A/S v. Danske Daghlades Forening*, 2009 E.C.R. I-6569, p.37.
[344] Case C-145/10, *Eva-Maria Painer v. Standard VerlagsGmbH*, 2011 E.C.R. I-12533, ¶ 88.
[345] U.S. Copyright Office, *Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence*, 88 Fed. Reg. 16,190 (Mar. 16, 2023).
[346] 17 U.S.C. § 106(1) (2018).
[347] *Authors Guild v. Google, Inc.*, 804 F.3d 202, 214–25 (2d Cir. 2015).
[348] Id. at 214–16.
[349] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 Apr. 2019 on Copyright and Related Rights in the Digital Single Market, 2019 O.J. (L 130) 92.
[350] See *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 930–37 (2005).
(Discussing contributory and vicarious liability in copyright law.)
[351] *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 442 (1984).

principle by demonstrating their systems have substantial non-infringing uses. However, AI systems are not similar to passive recording systems since they are capable of producing expressive content by themselves.

A negligence model, which mandates developers to take reasonable precautions against infringement that can be foreseen, might provide a way to have a balanced framework.[352] This would be a way of shunning strict liability and responsible innovation.

Artistic Integrity and Moral Rights.

The right of attribution and integrity of the author is preserved by the moral rights.[353] Moral rights are to be recognized in the Berne Convention regardless of economic rights. The rights are based on the personal relationship between the author and the work.[354]

The works created by AI put this premise into question since machines are not personalities, dignified, or reputable. Moreover, AI can replicate unique artistic styles, and this can pose a threat of reputational damage or misrepresentation.[355] Style in itself is not covered by the copyright law, but the excessive copying can be subject to ethical and policy issues of fairness and artistic integrity.

The United States maintains a human authorship requirement and depends on fair use to handle AI training controversies intensively. The administrative development proves that the works, which do not involve human creations, cannot be registered.

The United Kingdom has a statutory provision of computer-generated works, but this is a partial solution, as it is not clear in the situation of generative AI systems.[356]

The European Union provides a balance between the aspects of innovation and protection by offering specific exceptions to text and data mining.[357]

In India, on the other hand, no specific set of AI-generated-work-related reforms is established so far, and the courts have to interpret preexisting ones with a reflection of technological change. Legislative clarification or judicial clarification will be necessary to guarantee doctrinal consistency.[358]

Policy Recommendations

An effective reform regime must clearly define a meaningful human creative contribution as a condition for protection. When it comes to legislatures, AI-assisted works must be considered where human creativity is still at the center of the work, whereas AI-autonomous works must not be considered. Compulsory transparency of AI-generated material may increase transparency and responsibility.

AI training dataset licensing would guarantee right holders' compensation, and innovation would not be compromised for this reason. The standards of liability are to be adjusted so that there is fault and foreseeability, and no strict liability is taken into consideration. Last but not least, there is a need to harmonize international regulations involved to avoid regulatory fragmentation in an international digital marketplace.

Conclusion

The essence of AI threatens the doctrines of the copyright law. Autonomous generative systems are putting further pressure on the human authorship requirement, standards of originality, moral rights, and the doctrine of infringement. A total denial of protection for AI-generated works might maintain copyright's conceptual integrity but deter technological investment. On the other hand, granting protection could erode fundamental copyright principles while safeguarding corporate interests.

[352] See *Groksster*, 545 U.S. at 936–37.
[353] 17 U.S.C. § 106A(a) (2018).
[354] Berne Convention for the Protection of Literary and Artistic Works art. 6bis, Sept. 9, 1886, as revised at Paris July 24, 1971, 828 U.N.T.S. 221.
[355] *Painer v. Standard VerlagsGmbH*, Case C-145/10, 2011 E.C.R. I-12533, ¶ 88.
[356] Copyright, Designs and Patents Act 1988, c. 48, § 9(3) (UK).
[357] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 Apr. 2019 on Copyright and Related Rights in the Digital Single Market, arts. 3–4, 2019 O.J. (L 130) 92.
[358] Copyright Act, 1957, No. 14 of 1957 (India).

The correct approach is not to negate existing principles, but to rebalance them. Copyright law can embrace technological change without compromising its fundamental normative undertakings through both judicious statutory clarification, balanced liability regimes, and global cooperation. Copyright can only be effective and legitimate in the era of Artificial Intelligence in the context of a purposeful legislative and judicial involvement.

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2. ***Eastern Book Company v. D.B. Modak***: An Indian Supreme Court case that rejected the "sweat of the brow" doctrine in favor of a "skill and judgment" test for originality.

3. ***Burrow-Giles Lithographic Co. v. Sarony***: A U.S. Supreme Court case affirming that copyright protects works resulting from human creative decision-making and intellectual conception.

4. ***Naruto v. Slater***: A U.S. court case (the "monkey selfie" case) affirming that statutory standing under the Copyright Act belongs to human authors, not animals.

5. **Authors Guild v. Google, Inc.:** A U.S. case involving the mass digitization of books, used to illustrate transformative fair use.

6. ***Sony Corp. v. Universal City Studios***: A U.S. Supreme Court case establishing that technology providers are not liable for contributory infringement if their products have "substantial non-infringing uses".

7. **Copyright, Designs and Patents Act 1988, Section 9(3)**: A United Kingdom statutory provision that attributes authorship of computer-generated works to the person who makes the arrangements for their creation.

8. **The Copyright Act, 1957, Section 2(d)**: An Indian statutory provision defining the author of a computer-generated work as the individual who causes the work to be created.

9. **Directive (EU) 2019/790 on Copyright in the Digital Single Market**: A European Union directive that provides specific exceptions for text and data mining.

10. **The Berne Convention**: An international treaty that recognizes and preserves the moral rights and artistic integrity of human authors.