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FROM HUMAN CREATOR TO VIRTUAL ARTIST: ANALYZING THE CHALLENGES OF GEN AI ON EXISTING LAWS GOVERNING COPYRIGHT

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I. ABSTRACT

With the development of artificial intelligence (AI), which makes it possible for robots to carry out jobs that were previously only possible for humans, information technology has rapidly changed on a worldwide scale. Natural language processing-powered tools like virtual assistants serve as examples of this change. Simultaneously, generative AI (GenAI) has become a potent force in artistic creation, posing difficult legal issues with regard to intellectual property, especially copyright.

The *"output problem,"* or whether AI-generated works are eligible for copyright protection, is a major concern. Despite being created by humans, AI's ability to be creative on its own defies conventional frameworks that exclusively acknowledge human authorship. This raises questions about who owns the rights: the user, the programmer, or neither? When AI systems use pre-existing copyrighted content in their creation processes, the problem becomes much more complex.

WIPO and other international organizations are actively investigating these issues in order to create appropriate regulatory strategies. In order to evaluate the burden GenAI places on copyright law, this article engages with international legal discourse and judicial viewpoints. It draws attention to the shortcomings of existing theories on originality and authorship as well as the more fundamental normative worry that widespread algorithmic replication could weaken artistic originality. In the end, it makes the case for a fair structure that encourages creativity while maintaining originality.

II. CONFLICT : TRADITIONAL COPYRIGHT PRESUMPTION AND AI

Computers are becoming independent systems rather than just instruments in the link between technology and creativity. Earlier computer-generated works relied on explicit programming, resembling instruments like a brush or canvas. These days, machines can learn from data, spot patterns, and produce outputs with little help from humans, thanks to machine learning (ML), a subset of artificial intelligence. This development raises an important legal question: how and by whom should authorship and copyright protection be acknowledged in such independent creative processes?[1]

Problem of 'authorship'

Current copyright governing rules, globally, lay strictly on the founding presumption that only human beings capable of having personal creative input can be authors. Legal experts, in support of this, maintain that AI cannot be recognised as a legal subject with the necessary authority or accountability[2]. As creativity and invention majorly rely on the contribution of 'human ideas', 'creativity', and 'understanding', the current stance is that copyright ownership for AI works should likely fall to the individuals responsible for the

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creation, operation, or control of the AI[3].

There has to be authorship which implies human made. However, since AI can now generate original works without traditional human intervention, there is a clear need to expand the definitions of authorship and copyright ownership. It essentially and absolutely needs to find

the right balance point by respecting human creators, acknowledging AI's innovative contributions, and including AI technology development for social good[4]. The question one may stumble upon is AI is a robot and so if something is being essentially created by AI even with human prompts can we permit copyright protection?

Courts, to this question, universally have, taking the opposing stance, viewing the author as a 'natural person' who translates the idea into an expression on a fixed, tangible medium entitled to copyright protection. Hence, what courts and copyright protection care about is when something gets fixed into a tangible medium, the established law is that one does not get protection just for the ideas. So if we consider AI as a black box and an individual user does give prompts that are their own, but one does not control the output created, one possible argument could be that just because one gives prompts it does not make them the author.

There are many such possible arguments similar or contradictory to the above and have been debated since. These debatable questions centre around: Do the AI programmers who develop the algorithms and models hold the copyright to the resulting works? Can the AI itself be legally recognized as a copyrightable entity or author? So far there has been no definite, clear answer to this. Yet this remains concerning as the situation with AI is going to get more complex in the future.

Many academicians and scholars in this field hold a mixed perspective on this issue[5]. According to the traditional view, many argue that non-human subjects don't truly think independently. They believe that most AI still relies on pre-set algorithms and data controlled by humans. However, an argument, in contradictory, is that in current reality of AI this view is slowly getting outdated due to the fact being that AI technology, such as for example, Tencent's news-writing AI Dreamwriter, can now perform complex tasks like selecting content and composing text, producing articles with almost no creative human input. An evident case was that of the generated news articles on Rio Olympics instantly using data, without humans having to arrange the words[6]. This widening gap between law and technology carries serious risks for the creative industry as unregulated GenAI content would essentially fall into the public domain, free for anyone to use, causing the entire creative industry to shrink.

7

Another illustration is of Jason M. Allen's artwork, for which he requested the Colorado federal court to overturn the U.S. Copyright Office's (USCO) decision to reject copyright registration for his award-winning image, *"Théâtre D'opéra Spatial."* The work was created using the GAI tool 'Midjourney'. The U.S. Copyright Office rejected the application, pointing out 'insufficient human authorship'. While Allen argued that his

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In another example is the work of the artist given below, in the case of Thaler v. Perlmutter (2023), where the artist, Dr. Stephen Thaler, was denied copyright for his image, *"A Recent Entrance to Paradise,"* which he claimed was authored autonomously by his Creativity Machine, even though he owned the device. The court went on to say, *"The human authorship*

A Recent Entrance to Paradise (2012)
(AI-Generated Image, Publicly available)

8

With the aim to try and solve such issues, some experts, including scholar Jiming Yi, tried proposing a solution through *legal mimesis* (imitation). This approach suggests that AI should be formally designated as the author of its work by treating it as a juridical person (such as a legal entity like a corporation), affirming its '*de facto*' (in fact) authorship[9]. Crucially, the copyright itself would be exercised by the human subjects themselves, such as the developers/owners of the AI. This provides a dual benefit as it grants AI generated content with the necessary legal protection, while also ensuring that the economic returns and rights remain with the human subjects, thereby protecting the stable growth and interests of the broader creative market.

In countries with a common law tradition, such as the United States, several suits have concluded that copyright's purpose is to protect "mental labor and intellectual work," something

the courts require only a natural human to perform. This was evident when a U.S. court famously denied copyright protection to a monkey's "selfie" because the non-human subject lacked authorship and there was no human intellectual involvement in the creation[10]. Additionally, the U.S. Copyright Office mentioned with regards to "weaving process that randomly produces irregular shapes in the fabric", the resulting patterns are not protected because chance, rather than the programmer's creative direction, is directly responsible for the work[11]. If an AI generates artwork through randomness or through a self-learned behavior that the human user cannot claim to have guided, constrained, or intended, that lack of human direction means the work cannot be attributed to the programmer.

Similarly, in countries following civil law like the European Union, the highest court has clarified that a protected work must be the author's "own intellectual creation," which is linked to the author's personality[12], a concept, as mentioned before, mechanically produced that AI cannot fulfill. Courts in China have also explicitly rejected AI as an independent author, explaining that the country's copyright law only allows natural persons or legal entities to hold authorship. Noteworthy cases in the region include, one of the above mentioned Dreamwriter AI, the case of *Tencent v. Yingxun* where the court denied AI Dreamwriter authorship because it failed to meet the required legal and objective standards[13]. Following this, in *Li v. Liu*[14] the court concluded that only natural persons or legal entities may hold authorship under the PRC Copyright Law.

a. The Originality Paradox

The emergence of AI-generated works has complicated the idea of originality. Since AI often creates content by analyzing and combining vast amounts of existing data, patterns, and algorithms, a fundamental question arises as to what extent can these works be considered original if they majorly modify or remix existing elements? The challenge posed by AI, worth talking about, is the erosion of the traditional concept of originality[15]. Copyright protection has long been reserved for works that demonstrate a minimal level of human creativity, intent, and decision-making. AI-generated works, however, muddy

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this standard because their creation process is rooted in algorithmic synthesis. Hence, the resulting legal vacuum requires stakeholders to re-examine and clarify the concept of originality in copyright law.

From earlier times itself, courts viewed mere technical reproduction or mechanical application of software, without substantial human creative input, as insufficient such as in the case of *Bridgeman Art Library v. Corel Corp.*[16], where the court ruled that photographic reproductions of public domain artworks were ineligible for copyright protection. The reasoning was that these were "mere mechanical copies" lacking the required creative input. Simply digitizing or reproducing an existing image, even using skilled techniques, does not automatically grant new copyright. For AI, this precedent suggests that if an AI output is seen as a mechanical derivation from its training data, it may also be denied protection unless significant human creativity is injected into the process.

b. Assigning Rights in the Algorithm

Psychologists usually define creativity as the generation of a novel product or service that is simultaneously judged to be appropriate, useful or valuable by a knowledgeable community, while also eliciting a measure of surprise, beauty, or amazement[17]. Computational creativity systems, employing advanced algorithms such as genetic algorithms, simulated annealing, and deep neural networks, are now generating artifacts that meet these demanding criteria, suggesting a shift in how we perceive and think of 'innovation'. This was pointed out in the Eleventh WIPO Meeting on AI and Intellectual Property[18] focused on the need for a strong copyright infrastructure to manage copyrighted works. In the meeting, it was stated that this system is important because it helps protect creators fairly while still allowing for new innovation to grow. Also as Professor Sheena Iyengar, from Columbia Business School, said,

"Artists shouldn't fear AI replacing their work or diminishing the value of human creativity. AI can be a powerful tool, enabling human-AI collaborations to emerge as a distinct art form that elevates, rather than erases, the unique role of human talent."[19]

To try and untangle this challenge, the performance of these algorithms can be assessed using tests suggested by scholars such as researchers, like Mark Riedl, similar to the Turing test, whereby a machine is deemed "creative" if its outputs are viewed as such by human observers. Several examples have captured public attention by passing this creativity threshold in their

respective domains. Google's Magenta system, for instance, utilizes Generative Adversarial Networks (GANs) to "listen" to vast datasets of human-authored music, building a model of composition from which it then samples to produce novel and aesthetically pleasing scores. Another example is that of IBM's Chef Watson which operates by modeling the "hedonic psychophysical properties" of ingredients, how humans perceive tastes to generate surprising yet flavorful new recipes, hence, demonstrating creativity in a culinary domain[20].

An important point to note is that these creative machines do not always operate in isolation. While some systems, such as those that generate business news or basic poetry, can function independently with minimal human oversight, the most innovative and profitable results often arise from semiautonomous collaboration. Chef Watson exemplifies this partnership, where its output is refined and enhanced by human experts. The celebrity chef James Briscione lauded Watson as an "innovation partner," crediting the system with forcing him to approach ingredients without ingrained biases.

This human-machine synergy is critical in two distinct areas, as suggested by scholar Margaret Boden[21]. Firstly, deep human expertise is necessary to define and iteratively refine the conceptual space that the creative system will explore. The complexity and evolving nature of a

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problem domain often require human experts to continually adjust the parameters and procedures of the computational model. Secondly, human collaborators are essential for incorporating knowledge about human values and tastes, often synonymous with customer preferences. This tacit knowledge is exceedingly difficult to express in computational form. Expert chefs enhanced

Chef Watson's recipes by infusing them with their profound understanding of cooking methods and customer palates.

[MARIO KLINGEMANN, from the series Neural Glitch, 2018 (AI-Generated Image, Publicly Available[22]).]

As far as creative work is concerned Mario Klingemann, a self-described "artist and a skeptic with a curious mind," stands at the junction of computational creativity and the legal challenges of generative AI. His practice, which consists of a wide variety of advanced tools including neural networks, deep learning, algorithms, and generative art, is driven by the interest in AI's capacity to produce genuinely surprising new images and perspectives.

Klingemann's acclaimed series, "Neural Glitch" (2018), few works which are shown above, serves as a critical case study for debates on authorship and autonomous creativity. This

technique essentially involves deliberately manipulating Generative Adversarial Networks (GANs), a class of machine learning system trained to create new data, by introducing systemic "glitches" into their complex neural architectures. These intentional alterations cause the models to misinterpret the input data in aesthetically unpredictable ways. The resulting creations, which he interprets as "glimpses of autonomous creativity," exhibit a coherent style across different inputs when transformed by the same glitched model.

This suggests that the expressive core of the work stems not from the traditional human act of direct execution, but from the systemic error, an event intentionally provoked but autonomously executed by the machine. The artist's real creativity wasn't in making the final piece, but in designing and restricting the AI system itself. They deliberately set up the computer rules (the 'algorithmic constraint') to force the machine to produce unexpected and interesting results. When an artist programs an AI, they are not drawing the final image rather they are creating the rules or "algorithmic constraint" that guides the machine. Therefore, even when the AI executes the final work, the human is still considered the author because they designed the underlying creative process.

Another interesting illustration of this technological shift is the creation of "The Next Rembrandt" by J. Walter Thompson Amsterdam[23] in which a deep learning algorithm was trained on a massive dataset of all 346 of Rembrandt's known paintings, analyzing intricate elements such as geometry, composition, brushstroke patterns etc. to generate a completely new, "typical" Rembrandt portrait, a Caucasian male, 30-40 years old, wearing black, with a hat, and facing right, which was initially a digital image comprising 148 million pixels. The final step used an

advanced 3D printer to render the image onto a canvas which applied 13 layers of UV ink and, critically, utilized a "height map" (derived from 3D scans of original Rembrandt works) to precisely mimic the exact texture and thickness (impasto) of the master's brushstrokes, making

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the final work a result of AI-driven analysis and technological advancement rather than of traditional human artistry.

24

However, traditionally, as mentioned earlier, the ownership of copyright in computer-generated works was not in question because the program itself was seen as a 'tool' that supported the creative process, very much like a pen and paper. An interesting analogy to make is with the case of *Burrow-Giles Lithographic Co.*[25] where the court ruled that a camera, even a simple one, was merely a tool used by the photographer to express a creative idea. The photographer's choices (lighting, posing) made the work copyrightable, not the camera itself. Just

as the photographer uses the camera as a medium to express their vision, the artist uses the AI as a medium to express their systemic design or idea[26]. By classifying the AI as a tool, the law can bypass the problem of AI needing a "real will" or "consciousness," allowing the human who provided the initial creative direction and set the constraints to claim ownership over the final artistic output. This ensures that human effort and innovation in the AI space continue to be protected and incentivized.

On the other hand, scholars have also made the argument that Machine Learning algorithms break this parallel because the machine is no longer merely a conduit for human expression. They ask the question: Should the law recognize the contribution of the programmer (who built the system) or the user (who activated it)?

The crux of this ambiguity lies in the diminishing role of the user in the creative output of advanced AI. Examples of this autonomy, such as a neural network being taught to compose text in the style of Shakespeare or generate Wikipedia articles, demonstrate the program's capacity to produce surprising results with deep stylistic and structural coherence, independent of continuous human direction. Given the varying degrees of user input possible with AI, some legal academicians suggest that the issue might be manageable through a case-by-case analysis focused on the quality of the user's contribution.

For instance, the application of a Shakespeare-trained neural network to generate stylized text moved beyond simple replication to explore creative synthesis[27]. The network, trained on the complete texts of King Lear, Othello, and Much Ado About Nothing, learned to produce

free-form text in the Shakespearean style, requiring only a 100-character initial sequence for activation. Initial trials confirmed the network's ability to continue existing Shakespearean dialogue and generate novel scenes based on specified characters and settings. Although much of the generated text remained syntactically archaic and obscure, certain modern-context-related words like "save," "honest," "thief," "master," "traitor," and "deceive" emerged naturally, suggesting the system was not merely mimicking style but was capable of infusing thematic relevance. This finding indicates the potential for such AI systems to act as creative linguistic filters, perhaps "improving" modern prose by adding context-fitting archaic texture, even if the practical utility in legal drafting remains questionable.

The English case of *Nova Productions*[28] provides a precedent for this approach where the Court

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of Appeal examined the authorship of a computer game, concluding that a player's input was "not artistic in nature" and contributed "no skill or labour of an artistic kind." Applying this reasoning to GenAI, it can be said that if the user merely presses a button and the AI does everything, their contribution might be deemed non-artistic and insufficient for authorship. However, if the user provides extensive parameters, curation, or iterative feedback that guides the AI's output in a truly expressive way, they might be granted authorship.

Having navigated the immediate technological challenges by AI's rapid generative capabilities, such as its blurring of originality, questioning the traditional ambit of 'authorship' etc., the discussion must now move to the philosophical and legal defense of traditional copyright, which is as essential as the former, to understand the real complexities of the issue. This next segment would dissect the inherent tension between rewarding automated distinctiveness and upholding the established doctrine that confers protection based on the

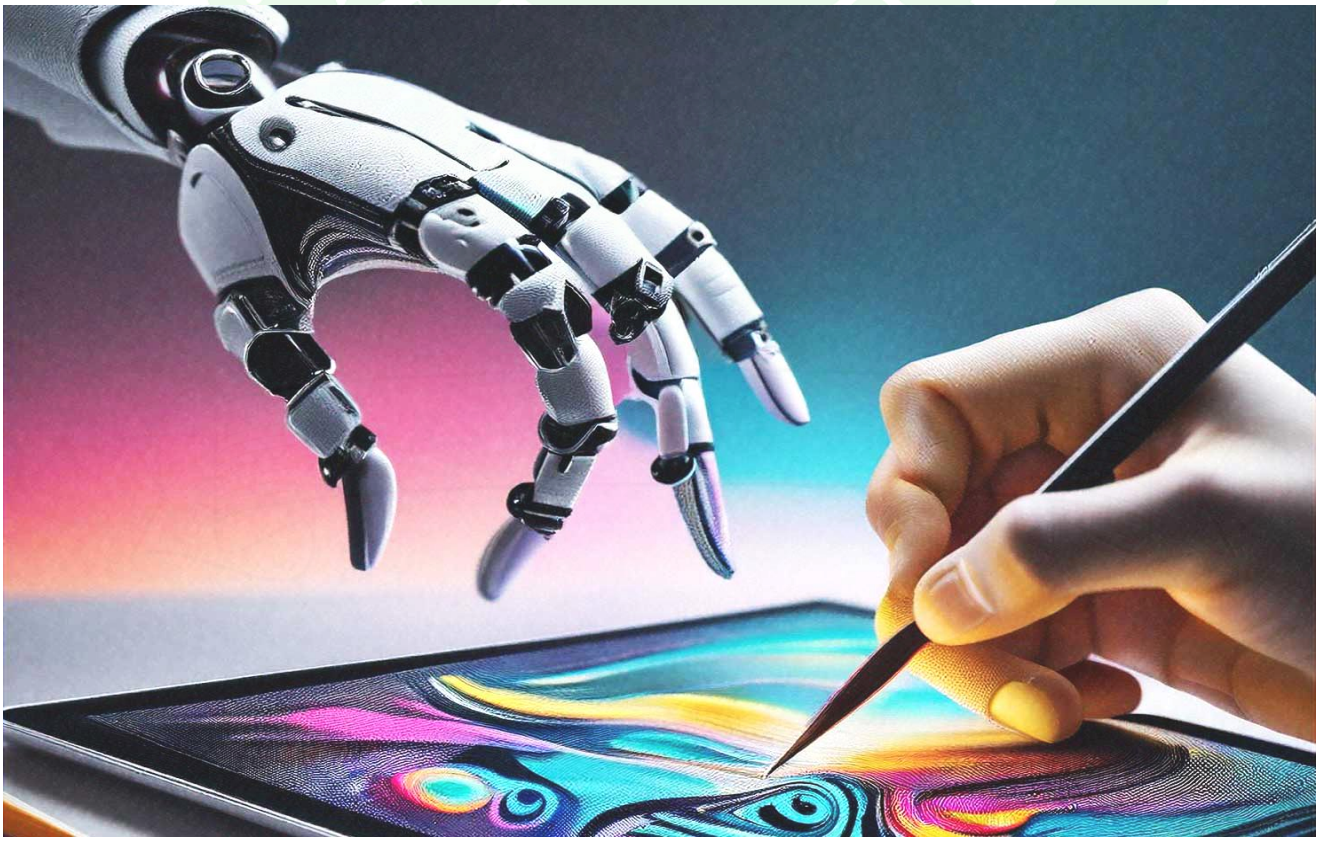
[28] *Nova Productions v Mazooma Games* [2007] EWCA Civ 219.

individual's intellectual autonomy and moral right in their creation. We transition, therefore, from assessing *how* AI disrupts the system to arguing *why* the system, founded on the human creator, must be defended against the existential threat of machine authorship.

III. FROM THE OTHER SIDE OF THE COIN [29]

The ethical as well as financial essentiality to protect the uniqueness of artistic expression principle, which emphasizes the creator's uniqueness and other factors, has consistently served as the basis for legislation governing copyright.[30] The basis of safeguarding copyright is this concept of distinctiveness, which lies at the nexus of creativity. It guarantees that artistic creations are expressions of genuine talent, labour, and discernment rather than just commercially produced copies.[31] The evolution of copyright law in India and other countries

shows a consistent attempt to define



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innovation as a concept imbued with intellectual autonomy as well as individual authorship rather than as originality under the umbrella of a patent.[32] The purpose of this kind of protection is to preserve the distinctive character of works in the face of the growing field of transformative and replica art.

Through the introduction of a form of craftsmanship, that questions conventional ideas of creativity, originality, and distinctiveness, the rise of generative artificial intelligence (AI) disturbs this balance. Sometimes training on huge amounts of previously published works, Gen AI systems generate results that are quantitatively calculated restorations in lieu of autonomous creations.[33] Because these models lack the detached awareness that traditionally underpins writing, they, as a result, produce results that replicate the verbal identities of authors by learning from human-constructed structures for formatting, arrangement, and semantic connection.[34] As such, it grows increasingly more difficult to distinguish both replication and re-creation. It is possible to characterize this phenomena as the *"algorithmic erosion of distinctiveness"* since, despite their apparent originality, the outputs often internalize and reproduce stylistic fingerprints that are present in the training data.[35]

This deterioration indicates a fundamental shift in the definition and understanding of originality rather than just a matter of infringement. Instead of using deliberate authorship, generative AI produces via stochastic recombination, thus confusing the terms copied and unique. The recognition and uniqueness that ip seeks to protect are deliberately undermined by

AI, which multiplies stylistic and expressive varieties.[36] This process, which is appropriately referred to as *"ambient plagiarism,"* means that, instead of overt stealing, distinctiveness is progressively erased by statistical copying. This paradigm, in which innovation is both decentralized and anonymized, is difficult for traditional legal systems, which are based on individual choice and moral authorship, to confront.[37] The conceptual underpinnings of copyright law, notably the theory of originality, are becoming increasingly unstable as AI's ability to scale comparable to human production increases, necessitating an immediate normative review.[38]

a. Philosophical Approach

The fundamental premise that artistic representation originates from a distinct awareness of an intellectual subjectivity whose creative act is the source of novelty, forms the groundwork for contemporary copyright jurisprudence, This theoretical foundation is based on the concept that could be also called a *"metaphysics of distinctiveness".* This is a notion that inventiveness involves alteration, an emerging event that allows for the introduction of something new into the universe.[39] However this philosophy fails in the era of generative AI. The computational system generates results via probability mixtures of previous expressions rather than through impulse or introspection. Rather than being an act of genesis, innovation is now an interdisciplinary computation, a constant, pattern-based reworking of cultural content devoid of subjectivity or origin.[40]

The initial stage of this issue was anticipated by Walter Benjamin in his thoughts on mechanized replication. In a 1936 piece, Benjamin made the case that art's aura , its singular existence throughout space and time degrades as a result of its mechanical repeatability.[41] Generative AI exacerbates this issue. In contrast to the lens or printing machine, which still needed an original piece of work to replicate, the system does away with sources completely. In order to create artifacts that mimic inventiveness while yet being philosophically derived, it synthesizes novelty by recombining preexisting forms of culture.[42] In this way, creation no more involves disruption but rather recurrence; it involves emulation rather than origin. The loss of aura has progressed to the

loss of the source itself.

The philosophical framework of copyright must be reexamined in light of this change. Whenever invention is computerized and disseminated, distinctiveness, the artistic and constitutional basis of originality, becomes less coherent. Because every result is a statistically distinct variation within an endless spectrum of likeness, the computational field makes copying and creation incomprehensible.[43] The legal system that formerly linked human motivation to innovation now faces a situation in which output continues despite the lack of intention. In a technological world of communication, copyright's belief in independent authorship seems more and more out of proportion, a holdover from enlightened individualism.[44]

Bernard Stiegler's technological theory offers a crucial lexicon for comprehending this change. According to Stiegler, technological innovation serves as a supplementary retention

mechanism, exteriorizing human memory and facilitating cultural evolution.[45] Half However, this approach runs the risk of proletarianization and the automation-induced loss of creative expertise. Generative AI is a prime example of this risk since it externalizes both memory and imagination. With her autonomy constrained to choosing from options generated by machines, the human creator turns into an exhibitor of algorithmic possibility.[46] The logical self-understanding of humankind as the source of creation is eroded, in addition to creative originality.

b. Challenge of Algorithmic Creativity

Because human intellectual labor has traditionally been privileged by copyright safeguards in India, the advent of automated artistic autonomy raises complex juridical and normative issues. Copyright law relies around the basic notion that only those works that are unique and represent the creator's creative work are safeguarded. Despite not providing a precise definition of *"authorship,"* the Indian Copyright Act of 1957 bases uniqueness on the use of talent, discretion, and inventiveness. This conceptual stance was formerly shaped by the ruling in University of London Press Ltd, which maintained that uniqueness is the manifestation of the author's own effort and decision rather than novelty in thought.[47] By dismissing the antiquated *"sweat of the brow"* technique in favor of a *"modicum of creativity"* standard, the Supreme Court developed this understanding in Eastern Book Company, harmonizing Indian jurisprudence with

its constitutional obligation in safeguarding creative expression and not merely diligent compilation.[48]

This humanistic system's fundamental stability is currently in doubt, nevertheless. Generative AI systems, like OpenAI's GPT, or image-generation networks, like DALL·E, work independently to create layouts, images, and narratives with no involvement from humans. The development methods derivative, combined, and iterative make the concept of uniqueness more ambiguous. In these situations, the term "author" adopts a broad definition that includes data keepers, software developers, prompt developers, and even end users who edit outputs.[49] All of these softwares, however, do not possess the control that is typically necessary to be considered the author in legal terms.[50] As a result, there is a legal and ontological gap: creations occur, but there is no legally recognized creator.

This discrepancy is highlighted by comparative jurisprudence. The need for human intervention was reaffirmed in the US Copyright Office's Zarya of the Dawn ruling, which has repeatedly denied registrations for AI-generated works without human authorship.[51] Section 9(3) of the Copyright, Designs and Patents Act 1988, which grants ownership of digitally produced works to *"the person by whom the arrangements necessary for the creation of the work are undertaken,"* has also not been able to overcome judicial resistance in the UK to extending ownership outside the realm of

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human thought.[52] Although this clause ostensibly allows for AI, its hermeneutic vagueness leaves open the question of whether machine learning algorithms that

lack intellectual intent can be regarded as independent creators or lawful tools.[53] Regarding AI-authored outputs, the Indian legal system, which does not have a comparable statutory status, is even less assured.

The conventional copyright protections of distinctiveness are severely threatened by generative AI, which both parallels and surpasses the erosion issues that are well-known from trademark law. According to recent research, *"algorithmic erosion"* the general degradation of uniqueness that results when AI systems developed on massive data sets produce numerous similar results which imitate recognized fashions and forms at scale is how generative models infiltrate artistic disciplines rather than through deliberate copying.[54] The very *"individuality that forms [copyright's] moral and economic foundation"* is undermined by this mechanism, as the inventiveness of previous pieces becomes diminished by a deluge of algorithmically generated alterations that *"blur the boundaries of authorship and originality"* rather than by infringement in the traditional sense.[55]

As stated in a law review, *"generative artificial intelligence creates content through complex algorithmic processes, blurring the boundaries of authorship and originality,"* highlighting *"limitations of existing intellectual property law,"* who have historically relied on *"human authorship"* as a prerequisite for copyright. The paper's authors argue for a *"legal reassessment"* of copyright to tackle degradation rather than outright copying, emphasizing that

"such decisions highlight the contradiction between existing laws and the reality of co-creation involving artificial intelligence."[56]

These changes present serious constitutional and policy issues from an Indian point of view. According to Article 300A of the Constitution, copyright is an ethical privilege based on labour and individuality as well as a legal exclusivity.[57] Thus, the relationship connecting originality and humanity may be weakened if autonomous generating processes take the role of human authorship.[58] Furthermore, a strictly exclusive strategy which denies security to AI outputs may stifle innovation and investment given India's developing digital marketplace and the importance of AI in the creation of culture and technology.

IV. DERIVATIVE WORKS AND GEN AI CONTENT: TOWARDS A THEORY OF " SYNTHETIC DERIVATION"

Generative AI, trained on large datasets, produces outputs identifiable in the style of specific artists without exact replication. This challenges traditional copyright, which protects expression rather than style. By generating close substitutes that evade infringement yet capture a creator's economic and reputational value, AI risks eroding artistic distinctiveness. This "algorithmic degradation" highlights the need to rethink derivative work rights, integrating considerations of creativity, fair use, and moral rights in defining authorship and protection in the age of artificial origination.

a. Doctrinal Baselines

Reinterpreting, altering, or modifying a current piece is safeguarded in the US by the ability to produce "derivative works".[59] Copyrightable creativity in the recently created piece and the appropriation of protected material from the old are prerequisites for this right. Modern legislative and regulatory guidelines have strengthened two similar concepts which are concepts of originality and authorship with human touch. Content "generated by AI technology" which lacks personal artistic oversight is not protected as authorship in accordance with the U.S. Copyright Office's 2023 policy, contributions from humans must be specified upon registration.[60] Through practical comparison, comparable underpinnings exist

beyond the United States. Indian law grants exclusive rights to "adaptations" as well as other reproductions of a piece of writing,[61] but the Supreme Court maintains that solely the representation of a concept is protected; concepts, visualizations, historical data, motifs, or "styles" are not.[62] In the UK, "adaptation" is regulated by law, and when a significant portion of language is appropriated, its reproduction right is violated; plain style is not covered.[63]

These baselines show a disparity. The traditional derivative work rights does not extend to synthesized results that undermine a maker's marketplace by creating nearly identical creations in that individual's unique style if "style" is not protected and mechanical outputs are frequently not "derived" from significant portions of a single work.

b. Transformative Use After Warhol

By highlighting aim and substance in setting, particularly business replacement, the Supreme Court's ruling in Andy Warhol Foundation[64] limited the transformative application examination. Although Warhol focused on a human artist, its reasoning is relevant to AI: the commercial replacement assessment turns crucial if a user instructs an avatar to produce a picture *"in the style of X"* in order to serve an identical marketplace duty as X's authorized compositions. However, Warhol does not transform stylistic mimicry into enforceable derivation; rather, it strengthens the fair-use defense in cases where protected language is copied rather than just statistical style replication.[65]

c. Training, the Right to Reproduction, and Latent Space

A significant conflict in modern copyright doctrine is revealed by the issue regarding whether developing machine learning algorithms on copyrighted content amounts to infringement. As the UK Court noted in Getty Images v. Stability AI,[66] learning necessitates the making of numerous interim copies, modifications, and insertions of protected works; if these reproductions are produced throughout the area of jurisdiction, they would be considered replicating in a "material form" under section 17 CDPA.[67] The conclusion that copyright does not differentiate among copies intended for use by humans and copies intended for statistical assessment is doctrinally orthodox. The question of how to control these kinds of activities when they take place on an extensive basis and within opaque, frequently extraterritorial training pipelines is yet unanswered.[68]

Dataset openness is one suggested remedy, which is currently represented in the ecosystem surrounding the EU's AI Act.[69] The goal of transparency responsibilities, dataset manifests, and opt-out procedures is to provide holders of rights with the knowledge they require to negotiate licenses, police ingestion, or seek remedies.[70] This is a significant methodological advance because it transfers the data load from creators, who are now unable to determine if their works have been utilized, to software developers.[71] Additionally, it promotes ecosystem-wide licensing standards, especially for domain-specific optimization. However, the fundamental issue caused by generative systems is not entirely resolved by clarity and permission at the ingestion stage. A framework can produce an endless number of outcomes that quantitatively represent the "style signature" of the corpus used for training without recreating any secure phrase from a specific work once it has been trained, whether legally or illegally.[72] This phenomenon is known as "style-consistent substitution," which refers to products that closely emulate the visual style of a recognizable artist and can serve as direct market equivalents. However, because they do not replicate a significant portion of any particular work, they are completely outside the traditional offending framework.[73] As a result, training-stage fixes only deal with the pipeline's front end. They do not control models' downstream ability to algorithmically diminish creative uniqueness.

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Erosion of Distinctiveness

The term "synthetic derivation" encompasses an entirely novel kind of copyright-related harm made conceivable by generative AI: the mass fabrication of works that systematically replicate the unique creative identity of a certain author without copying any one particular legally protected material.[74] The traditional derivative-work paradigm, which was designed to identify duplication as opposed to quantitative imitation, completely ignores this phenomena. According to conventional wisdom in the US, UK, and India, infringement necessitates an acquisition of a "substantial part" in the creation of storylines, songs, configurations, or particular artistic choices.[75] However, generative models do not frequently replicate such features. On the contrary, they internalize the statistical characteristics which offer each piece of art its distinctive aesthetic by learning from several thousand works under copyright. Because they are categorized as merely "ideas" or "methods," these distinctive fingerprints, brushstroke patterns, color schemes, and musical rhythms are not protected by copyright.[76]

Nevertheless it is essentially these artistic characteristics that give an artist a financial essence. Although a "Van Gogh-inspired" or "Annie Leibovitz-inspired" computer-generated image would not violate any particular work, it replicates the financial worth of the creator's uniqueness and acts as an appealing substitute.[77] Financial diluting results from generating systems flooding the market with essentially identical items, which lowers licensing fees, undercuts commissions, and reduces the scarcity of artist labor.[78] Because it believes that value is discovered in the way something is expressed in an individual piece compared to the collective

individuality of a corpus, the standard concept-expressing approach is unable to capture this harm.[79] Computational AI, which maximizes usefulness by examining the structural coherence of an entire opus rather than from its components, challenges this notion.

The erosion of repute is an additional dimension. irrespective of whether the result is of low caliber, ideologically inflammatory, or morally dubious, the viewership may automatically link the final style with the actual creator when models produce outputs in an artist's unique style.[80] In contrast to passing-off claims, the deterioration occurs by mere stylistic overkill; no overt distortion is necessary.[81] Reputational harm may occasionally be addressed by the moral rights framework, particularly in countries like India that uphold the right to integrity, but only in cases when the connection is clear.

IV. CONCLUSION

Things are likely to get more complex in the coming years. The jurisdictional metamorphosis regarding generative AI necessitates a tripartite recalibration of intellectual property (IP) regimes to balance innovation against market stagnation. Firstly, is the Instrumental Model which categorizes AI as a sophisticated mechanical tool, vesting authorship in human collaborators. This preserves the status quo for semi-autonomous systems where human agency remains the primary creative catalyst. Secondly, the Public Domain Nullity posits that autonomous outputs lack the requisite "human spark", relegating them to the public domain. This prevents an "anticommons" crisis, fostering cumulative innovation over proprietary stagnation.

Thirdly, Upstream Proprietary Rights which allocates IP to the system's architects, though this invites regulatory capture and rent-seeking through strategic lobbying.

Determining the most "legally sound" path requires a delicate equilibrium. Currently, the Instrumental Model seems to be the most pragmatically sound, as it avoids systemic shocks to extant legal doctrine. Conversely, the Public Domain Nullity is the most "affordable", neutralizing monopolistic barriers and enforcement costs. A hybridized approach

remains the most sophisticated solution for navigating these distinct risks of market failure.

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