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Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 73059 14348 – info@iledu.in / Chairman@iledu.in



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'COPYRIGHTABILITY IN THE AGE OF AI'

AUTHOR – SIYA BEDI, STUDENT AT SYMBIOSIS LAW SCHOOL, PUNE

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ABSTRACT

With the fast-paced generative artificial intelligence (AI) systems that have been spreading, there have been profound and yet unnoticed changes within the global intellectual property laws. It was only normal that traditional copyright laws based on the unchallengeable notion that only 'human authorship', can be protected, are now far less prepared to present the challenges of machine-generated creative works, the large-scale ingestion of copyrighted content for training AI, and the deployment of deepfake technology for harmful purposes. This article carries out a detailed study of these combined issues, especially highlighting the 'Indian legal system' as represented in the Copyright Act, 1957. Besides, it studies the 'United States', the European Union's, the United Kingdom's, and Japan's laws to show differences in the opinions about copyright of AI-generated works, TDM exceptions, and responsibility structures.

Keywords: *Generative artificial intelligence, Intellectual property, copyright, creative works, deepfake, TDM.*

INTRODUCTION

Artificial intelligence (AI), as defined by A.M. Turing⁸²⁷, 'refers to the development of computer systems that can perform tasks requiring human-like intelligence'. Artificial intelligence has gradually changed from being just a helping hand to becoming a co-creator of not only stories but also songs, movies, paintings, and other forms of arts. Generative models like image generation from diffusion processes, large language models (LLMs), and audio synthesis systems have the ability to produce works that, in many settings, are nearly impossible to tell apart from human-created⁸²⁸ outputs. The last few years have witnessed a rush of attention to the law of AI-generated content, especially regarding copyright. The fast changes in the development of AI technology

have given rise to the issue of AI-generated works legal status and protection⁸²⁹.

At the same time, deepfake technologies, which rely on machine learning algorithms that can either manipulate existing audiovisual content or produce highly realistic news content, have triggered serious discussions about issues like consent, identity, and violation of rights, particularly in the context of personality rights and copyright.

The Copyright law was actually created in the first place to recognize human creative talent and encourage the creation and dissemination of original works. The 'Indian Copyright Act, 1957', and similar laws in other countries refer to "author", "originality", and "work" in anthropocentric terms, and so they are not well-

⁸²⁷TURING, A.M., "Lecture to the London Mathematical Society", in INCE, D.C., ed., *Mechanical Intelligence: Collected Works of A.M. Turing* (North Holland, 1992).

⁸²⁸Mohan, M. P. (2025). Artificial Intelligence, Developers, and Copyright Infringement: The Liability Dilemma. *Indian J. Intell. Prop. L.*, 15, 55.

⁸²⁹He, Tianxiang, "The sentimental fools and the fictitious authors: rethinking the copyright issues of AI-generated contents in China." *Asia Pacific Law Review* 27.2 (2019): 218-238.

suited to cases where machines are the main creators or humans only provide prompts or help in data curation. Such an incongruity has led to a lack of clarity on ownership issues in the legislation.

CONCEPT OF ORIGINALITY AND OWNERSHIP OF WORK

Originality⁸³⁰⁸³¹ indicates that a work of protection needs to have an identifiable originator or author, and thus it will represent the personality of the author and not be entirely derivative or completely new. International copyright laws, like the Berne Convention⁸³², provide rights for "literary and artistic works" made by "authors". Nevertheless, the Convention neither specifically defines⁸³³ originality nor deals with the question of non-human creators being eligible. On the other hand, most national law systems consider originality as necessitating a 'certain degree of human intellectual' endeavor or creative decision.

The concept of originality as developed under the 'common law' has traditionally been linked to the theory of 'sweat of the brow'⁸³⁴. It should be noted, that in some nations like the US, originality has changed, as the mere labor that was used in the creation of a work is not a requirement anymore in establishing originality or determining a work to be copyrightable. This theory is consistent with the utilitarian approach which encourages human creativity and motivates authors to acquire the copyright protection of their works. Originality merely does not focus on uniqueness or novelty; it also emphasizes the need for a touch of human creativity and efforts, indicating a certain level of skill⁸³⁵ separating it from AI-generated

content⁸³⁶. The US courts, have laid down that an original work must have an 'independent origin and exhibit a minimal level of creativity'.⁸³⁷⁸³⁸

There are two models for assessing who the real owner of a piece of content is. Firstly, a human-centric⁸³⁹ approach is followed, where only human beings are granted authorship, and autonomous AI outputs are either unprotected or protected only if significantly modified by a human. The US Copyright Office has repeatedly rejected applications for copyright for content produced solely by AI, emphasizing that copyright shall be granted only to human-authored components. Secondly, there are a few states that recognize AI outputs as well, where an AI is operated, "arranged", or "caused" the work to be done by a human. Here, it implies that even if a machine does the majority of the work, but such work is guided by a human, then it shall be granted a copyright.

According to Indian law, a visual or textual AI-created content generated through a commercial chatbot or image generator software can be attributed to the user who "led to" it or to the company that developed the model, depending on the contract and technical context.

Rather than only concentrating on novelty, these areas of law try to find out whether an author creates a piece or simply copies it from others. Countries like the UK and the US give more importance to authorship than novelty when determining originality. Steering clear of the extremes of subjective and objective theories, these jurisdictions are aiming to keep copyright law fair and workable while also recognizing the special features of AI-generated works⁸⁴⁰.

⁸³⁰ C.J.S. Azoro and Queen O. AGULEFO, "'Original' under the law of copyright is distinct from the ordinary meaning of 'original': A discourse", (2021) 7 International Journal of Law 29, 30–1.

⁸³¹ Odugbemi, Gbenga and Odugbemi, Gbenga, Re-Defining Copyright Originality in the Age of AI: Reconciling Creativity, Labour, and Human Authorship (January 10, 2026).

⁸³² WIPO, Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979).

⁸³³ Ginsburg, J.C. People Not Machines: Authorship and What It Means in the Berne Convention. IIC 49, 131–135 (2018). <https://doi.org/10.1007/s40319-018-0670-x>.

⁸³⁴ Saksena, Hailshree, Doctrine of Sweat of the Brow (May 3, 2009). Available at

SSRN: <https://ssrn.com/abstract=1398303> or <http://dx.doi.org/10.2139/ssrn.1398303>.

⁸³⁵ University of London Press v University Tutorial Press [1916].

⁸³⁶ Hollinrake v Truswell [1894] 3. Ch. 420, para. 427.

⁸³⁷ Baltimore. Orioles, Inc. v Major League Baseball Players Ass'n, 805 F.2d 663 (7th Cir. 1986).

⁸³⁸ Alfred Bell & Co. Ltd. v Catalda Fine Arts, Inc. et al., 191 F.2d 99 (2d Cir. 1951).

⁸³⁹ AI-Generated Content and the Copyright: Who Holds the Rights?, IIPRD, <https://www.iiprd.com/ai-generated-content-and-the-copyright-who-holds-the-rights/> (last visited Apr. 16, 2026, 3:19 p.m.).

⁸⁴⁰ GAFFAR H, ALBARASHDI S. Copyright Protection for AI-Generated Works: Exploring Originality and Ownership in a Digital Landscape. Asian

In India, the Copyright Act of 1957 introduced the term “author” in Section 2(d)⁸⁴¹, covering the author of a literary or dramatic work, the composer of music, the artist who paints a picture, etc. Importantly, the Act also features a clause for “computer-generated works” in Section 2(d)(vi)⁸⁴², which explains that the “author” of such a work shall be “the person who causes the work to be created”. This statutory concept changes the idea of authorship from a personality-based one to a more functional, attribution-based one, but at the same time, it is not designed for present-day generative AI, and it leaves unclear what “causes the work to be created”.

In India, the landmark RAGHAV AI case⁸⁴³, involved ‘Ankit Sahni’, who developed the RAGHAV ‘(Robust Artificially Intelligent Graphics and Art Visualizer)’ app and sought copyright protection for an AI-generated artwork entitled “Suryast”⁸⁴⁴. Initially, the Indian Copyright Office granted registration in November 2020, acknowledging RAGHAV as a co-author, thus potentially making this the first case worldwide where an AI tool was considered a co-author of a copyrighted work. However, the Copyright Office later sent a withdrawal notice, doing so only after the submission of a copy of the written statement by the appellant in which the Copyright Office questioned the existence of the AI product and asked Sahni to prove RAGHAV’s legal status, which is indicative of the unsettled regulations of the AI-generated works. Besides, this recognition was also supported by the Canadian Copyright office.

In the landmark and pioneering judgment⁸⁴⁵ involving AI, the court framed issues pertaining to whether the unauthorized use of its news

content for ChatGPT training, seeking damages and injunctions, constitutes infringement.

Under the IT Act, 2000 (MeitY), published advisories (December 2023, revised March 2025) require intermediaries to label AI-generated content, including deepfakes, and to perform due diligence. In April 2025, the DPIIT⁸⁴⁶ expert committee released a December 2025 Working Paper (Part I) on GenAI and copyright. It opposes blanket exceptions or opt-outs to TDM as insufficient to fit creator-heavy ecosystems in India, citing the risks of uncompensated usage, biased AI, and damage to cultural production.

The question of the legal framework in which AI-generated works should be attributed copyright implies some fundamental issues that address the purpose of the copyright system. The copyright should focus on protecting and promoting human creativity. This means that any rulings on the eligibility of AI-generated works for copyright protection would have far-reaching consequences for the social intent behind the creation of the copyright system⁸⁴⁷.

LEGAL DIMENSIONS OF DEEPFAKES

Deepfakes⁸⁴⁸ synthetic media produced by deep learning algorithms which overlay or replace the image, voice, or identity of a person onto video, audio, or photographic material form a specific and especially pernicious aspect of the AI and copyright issue at hand. Combining deepfake technology with Intellectual Property Rights (IPR) problematizes copyright and authorship issues in the digital era. Although deepfake technology can be fun and educational, its ability to create harmful or misleading content illegally affects intellectual property laws. Under the Indian Copyright legislation, Sections 55⁸⁴⁹ and 63⁸⁵⁰ protect an individual from such infringement.

Journal of International Law. 2025;15(1):23-46.
doi:10.1017/S2044251323000735.

⁸⁴¹The Copyright Act, 1957, § 2 (d), No.14, Acts of Parliament, 1957 (India).

⁸⁴²The Copyright Act, 1957, § 2(d) (vi), No.14, Acts of Parliament, 1957 (India).

⁸⁴³Astha Ojha, AI & Copyright in India: Law, Policy, and the Future of Creative Rights, National e-Governance Division, Ministry of Electronics & Information Technology, Govt. of India 2025.

⁸⁴⁴India recognises AI as author of a copyrighted work, LEXCAMPUS, <https://www.lexcampus.in/india-recognises-ai-as-author-of-a-copyrighted-work/> (last visited Apr. 15, 2026, 4:20 p.m.).

⁸⁴⁵Ani Media (P) Ltd. v. Open AI Inc, 2024 SCC OnLine Del 8120.

⁸⁴⁶Working Paper on Generative AI and Copyright Part 1, Balancing AI Innovation and Copyright, Department for Promotion of Industry and Internal Trade Ministry of Commerce & Industry, Govt. of India 2025.

⁸⁴⁷WIPO Secretariat, “Revised Issued Paper on Intellectual Property Policy and Artificial Intelligence”, WIPO/IP/AI/2/GE/20/1 REV (11 June 2022), para. 23.

⁸⁴⁸Ria Dennis, “Examining the Intersection of Deepfakes and Copyright law” IJLS ISSN No. 2583-9608.

⁸⁴⁹The Copyright Act, 1957, § 55, No.14, Acts of Parliament, 1957 (India).

⁸⁵⁰The Copyright Act, 1957, § 63, No.14, Acts of Parliament, 1957 (India).

These laws give the victim options to report and prosecute the offender who has shared the fake video, denying the personality rights of the victim.

The Rules on 'Information Technology (Intermediary Guidelines and Digital Media Ethics Code)'⁸⁵¹ 2021 (IT Rules) have been revised to establish requirements for Social Media Intermediaries (SMIs) specifically targeting synthetic content. It is the initial Indian legislative definition of the term synthetically generated information, the term information which has been artificially or algorithmically produced, generated, modified or altered by using a computer resource, in a way that seems reasonably authentic or true.

As deepfake material is widely available in society, it is a question pondered upon whether it can get copyright protection and, if so, who will be the owner of the copyright. Since the AI itself doesn't create "works" in the sense needed for copyright, as human creativity is still a necessary part, the 'US court' has held that copyright protection is limited to works that are 'original' and 'created by the human mind', thus excluding deepfake content from protection.

COMPARATIVE PERSPECTIVE

UNITED STATES

As per the US copyright laws, AI-generated works are unprotectable, and protection is only provided on human contributions that have sufficient control over expression. The United States has taken the most unambiguous and judicially settled position on the question of AI authorship. The U.S. Copyright Act of 1976 does not define "author", but the courts have consistently held, drawing upon constitutional

text and sustained precedent, that "author" shall denote a human being.

The US implements the doctrine of '*fair use*'⁸⁵² that permits the reproduction of work under copyright to a reasonable extent to safeguard the interests of the people but balances the rights of the holders. It has witnessed a proliferation of copyright infringement suits against AI developers, including '*Andersen v. Stability AI*'⁸⁵³ and '*Getty Images v. Stability AI*'⁸⁵⁴, raising questions about whether the ingestion of copyrighted images for AI training constitutes reproduction, and whether the fair use doctrine provides a defense.

EUROPEAN UNION

The European Union has adopted the most comprehensive and prescriptive regulatory framework for AI and copyright, principally through two legislative instruments: the Digital Single Market (DSM) Directive (EU) and the AI Act. The AI Act, which came into force in 2024, imposes transparency⁸⁵⁵ and disclosure obligations on providers of general-purpose AI models (GPAIMs), requiring them to publish detailed summaries of the data used for training, including information about copyright compliance. Based on the information collected by a policy questionnaire, member states are of the opinion that AI-generated content should be eligible for copyright protection only if the human input in its creation was "significant".

UNITED KINGDOM

The 'United Kingdom' has a unique rule in copyright law for computer-generated works under 'Section 9(3)'⁸⁵⁶ of the Copyright, Designs and Patents Act', giving authorship and first ownership to the person who makes the necessary arrangements for the work's creation.

⁸⁵¹Aayushman Gaikwad & Smruti Mishra, "Three Hours To Comply: India's New Rules For AI-Generated Content And Deepfakes", LiveLaw, <https://www.livelaw.in/articles/ai-generated-content-deepfakes-524064> (last visited Apr. 6, 2026, 6:11 p.m.).

⁸⁵²Mihir Wagh, Fair Dealings And Fair Use: Critically Analysing The Copyright Exemption Doctrines In Place In India And The United States, Manupatra Articles, <https://articles.manupatra.com/article-details/FAIR-DEALINGS-AND-FAIR-USE-CRITICALLY-ANALYSING-THE-COPYRIGHT-EXEMPTION-DOCTRINES-IN-PLACE-IN-INDIA-AND-THE-UNITED-STATES> (Last Visited Apr. 16, 2026, 1:38 p.m.).

⁸⁵³Andersen v. Stability AI Ltd., 3:23-cv-00201, (N.D. Cal.).

⁸⁵⁴Getty Images (US), Inc. v. Stability AI, Inc., 1:23-cv-00135, (D. Del.).

⁸⁵⁵Suzanne Carayol, Transparency Obligations For AI-Generated Content Under the EU AI Act: From Principle to Practice, Herbert Smith Freehills Kramer, <https://www.hsfkramer.com/Notes/Ip/2026-03/Transparency-Obligations-For-Ai-Generated-Content-Under-The-Eu-Ai-Act-From-Principle-To-Practice> (Last Visited Apr. 16, 2026, 5:40 p.m.).

⁸⁵⁶Copyright, Designs and Patents Act 1988, § 55, c. 48.

This creates legal certainty for AI-generated works, but it has been criticized⁸⁵⁷ for possibly benefiting AI developers instead of users and for giving a 50-year term of protection. Recently, to push the AI industry, they have introduced a broad commercial text-and-data-mining exception with transparency and opt-out rules for clearer regulation of the AI industry.

JAPAN

Japan has one of the most permissive AI training data rules among major jurisdictions. Under Article 30-4⁸⁵⁸ of the Japanese Copyright Act, copyrighted material may be used for “information analysis,” including commercial AI training, as long as it does not unreasonably harm the copyright owner’s interests. This reflects Japan’s policy choice to support AI industry growth over short-term rightsholder concerns. Guidelines also clarified that AI-generated works are copyrightable only when the human author makes creative contributions beyond mere effort, considering factors like prompt specificity, number of attempts, and post-editing. Japan’s approach is broadly similar to the EU’s human-input standard.

CONCLUSION

India’s current Copyright laws reveal its inadequacy⁸⁵⁹ to engage artificial intelligence in its framework. The Copyright Act, 1957, currently cannot resolve issues of AI authorship and ownership; it does not clearly address the legality of TDM for AI training; and it falls short in addressing deepfake synthetic content. India follows the Concept of “Fair Dealing”⁸⁶⁰ to govern copyright aspects of TDM in India. The regulatory interventions and amendments represent a meaningful path to follow; however, they do not

collectively or individually constitute a comprehensive regime.

A thorough, in-depth reform of the legislation in India be made. Firstly, the act be amended to define “computer generated works”, following the UK’s copyright laws, and to lay down under what circumstances copyright subsists in such works and who the actual owner is. Secondly, a detailed and subtle TDM exception⁸⁶¹ ought to be brought into existence which is in line with the model of the EU but also takes into consideration India’s developmental priorities, includes an effective means for rightsholders to opt-out, and requires AI developers to be transparent. Thirdly, deepfake-specific legislative measures should be put in place, supported by clear definitions and proportionate criminal sanctions. In the author’s opinion, India should promptly incorporate the proposed DPIIT’s hybrid model, and additionally, a clear definition of ‘significant human contribution’ should be provided to understand the applicability of the Act on the AI-generated content and provisions covering the aspect of deepfakes.

⁸⁵⁷Giuseppina D’Agostino, ‘Healing Fair Dealing?: A Comparative Copyright Analysis of Canadian Fair Dealing to UK Fair Dealing and US Fair Use’ (2007) Comparative Research in Law & Political Economy. Research Paper No. 28/2007 <http://digitalcommons.osgoode.yorku.ca/clpe/244> (Last Visited Apr. 16, 2026, 5:57 p.m.).

⁸⁵⁸Kensuke Inoue, Japan’s emerging framework for responsible AI: legislation, guidelines and guidance, IBA, <https://www.ibanet.org/japan-emerging-framework-ai-legislation-guidelines> (Last Visited Apr. 16, 2026, 6:23 p.m.).

⁸⁵⁹Sharma, S. (2024). Redefining Liability: Intellectual Property Challenges in the Age of AI. *LawFoyer Int’l J. Doctrinal Legal Rsch.*, 2, 316.

⁸⁶⁰Chauhan, Kailash, Generative AI, Text & Data Mining (TDM) And The Fair Dealing Doctrine: Examining The New Problem With The Old Regime (January 14, 2025). *Journal Of Intellectual Property Rights*, Volume 30, Issue 1, 2025, Available At SSRN: <https://ssrn.com/abstract=5096997> Or <http://dx.doi.org/10.56042/jipr.v30i1.12652>

⁸⁶¹Rosati E. Copyright Exceptions and Fair Use Defences for AI Training Done for “Research” and “Learning,” or the Inescapable Licensing Horizon. *European Journal of Risk Regulation*. 2025;16(3):961-984. doi:10.1017/err.2025.10035.



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