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WHO OWNS WHAT THE MACHINE MAKES? AI-GENERATED WORKS UNDER THE COPYRIGHT ACT, 1957 AND THE CASE FOR A TARGETED AMENDMENT

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ABSTRACT

Generative artificial intelligence now produces text, images, music and code from a short prompt, yet the Copyright Act, 1957 has no provision written for it. This article asks who, if anyone, owns AI-generated works under Indian law, and whether Parliament should amend the Act. It argues that (i) purely autonomous output is unlikely to attract copyright under the Act as it stands, because originality and authorship presuppose a human mind; (ii) where a person exercises real creative control over the output, that person is the author and first owner; and (iii) the uncertainty surrounding section 2(d)(vi), the Act's only provision on computer-generated works, justifies a narrow amendment that codifies a human-contribution threshold, rather than a new property right in machine output.

Keywords: copyright; artificial intelligence; authorship; originality; computer-generated works; section 2(d)(vi); DPIIT Working Paper

I. Introduction

The Copyright Act, 1957 (the Act) was designed for human creators. Its sole concession to machines is section 2(d)(vi), inserted in 1994, which treats "the person who causes the work to be created" as the author of a computer-generated work.[625] That provision was drafted when computers were tools of assistance, not engines of autonomous composition. Today a user can type one sentence into a generative system and receive an image or essay that no human drew or wrote in the traditional sense.

The policy debate in India has so far centred on the input side: whether training AI models on copyrighted works is infringement. In December 2025 the Department for Promotion of Industry and Internal Trade (DPIIT) published Part 1 of its Working Paper on Generative AI and Copyright, addressing that question.[626] The output side, namely the copyrightability and authorship of AI-generated works, the

[625] The Copyright Act, 1957 (Act 14 of 1957), s. 2(d)(vi), inserted by the Copyright (Amendment) Act, 1994 (Act 38 of 1994).

[626] Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, *Working Paper on Generative AI and Copyright, Part 1: One Nation One Licence One Payment – Balancing AI Innovation and Copyright* (Dec. 2025).

application of moral rights and liability for infringing outputs, was reserved for Part 2.[627] This article addresses that second question.

The argument proceeds in six steps. Part II draws the conceptual distinction between AI-assisted and AI-generated works. Part III examines the statutory position. Part IV surveys the United States, the United Kingdom and China. Part V reviews Indian developments. Part VI argues for a targeted amendment and proposes its content, and Part VII concludes.

II. Conceptual Groundwork: Assisted versus Generated

AI involvement in creative work lies on a spectrum. At one end, a photographer or illustrator uses AI to retouch, extend or refine an image whose composition and expressive choices remain the human's own. At the other, a user enters a brief prompt and accepts whatever the system returns. Between lie cases of iterative prompting, selection among outputs, and editing or arrangement of the results.

This article therefore uses "AI-assisted" for works in which a human makes the original expressive choices and the system is an instrument, and "AI-generated" or "autonomous" for output whose expressive content is determined by the system with minimal human creative input beyond the prompt. The distinction matters because copyright law attaches to human intellectual creation, and the legal answer differs sharply across the spectrum.

III. The Position under the Copyright Act, 1957

A. Authorship as the gateway

Copyright subsists in original literary, dramatic, musical and artistic works.[628] The Act then identifies the author of each category, and the author is, subject to exceptions such as employment, the first owner of the copyright.[629] Authorship therefore does two jobs: it determines whether a protectable work exists and who owns it. If no author can be identified, the statutory scheme has no first owner to whom rights can vest.

B. Originality and the human mind

In *Eastern Book Company v. D.B. Modak*, the Supreme Court rejected the "sweat of the brow" approach and adopted a standard requiring a modicum of creativity,[630] aligning Indian law with the reasoning of the United States Supreme Court in *Feist*.[631] The Court required that a work be the product of intellectual effort involving a degree of skill, judgment and creativity, not mere labour or mechanical reproduction. That standard is difficult to apply to a system that generates output through statistical inference without any person's creative choices. Creativity in the doctrinal sense is an attribute of a mind exercising judgment; a model's output may look creative, but the law asks who exercised the judgment that made it so.

[627] *Ibid.* (the committee divided its work so that Part 1 covers training data and Part 2 covers copyrightability and authorship of outputs, moral rights and liability for infringing outputs).
[628] The Copyright Act, 1957, s. 13(1)(a).
[629] The Copyright Act, 1957, s. 2(d) and s. 17.
[630] *Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1.
[631] *Feist Publications Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991).

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C. Section 2(d)(vi): what does "causes" mean?

Section 2(d)(vi) provides that, in relation to any literary, dramatic, musical or artistic work which is computer-generated, the author is the person who causes the work to be created.[632] At least three readings are possible.

First, the user who supplies the prompt is the person who "causes" the work. This reading is textually attractive, since the user's prompt is the but-for cause of the output. But causation is not creation. If a one-line prompt sufficed, anyone could acquire copyright in large volumes of output without exercising any creative judgment, which sits uneasily with the originality requirement of *Eastern Book Company*.

Second, the developer who built and trained the system "causes" every output. This reading is difficult to sustain. The developer's contribution is to the tool, not to each specific work, and absent a direct and original creative contribution to the output, ownership of the system does not make its owner the author of everything it generates.

Third, section 2(d)(vi) identifies the author only where the work is otherwise original, so that originality must be traced to a human choice somewhere in the process. On this reading the provision answers "who is the author?" but not "is there a work?", and the latter question is governed by section 13. This is, in my view, the most coherent reading, and it explains why purely autonomous output may fall outside protection altogether even though section 2(d)(vi) exists.

The provision's drafting history supports this reading. It was introduced in 1994 in the context of computer programmes and computer-assisted works, and Indian courts have not yet interpreted it in relation to autonomous generative systems.[633] It also sits awkwardly with the definition of a computer programme as a set of instructions, since a generative model's output is not itself a programme.[634]

D. Consequences of the gap

If autonomous output has no author, several consequences follow. No copyright subsists, so the output is effectively free for anyone to use. The employer rule on first ownership has nothing to attach to.[635] Moral rights, which belong to the author, cannot arise.[636] The term of protection, calculated from the life of the author, cannot be computed.[637] Contractual assignment is also of limited help: assignment requires a work in which copyright subsists, and it must be in writing.[638] Platform terms that purport to assign "all rights in the output" to the user cannot create a right that the statute does not recognise, although they may bind the parties as a matter of contract.

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[632] The Copyright Act, 1957, s. 2(d)(vi).
[633] Himanshu Deora, "AI-Generated Content and Copyright Protection in India: Navigating Authorship, Ownership and Emerging Legal Challenges", *Ke&S Partners*, (7 Aug. 2026), available at https://ksandk.com/intellectual-property-rights/ai-generated-content-copyright-ownership-india/ (last visited 15 Nov. 2026).
[634] The Copyright Act, 1957, s. 2(ffc) (computer programme) and s. 2(o) (literary work).
[635] The Copyright Act, 1957, s. 17(c).
[636] The Copyright Act, 1957, s. 57.
[637] The Copyright Act, 1957, s. 22.
[638] The Copyright Act, 1957, ss. 18 and 19.

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IV. Comparative Perspectives

A. United States

The United States requires human authorship. In *Thaler v. Perlmutter*, the D.C. Circuit affirmed the refusal to register a work that the claimant described as autonomously created by an AI system, holding that the Copyright Act requires a human author.[639] The Copyright Office's 2025 report on copyrightability concluded that prompts alone do not ordinarily give a user sufficient control over expressive elements to make the user the author, while human selection, arrangement and modification of AI output, and human-authored material incorporated in it, can qualify for protection.[640] Its earlier decision on *Zarya of the Dawn* similarly protected the human-written text and the selection and arrangement of images, but not the individual images generated by the system.[641]

B. United Kingdom

The United Kingdom is unusual in expressly protecting computer-generated works, treating as author the person by whom the arrangements necessary for the creation of the work are undertaken.[642] This resembles section 2(d)(vi), though with different wording. The UK government has reviewed whether the provision should be retained, which signals doubt even in the jurisdiction that pioneered it.[643]

C. China

In *Li v. Liu*, the Beijing Internet Court recognised copyright in an AI-generated image where the claimant's prompts and parameter choices reflected personal intellectual input.[644] The decision is notable for locating protection in the quality of human contribution rather than in the machine's autonomy.

D. Convergence

Across these jurisdictions the emerging principle is that human creative contribution is the touchstone; the divergence lies in how much contribution is enough and whether autonomous output can be protected at all. Scholars have long debated the alternatives, from allocating ownership to the user or the programmer to denying protection altogether.[645][646][647] These comparative positions are relevant to India not as binding authority but as evidence of how other legislatures and courts are managing the same difficulty.

[639] *Thaler v. Perlmutter*, 130 F.4th 1039 (D.C. Cir. 2025).
[640] United States Copyright Office, *Copyright and Artificial Intelligence, Part 2: Copyrightability* (Jan. 2025).
[641] United States Copyright Office, decision letter on *Zarya of the Dawn* (21 Feb. 2023).
[642] Copyright, Designs and Patents Act 1988 (UK), ss. 9(3) and 178.
[643] UK Intellectual Property Office, *Copyright and Artificial Intelligence* (consultation, Dec. 2024).
[644] *Li v. Liu*, Beijing Internet Court (27 Nov. 2023).
[645] Pamela Samuelson, "Allocating Ownership Rights in Computer-Generated Works", 47 *University of Pittsburgh Law Review* 1185 (1986).
[646] Jane C. Ginsburg, "People Not Machines: Authorship and What It Means in the Berne Convention", 49 *International Review of Intellectual Property and Competition Law* 131 (2018).
[647] Andres Guadamuz, "Do Androids Dream of Electric Copyright? Comparative Analysis of Originality in Artificial Intelligence Generated Works", *Intellectual Property Quarterly* 169 (2017).

V. Indian Developments

Registration practice. The Copyright Office registered an artwork listing an AI system as co-author and later sought clarification of the legal basis for recognising an AI system as an author.[648] Whatever the eventual position, the episode shows that registry practice has run ahead of statutory text.

Litigation. In *ANI Media Pvt. Ltd. v. OpenAI Inc.*, the Delhi High Court is seized of India's first major generative AI copyright suit, which concerns the use of copyrighted content to train models.[649] Although the suit is principally about inputs, its reasoning on infringement and on the nature of AI systems may inform the output-side debate.

Policy. The DPIIT committee, constituted on 28 April 2025, proposed in Part 1 a hybrid model: a mandatory blanket licence for training on lawfully accessed works, a statutory remuneration right, and a central collecting body to collect and distribute royalties.[650] Commentators have observed that the Working Paper does not propose any provision attributing authorship of AI-generated works to developers or deployers, and that any legislative intervention must begin with the definition of authorship.[651] The Government has told Parliament that authorship, ownership and copyrightability of AI-generated works are being examined for Part 2.[652]

VI. Does India Need a Statutory Amendment?

A. The case for reform

Four considerations favour legislative action.

1. **Textual mismatch.** Section 2(d)(vi) was written for computer-assisted work, and its language of "causing" does not map onto autonomous generation. Courts can interpret it, but only case by case and slowly.
2. **Practical uncertainty.** Creators, publishers, platforms and investors need to know whether an AI-assisted work is protected, who owns it and how to register it. The registry episode shows that without guidance, outcomes depend on the examiner.
3. **Gaps in the statutory scheme.** Employer ownership, moral rights and term all depend on a human author and break down when none exists.
4. **A live opportunity.** Part 2 of the Working Paper is pending. Parliament can address authorship deliberately rather than leaving it to be settled by litigation.

B. Objections

Two objections deserve answers. The first is that courts should develop the law incrementally. That is a respectable position, but incremental development leaves a prolonged period in which commercial

[648]Deora, *supra* note 9 (describing the Copyright Office's request for clarification on recognising an AI system as author).
[649]*ANI Media Pvt. Ltd. v. OpenAI Inc.*, CS (COMM) 1028/2024 (Delhi High Court) (pending).
[650]DPIIT, *supra* note 2 (proposing a mandatory blanket licence, statutory remuneration, and the Copyright Royalties Collective for AI Training).
[651]"India's generative AI moment: Copyright law at regulatory crossroads", *Bar & Bench*, available at https://www.barandbench.com/columns/indias-generative-ai-moment-copyright-law-at-regulatory-crossroads (last visited 15 Nov. 2026).
[652]"Copyright Act being reviewed to address challenges posed by generative AI: Centre in Lok Sabha", *Bar & Bench*, available at https://www.barandbench.com/amp/story/news/law-policy/copyright-act-being-reviewed-to-address-challenges-posed-by-generative-ai-centre-in-lok-sabha (last visited 15 Nov. 2026).

decisions are made under uncertainty, and the Act's text gives courts little to work with on autonomous output. The second is that no incentive is needed for machine output, so any protection is a windfall. This objection supports not creating a new right for purely autonomous output, and it informs the proposal below. It does not justify leaving the protection of AI-assisted human work in doubt.

C. A targeted amendment

The reform should be narrow. It should clarify who is an author, not create a new species of property right. I propose the following elements.

1. **Amend section 2(d)(vi)** so that the author of a work created with the assistance of a computer system, including an AI system, is the natural person who exercises creative control over, and makes the original expressive choices in, the work. "Causing" the work to be created should no longer suffice on its own.
2. **Codify a human-contribution threshold.** Selection, arrangement, editing and iterative direction that reflect the person's own creative judgment should count. A bare prompt, without more, should ordinarily not.
3. **Leave purely autonomous output unprotected.** Output with no sufficient human contribution should fall into the public domain, which keeps the incentive logic of copyright intact and avoids monopolies over machine-scale output.
4. **Require disclosure at registration.** An applicant should identify AI-generated elements and disclaim those not attributable to human authorship, with consequences for misstatement.
5. **Confine moral rights to human authors**, and make clear that liability for infringement continues to attach where output reproduces protected works.[653]
6. **Preserve contractual freedom** between users and platforms, while stating that contract cannot create copyright in output that the Act does not protect.
7. **Provide for statutory review** after a fixed period, given the pace of technological change.

An illustrative form of the amended clause would read:

> "(vi) in relation to any literary, dramatic, musical or artistic work created with the assistance of a computer system, including an artificial intelligence system, the natural person who exercises creative control over, and makes the original expressive choices in, the work;"

VII. Conclusion

On the better reading of the Copyright Act, 1957, autonomous AI output is unlikely to be protected because it lacks a human author exercising the creativity that section 13 and *Eastern Book Company* require, while AI-assisted work in which a person makes the expressive choices is protected, and that person owns it. Section 2(d)(vi) does not resolve the question, because causation is not authorship. The resulting uncertainty is costly, and Part 2 of the DPIIT Working Paper offers a timely opportunity to resolve

[653] The Copyright Act, 1957, s. 51 (infringement) and s. 57 (moral rights).

it. The best response is a narrow amendment that anchors authorship in human creative control, requires disclosure, and leaves wholly autonomous output in the public domain. India need not choose between stifling innovation and expanding copyright; it can protect human creativity wherever it appears and be clear about where it does not.

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