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refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

COPYRIGHT IN THE AGE OF ARTIFICIAL INTELLIGENCE: WHO OWNS AI-GENERATED WORKS?

AUTHORED BY - PIYALI BHATTACHARJEE

Abstract

With recent breakthroughs that allow creative fields to use AI — music, art, literature and more — to produce works almost entirely free of human creation, algorithms are taking the world by storm. But these developments stand as a very real challenge to the bedrock principles of human authorship and originality at the heart of conventional copyright. In this paper, we discuss the difficult legal and moral problems regarding copyright ownership for works created by an ai. It investigates the insufficiency of applicable legal systems, the conflict of interests amongst programmers', users', and also AI systems' rights, as well as what it would mean for such outputs to enter public domain. By comparatively examining legal regimes across the globe and in India, this research suggests amendments to copyright laws including but not limited to enactment of sui generis rights and/ or co-ownership models. The paper charts a course for modernizing copyright within the realities of the AI age–insofar as it tackles ethical concerns in addition to weighing the tightrope between invention versus public interest.

Keywords

Artificial Intelligence, Copyright, AI-Generated Works, Originality, Authorship, Legal Reforms, Intellectual Property, Comparative Analysis, Sui Generis Rights.

I. Introduction

Background and Context

Artificial Intelligence (AI) has started to be the spark that ignites transformation among various industries and even the creative space. AI systems are capable of producing what once was a purely human domain: generating music and art, writing novels, developing software. But AI's involvement in creating content also presents some very important legal and moral dilemmas, especially when it comes to copyright, that the world clearly hasn't prepared for. Traditionally, copyright law has focused on the protection of human creativity with exclusive rights granted

to creators. Given the increasing number of works derived from AI, we wonder if this framework reasonably addresses the characteristics that deal with such types. We must navigate these complexities to provide some clarity and equitability in the copyright environment.[1]

Research Problem

The authorship of AI-generated works is a bone subject because it goes against the traditional rules of originality. These works are of great significance, but current copyright frameworks were created when non-human authorship was not even a consideration, creating substantial vagueness. Since ownership is not so black and white in this space, the existing laws only muddy the waters; that makes things difficult for creators, businesses, and policymakers[2]

Research Objectives

The objective of this research is to analyze whether current copyright laws are applicable to works created by AI. It serves to examine the consequences of assigning copyright ownership to programmers, users or indeed no one. Through this, the paper intends to explore the details of legality and ethics about the issue

Research Questions

The primary questions guiding this research are:

- Who should own the copyright of AI-generated works: the programmer, the user, the AI entity itself, or should such works remain in the public domain?
- How do different international copyright regimes address the question of AI-generated works?
- What reforms or adaptations to copyright law might be necessary to address the challenges posed by AI technologies?

Methodology

This study utilizes the doctrinal legal research method, which is directed to identify statutes, case law and International conventions pertaining copyright. It also uses a comparative method that compares copyright law from jurisdiction to jurisdiction to find the differences and

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[1] Lionel Bently, Brad Sherman and Dev Gangjee, *Intellectual Property Law* (5th edn., Oxford University Press, 2022) 45.
[2] Berne Convention for the Protection of Literary and Artistic Works, 1886 (amended in 1979).

potential best practices. The aim of the research to identify and analyse these data sources in order to deliver an overall fair view about the matter.

II. Historical and Legal Background

Foundations of Copyright Law

Copyright is based on a human incentive to create something new and protect it. It evolved over time in association with the rise of print, beginning with the Statute of Anne 1710 which is often described as the first statutory type copyright. And this is how this law guaranteed that authors were the sole owners of their works, and not the publishers anymore. Copyright law evolved to justify the appropriation of more paths of creative expression; for instance: literary works, music, visual art, etc.; undergirded by the imperative to spur innovation and cultural development.[3]

At the heart of copyright law are originality, authorship and ownership. A work is original if it has the author's input, and is not just an imitation or duplication. Authorship traditionally means the name of the person or people who writes/draws the work — assuming they imbue their creation by a personal touch that only humans can contribute. Ownership, by contrast, refers to the rights holder or the individual(s) who can be considered its owner — most often either the original author or other party if (and only if) rights have been vested. These principles combine to form the spine of copyright law, providing for a just reward for creativity and protection for creative endeavours whilst also facilitating public access to some measure over cultural and intellectual property.

Bringing Technology into Copyright

New technologies have always been challenging and reshaping copyright law. With each major creative innovation, legal doctrines have been stretched. When photography was invented in the 19th century things like how original is a work that can be made mechanically, were raised. When adjudicating early copyright disputes about photographs — which, at the time, were considered reproductions of reality — courts struggled to determine whether or not photographs met the originality threshold necessary for copyrightability. Over time, we became aware that the voice of the photographer—composition, light and timing—injected originality into the work making it qualify for copyright.

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

Likewise, the latter half of the 20th century led to another major transition when software development became a true industry. Functional craft — the element of software as a practice — did not fall into earlier established tributary categories within copyright stream. Courts and legislatures had to decide if computer code was covered by copyright law, patent law or an entirely different regime. Software was found to qualify as copyrightable subject matter despite its functionality being patentable. So long as it exhibited originality and expression, then software is protected under copyright. It was a huge expansion of copyright into nontraditional areas.[4]

The proliferation of derivative works, such as remixes, adaptations, and mash-ups, made possible by technological advances have made the legal landscape much more complicated. And courts have needed to weigh the interests of original creators against the ability of others to build upon their work in transformative ways. That said the idea of "fair use" (or "fair dealing," as we say over here) has self-developed to permit small amounts (non-trivially reproducing the work being protected) of unpermitted usage for functions like criticism, research study and education.[5]

It enables us to learn critical lessons from these events that may apply to our contemporary challenges related to artificial intelligence (AI). Even when technology intermediates the creative process, however, originality still remains a guiding principle. Decision makers, both judicial and legislative, have been trying to pinpoint some element of humanity or authorship in emerging works of art for decades. Second, legal regimes have proven adaptable: underlying principles remain intact while new technologies and paradigms become encompassed by them. Yet that flexibility has frequently been slow, taking years of litigation and legislative fixes to adapt new creative activities into the copyright framework.[6]

The relationship between copyright and technology has a long history: it is one of logic animated best, as the law of ideas. Every technological revolution has necessitated a revisiting of foundational rights, striking a delicate balance between the desire to protect creators and the need to serve the public good. The emergence of AI is the latest stage in this evolution. If AI

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[4] WIPO, *World Intellectual Property Indicators 2021* (2021) https://www.wipo.int accessed 9 November 2024.
[5] *Eastern Book Company v. D.B. Modak* AIR 2008 SC 809.
[6] Caroline Davies, "AI and Copyright: The UK Approach to Computer-Generated Works" 31 *Intellectual Property Quarterly* 49 (2020).

does undermine our traditional assumptions about what it means for a work to be original or who made the work, history provides some cause for optimism: copyright law tends to bend to both technology and new realities of authorship (or at least try). This potential flexibility is not without peril, though; any effort by courts or legislatures in this direction faces profound questions as to whether works created from scratch by AI--unfettered creations that no one has ever thought of before-should even themselves be eligible for copyright protection.[7]

An overview of the development of copyright and its adaptations to past technologies might provide us with an interesting background on what we can expect from legal systems in their way in dealing with AI. However, as history has shown, these concepts of originality, authorship and ownership have foundational principles that remain relevant even if they no longer apply exactly the same way to every new creative process. We learn several approaches that relate in the context of copyright law and the challenges it must address as relates AI.[8]

III. ARTIFICIAL INTELLIGENCE AND CREATIVITY

In this section we will show how AI creates artistic works.

AI is reinventing creative work by generating pieces that we believed were the realm of manual labour only. This AI sub-field known as Generative AI utilizes algorithms to create content automatically with little or no human intervention. These systems are powered by machine learning models trained on extensive datasets, which allows them to analyze patterns, styles and structures. From this generative process, it is possible that music, art, literature and even software code are produced that either mirrors or creates a new unique product.

Generative AI uses neural networks, especially deep learning models that mimic the structure of the human brain. By feeding these networks a diverse array of training data, they take in information about styles, techniques, and content. If a generative AI model is trained on classical compositions, it can create brand new pieces of music that sound like Beethoven or Mozart. In a similar vein, instead of visual art such as OpenAI's DALL•E that synthesise from elements of different artistic styles, language models like GPT write fluent and imaginative prose.

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[7] WIPO, "AI and IP: A Virtual Conversation Series" (2021) https://www.wipo.int/ai/en/ accessed 9 November 2024.

[8] AIVA, "Artificial Intelligence Virtual Artist: Case Studies" (2021) https://www.aiva.ai/ accessed 9 November 2024.

Generative AI capabilities have shown their transformational potential in many creative fields already. AIVA (Artificial Intelligence Virtual Artist) is an AI that writes original scores for films, advertisements, and video games. In visual art, AI-generated works have been auctioned at places such as Christie and Sotherbys for thousands of dollars (one AI painting entitled Edmond de Belamy was sold for over $4000). AI tools help in story, poetry and screen writing. These examples illustrate how neurals can create such diverse art that is no longer easily distinguishable from human-made pieces.[9]

Challenges to Copyright Law

The emergence of AI-generated works presents mightily challenges to established copyright tenets — namely, originality and authorship. A classic principle in copyright law is originality, which historically necessitates that a work derive from human creativity and intellectual exercise. But because of the nature of AI, where they generate works without much human intervention in the process, this creates ambiguity over whether these generated works are capable of passing that originality test.[10]

And one of the big challenges is that we dont have a human creator. Copyright law was historically human-centric as the expression of a work relies heavily on the personality of its human creator. For AI content, this connection is tenuous or nonexistent. AI systems generate outputs through algorithms and data inputs without independent thought or intent. That immediately presents a problem with attribution of authorship. Who should be recognised as the author — the programmer behind the AI system, or their user who fed the input data, or perhaps even the AI itself? Whether there would even be any answer under existing copyright frameworks is an open question, with courts and policymakers alike still struggling with them. The other thing is that, in the context of works created by AI programs, it can be difficult to determine what "originality" means. Though these pieces can seem novel they are often due to the synthesis of preceding data. That raises questions about whether some of what AI churns out is truly new, or just an echo of the work it was taught on. The issue is if the AI painting looks eerily similar to an existing one, does it infringe copyright or is it deemed a new piece of art?

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[9] OpenAI, "DALL·E 3: AI Image Generation" (2023) https://openai.com accessed 9 November 2024.
[10] US Copyright Office, *Compendium of US Copyright Office Practices* (3rd edn., 2021) https://www.copyright.gov/ accessed 9 November 2024.

In addition, the unintentional nature of creative processes would also break down conventional rationales for copyright protection. Copyright exists to encourage us humans to be creative with exclusive rights granted for doing so. But AI systems have no such money motivation, they get a job done because of personal interests. So it begs the question whether AI-generated works should be protected by copyright given that it is all these things which form the basis of copyright in the first place.

And these challenges will have implications that go well beyond legal ones. Creative industries are also affected, because the productions of AIs can threaten human creators and ultimately reduce the value of artistic work. Moreover, the uncertainty around copyright ownership can discourage investment in AI due to legal ambiguity for businesses and creators.[11]

These difficulties highlight the need for legal regimes to adjust to the realities of creativity, which increasingly grows from AI usage. Solutions range from automatically deeming AI-generated works to be in the public domain, to assigning some ownership (such as programmers or users) in recognition of the role they played in creating it, through to a brand new form of intellectual property rights for such content. These reforms need to balance however, protecting creative industries versus stimulating innovation around AI-tech.

IV. Copyright Ownership Debate

Possible Stakeholders

One such area of extensive debate is over ownership of copyright in AI-generated works, with a number of potential rights holders arising. Stakeholders include those who develop AI models, such as programmers. But behind every single AI, there are programmers who poured lots of brainpower into designing the algorithms and systems that allow the AI to work. You might say that they are the creators of anything that comes out of it, because they created all the building blocks of creating with AI creativity. But that viewpoint is debatable, because in practice programmers do not really guide or drive the exact results created by AI methods.

The second group of potential stakeholders are users, who enter information and guide AI tools in generating certain works. Users often play an active role in determining the outcome—defining parameters, supplying data, or directing the creative flow. Proponents of user

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[11] Berne Convention for the Protection of Literary and Artistic Works, 1886 (amended in 1979), Art 2(1).

ownership contend that the role they play in a creative process merits copyright ownership. But that begs a question of how much creativity you need to never have appeared in copyright, and so perhaps at all.[12]

Another more radical view suggests claiming AI entities themselves as independent creators. Supporters of this perspective claim that modern AI systems, especially those based on machine learning, exhibit a form moral agency or decision-making capacity that is similar to human engineers who developed them. Although this view is inconsistent with the traditional conception of authorship, it encounters considerable legal and philosophical difficulties: under existing law an AI system cannot be a legal person that has rights.[13]

Finally, it may be that works created by an AI are regarded as public domain and thus non-protectable and available to the world. This is consistent with the argument that no human or entity can own works created without direct human authorship. Opponents, however, caution that this may have a contrary effect and will prevent people from investing in AI development and creative industries as they will not be financially incentivised to do so.

Key Arguments

For each of these stakeholders, the debate over copyright ownership entails ethical, legal, and economic considerations. Ownership being assigned to programmers or users makes more sense — at least from an ethical point of view, since humans should be rewarded for their work. On the other hand, giving ownership to AI will also raise issues of whether this might demean humans and undermine the writ of copyright law by treating machines like people. In contrast, the public domain argument focuses on fairness and access, advocating for the social value over individual profit.

Legally existing copyright laws are not suitable for the special nature of AI-generated works. Contemporary cases challenge courts and policymakers with principles of originality and authorship that, by any account, are atrophying. Cases from countries including the United States suggest works without a human author may be entitled to no copyright protection at all, with the US Copyright Office's 2019 rejection of a copyright claim for an AI-created work

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[12] *Narayanan v. Suryakant Govindarao Naik* AIR 1985 SC 1289.
[13] WIPO, *World Intellectual Property Indicators 2022* (2022) https://www.wipo.int accessed 9 November 2024.

being frequently cited. On the other hand, some jurisdictions (China) are starting to propose systems in which created works can be counted with AI help under certain circumstances. The adequacy of current law is debated among legal scholars, who are not agreed on whether application of AI to authorship will require new laws or if existing intellectual property statutes can be applied through judicial interpretation.

From an economic perspective, the notion of copyright ownership influences the incentives for innovation and investment. If programmers were considered to own the rights, there may ultimately lead to creating more advanced AI tools but granting users as authors could further bolster AI adoption across creative sectors. Using public domain status for AI outputs may promote access and collaboration but be less attractive for private investment. It is critical that such competing interests be balanced to deliver fair and sustainable outcomes.[14]

V. International and Comparative Perspectives

Framework by International Copyright

International copyright issues are primarily governed by treaties, with the Berne Convention for the Protection of Literary and Artistic Works setting minimum standards for copyright protection within its member states. While the Berne Convention (which protects works, not individual authors, in exchange for respect of human rights) requires protection of works meeting a minimal threshold of originality and will guarantee automatic protections to authorship-recognising these key will-not protect on such grounds alone-the convention does not clearly speak to creations by nonhuman creators. As a result, it can be seen as unclear how applicable that is to AI-created works considering the convention was drafted when neither the existence of AI nor its creation normally were even thinkable. Likewise, other international treaties like TRIPS again focus on human creativity without a thought to the implications of AI in copyright.[15]

There is a noticeable absence of provisions that designates the author of an AI work, and this ultimately creates inconsistencies across member states in how they approach their own copyright laws. Countries continue to use historical traditions based around authorship and originality while other countries at least play around with forward-thinking models. Without a

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[14] Ryan Abbott, "I Think, Therefore I Invent: Creative Computers and the Future of Patent Law" 57 *Boston College Law Review* 1079 (2016).
[15] Chinese Copyright Law, Art. 5, as amended in 2020.

uniform system of copyright, enforcing and recognizing rights over AI-assisted work across borders is difficult — indicating the necessity of international collaboration to combat this new challenge.[16]

Comparative Analysis

The U.S. Copyright Office has been quite strong on this front, saying copyright can only attach to works created with human authorship. In 2019, the office rejected a copyright claim for artwork generated by an AI system called Creativity Machine because it concluded that the absence of human involvement meant no protection was warranted....The US does acknowledge copyright in works that make use of AI provided there is "substantial human creativity". It's an incremental modification of what was already there, not a functional revision of copyright law.

As for the U.K. and EU: perspectives are lust a tad different. UK copyright law specifically defines "computer-generated works" in the Copyright, Designs and Patents Act 1988, which states that authorship is given to the person who makes the "arrangements necessary for the creation of the work." This provision gives a foundation for acknowledging works created using AI, however not in very much capacity. Conversely, the EU takes a more cautious route with copyright policies like the Copyright Directive that centers on humans in creativity. Still, the EU is leading the way in examining the legal and ethical ramifications of AI — shaping up what could become broad regulations that could one day touch copyright law.[17]

Other jurisdictions provide different models. However, Indian Copyright law is heavily based on conventional works with a human author and originality albeit there are no express provisions which grant the protection of copyright to AI generated work. Still, the development of this sector in India may lead to future legal developments in this space. In contrast, courts in China have recognised copyright in some examples of AI-assisted works. For example, a Chinese court recently found that copyright existed in a news article generated by AI and attributed authorship of the work to an entity that operated the AI system. Japan, by contrast, has taken a more practical approach and permits free use of AI-generated works in specific situations to promote development and public gain.

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[16] European Union, *The Ethics of Artificial Intelligence: Challenges and Opportunities* (2021) https://ec.europa.eu/ accessed 9 November 2024.

[17] Bently, Lionel and Sherman, Brad, *Intellectual Property Law* (5th edn., Oxford University Press, 2022) 151.

These comparisons highlight the range of legal responses to works produced by AI, indicative of the varying degrees of adjustment within various jurisdictions. Some countries are implementing incremental amendments to existing laws, while others seek new frameworks suitable for the specific challenges on AI.

VI. Proposed Solutions and Reforms

Revisiting Key Principles

As works created by AI soar, some of the most fundamental tenets that contextualise copyright law — originality and authorship of work — need to be re-examined. We will have to modify traditional ideas of originality — which are based on human creativity alone — to address works with little or no human involvement. A suggestion is to expand the definition of original works to encompass outputs generated through AI, as long as they display some degree of uniqueness or creativity that Does not merely replicate existing work. In a similar vein, authorship could be redefined in terms of CAA as well, with a recognition that the roles humans and AI play are co-authors (e.g., programmers, users, operators) or not at all (i.e., the outputs belong to no one). This act of redefinition needs to strike a balance between incentivizing innovators, including both creators and businesses — all while ensuring that the public at large can still benefit from the fruits of their labor — because innovators need to be compensated for what they create and consumers simply want access, but not at the expense of removing protections around intellectual property.[18]

Legal Reforms

Copyright laws need to be revised in order to fill the empty spaces which are not derived/covered by any existing legal framework and thus providing clear definition for returning back the ownership of AI-generated works. One suggestion is to create an entirely separate area of copyright law that would treat works assisted by or generated completely by AI differently, with rights and exceptions accordingly. Others call for new, sui generis rights — in other words, a distinct legal framework tailored to AI-generated content. It would open a tailored framework on rules as to ownership, use and length of time, appropriate for such works.

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[18] Pamela Samuelson, "Allocating Ownership Rights in Computer-Generated Works" 47 *University of Pittsburgh Law Review* 1185 (1997).
Davies, Caroline, "AI and Copyright: The UK Approach to Computer-Generated Works" 31 *Intellectual Property Quarterly* 49 (2020).

A second example of a reform some people are exploring is shared ownership models. If the AI work is created when multiple parties—the programmer, user and provider of data—contribute to it, then the rights can be shared between those parties by reference to their respective creative contributions. This model enables collaboration and also takes the varied interests of all the parties involved into account.

Ethics and Practicalities

In addition to any legal changes, however — and even as a corollary or cause of them — there is a pressing need to reflect on the ethics and pragmatics behind such changes. These new rules of copyright, applied to AI-generated creations would drive a fundamental change in some creative industries — dynamically changing the worth of human creativity output and affecting artistic and cultural norms. You might like: For example, high utilization of AI methods in creative domains can lower the need for human creators and spark ethical debates regarding how to homogenize the devaluation processes towards humans' labor and creativity.

At the same time, we need to ensure that our drive for safety is balanced so innovation in AI technologies can continue to thrive. Copyright protections that are either too strict or lax deter further AI research and its deployment, with the former discouraging investment in creative tools powered by AI technologies. Furthermore, the manner in which AI created works affect society should also be taken into account — particularly how they influence culture, education and the public interest. Policymakers need to attempt to establish an environment in which they will firstly meet their stakeholders from whom they are demanding, but also in order for this not to be separated from the big picture that includes promoting diversity and inclusivity in creative expression.[19]

VII. Conclusion

Revisiting Key Principles

AI-generated works raise questions of core copyright concepts, particularly originality and authorship. We need to reconcile our traditional conceptions of originality, which depend on human contributions to creativity, with works that are created largely or entirely without a person involved in the process. The argument is basically to move the definition of originality

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[19] Bently, Lionel, Brad Sherman and Dev Gangjee, *Intellectual Property Law* (5th edn., Oxford University Press, 2022) 201.

further so as to include AI generated outputs, if those are in fact an original expression of a unique output that was not derived from existing works. Likewise, we might redefine what it means to be an author, accounting for collaborative roles between humans and AI and attributing authorship to programmers, users or operators as co-authors. Such a redefinition must strike the right balance between allowing innovation and creativity to flourish in all sectors and protecting the public interest by promoting access to AI content in various forms but also proper protection of rights holders.

Legal Reforms

Where undue protection for AI-generated works is found within the gaps of existing legal frameworks, copyright statutes should be revised/improved/updated to explicitly include provisions that account for these creations. One suggestion is to create a new category under copyright law that identifies AI-supported or generated works and specifically customises rights and limitations accordingly. Another group of academics pushes for the establishment of so-called sui-generis rights, a new legal category tailored to AI-generated works. That would entail a bespoke regime for ownership, use and term that recognises the special status of such works.

One more reform that can be applied is to use shared ownership models. If there are collective contributions from multiple parties—the programmers who created the generative AI tool, users inputting prompts or shaping the output, and/or data providers who trained it—ownership could be prorated among them according to their role in producing the creative work. This model serves to facilitate cooperation and reconcile the different interests of those involved.

Ethics and Convenience

However, such changes are much more than legislative reforms and require an ethical as well as practical consideration. Expected effects of new copyright rules for AI-created works on porn industries, the price we put on human labor and the way art and culture are expressed. One of the major ones is that if creative AI becomes extensively used, it could lead to a commercialization aspect wherein human creators might be full-time eliminated by automation leading to potential issues like devaluation of human work and creativity.

While on the other hand, promoting innovation in artificial intelligence solutions necessitates balance to avoid choking off progress. But overly harsh copyright protections might choke off

AI research and deployment, while too weak of a protection could disincentivize investment in cool new AI creative tools. The societal implications of generative works is also an ongoing concern, such as the way in which these materials affect culture and education and the public's access to information. They still need to produce a framework that serves the interests of stakeholders and also resonates with where society is headed in terms of creative expression through diversity and inclusiveness.

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    o   Goldstein, Paul, *International Copyright: Principles, Law, and Practice* (2nd edn., Oxford University Press, 2019).

2. **Journal Articles**

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- o Grimmelmann, James, "There's No Such Thing as a Computer-Authored Work – And It's a Good Thing, Too" 39 *Columbia Journal of Law & the Arts* 403 (2016).

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3. **Reports and Online Sources**

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- o European Union, *The Ethics of Artificial Intelligence: Challenges and Opportunities* (2021) https://ec.europa.eu/.

- o US Copyright Office, *Compendium of US Copyright Office Practices* (3rd edn., 2021) https://www.copyright.gov/.

- o Indian Ministry of Electronics and IT, *National Strategy for Artificial Intelligence* (2021) https://www.meity.gov.in/.