Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.
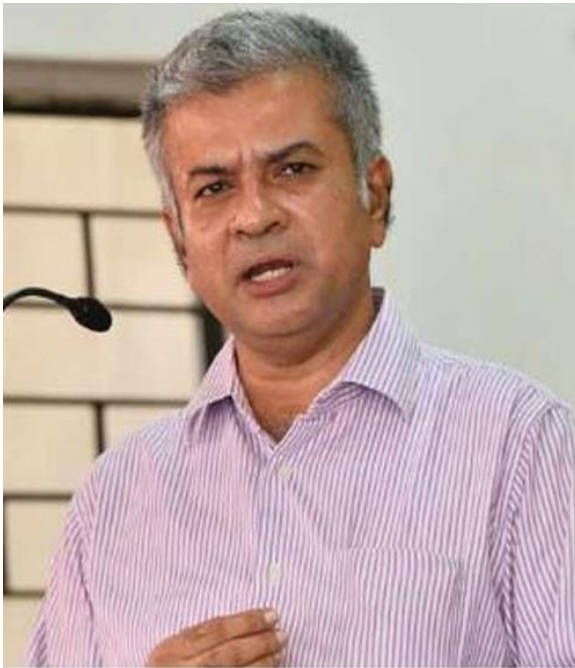
DISCLAIMER

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer

Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.
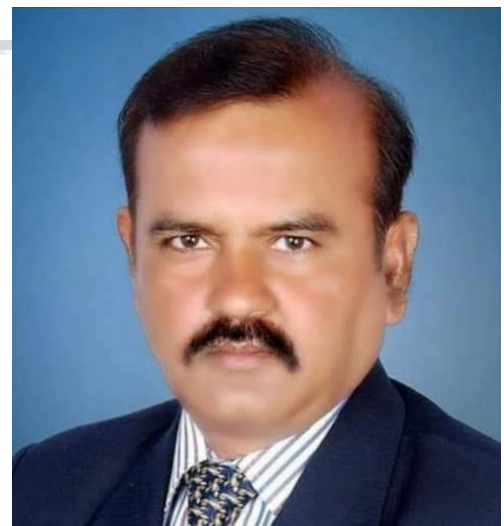
Senior Editor

Dr. Neha Mishra

Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

 Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.

Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM
Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.
More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.
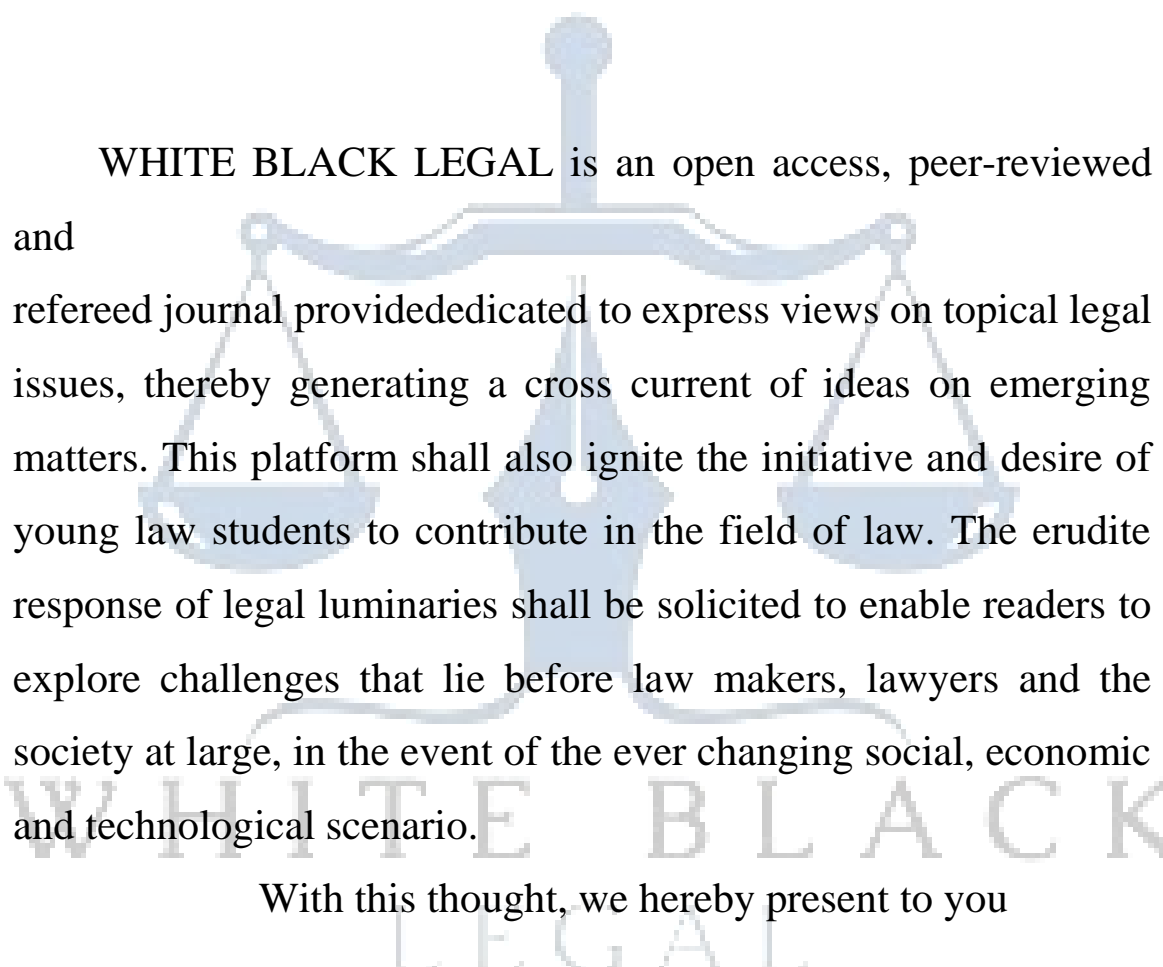
Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and

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

ARTIFICIAL INTELLIGENCE: COPYRIGHT CONCERNS V. TECHNOLOGY DEVELOPMENT

AUTHORED BY - MR. HARSHA C

2nd Semester, LLM in Intellectual Property and Trade Law at

Christ University, Bangalore

CO – AUTHOR - MS. AKHEKIVIMI K CHISHI

2nd Semester, LLM in Constitutional and Administrative Law at

Christ University, Bangalore

ABSTRACT

Artificial intelligence (AI) creates content in the form of literature, art and music which is protected under copyright. The TRIPS agreement not specifying about AI generated works and there are different approaches in domestic legislation, requiring human creativity that effectively leaves such works unprotected. AI regulation is linked to questions of morality, and intellectual property. The AI content has an issue of authorship and ownership issues and there are challenges in the development of AI that international trade rules could address, such as improving global access to data to train AI systems which is copyright infringement and there is lacking of clarity as to the liability of such content creation and misinformation and defamatory information. With this lack of clarity about authorship and liability, there is no scope for the development of Artificial intelligence-oriented services and technology as there is no access to content and scope for infringement. This article tries to bring clarity about who should own the authorship and liability and how can the copyrighted content be used to improve artificial intelligence-oriented technology and services in an international platform without any infringement claims.

Keywords: Artificial Intelligence, Copyright infringement, authorship, liability and fair use.

1. <u>INTRODUCTION</u>

Artificial Intelligence, everyone talks about it and uses it for daily needs to ease their work such as generating information on any topic, draft documents, mails, etc and there's likely no problem that anyone has faced when using artificial intelligence in the rough sense that the information is used only as a draft and to understand any topic or use it for non-commercial and personal use.

Artificial intelligence? How intelligent is it, what does it do and how is it different from other information available on any search engines like Google, Bing, etc. Before anyone can think of the legitimacy of the content generated by artificial intelligence or artificial intelligence in total, it becomes important to understand the use and the need for artificial in a general sense in the perspective of the common man.

Before artificial intelligence, search engines like Google, etc have taken people's attention to get information and many other things such as acting as a bridge between other sites and companies and the people. Any user who is subjected to the internet and browsing before artificial intelligence would first look for a search engine like Google and then type their query in the search box and then redirect themselves to the relevant sites.

What is the status and need of such bridging sites like Google to connect people to other sites when the sites already have their website links and can access them directly? The search engine has got people's trust and they believe whatever their query is, can be asked in the search box of such search engines and they get relevant information in no time either to be redirected to other sites or get content. There was no problem regarding the status of such search engines as they only act as a platform to provide information available on other sites.

What is the problem with artificial intelligence in generating information when there is no problem with search engines providing content? Is it because it doesn't provide a direct reference to the content generated or is it the validity of the information generated?

From a common man's perspective or need, what difference does it make? People used to use search engines to get information and now use artificial intelligence to get information, draft documents, emails, etc. With the evolution of technology, the ease of work too has improved either with the evolution of search engines or artificial intelligence. So, what's the problem

with artificial intelligence generating information?

To understand this, we need to understand the definition of artificial intelligence, how it generates information and how different is the information generated by search engines or other platforms to that of artificial intelligence and how is it related to intellectual property specifically to copyright.

2. ARTIFICIAL INTELLIGENCE – A RESEARCH APPROACH

Artificial intelligence as simple as it makes people's lives is the complexity of its nature and definitions. Artificial intelligence is defined by many researchers and some of them are as below for the understanding of the meaning and concept of artificial intelligence.

Samoili S and López Cobo, et al.[1] defined artificial intelligence[2] in their article "*AI Watch. Defining Artificial Intelligence. Towards an operational definition and taxonomy of artificial intelligence*" (2020). WIPO[3] has defined artificial intelligence in the "*Revised Issues Paper on Intellectual Property Policy and Artificial Intelligence*" (2020)[4].

There is no universally accepted definition of artificial intelligence. Every country or organization has its understanding and stance on artificial intelligence making it difficult to interpret what is artificial intelligence.

As we have seen, from a common man's perspective and the rough use of artificial intelligence has no exact problem as such but is it really having no problem in total? This article tries to identify the complexity and challenges for the authorship and ownership of the content and artificial intelligence as a separate entity in the realm of copyright and understanding the liability in generating content and other issues related to the artificial intelligence.

---

[1] White Paper on the use of Artificial Intelligence in Trade Facilitation (2024)

[2] "*Artificial intelligence (AI) systems are software systems designed by humans that, given a complex goal, act in the physical or digital dimension by perceiving their environment through data acquisition, interpreting the collected structured or unstructured data, reasoning on the knowledge or processing the information derived from this data, and deciding the best action(s) to take to achieve the given goal. AI systems can either use symbolic rules or learn a numeric model, and they can also adapt their behaviour by analysing how the environment is affected by their previous actions.*"

[3] "*Discipline of computer science that is aimed at developing machines and systems that can carry out tasks considered to require human intelligence, with limited or no human intervention.*"

[4] Trends and Developments in Artificial Intelligence – Challenges to the Intellectual Property Rights Framework (2020).

As we have tried to compare artificial intelligence to search engines in the introduction of this article, we can compare both from the researcher's perspective to understand the authorship and liability issues of artificial intelligence generating content. What is different between generating the content and users using any such content?

Let us illustrate[5] the use of search engines on one hand and using artificial intelligence on the other. 'A' is using Google for the research and 'B' is using ChatGPT (a commonly used artificial intelligence) for academic research. 'A' has used Google and has been redirected to a page from where the content has been copied and 'B' as well has copied the content from ChatGPT. Both 'A' and 'B' have submitted their work as research to their institution. The content has been subjected to plagiarism check and 'A' has got report that the content is 50% similar to the content in the website 'Y' and 'B' has got report that the content is 50% AI generated.

So, what difference does it mean and what are the consequences of research? 'A' though has used Google for research has copied content from website 'Y' which Google suggested and the similarity check doesn't recognise Google as the content provider but 'B' has used ChatGPT and the report shows as AI generated. Therefore, the major difference between search engine and Artificial intelligence is the recognition given to artificial intelligence as a primary source of content, unlike Google which is not recognised as the primary source of content provider. This makes anyone think about why it is like that and what is the status of artificial intelligence and whether it has protection and liability over generated content. Before understanding the authorship and ownership of the content generated by artificial intelligence, it is important to understand the need of why authorship and ownership need to be given to the artificial intelligence generated content.

In illustration[6] 1 @ footnote 5, when 'A' has used website 'Y' and later was found that the content was incorrect and was brought to the notice of the website officials and can be removed/altered as required and the officials can apologize to the concerned people and public based on the impact of the content posted in the website.

'B' has generated the content and later was found offensive to the public interest. What next?

---

[5] For reference in the future, will be referred as illustration 1 @ footnote 5.
[6] For future reference, will be referred as Illustration 1 @ footnote 6.

Information was not posted by anyone until the input for generating such content was given. So, is there no remedy for such an error? Who is to be held liable and who needs to remove such content and either compensate and apologize to the public?

When artificial intelligence creates wonderful content, which is appreciated by the public and gets recognition, both the company owning the artificial intelligence and the user who prompted artificial intelligence for such content creation would want to claim authorship and the monetary benefits. But when the content is irrelevant and is causing public outrage who is responsible? Either authorship and liability someone needs to take it and there must be clarity in this regard as people in the rapid growth of technology and artificial intelligence must not be confused and afraid of using the technology.

3. AUTHORSHIP CONCERNS

Artificial intelligence has got no proper recognition as a separate entity in any jurisdiction as a human or artificial entity. In Berne Convention[7], it refers to a natural person as an author of creative work. In the case of '*EBC v. D.B. Modak*', the court laid down that there must be a minimum "Modicum of creativity" along with innovation. As definition of artificial intelligence at footnote *2* specifies that artificial intelligence uses the existing data and interprets it to provide the required output as defined in the footnote *3*. In Section 2(d)(vi)[8] of Indian Copyright Act, 1957 (the Act) it mentions who can be an author. Section 17[9] of the Act defines an owner.

What is artificial intelligence and to what can it be compared for getting the legal status of an

---

[7] Berne Convention for the Protection of Literary and Artistic Work referred in Moerland, A. (forthcoming), 'AI and Intellectual Property Law', in: Lim, E. and Morgan P., The Cambridge Handbook of Private Law and Artificial Intelligence, Cambridge University Press – accepted for publication in a revised form Available at ssrn_id4203360_code2287607.pdf (elsevier-ssrn-document-store-prod.s3.amazonaws.com)

[8] "In relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created"

[9] Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:
Provided that--
(a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;
(c) in the case of a work made in the course of the authors employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

entity in the scope of existing legislations. We can think of the company as an artificial person in the Companies Act when we think of something artificial entity. Therefore, let's compare artificial intelligence with that of a company to identify if artificial intelligence can be identified as a company or not to get legal status.

To better understand, let's illustrate[10] it with an example. Section 2(20)[11] of the Companies Act, 2013 defines the company. Let 'C' be a company registered under the Companies Act, 2013 and 'D' be an artificial intelligence to be registered as a company. Here, we will compare both 'C' and 'D' with the salient features[12] of a company and see if both have same features of a company or differ somewhere.

1. *SEPARATE LEGAL ENTITY*

   'C' a company registered under the Companies Act, 2013 has a separate legal entity from its members. 'D' an artificial intelligence can be considered to have separate legal entity as it can function on its own name and exist independently.

2. *LIMITED LIABILITY*

   'C' has limited liability as it is a registered company. 'D' being an artificial intelligence that can only function with human input and database, can be said to have a limited liability as without the database and input it cannot function.

3. *PERPETUAL EXISTENCE*

   'C' has perpetual existence until the winding up of the company. 'D' being an artificial intelligence can be said to have perpetual existence until it is completely deleted.

4. *SEPARATE PROPERTY*

   'C' has a separate legal entity and therefore, can acquire property separately. 'D' being able to be a separate entity can acquire property for maintaining database and servers.

5. *SHARES*

   'C' being a company has shares and can be transferrable. 'D' being able to be

---

[10] For reference in the future, will be referred as illustration 2 @ footnote 10.
[11] "Company means a company incorporated under this Act or under any previous company law"
[12] Law, University of Kashmir, "*Nature of Company*", available at company_intro.pdf (uok.edu.in).

recognised as a company, can have shares and be transferred.

6. *CAPACITY TO SUE AND BE SUED*

'C' has the ability to sue and be sued as a company and 'D' too has the ability to sue or be sued as it has no difference to that of a company.

7. *COMMON SEAL*

'C' has a common seal as it is a company and 'D' being able to be recognised as a company can have a common seal and as it is particularly having online existence can have its digital signature.

As we have compared artificial intelligence to a company and have found positive results, we can consider artificial intelligence to be a company in the scope of existing legislations. Further, we need to analyse whether an artificial intelligence registered as a company can have authorship and ownership over the content generated by it.

Let 'D' referred to in illustration 2 at footnote *10* be considered as a service-oriented company. A service-oriented either has online or offline presence, provides its clients/customers with services and no physical product. 'D' being an artificial intelligence has online presence and provides content to the users, it can create content which are copyrightable.

Other services cannot be copyrighted but literature, art and music are under the scope of copyrightable expressions. Many similarity and plagiarism checkers detect the content generated by artificial intelligence as a separate category as "AI generated". If the tools don't recognise the content as "AI generated", does it solve the problem of the authorship of artificial intelligence generated content? This will be discussed later.

Further whether 'D' can get copyright for the content or not is a question though the content is copyrightable under the Act. For this, we need to identify why the content created by humans is copyrighted and whether the artificial intelligence can fulfil such criteria. This can be understood with the ratio decidendi of the cases and the rationale behind the copyright.

4. <u>RATIONALE BEHIND GRANTING COPYRIGHT</u>[13]

Copyright granted to any individuals grants them with economic rights u/s 14 of the Act and moral rights u/s 57 of the Act. Copyright protection enables the author to protect their creative expression and encourages innovation and creativity. Copyright protection acts as a reward for the creative work and enables authors to benefit from economic exploitation and be recognised for their work. In the case of '*RG Anand v Delux Films & Ors.*'[14], it was held that only expression of an idea can be copyrighted and not mere idea.

Principles of originality and the rationale of copyright

<u>Sweat of the Brow Test</u>

In '*University London Press v. University Tutorial Press*'[15], it was held that copyright can be granted for the labour put into the work[16]. This was followed even in the Indian courts[17].

<u>Modicum of creativity</u>

In '*Feist Publications Inc. v Rural Telephone Services Co.*'[18], it held that there must be intellectual effort and degree of creativity.

<u>Skill and Judgement Test</u>

The author must have applied his 'skill and judgement' in creating the work and the work must have a degree of creativity.

Applying these principles to the work created by humans and artificial intelligence, it can be understood that human applies labour, intellectual effort, skill and judgement with a degree of creativity unlike artificial intelligence which collects data from various sources and regenerates the same information.

To understand this, let us illustrate this with an example, 'D' an artificial intelligence-oriented service provider and 'E' an individual researcher. Both 'D' and 'E' are subjected to a test to find an answer to a question for which there is no direct answer and one needs to refer to various

---

[13] The principles are referred from Robbin Singh, "*UNDERSTANDING THE CONCEPT OF ORIGINALITY UNDER COPYRIGHT LAW IN INDIA*", Law Mantra think beyond others available at *11.pdf (lawmantra.co.in).
[14] R.G. Anand v. Delux Films & Others, AIR 1978 SC 1613
[15] University London Press v. University Tutorial Press, [1916] 2 Ch 601.
[16] "Merely because time, energy, skill and labour were expended (ie, originality of skill and labour)."
[17] Burlington Home Shopping v Rajnish Chibber. 61 (1995) DLT 6.
[18] Feist Publications Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991) Feist Publications Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991).

materials and interpret them to come to a rationale conclusion.

'D' with the data input in the server interprets it and provides a result ('F') and 'E' refers to the online materials along with offline resources and with human understanding and efforts provides a result ('G'). Here, the question of correctness of the result arises along with what information has been used.

'D' has only used the data that has been stored in the database and interprets them to provide a result. And what if the data is wrong o there is no data stored. It shows a wrong result based on the data stored in the database or shows error and wouldn't be able to understand and interpret the question. This makes it clear that artificial intelligence functions only when the data is stored and can only interpret them and nothing beyond that.

'E' has used the online and offline resources and has provided a result with human understanding. What if the information accessed is wrong? 'E' can interpret the question and the information and with human understanding can rectify the information and provide a valid answer or raise objection about the question.

One might think that if the information is correct and there is data stored in the database, then there is no problem and artificial intelligence can beat human intelligence and ease the work of a human.

When 'D' and 'E' are provided with all the information and then subjected to the same test, is the result same? No, when both are subjected to an unethical and illegal question, 'D' still provides a result from the database and 'E' with human intellect interprets the question and then decides what the response must be and whether to respond or not. Therefore, though artificial intelligence is provided with all the information there needs to be a human intellect behind while storing the information in the database and when using such information after the result is generated through artificial intelligence.

This makes it clear that artificial intelligence doesn't qualify the principles of originality as there is no creativity, skill, judgement nor labour. So, the content generated by artificial intelligence doesn't qualify for copyright?

There's more to it. What about the economic rights and moral rights of the work? Though there

is less scope or no scope for artificial intelligence to be granted copyright, the rights for the work must be granted to someone. Who is it? The artificial intelligence or the company maintaining the artificial intelligence or the person giving the prompt or the government?

ARTIFICIAL INTELLIGENCE

The the information is created based on the information stored in the database and the input given. But does it mean it isn't creating any work and is not eligible for copyright and the rights conferred in it?

Let us illustrate[19] an example for better understanding. Let 'D' be an artificial intelligence tool and 'G' and 'H' are two individuals who are generating responses from 'D'. The database stored in 'D' is same for 'G' and 'H'. Based on the similar inputs given by 'G' and 'H', will the results be same?

No. Though the input is similar, the artificial intelligence learns from the user interaction and the information generated is unique and is based on the user and the interaction. So, should artificial intelligence get rights conferred in copyright? No, as artificial intelligence generated content cannot fulfil the principles of originality, it cannot be granted copyright thus no rights. What if it is conferred with rights? Every output generated by artificial intelligence needs to be granted copyright making it have millions of copyrights on a daily basis for every single use. So, there is a concern about granting copyright to artificial intelligence and therefore no rights can be granted and artificial intelligence cannot exploit economic rights and moral rights independently and what other issues are faced if granted with copyright.

What is the duration of copyright? TRIPS has set minimum standards of copyright protection as a lifetime of the author plus fifty years and artificial intelligence having a perpetual existence, cannot be granted copyright protection forever as considering artificial intelligence as an author, the information must be protected and cannot be made public.

Though artificial intelligence is not granted copyright protection and economic rights, it is being granted moral rights when content generated by artificial intelligence is being recognised as AI generated. But the issue is that it doesn't specifically recognise which artificial intelligence is being used. So, whether it can be considered as getting moral rights or not? This issue can only be solved when either the artificial intelligence is recognised so every

---

[19] For future reference, will be referred as illustration 3 @ footnote 19.

artificial intelligence is having different identity and can be identified separately or each artificial intelligence have different and unique way of response compared to other artificial intelligence so that the tool detecting the content as AI generated can specifically recognise which artificial intelligence is generating content.

Thus, granting authorship to the artificial intelligence has many issues and concerns but who takes the liability for misinformation and other errors? This will be discussed later.

THE COMPANY

The company developing the artificial intelligence has developed codes for the artificial intelligence and has stored information in the database and given the specifications and other automated prompts for generating response in no time. The company has made all the arrangements for the artificial intelligence to operate independently without regular monitoring.

Does this mean the company doesn't have any liability or need to regulate the artificial intelligence? First to understand the liability we need to know about the authorship.

To understand the authorship, let us illustrate an example. Let 'I' be a software developing company and 'D' is an artificial intelligence developed by 'I' and 'J' is a normal gaming software developed by 'I'. Both are being launched to the public.

Before a software is launched, the company tries to identify errors and does small scale testing and make sure that the software doesn't crash, malfunction or create any error in any system. So, there is a reasonable care and checks that there are no errors. And there is always an update and developments in a software. So, this makes the company eligible for the authorship over software.

But that is over a software and not the way of how the software functions. This makes it clear that the company has authorship over artificial intelligence but what about the content? The company through the software i.e., artificial intelligence provide service to the public and the company has all the rights over any service provided. This means that though the public gives input to the artificial intelligence to generate responses, it can be understood that providing inputs doesn't involve creativity, skill and judgement and intellect effort as mentioned in the

principles of originality and the company for developing the artificial intelligence and putting efforts, creativity and skill and judgement in giving right instructions and ways to respond, the company is capable of being granted authorship of the content.

But the artificial intelligence is a service and is considered not eligible to get copyright. So, irrespective of the efforts over the development of artificial intelligence the company cannot claim copyright over the content. So, what does the company get in return for the efforts put into the development of artificial intelligence?

The company has authorship over the artificial intelligence in the category of software in the copyright legislations. So, the company can exploit the software and the codes of the artificial intelligence and acquire economic rights and moral rights.

Thus, the company doesn't get copyright over content generated by artificial intelligence but can it take liability for the error in the responses? This will be discussed later.

INDIVIDUALS

As discussed earlier, giving any prompt doesn't involve creativity, but what about skill, judgement and intellect efforts?

Getting response from an artificial intelligence is a difficult task. How many people are techies or into electronic gadgets and can make full use of them. This makes anyone think about whether they are capable to use technology to the fullest or not. When two individuals are given same technology and same problem, there is a difference in the results and even the time to get a proper response matters as that determine the skill and judgement and intellect efforts of humans.

When two individuals are using the artificial intelligence, one might get the right answer in no time and the other might get any error or wrong response. This can be a determining factor of having intellect efforts and skill and judgement and to an extent creativity as giving a correct prompt is a creative input of human.

So, this further leaves us with whether individuals be granted copyright for the content. This is a complex area of understanding as everyone who uses artificial intelligence will be generating responses and everyone needs to get copyright for the content they generate and this piles up the copyright claims and this reduces the value for the principles of originality.

As artificial intelligence is a free to use software, the use of the software must be for personal use and it must be upon the individual to make best use of it. So, what if artificial intelligence still provides wrong information, who should be liable?

There is an extent of development of artificial intelligence where the software has premium subscription services as well. So, in a free version any individual who uses artificial intelligence has to own the liability or use it to only personal use or have restricted use? Is there any difference between the free and premium version? There is no difference in he context we are discussing. Therefore, both free and premium versions are considered same. So, if anyone uses premium version and gets wrong response will the artificial intelligence or the company be liable?

No. The terms and conditions of the artificial intelligence for both free and premium versions expressly say that "*ChatGPT can make mistakes. Check important info*." Therefore, both the company and the artificial intelligence are not liable as it is the discretion of the user to rely on the information. So, does it make the user liable for the content though not being eligible for authorship?

GOVERNMENT

What does government have the copyright over the artificial intelligence generated content mean? It means that the government can allow the work to be published without the consent of the author through compulsory licensing.

Compulsory licensing is a provision in copyright law that government grants a licensee to use a work of copyright without requiring approval from the owner of the copyright. Section 31[20] of the Act states when can compulsory licence be granted. As there is no author for AI

---

[20] "*Compulsory licence in works withheld from public. -*
(1) If at any time during the term of copyright in [1][any work] which has been published or performed in public, a complaint is made to the [2][Commercial Court] that the owner of copyright in the work--
(a) has refused to republish or allow the republication of the work or has refused to allow the performance in public of the work, and by reason of such refusal the work is withheld from the public; or
(b) has refused to allow communication to the public by [3][broadcast] of such work or in the case of a [4][sound recording] the work recorded in such [4][sound recording], on terms which the complainant considers reasonable, the [2][Commercial Court], after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyrights to grant to the complainant a licence to republish the work, perform the work in public or communicate the work to the public by [4][broadcast], as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the [2][Commercial Court] may determine; and thereupon the Registrar of Copyrights shall grant the [5][licence to such person or persons who, in the opinion of the [2][Commercial Court], is or are qualified to do so] in accordance with the directions of the [2][Commercial Court], on payment of such fee as may be prescribed."

generated content, can it be considered that it can be compulsorily licensed by the government or and agency?

In Section 31A[21] of the Act defines for compulsory licencing of unpublished or published work when the owner cannot be traced, dead or not found, etc. As there is no proper author for the artificial intelligence generated content, the content can automatically be granted compulsory licence u/s 31 and 31A of the Act and be made public.

But this further leads to the question of quality and validity of the content generated by artificial intelligence. So, if the content generated by artificial intelligence is to be granted compulsory licencing, it means that the content is considered correct, creative and has qualified the principles of originality. Therefore, artificial intelligence be given status of author. Who monitors the content and does all the content generated be granted compulsory licensing? Artificial intelligence being an online platform and having international presence has millions of users using the tool and there will be billions of responses generated on a daily basis. Does every response get compulsory licensing and be made public or there needs to be scrutiny? Is it possible for scrutiny of billions of responses on a daily basis?

No. Only exceptional responses must be getting compulsory licence and others must be treated as non-creative content and must be made public or disregarded? If disregarded there is no problem. But what difference does it make when both exceptional content and basic content are made public? The issues of rights and liability arises again.

There is always a lack of clarity regarding authorship and liability of artificial intelligence generated content. We have tried to identify the authorship for the artificial generated content. We need to understand the authorship from the perspective of academic integrity because academic and research is always relying on the content and it is important to understand the value of artificial intelligence and how reliable and who needs to be credited for the content from artificial intelligence.

As we have already discussed as to who can be author among artificial intelligence, company maintaining the artificial intelligence or the government. We can further the discussion on the

---

[21] "31A. "***Compulsory licence in unpublished [or published works].*** — *[(1) Where, in the case of any unpublished work or any work published or communicated to the public and the work is withheld from the public in India, the author is dead or unknown or cannot be traced, or the owner of the copyright in such work cannot be found, any person may apply to the [Appellate Board] for a licence to publish or communicate to the public such work or a translation thereof in any language.]*"

same grounds.

ARTIFICIAL INTELLIGENCE

As we have discussed the problem faced in considering the artificial intelligence as the author but it is being recognised as the source in the similarity and plagiarism checker making it an author. So, can artificial intelligence be considered as author and be credited for the information. Does it mean that giving due credits to the content as AI generated make it not plagiarised?

Though the tools recognise the content, it doesn't specify which tool in specific has generated the content and how to give credits to the artificial intelligence?

It generates content based on the database and the input and can artificial intelligence be considered as author and the tool as blog and the chat page as the journal name or is it sufficient to just post the link? So, if artificial intelligence is being recognised as a source, it must be considered as author and be given credits. But this again leads us to the question of copyright and liability concerns.

So, why recognise the content as AI generated when it can't be considered as author and be given credits? The answer is to recognise as generated by artificial intelligence so the concerned authorities need to cross check the information and not completely rely on the information. And is it to not recognise the human as the author?

Though there are assumptions regarding the recognition given to artificial intelligence there is still no clarity as to why artificial intelligence is being recognised when it can't be considered as author.

THE COMPANY

As we have seen whether the company can be considered as author or not, it is clear that the tools recognise as AI generated content and not specifically recognise which company does the artificial intelligence belong to. Therefore, the company can't be given credits?

When a judge writes a judgement, it will be in the names of the judges and not in the name of the court or judiciary. So, on a similar ground, the company cannot claim the authorship and credits? The company has it is being given rights for the artificial intelligence and can exploit the software it can't exploit the responses considering it as a service provided to public.

INDIVIDUALS

As we have seen how individuals cannot be granted authorship for the content, it must be understood in terms of credits. The content is being recognised as AI generated and this reduces the reputation of the individuals using that content. But we discussed as to how generating a proper response require skill and judgement and intellect efforts.

But we need to understand that research happens based on the existing information unless it is empirical and research on any new area. So, any research needs analysis of the existing data and rebuilding new data and content with different perspective or criteria. So, the individuals who are able to use the artificial intelligence to their best to generate responses can be considered as researchers and can be granted credits.

But does having smartness on using technology and artificial intelligence make an individual a researcher like an individual who puts their efforts, time, creativity and does field research? There is lots of difference in an individual generating responses on their fingertips at the comfort of their homes and an individual who does field study, collect data etc. Therefore, as individuals cannot be granted authorship, they cannot be given credits for the work they have not done.

And the other problem in giving credits to individuals is that the chat with the artificial intelligence is private and only whether the content is by artificial intelligence or not can be identified based on the response pattern. To recognise individual as an author or to give credits, there comes privacy concerns as the chat with the artificial intelligence needs to be monitored and there can be multiple people generating same content and who needs to get credits is a question.

THE GOVERNMENT

As discussed, it doesn't mean the government becomes the author and get credits for the work. The government through granting compulsory licensing make the work public and available for public use.

So, should the government get the credits and authorship to the work? No. The government through an authorised agent or publisher publishes the work and make it public and it becomes available to public use. The money generated by publishing such work can be claimed by anyone by proving that they or their known person have created he work.

But when a work is being made public and free to use or available to public at cost by government recognised agent the work is considered as valid and correct. So, what if the content is wrong? It needs to be taken down again and declared incorrect. Until the content is removed, the content is considered as correct and copying that content must be considered as valid and not be recognised as plagiarism by any tools.

So, does this make any content generated by artificial intelligence be made public by government through compulsory licensing be considered valid so making anyone using artificial intelligence for their research make them not liable for using artificial intelligence and it means that the individuals be credited for reviewing and commenting on such content.

Therefore, even after a detailed study on the authorship of the content generated by artificial intelligence is an area of further study and there needs to be clarity given by any appropriate authorities and there needs to have necessary changes in the legislations to incorporate the decision given by authorities.

Though there is a lack of clarity on authorship and credit for the content generated by artificial intelligence, there must be some clarity on liability of the content generated. The study will further focus on the liability aspect of the content generated by artificial intelligence in the same pattern as discussed for authorship and credits.

ARTIFICIAL INTELLIGENCE

This is an independent tool capable of performing on its own without regular monitoring by any human. Therefore, can be said to have a separate identity. But this doesn't make it have authorship over its content. Does this exempt it from liability of error in response?

If it doesn't even have a separate identity in the eyes of the law and is not given rights, how can it have liability which is a basic principle of jurisprudence. So, whatever the content is generated, if any error occurs who is liable? Even though the artificial intelligence is liable, how can a software be made liable for the errors in the codes and mechanism of its functioning and it is indirectly the human behind the software who can be liable.

THE COMPANY

As we saw that the software cannot be liable and only human can be held liable, it must be developer and tester who is liable and has it is in the course of employment, it must be the

company who must be vicariously liable along with the developers and testers for the error in the software.

But the company has clearly mentioned that the software can make mistakes and user need to check information and the company doesn't regularly check or monitor every chat and response, so the company cannot be held liable. But when any input is generating wrong response, the company needs to be informed and there must be corrections made and if they don't make correction, then they can be held liable based on the safe harbour principle.

INDIVIDUAL

Though the software mentions that the user needs to check the information, people use the software for easing the work and if they have to check every information then they can use other resources available in the library and online resources. So, using he software doesn't make the user liable?

When an individual uses the software for personal understanding of any topic or other personal use, then there is no problem. But using the content for commercial use and publishing it as own content without checking the content for validity or existing copyright or other issues concerning the content the individual must be held liable to an extent of the offence.

GOVERNMENT

Though the rule of law principle says that no man is above law, the government is just facilitating the reach of the content to the public through compulsory licensing and therefore, cannot be held liable for the content which is not created, monitored and have monetary benefit to the government.

So, the question of liability is clear as compared to that of authorship and credit for the content generated by artificial intelligence. As we have seen authorship, credit and liability of the content, we need to study the copyright concerns and need of the copyrighted content for the smooth functioning of artificial intelligence.

We have understood that the artificial intelligence functions mainly based on the content stored and interpreting such content as per the requests given by user. So, it can be clear to anyone how important is the content for generating any responses. One might think that artificial intelligence is just like any search engine but search engine just provides relevant sources as

results from which the user needs to refer and take content based on the availability and restrictions of those sources.

To understand the need of content and the copyright concerns we need to understand the difference on how the artificial intelligence and search engine work. Search engine when posed a question, it redirects the user to page having various sites and the sites has information. What does it mean?

When a user searches for any information which is general and freely available, the search engine shows various sites from which the user can refer for information. And the search engine is not liable for the content in those sites and it just acts a bridging agent between the user and the sites. What if the content is paid and not available?

The user needs to pay for the content in the particular site if they wish to buy the content and there are many sites which provide access to the users for reading but has restrictions in copying the content and has to pay and buy the article for using such content. So, there are many ways of restricting the use of content and there is necessity of buying the content for using the content.

In search engine, the user has the option to choose the content and sites from where the content can be taken either free or paid and in artificial intelligence the user doesn't have the option to choose the sites and type of content the artificial intelligence uses and it generates making it crucial to have access to various content and many contents might have copyright and be having restricted access.

But the artificial intelligence needs to be having access to such copyrighted content to be providing real time response and generate unique and correct responses. Unable to get the access to copyrighted and premium content, there are high possibilities of wrong responses. So, what about the monetary rights of the copyright holder?

The company developing the software must take licence from the copyright holder and charge minimal charge from the users or the use of such content must be exempted from infringement considering the use as research and non-commercial use under the fair use and fair dealing principles as individuals can be held liable as discussed earlier. There must be a way to balance the economic rights of the copyright holder and the public interest in the developing era of technology or else, the best use of artificial intelligence can never be made and it just becomes a search engine or site like Wikipedia where anyone can write and edit content and the content

has no value for academic and research and can be used only for basic understanding of any topic.

5. <u>CONCLUSION</u>

This article through a detailed study has focused on the authorship, who needs to get credits for the content generated by artificial intelligence and who takes liability for the mistakes in the content and to what extent. This article has considered the detailed study on the artificial intelligence, the company maintaining the artificial intelligence, the individual using the artificial intelligence and what role does government play in regulating the content and balancing public interest in terms of authorship and liability of the content generated by artificial intelligence. This article focuses even on the copyright concerns of the content generated by the artificial intelligence and the content used by the artificial intelligence and the need to balance economic rights of the copyright owner of the content used by artificial intelligence and the public interest in the development of technology.

This article through this study recommends that the concerned authorities consider the need of bringing clarity about the authorship and status of artificial intelligence and the liability for the content generated by artificial intelligence and to what extent the user can rely on artificial intelligence and what is the status of infringement concerns of using copyrighted content in the database of the artificial intelligence. As the technology is developing, it is important for the users to understand the good and bad side of anything and their responsibilities and safety measures.