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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated 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

CAN AI BE CONSIDERED AN AUTHOR? A COMPARATIVE ANALYSIS OF COPYRIGHT PROTECTION FOR AI-GENERATED WORKS

AUTHORED BY - KIRITI KALA

Abstract

The rapid rise of artificial intelligence (AI) has dramatically reshaped the creative landscape across various fields such as art, literature, music, and software. With the emergence of generative AI tools like DALL·E, ChatGPT, and other large-scale models, machines are now capable of producing sophisticated and original content that, in many cases, rivals' human creativity. These advancements have redefined traditional processes of creation, with AI systems playing increasingly autonomous roles in generating expressive and functional outputs.

However, this technological leap has also triggered complex legal and ethical questions—chief among them being the issue of copyright. Existing copyright laws were built around the assumption of human authorship, rooted in notions of intent, creativity, and originality. As AI systems become more autonomous, a legal grey area has emerged: Can AI-generated works be copyrighted? If so, who owns these rights—the developer, the user, or the AI itself?

This research aims to examine whether and how copyright laws should evolve to address the growing prevalence of AI-generated content. It explores the legal approaches taken by various jurisdictions—particularly the United States, the European Union, the United Kingdom, and China—in dealing with AI authorship. Central to this analysis is the concept of "originality" and how different legal systems interpret it in the context of non-human creators. The study also looks at how varying levels of human involvement, such as providing prompts or editing outputs, influence ownership claims.

The findings reveal significant differences in global perspectives. In the United States, the position remains firm: only works created by humans qualify for copyright, as reinforced by both the U.S. Copyright Office and case law like *Thaler v. Perlmutter*. The United Kingdom, by contrast, has provisions that allow copyright in computer-generated works, attributing ownership to the person who orchestrated the creative input. Meanwhile, China has

demonstrated a more adaptive approach, with courts occasionally recognizing copyright for AI-generated works—particularly when there is meaningful human involvement.

This paper contends that granting full legal personhood to AI is neither necessary nor practical. Instead, a balanced, hybrid framework may be more appropriate. Distinguishing between fully autonomous creations and those shaped through human input could allow for a fairer attribution system. Under such a model, the human contributor—whether a prompt engineer, curator, or editor—could be recognized as the author, provided their involvement significantly shaped the outcome. This would not only bring greater clarity to copyright law but also encourage ethical and responsible use of AI in creative domains.

In conclusion, current copyright laws are ill-equipped to deal with the complexities posed by AI-generated content. Legal reforms or reinterpretations are urgently needed to bridge this gap. By addressing these issues, policymakers can reduce uncertainty, uphold creative rights, and ensure that the transformative potential of AI in the creative sector is realized in a fair and inclusive manner.

1. <u>Introduction</u>

The 21st century has ushered in a dramatic shift in how creative content is conceived and produced, largely due to the transformative power of artificial intelligence (AI). At the forefront of this revolution is generative AI—a branch of AI that enables machines to autonomously produce content across various mediums including text, images, music, video, and even computer code. Tools like Open Ai's ChatGPT, DALL·E, Midjourney, Google's Gemini, and Stability AI's Stable Diffusion have redefined the creative process by generating human-like outputs based on user prompts. These technologies, trained on massive datasets, can understand context, mimic artistic styles, and respond with impressive originality.

Today, generative AI tools are no longer just experimental novelties; they are becoming integral to how individuals and organizations create. [1]Visual artists are designing entire portfolios using AI-generated imagery, writers are co-developing narratives with language models, and programmers are speeding up development cycles with tools like GitHub Co-pilot.

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[1]   https://www.cambridge.org/core/journals/asian-journal-of-international-law/article/copyright-protection-for-aigenerated-works-exploring-originality-and-ownership-in-a-digital-landscape/12B8B8D836AC9DDFFF4082F7859603E3

[2]This integration of machine intelligence into creative workflows is not just enhancing productivity—it is also blurring the lines between human and machine authorship.

Amid this innovation, however, one major legal and ethical question looms large: Who owns the output generated by AI? At the core of copyright law lies a fundamental principle—that creative works are the result of human intellect and imagination. Most copyright systems around the world, whether under international treaties like the Berne Convention for the Protection of Literary and Artistic Works, or national statutes such as the U.S. Copyright Act of 1976, the U.K.'s Copyright, Designs and Patents Act of 1988, or India's Copyright Act of 1957, are built on this assumption. They aim to protect the moral and economic rights of human authors, rewarding their originality, labour, and creativity.

But with machines now capable of producing entire poems, paintings, or even musical scores without direct human intervention, the traditional human-centric view of authorship is facing unprecedented challenges. [3]The core legal question becomes: Who, if anyone, can claim copyright over a work generated by AI? Is it the programmer who built the model? The user who provided the prompt. The company that owns the system. Or is the work unprotectable because no human authored it?

This isn't just a theoretical debate. The answer to this question has far-reaching implications: it determines who can monetize AI-generated work, who is liable in the event of copyright infringement, and how legal protections should be enforced in a world where machines are co-creators.

Complicating matters further is the lack of international consensus. Legal interpretations vary widely across jurisdictions. In the United States, the U.S. Copyright Office and courts have repeatedly affirmed that copyright protection applies only to works with human authorship. In the landmark 2023 decision in *Thaler v. Perlmutter*, a federal court ruled that works created entirely by AI could not be registered for copyright, emphasizing the need for human creative input. On the other hand, the United Kingdom recognizes a unique category of "computer-generated works," where copyright may be granted to the person who made the arrangements necessary for creation under Section 9(3) of the CDPA 1988. China's courts, meanwhile, have

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[2]   https://houstonlawreview.org/article/92132-what-is-an-author-copyright-authorship-of-ai-art-through-a-philosophical-lens

[3] https://www.scirp.org/journal/paperinformation?paperid=125721

shown a willingness to acknowledge copyright in AI-generated content if there is meaningful human involvement.

These divergent approaches point to a pressing global need for clarity and consistency in how copyright law treats AI-generated content. Should existing copyright frameworks be amended to include machine-generated works? Or should a new category of rights be created—perhaps something akin to a sui generis protection—that acknowledges AI's contribution while maintaining human accountability?

This paper sets out to explore these critical questions through four main objectives:

1. Assessing the possibility of AI authorship under current legal frameworks, analyzing statutory language, court interpretations, and academic debates surrounding non-human creativity.

2. Comparing copyright regimes across jurisdictions—including the United States, United Kingdom, European Union, India, and China—to identify legal trends, gaps, and emerging consensus (if any).

3. Examining the role of originality as a legal requirement for copyright and questioning how it applies to works where the creative input originates from an algorithm rather than a person.

4. Proposing a practical and policy-informed framework that balances innovation with accountability—offering legal reforms, alternative rights models, and ethical considerations to address the growing influence of AI in creative industries.[4]

The discussion will begin with a deep dive into the workings of generative AI and its application across different creative sectors. This will be followed by a doctrinal and comparative legal analysis, drawing from relevant case law, regulatory guidance, and legal scholarship. Interdisciplinary insights—from fields such as computer science, ethics, and philosophy—will enrich the legal analysis, placing the copyright debate in a broader socio-technological context.

Ultimately,[5] the goal of this paper is to contribute to the evolving legal discourse on AI and authorship. As generative AI becomes a routine part of how we create and communicate, the legal system must keep pace—offering fair, transparent, and adaptable solutions that reflect the realities of 21st-century creativity. Addressing these questions is not just about resolving legal

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[4] https://www.tandfonline.com/doi/full/10.1080/13600869.2025.2486893
[5] file:///C:/Users/Sandeep%20Kumar/Downloads/malikova_rafiga.pdf

ambiguities—it is about shaping the future of intellectual property in a world where humans and machines create side by side.

2. Concept of Authorship in Copyright Law

Authorship is a cornerstone of copyright law—it is the starting point from which all related rights and responsibilities flow. It defines who legally owns a creative work, who can license or sell it, who can sue for infringement, and who is entitled to the recognition and rewards that come with creation. [6]Traditionally, this concept has always revolved around the human creator—someone who brings a work into existence through their intellect, effort, and personal creative expression.

Under classical copyright doctrine, authorship is linked to two key legal principles: originality and fixation. Originality refers to the requirement that a work must originate from the author and show a minimal level of creativity. Fixation ensures that the work is captured in a tangible form—whether written, recorded, drawn, or otherwise made permanent—so that it can be protected and enforced under the law. These elements form the legal scaffolding upon which copyright protection is granted.[7]

But authorship is more than a legal formality. It is deeply connected to broader philosophical ideas about labour, individuality, and moral rights. Influential thinkers like John Locke have argued that people have a natural right to the products of their labour. In this view, creative works are not just commodities—they are extensions of a person's intellect and personality. This understanding has long underpinned copyright systems, especially in jurisdictions that recognize moral rights, where the author retains the right to be identified as the creator and to protect the integrity of their work.

However, with the advent of AI-generated content, this traditional framework is being tested. When a machine produces text, images, or music without direct human input, the question arises: can there truly be an "author" in the legal or moral sense? And if not, can such works be owned, licensed, or protected at all?

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[6] https://intellectvidhya.com/authorship-and-ownership-of-copyright-in-india/
[7] https://legal-wires.com/lex-o-pedia/ownership-and-authorship-of-copyrights-and-rights-of-copyright-owner/

2.1 Traditional Understanding of Authorship

a. Human Creativity

In the traditional framework of copyright law, authorship has always been seen as a distinctly human endeavour. This view is rooted in the long-standing belief that creativity is a product of human consciousness—our ability to think, feel, and make subjective choices. Courts and legislators alike have consistently understood the "author" as a natural person—someone who exercises judgment, imagination, and originality in crafting a work[8].

A well-known example is the U.S. Supreme Court decision in *Feist Publications, Inc. v. Rural Telephone Service Co.*, where the Court made it clear that copyright requires more than just hard work—it demands at least a small amount of creativity. And that creative spark, even if minimal, must come from a human being. Machines, by contrast, are seen as lacking the ability to originate ideas or express personal judgment.

b. Expression of Ideas (Not the Ideas Themselves)

A core principle of copyright law is that it protects the expression of ideas, not the ideas themselves. [9]Known as the idea-expression dichotomy, this rule ensures that only the specific way an idea is communicated receives protection—not the general concept behind it.

This expression must be original to the author and fixed in a perceivable form. Common themes or generic facts aren't protectable. Instead, it's the author's unique voice, structure, and treatment of the subject that gives rise to a copyrightable work.

c. Fixation and Originality

Two core requirements underpin the legal recognition of authorship:

- Fixation means that the creative work must be captured in a tangible medium. In the U.S., for instance, 17 U.S.C. § 102(a) states that copyright exists in "original works of authorship fixed in any tangible medium of expression."
- Originality requires that the work be independently created by the author and contain at least a small amount of creative input. The *Feist* decision reaffirmed that originality doesn't mean the work has to be new in the world, but it must be the product of the author's own intellectual effort. [10]

In both elements, human agency is vital. Fixing an idea—whether through writing, illustration,

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[8] https://www.sciencedirect.com/science/article/abs/pii/S0065260123000291

[9] https://en.wikipedia.org/wiki/Idea%E2%80%93expression_distinction

[10] https://www.writinglaw.com/doctrine-of-fixation-copyright-law/

code, or composition—demands intention, technical skill, and artistic decision-making

2.2 Why Authorship Matters for Rights and Responsibilities

Authorship isn't just a philosophical or artistic label—it has very real legal consequences.[11] It forms the basis for allocating both economic and moral rights under copyright law.

a. Economic Rights

Economic rights enable an author to control how their work is used. These include the rights to reproduce, distribute, perform, display, and create adaptations. If no human can be identified as the author of an AI-generated work, these rights become difficult to assign or enforce. For example, the U.S. Copyright Office has explicitly denied registration for works generated solely by AI, citing lack of human authorship.

b. Moral Rights

In many jurisdictions, including France and India, authors are granted moral rights—non-economic rights that protect their personal connection to a work. These rights include the right to attribution and the right to object to derogatory treatment of the work.

AI cannot experience pride, dignity, or harm to reputation—so if there's no human author, moral rights become irrelevant.

c. Legal Liability

Authorship also plays a crucial role in determining who is responsible when something goes wrong. If an AI-generated work infringes existing copyright, courts must identify who is accountable—the user, developer, or AI provider? Without authorship, enforcement mechanisms break down.

2.3 Jurisprudential and Philosophical Perspectives on Authorship

Beyond legal definitions and statutory conditions, the concept of authorship is rooted in philosophical and jurisprudential reasoning.

a. The Labour Theory (Lockean Justification)

John Locke's labour theory posits that individuals gain ownership over something by mixing their labour with it. This view implies that authorship should only be attributed to beings

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[11] https://www.icmje.org/recommendations/browse/roles-and-responsibilities/defining-the-role-of-authors-and-contributors.html

capable of labour—thus excluding AI, which lacks conscious effort.

b. The Personality Theory (Hegelian Justification)

Georg Wilhelm Friedrich Hegel argued that creative works are expressions of the creator's personality. Since AI lacks identity, values, or self-awareness, it cannot be seen as a rightful author under this theory.

c. The Incentive Theory

Utilitarian theorists justify copyright as a social contract that encourages creation by offering exclusive rights. Applied to AI, this suggests protecting the human developers or prompt-users to maintain innovation and creativity.[12]

3. India's Legal Framework for AI-Generated Works Under Copyright Law

India's copyright regime is governed by the Copyright Act, 1957, which has seen several amendments over the years to keep up with technological change. [13]However, with the advent of generative AI systems—capable of creating text, images, music, and software without direct human authorship—the law now faces challenges it was never designed to handle.

Under the Act, an "author" is typically defined as the creator of the work. For example, Section 2(d) identifies the author as the person who creates a literary, dramatic, musical, or artistic work. While the law does recognize computer-generated works (particularly in relation to cinematographic films or computer programs), it doesn't specifically address works generated by AI systems operating with little to no human intervention.[14]

One potential opening is found in Section 2(d)(vi), which allows for authorship to be assigned to a person "who causes the work to be created" in the case of computer-generated content. However, this phrase remains ambiguous when applied to generative AI tools that produce outputs autonomously, often without specific, detailed human instructions.

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[12] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4901491
[13]   https://www.ijlt.in/post/balancing-indian-copyright-law-with-ai-generated-content-the-significant-human-input-approach
[14] https://www.pib.gov.in/PressReleasePage.aspx?PRID=2004715

This ambiguity leaves several key issues unresolved:

- Who qualifies as the "author" when the AI, not a human, generates the creative expression?
- Can copyright be claimed by the user who prompted the AI, or must it go to the developer or owner of the system?
- What happens to liability when AI-generated content infringes existing copyrights or violates other legal norms?

So far, Indian courts and regulatory bodies have not provided concrete guidance on these questions. [15]Unlike jurisdictions such as the UK, which attributes authorship in computer-generated works to the person making the necessary arrangements, or the U.S., which firmly rejects copyright protection for non-human creations, India stands at a legal crossroads.

As AI-generated content becomes more common in sectors such as art, journalism, marketing, and software development, the absence of clear legal standards creates uncertainty for creators, investors, and legal practitioners alike.

3.1 The Indian Copyright Act, 1957: Foundations and Scope

India's Copyright Act, 1957 is the cornerstone of the country's intellectual property regime. It offers protection to a wide variety of original works—ranging from literary and musical compositions to films, photographs, and computer programs.[16] The Act not only provides economic rights, such as the ability to reproduce, publish, distribute, or adapt the work, but also recognizes moral rights—including the right to be identified as the author and to object to distortion or misrepresentation of one's creation.

Section 2(d): Understanding the Author

The legal definition of an "author" under Section 2(d) of the Act varies by category:

- For literary and dramatic works, the author is the actual creator.
- For films and sound recordings, it's the producer.
- For photographs, it's the photographer.

When it comes to computer-generated works, the author is defined as "the person who causes the work to be created." This clause becomes especially relevant in the context of generative AI. While it excludes the possibility of recognizing the computer or AI as the author, it

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[15] https://www.mondaq.com/india/copyright/1348418/legal-implications-of-ai-created-works-in-india
[16] https://blog.ipleaders.in/an-overview-of-the-copyright-act-1957/

introduces ambiguity about who exactly "causes" the creation—a term the Act leaves undefined.[17]

3.2 Applying the Law to AI-Generated Works

1. Human-AI Interaction

Modern generative AI tools like ChatGPT, DALL·E, and Midjourney produce content based on human interaction at various levels:

- AI developers train and fine-tune the models.
- Users prompt the models to generate specific outputs.[18]
- Editors or curators refine or modify the AI-generated content.

This layered involvement makes it difficult to identify a singular "author Should authorship go to the AI developer, the user who gave the prompt, or the entity providing the AI service?

2. The "Causal Role" Standard

The phrase "causes the work to be created" implies a standard of effective control or direct causation. But in AI-generated outputs, this causation can be incredibly complex:

- If someone simply inputs "compose a poem about the monsoon" and the AI produces a ready-made poem, did the user really "create" it?[19]
- If the developer built and trained the model, does that make them the author of every output?
- If a business licenses the AI system, do they inherit any authorship rights?

With no legal clarity on how causation should be assessed in such scenarios, courts and copyright offices are left to interpret it case-by-case.

3.3 Legal Silence on AI Autonomy

India's current copyright law does not explicitly address the issue of AI-generated content created with minimal or no human involvement.[20] In contrast to countries like the U.S., where the law has taken a clear stance, Indian law remains silent.

1. Rise of Autonomous Creativity

    AI systems today are not just passive tools—they can generate content that appears

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[17] https://www.drishtijudiciary.com/to-the-point/intellectual-property-rights-ttp/copyright-protection-under-the-indian-copyright-act

[18]https://www.researchgate.net/publication/388422748_A_foundation_model_for_human-AI_collaboration_in_medical_literature_mining

[19] https://www.lawjournal.digital/jour/article/view/486?locale=en_US

[20] https://pmc.ncbi.nlm.nih.gov/articles/PMC7332220/

creative, coherent, and even emotionally resonant. [21]When AI creates artwork, articles, or music based on minimal prompts, it's questionable whether any human can truly claim authorship under the traditional legal model.

2. Impact on Ownership and Commercialization

This uncertainty leaves businesses, artists, and developers in a legal grey zone. Without clear authorship:

- Works may be unprotected and fall into the public domain.
- Rights may be challenged or invalidated.
- Enforcement becomes legally complicated. [22]

3. Risk of Abuse

Ambiguity also opens the door to misuse. [23]Individuals might claim copyright over content they had no meaningful role in producing, diluting the principle of originality, and threatening the rights of legitimate human creators.

3.4 Global Perspectives: A Comparative Overview

United States

The U.S. takes a firm human-centric approach. In *Thaler v. Perlmutter*, the court upheld that copyright protection cannot extend to a piece generated entirely by an AI without human creative input. The U.S. Copyright Office further clarified its stance: merely prompting an AI does not meet the standard of authorship.[24]

United Kingdom

Under the Copyright, Designs and Patents Act, 1988, [25]the author of a computer-generated work is "the person by whom the arrangements necessary for the creation of the work are undertaken." This has been interpreted to recognize authorship based on human planning and execution.

China

Chinese courts have shown a more flexible approach. While still requiring human involvement,

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[21] https://www.sciencedirect.com/science/article/pii/S0022103122001512

[22] https://www.sciencedirect.com/science/article/abs/pii/S0166497225000914

[23] https://www.cdc.gov/child-abuse-neglect/risk-factors/index.html

[24]   https://library.fiveable.me/global-perspectives-on-identity-and-diversity/unit-3/global-perspectives-gender-roles-norms/study-guide/wgc2i7d9tXJlE6ON

[25]   https://www.open.edu/openlearn/education-development/global-perspectives-on-primary-education/content-section-4

they have granted copyright to individuals who curated and supervised AI outputs, recognizing creative contributions in selecting inputs or refining outputs.[26]

India: A Policy Vacuum

Unlike these jurisdictions, India has yet to issue official guidance or rulings on AI authorship. This leaves creators, companies, and legal professionals uncertain and exposed to inconsistent interpretations.

3.5 The Way Forward: Need for Legal Reform

India must urgently update its copyright framework to reflect the realities of AI-driven creativity.

1. Clear Definitions

   Define terms like "AI-generated" and distinguish them from "AI-assisted" works. This clarity will help determine when human authorship is present or absent.

2. Authorship Models

   Several models can be considered:

   - User-as-author model
   - Developer-as-author model
   - Hybrid authorship
   - No-rights model[27]

   Each model carries legal and ethical trade-offs that must be weighed carefully.

3. Sui Generis Rights

   Introduce a distinct category of protection for AI-generated works, based on investment or technical input rather than human creativity. This would avoid distorting traditional copyright norms while encouraging innovation.

4. Copyright Office Guidelines

Like the U.S., India's Copyright Office could issue guidance outlining when and how AI-generated works can be registered, under what conditions, and what standards must be met for authorship to be attributed. India's Copyright Act was forward-looking when it was enacted, but it now faces a critical gap when it comes to AI. [28]Section 2(d) provides a potential starting

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[26] https://www.sciencedirect.com/science/article/pii/S1470160X23002054
[27] https://www.orfonline.org/expert-speak/legal-reform-in-a-post-covid19-world-the-way-forward-67065
[28] https://copyright.gov.in/documents/handbook.html

point, but without definitions or interpretive guidance, it falls short of addressing today's challenges. As generative AI becomes a regular tool in fields ranging from digital art to software development, India must modernize its legal framework to preserve legal certainty, encourage innovation, and prevent exploitation. Until such reform occurs, stakeholders will have to rely on private contracts, licensing agreements, and industry norms to assign and manage rights in AI-generated content—an imperfect but necessary workaround in the absence of statutory clarity.[29]

U.S. Copyright Office Policy (2023)

In March 2023, the U.S. Copyright Office released a formal statement titled "Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence." This guidance reaffirmed a long-held legal stance: copyright protection in the U.S. is limited to works created by human beings.[30] According to this policy, if a work includes AI-generated material, the Office will evaluate whether that content stems from human intellectual input or if it is merely the result of mechanical reproduction by a machine. If the content lacks meaningful human authorship, it cannot be copyrighted—no matter how impressive or creative it may appear.

The *Zarya of the Dawn* Case

A landmark case that tested this policy was *Zarya of the Dawn*, a graphic novel submitted by Kristina Kashtanova. While she authored the text, the images were generated using Midjourney, an AI-based text-to-image tool. Initially, copyright was granted for the entire work. However, once the Office discovered that AI had produced the illustrations, it revoked protection for the visual elements while allowing the text to remain protected. [31] The decision clarified that prompting an AI tool does not equate to authorship, particularly when the AI independently makes expressive decisions. This case set a strong precedent for distinguishing between AI-assisted and AI-generated works.

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[29] https://www.copyright.gov/what-is-copyright/

[30] https://www.copyright.gov/

[31]   https://www.copyright-registry-application-online.com/?gad_source=1&gad_campaignid=21023181807&gbraid=0AAAAAqnEzIZ3k1QFIaUw0aZgvgQL2gf85&gclid=Cj0KCQjwnJfEBhCzARIsAIMtfKIDpr77jrA5XNyEEqpZEw9o3xw_AUPXy692sAtWZC3BskYQpoJZwgkaAoJnEALw_wcB

Collaborative Works and Human Contribution

The U.S. Copyright Office has indicated that partial protection may apply when a human contributes creatively—such as arranging, editing, or incorporating AI outputs into a larger, human-made composition. [32]However, full copyright cannot be claimed if the human role is minimal or passive. Transparency is key: applicants must disclose the role of AI and clarify which portions were not authored by a human. In short, U.S. copyright law continues to centre on human creativity, and while collaboration with AI is permitted, authorship rights only extend to the human-authored portions of a work.

United Kingdom: A More Adaptive Framework

Unlike the U.S., the U.K. takes a more flexible approach. Section 9(3) of the Copyright, Designs and Patents Act 1988 states that in the case of computer-generated works, the author is the person who made the necessary arrangements for the creation.

This clause has become increasingly relevant in the age of generative AI, even though it was originally designed with basic software-generated content in mind. The law allows authorship to be attributed to:

- The user who provides structured prompts,
- The developer who builds the AI,
- Or the entity that integrates AI output into final creative works.

However, like other jurisdictions, the U.K. does not recognize AI as an independent author. Copyright must vest in a human or legal entity that orchestrates or curates the creation process.

Interpretative Flexibility

Determining who made the "necessary arrangements" can vary case by case. If a user is deeply involved—designing prompts, refining results, and integrating outputs—they may be considered the author. On the other hand, minimal involvement could disqualify them from authorship claims.[33] Although the U.K.'s legislative language allows more room for AI-generated content to be protected, there is still limited case law interpreting this provision in the context of modern AI tools. Future judicial rulings and possible amendments may further shape this evolving space.

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[32] https://www.copyright.gov/policy/

[33] https://ipwatchdog.com/2023/12/18/happened-u-s-copyright-office-2023/id=170509/

European Union: Emphasis on Human Authorship

The European Union has taken a more conservative, human-centric stance on authorship. Under the InfoSec Directive (Directive 2001/29/EC), authorship rights are granted only to human creators. The Court of Justice of the European Union (CJEU) has repeatedly stated that a work must reflect the "author's own intellectual creation." Originality and Personality.

In cases like *Infopaq* (C-5/08) and *Painer* (C-145/10), the CJEU has emphasized that originality comes from personal expression and creative choices. This interpretation makes it clear that machines, lacking intent and self-awareness, cannot meet the originality requirement under EU law. Moral rights—such as the right to attribution and protection from distortion—further reinforce the view that only natural persons can be authors.[34] These rights are rooted in the idea of human dignity and identity, both of which are irrelevant to machines.

- The EU Artificial Intelligence Act (AI Act)

While the EU has taken bold steps with the AI Act (2023)—the first global regulation addressing AI technologies—its scope is focused on transparency, risk classification, and ethical use, not intellectual property, or authorship. Thus, the AI Act does not grant AI authorship rights, nor does it alter the InfoSec Directive's stance. The framework remains clear: authorship requires a human creative origin.

National Diversity and Fragmentation

Because EU directives allow national discretion in implementation, some variation exists:

- France and Germany uphold strong moral rights and strictly follow the human authorship doctrine.
- Ireland and the Netherlands are more open to flexible interpretations in tech-assisted works. Still, no EU country currently offers copyright protection to purely AI-generated works without meaningful human input.

Comparative View and Need for Reform in India

As discussed previously, India's Copyright Act, 1957 uses the phrase "the person who causes

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[34] https://www.sonisvision.in/blogs/comparative-analysis-of-copyright-laws-for-ai-generated-works-in-the-usa-eu-and-
japan#:~:text=Human%20Creativity%20Requirement%3A%20EU%20law,creation%20by%20a%20human%20author.

the work to be created" to determine authorship in computer-generated works. While this provision gives some room for interpretation, it lacks the clarity and judicial guidance found in jurisdictions like the U.K. or U.S. India has yet to take a formal stance through legislation or judicial pronouncements. [35]This creates legal uncertainty, especially as Indian artists, tech developers, and businesses increasingly adopt generative AI in their workflows.

Final Reflection

Across jurisdictions, a common theme emerges authorship remains a human domain, at least for now. The laws in the U.S., U.K., EU, and India, though varied in language and flexibility, all exclude AI as a legal author. Yet the intensity of human involvement, and how it is measured, differs widely.

This divergence poses challenges:

- For creators, who seek clarity on how to protect their AI-assisted works.
- For courts, which must balance legal tradition with technological evolution.
- For policymakers, who face the urgent task of modernizing IP frameworks to reflect today's creative realities. Going forward, options such as joint authorship models, sui generis protections, and clearer legislative definitions may be necessary to ensure that copyright law evolves alongside innovation.

5. WIPO & International Trends

As artificial intelligence (AI) reshapes the creative and intellectual property (IP) landscapes globally, the World Intellectual Property Organization (WIPO) has emerged as a key platform for international dialogue on how copyright laws should evolve. [36]As a specialized agency of the United Nations with 193 member countries, WIPO plays a crucial role in setting international IP norms. Although copyright laws are typically national in scope, the rise of AI-generated content—whether in literature, art, music, or software—has prompted a global reconsideration of foundational copyright principles, especially concerning originality and authorship.

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[35]   https://www.researchgate.net/publication/381278358_The_notion_of_'authorship'_under_EU_law-who_can_be_an_author_and_what_makes_one_an_author_An_analysis_of_the_legislative_framework_and_case_law

[36] https://www.wipo.int/en/web/patent-analytics/w/news/2025/wipo-technology-trends-report-2025

A. WIPO's Central Role in Global Copyright Governance

WIPO oversees international agreements like the Berne Convention for the Protection of Literary and Artistic Works (1886)—a cornerstone of global copyright law. This treaty established key principles such as:

- Automatic copyright without registration.

- Equal treatment for foreign works (national treatment).

- Protection of both moral and economic rights. However, these frameworks were created long before the idea of machines generating creative works was imaginable. They assume that only human beings can be authors.[37] In response to the growing use of generative AI, WIPO has initiated several efforts to examine how IP systems can adapt to new realities.

B. The "WIPO Conversation" on IP and AI

In 2019, WIPO launched the "WIPO Conversation on Intellectual Property and Artificial Intelligence"—a global forum that brings together policymakers, academics, legal professionals, tech companies, and civil society to discuss the complex interaction between AI and IP. Key copyright-related issues explored include:

- Whether AI can be considered an author.

- If not, whether new forms of protection are needed for AI-generated works.

- Who—among developers, prompt engineers, users, or corporations—should hold rights to such works? Rather than prescribing uniform solutions, WIPO's goal has been to support mutual understanding through comparative studies, open dialogue, and informed policymaking.[38]

C. Diverging Legal Approaches Across Countries

One of the challenges WIPO faces is the wide variation in how countries approach AI and copyright:

- United States: Firmly maintains that only humans can hold copyright. In *Thaler v. Perlmutter*, the court confirmed that AI-generated works are not eligible for protection without human involvement.

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[37] https://www.wipo.int/portal/en/index.html
[38] https://www.wipo.int/meetings/en/details.jsp?meeting_id=51767

- United Kingdom: Offers limited copyright protection for computer-generated works under Section 9(3) of its Copyright Act, granting rights to those who make the necessary arrangements—but still excludes AI as an author. [39]

- India: The law provides that the "person who causes a computer-generated work to be created" is the author, leaving room for human involvement but remaining silent on full AI autonomy.

- China: Some courts have acknowledged copyright in AI-assisted works where human creative control can be shown, suggesting a more flexible approach.

- European Union: Strongly emphasizes human originality. Under CJEU rulings and existing directives, AI-generated works lacking human input are not protected. [40]

These inconsistencies create significant cross-border legal uncertainty, especially for companies or creators using AI in global markets.

D. Proposed Legal Innovations for AI-Created Works

Amid this growing complexity, WIPO discussions have brought forth several legal models that countries might consider:

1. Sui Generis Protection

   A popular proposal involves creating a new, tailored right specifically for AI-generated works. This could function similarly to:

   - Database rights in the EU (which protect based on investment), or

   - Plant variety rights (which reward technical innovation) Such a model would offer limited-time protection (e.g., 5–10 years) to human stakeholders like developers or users, without redefining traditional copyright authorship.[41]

2. Human Attribution Models

   This approach allows copyright protection only when a human has made significant creative decisions—such as crafting complex prompts, editing AI outputs, or organizing them into compilations. In this case, protection applies only to the human-contributed portions.

3. Developer or Corporate Ownership

   Another suggestion is to grant rights to the company or individual who owns or deploys the AI system, mirroring the U.S. concept of "work made for hire." Critics argue these

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[39] https://www.redalyc.org/journal/4027/402771781002/html/

[40] https://wp.hse.ru/data/2019/03/25/1188261076/88LAW2019.pdf

[41] https://or.niscpr.res.in/index.php/JIPR/article/view/3259/2968

risks commodifying creativity and eroding the value placed on human expression.

E. Broader Ethical and Policy Considerations

WIPO's discussions have also touched on important philosophical and societal questions:

- Should machines ever be considered authors?

- Will extending rights to AI outputs diminish the value of human-made art?

- How can innovation be balanced with cultural integrity and public access?[42] Some stakeholders worry that granting strong IP rights to AI-generated works could flood markets with machine-made content, making it harder for human creators to compete. Others express concern about copyright infringement by AI systems trained on existing human works without consent or transparency. These debates highlight the need for policies that are not only technically sound but also ethically grounded and socially equitable.

F. Looking Ahead: Building Consensus

WIPO has not yet proposed any binding international treaty on AI and copyright, largely due to the lack of global consensus. However, it is laying the groundwork for future reform by:

- Publishing best practices and model laws.

- Conducting global surveys and comparative studies.

- Hosting dialogues and training to help countries develop modern, balanced IP systems. The organization's long-term vision is to help nations navigate these emerging challenges through collaboration—not by dictating solutions, but by fostering mutual learning and legal evolution. [43]WIPO's ongoing work at the intersection of AI and copyright is shaping the future of intellectual property on a global scale. Whether through new rights, flexible attribution models, or careful policy guidance, WIPO is guiding nations toward a more coherent and fair response to the creative potential—and legal disruption—of AI.

6. **Case Study**

- Thaler v. USPTO (U.S., 2022)

Though this case deals primarily with patent law, its implications resonate deeply with

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[42] https://www.niehs.nih.gov/research/resources/bioethics/whatis
[43] https://pmc.ncbi.nlm.nih.gov/articles/PMC12274436/

copyright law—especially when it comes to defining who or what can be an "author" or "inventor."[44]

Background:

Stephen Thaler developed DABUS (Device for the Autonomous Bootstrapping of Unified Sentience), an AI system designed to autonomously generate inventive concepts.[45] DABUS purportedly "invented" a fractal-geometry food container and an emergency beacon. Thaler filed U.S. patent applications naming DABUS—not himself—as the inventor.

Legal Battle:

The U.S. Patent and Trademark Office (USPTO) rejected the applications, stating that the Patent Act requires inventors to be natural persons. Thaler challenged this, arguing that the statute does not explicitly restrict inventorship to humans, and that excluding AI could stifle innovation.

Court's Decision:

The U.S. District Court and the Federal Circuit sided with the USPTO. The court held that:

1. The Patent Act uses terms like "individual" and "person," which denote humans.
2. Inventorship requires mental conception, implying human cognition.[46]
3. AI lacks legal personhood and thus cannot claim inventorship or corresponding rights.

Relevance to Copyright:

The rationale in *Thaler v. USPTO* has influenced copyright determinations. Courts and the U.S. Copyright Office cite this case to reinforce that only humans may hold IP rights. It underscores the legal consensus that authorship and inventorship require a human origin. Thaler v. UKIPO (U.K., 2021)

The United Kingdom faced a parallel legal challenge when Thaler filed patent applications naming DABUS as the inventor.[47]

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[44] https://www.cafc.uscourts.gov/opinions-orders/21-2347.OPINION.8-5-2022_1988142.pdf
[45] https://www.wipo.int/wipolex/en/judgments/details/2098
[46] https://btlj.org/2022/01/ais-as-inventors-thaler-v-hirshfeld/
[47] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4368612

Background:

Just like in the U.S., Thaler submitted patent applications for inventions allegedly created by DABUS, including a fractal container and emergency device.

Legal Challenge:

The UK Intellectual Property Office (UKIPO) rejected the applications, citing that inventor must be natural persons. Thaler argued that the Patents Act 1977 does not expressly require human inventors.

Court Ruling (2021):

The High Court, and subsequently the Court of Appeal (by a 2:1 majority), upheld UKIPO's decision. The court reasoned that:

1. UK patent law presumes inventors are human.
2. AI cannot hold property rights or responsibilities.
3. Any shift in policy must come from Parliament, not the judiciary. One dissenting judge proposed acknowledging machine-generated inventions if legal ownership could be properly defined, though this view did not prevail.

Implications for Copyright:

Section 9(3) of the Copyright, Designs and Patents Act 1988 attributes authorship of computer-generated works to the person who made the "necessary arrangements." [48]The DABUS decision reinforces that authorship must ultimately trace to a human or legal entity—not an autonomous AI.

- Zarya of the Dawn (U.S., 2023)

This case became a landmark for AI-generated visual content under copyright law.

Background:

Kristina Kashtanova authored a graphic novel, *Zarya of the Dawn*. While she wrote the text, she used Midjourney, a generative AI tool, to create the illustrations. Initially, Kashtanova received full copyright registration for the work.[49]

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[48]   https://uk.practicallaw.thomsonreuters.com/w-036-5377?transitionType=Default&contextData=(sc.Default)&firstPage=true#:~:text=On%20August%205%2C%202022%2C%20in,the%20Patent%20Act%20(35%20U.S.C.
[49]   https://creativecommons.org/2023/02/27/zarya-of-the-dawn-us-copyright-office-affirms-limits-on-copyright-of-ai-outputs/

Copyright Office Review:

Upon learning of the AI involvement, the U.S. Copyright Office revaluated:

1. The textual and narrative elements authored by Kashtanova remained protected.

2. The illustrations generated by Midjourney were denied copyright protection, as they lacked human authorship.

3. The Office stressed the need for disclosure of AI-generated components in copyright filings.

Broader Impact:

The decision in *Zarya* clarified that:

- Only human-created elements of a work are eligible for protection.

- Merely prompting an AI is insufficient for copyright claims.

- Transparency about AI usage is critical in copyright applications. This case drew a bright legal boundary between AI-assisted and fully AI-generated works, reinforcing human-centric copyright doctrines.[50]

Synthesizing the Trends

These cases—*Thaler v. USPTO*, *Thaler v. UKIPO*, and *Zarya of the Dawn*—highlight a growing legal consensus: AI cannot be an author or inventor under current IP regimes.

Key themes include:

- Human agency is central to the legal definitions of authorship and inventorship.

- AI-generated content, no matter how innovative or expressive, is not independently copyrightable or patentable.

- Reform pathways may include sui generis rights or legislative updates, but for now, IP law remains fundamentally anthropocentric.

As AI continues to evolve as a creative and technical collaborator, these decisions serve as critical benchmarks for legislators, innovators, and legal practitioners. [51]The law must now grapple with whether to adapt through new frameworks—or double down on human authorship as its foundational principle.

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[50]   https://jolt.law.harvard.edu/digest/zarya-of-the-dawn-how-ai-is-changing-the-landscape-of-copyright-protection

[51] https://en.wikipedia.org/wiki/Zarya_of_the_Dawn

7.   The Challenge of Originality in AI Generated Content

Originality is the linchpin of copyright protection. A work must satisfy originality standards rooted in human intellectual input to be eligible. However, the emergence of generative AI systems like ChatGPT, Midjourney, and DALL·E has challenged traditional notions of originality. [52]These tools can autonomously produce sophisticated artistic and literary content, prompting courts, policymakers, and legal scholars to reconsider the role of the human creator in modern copyright law.

7.1 Traditional Originality Tests

1. India: Skill, Labour, and Judgment

    In *Eastern Book Company v. D.B. Modak*, the Supreme Court of India clarified that originality requires more than mere labour. It must include the author's skill, judgment, and application of intellectual effort—even if modest. [53]This marked a departure from the earlier "sweat of the brow" doctrine, which had emphasized industriousness over creativity.

2. United States: Minimal Creativity Standard
    The U.S. Supreme Court in *Feist Publications, Inc. v. Rural Telephone Service Co.* held that originality requires independent creation and at least a minimal degree of creativity. The emphasis is on personal intellectual expression—something an algorithm cannot independently provide.[54]

3. European Union: Intellectual Creation Doctrine
    The European Union, through decisions like *Infopaq International A/S v. Danske Dagblades Forening* and *Painer v. Standard Verlags GmbH*, insists that a work must reflect "the author's own intellectual creation." This formulation focuses on the freedom of choice and personal expression that only a human creator can demonstrate.

7.2 Do AI Generated Works Fit These Standards?

1. Fully Autonomous AI Creation Where AI systems independently generate content from minimal input (e.g., "write a sonnet" or "generate a painting of the Himalayas"), no human can reasonably claim authorship rooted in skill, judgment, or originality.

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[52] https://thebarristergroup.co.uk/blog/the-ownership-of-knowledge-in-ai-generated-content
[53] https://www.slideshare.net/slideshow/doctrine-of-originality-copyright/229592256
[54] https://cyber.harvard.edu/copyrightforlibrarians/Module_8:_Traditional_Knowledge

[55]Without a traceable creative link to a human mind, such outputs typically fail legal originality thresholds.

2. The Question of Machine Creativity Despite producing novel and impressive results, AI lacks intent, consciousness, or legal agency. These limitations make it incompatible with the originality standards that demand creative autonomy. Machines cannot make expressive choices that reflect a personality, as required under EU jurisprudence or U.S. and Indian standards.[56]

7.3 Human Curation Makes the Difference

When a human:

- Designs intricate prompts,
- Selects and arranges AI outputs,
- Refines or modifies the content,

they add sufficient originality to qualify for copyright protection—at least for their contribution. [57]The U.S. Copyright Office's 2023 guidance explicitly allows registration of works incorporating AI elements *if* there is demonstrable human authorship. In such cases, only the human-influenced aspects are protected.

7.4 Ongoing Debates and Theoretical Disputes

Proponents of AI-generated rights argue:

- *Practical Equivalence:* If audiences can't distinguish AI and human works, protection should be extended.
- *Investment Rationale:* Developers and users who invest heavily in AI systems deserve some form of IP protection.
- *Public Domain Saturation:* Denying protection could lead to a flood of AI content that overshadows human creativity.

Opponents argue:

- *Human-Centric Doctrine:* Copyright exists to protect human creators and their moral and economic rights.

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[55] https://www.pib.gov.in/PressReleasePage.aspx?PRID=2004715
[56]   https://www.aippi.org/news/approaches-to-ip-protection-for-works-generated-by-artificial-intelligence-european-standards/
[57] https://www.ox.ac.uk/news/2022-12-08-new-exhibit-highlights-differences-between-algorithmic-and-human-curation

- *Accountability Issues:* Since AI lacks consciousness and liability, it cannot be assigned rights or held accountable.

- *Moral Rights and Dignity:* Particularly in civil law jurisdictions, moral rights are tied to human identity, something a machine cannot possess.

7.5 Where Philosophy Meets Policy: The Path Forward

To strike a balance between innovation and legal coherence, the following reforms are being considered globally:

- Sui Generis Protections: New IP categories designed specifically for AI-generated works, like the EU's database right.

- Expanded Originality Definitions: Recognizing "co-creativity" or human-AI teaming as sufficient for protection.

- Transparency Mandates: Requiring disclosure of AI involvement in creative processes to ensure informed evaluation of originality.

Until such changes are codified, existing legal frameworks in India, the U.S., and the EU maintain that human creativity is essential to copyrightability. [58]Across all jurisdictions, originality—though variably defined—ultimately remains anchored in human contribution.

Generative AI has undeniably blurred the boundary between tool and creator. But for now, copyright law stands firm: originality must spring from a human mind. Whether this paradigm shifts will depend on evolving judicial interpretation, legislative innovation, and global consensus.

8. Arguments for and Against AI Authorship

As AI-generated content becomes more sophisticated, the debate over whether AI can or should be considered an "author" under copyright law has intensified. While some argue that denying AI authorship is outdated and stifles innovation, others maintain that authorship must remain intrinsically human. The discourse is not merely academic—it has real implications for law, culture, and industry.[59]

- Arguments For Recognizing AI Authorship
1. AI Systems Are Creatively Autonomous: - Modern generative AI systems like GPT-4,

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[58] https://link.springer.com/article/10.1007/s11158-023-09651-x
[59]   https://cacm.acm.org/opinion/ai-authorship-revisited/#:~:text=Its%20main%20conclusions%20were%3A%20the,purely%20AI%2Dgenerated%20material%3B%20although

Midjourney, and DALL·E can autonomously produce works that appear original and creative. These tools can generate poetry, paintings, scripts, music, and even code—often indistinguishable from human-created works. Proponents argue that if the output meets the same aesthetic and functional standards as human-made content, it should be equally eligible for protection.

2. Focus on Output, Not the Creator: - This utilitarian view suggests copyright law should prioritize the work's originality and cultural value, regardless of the source. If the output has expressive merit, its origin—human or machine—should be secondary. This position frames copyright less as a reward for human creativity and more as a mechanism for incentivizing the creation and dissemination of valuable content.[60]

3. Incentivizing Innovation and Investment: - The development of sophisticated AI models demands substantial investment in data, infrastructure, and research. Without a framework that recognizes the commercial value of AI-generated outputs, innovation may stagnate. Legal protection could ensure fair returns for developers and stakeholders, encouraging ethical AI use and long-term technological advancement.

4. Legal Precedents for Non-Human Ownership: - Entities like corporations—non-human legal persons—routinely hold copyrights. Supporters argue that if artificial legal entities can own and enforce rights, so too could the developers or users of AI systems under contractual or statutory arrangements. The goal is not to give the AI rights per se but to legally protect the human interests surrounding its outputs.

5. Filling the Legal Vacuum: - AI-generated works currently sit in a legal grey zone—not clearly protectable, yet not automatically in the public domain. [61]This ambiguity discourages commercialization and complicates licensing. Advocates suggest sui generis protections or hybrid models that balance innovation with legal certainty.

- Arguments Against Recognizing AI Authorship

1. AI Lacks Consciousness, Intent, and Responsibility: - At the heart of copyright is the idea that creative works stem from human intellect and emotion. AI lacks:

    - Consciousness and understanding,
    - Intentionality in creation,
    - Moral or legal accountability.

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[60]https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5108423#:~:text=The%20authors%20are%20of%20the,longstanding%20tenet%20in%20copyright%20law.

[61] https://publicationethics.org/news-opinion/artificial-intelligence-and-authorship

Legal decisions in *Thaler v. USPTO* and *Thaler v. UKIPO* have emphasized that authorship requires a human or legal person with mental conception and responsibility.[62]

2. Threat to Human Creativity: - Granting AI the same legal status as human creators risks devaluing human effort. Critics warn this could:

- Oversaturate the market with low-cost, AI-generated content,
- Undercut the livelihoods of writers, artists, and musicians,
- Diminish recognition of the emotional and cultural depth in human-made works.

3. Unclear Ownership and Legal Chaos: - Even if AI could be an author, serious issues arise:

- Who owns the rights—the developer, user, or platform?
- What if AI replicates or "learns" from copyrighted training data?
- How do we assign liability for infringement or misuse?

Without clear authorship rules, enforcement becomes chaotic and inconsistent.

4. Ethical and Cultural Concerns: - AI-generated works may lack the emotional and cultural dimensions that define meaningful human expression. Moreover, moral rights—like the right to integrity or attribution—are deeply personal and cannot logically apply to machines. [63]Assigning authorship to AI may weaken the cultural significance and identity-driven aspects of creativity.

Striking the Balance: Alternative Solutions

While most legal systems currently deny AI authorship, several middle-ground solutions are under discussion:

- Human Attribution Models: Allow copyright only if a human meaningfully contributed—through prompt engineering, editing, or curating the final work.
- Sui Generis Protection: Introduce limited, tailored protections for AI-generated outputs, separate from conventional copyright.
- Public Domain Model: Treat AI-generated content as unowned and freely available, but strictly protect human-authored content.

AI-generated works are here to stay. However, their legal classification remains one of the most pressing—and philosophically profound—questions facing modern

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[62]   https://csipr.nliu.ac.in/miscellaneous/rethinking-authorship-legal-dilemmas-in-copyright-for-ai-generated-content/#:~:text=Stephen%20Hawking%20stated%20that%20the,the%20decline%20of%20human%20creativity.

[63] https://aokistudio.com/50-arguments-against-the-use-of-ai-in-creative-fields.html

intellectual property law.

Whether copyright law will evolve to include AI as a "creator" or find new ways to accommodate its outputs without undermining human-centric values remains uncertain.[64] For now, courts and lawmakers must balance innovation with the enduring importance of human creativity and legal accountability.

9. Policy Suggestions for Regulating AI-Generated Works under Copyright Law

Generative AI systems such as GPT-4, Midjourney, and Stable Diffusion have dramatically expanded the possibilities of creative production. These tools can independently produce novel outputs in literature, art, music, and software—sometimes with little to no human intervention. However, this evolution has exposed critical gaps in copyright laws across jurisdictions, particularly regarding originality, authorship, and ownership.[65]

To address this legal ambiguity and foster an equitable and forward-looking copyright system, the following policy strategies are proposed.

9.1 Introduce Sui Generis Protection for Fully AI-Generated Content

One potential legislative solution is the creation of sui generis protections—a unique legal category tailored specifically for non-human-generated works. This mechanism would:

- Protect AI-generated works without redefining the human-centered notion of "authorship" in traditional copyright.
- Encourage investment and innovation in AI tools and applications.
- Avoid leaving high-value, machine-generated content in a legal vacuum.[66]

A sui generis regime might include:

- Shorter protection terms (e.g., 5–10 years).
- No moral rights, as machines lack identity or dignity
- Economic rights assigned to AI developers, users, or investors
- Mandatory disclosures about the role of AI in the creation process.

The European Union's Database Directive offers a useful precedent: it protects substantial

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[64] https://cacm.acm.org/opinion/ai-authorship-revisited/
[65]   https://www.itu.int/en/ITU-T/academia/kaleidoscope/2024/Documents/S8.3Copyright-in-the-Age-of-Artificial-Intelligence-Unravelling-the-Complexities-for-the-Protection-of-AI-Generated-Work.pdf
[66] https://www.rand.org/pubs/perspectives/PEA3243-1.html

investment in data organization without requiring human originality.

9.2 Require Human Attribution or Creative Involvement for Copyright Eligibility

A foundational principle of copyright law is that protection flows from human creativity. Policymakers can reinforce this by legally mandating human authorship in AI-assisted works. Qualifying human contributions might include:

- Designing structured prompts,
- Editing and refining outputs,
- Integrating AI content into a broader creative framework

This model echoes the U.S. Copyright Office's 2023 guidance, which states that works without meaningful human input are ineligible for protection. [67]Disclosure of the nature and degree of AI involvement should be mandatory during registration.

Benefits include:

- Preventing mass flooding of low-effort AI content.
- Encouraging responsible use of generative tools.
- Upholding copyright's normative commitment to human authorship.

9.3 Develop Flexible Licensing Models for Human–AI Collaboration

Not all AI-generated content is fully autonomous. Many works result from co-creation, where humans direct, guide, or curate machine outputs. For such hybrid works, copyright systems should support flexible licensing models.[68]

Options may include:

- Proportional attribution based on input levels,
- Contractual co-ownership of outputs,
- Platform licensing terms (e.g., Open AI, Adobe) that balance user access with ethical data usage.

Such frameworks should also promote:

- Transparency to audiences about AI involvement.
- Fair attribution to human creators whose works were used in AI training datasets.
- Respect for existing copyright through dataset curation and ethical AI development.

Licensing reform is crucial to resolving ownership conflicts and promoting user clarity in

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[67] https://www.barandbench.com/columns/art-is-humane-works-devoid-of-human-involvement-not-eligible-for-copyright-protection

[68] https://www.sciencedirect.com/science/article/pii/S2666920X24000596

hybrid works.[69]

9.4 Modernize National Copyright Laws to Reflect AI Capabilities

Finally, existing copyright laws must be modernized. Most statutes, including India's Copyright Act of 1957, were enacted long before the idea of AI-generated creativity was conceivable.

Reforms should address:

- Definitions of AI-generated and AI-assisted works.
- Criteria for authorship and originality in machine-assisted contexts.
- Rules for assigning rights—whether to developers, users, or investors.
- Obligations to disclose AI involvement at the time of copyright registration.
- Revised fair use/fair dealing provisions to handle AI training practices involving copyrighted data.

Countries should also align with international efforts led by WIPO, to ensure global harmonization and avoid regulatory arbitrage.

The emergence of generative AI has disrupted traditional notions of authorship and originality, but it also offers enormous creative potential.[70] To responsibly harness this potential, copyright law must evolve—without abandoning its humanistic foundation.

Key policy recommendations are:

1. Establishing sui generis protections for fully autonomous AI works.
2. Requiring human input as a prerequisite for standard copyright.
3. Developing licensing models that reflect human–AI collaboration.
4. Modernizing copyright statutes to reflect 21st-century creative realities.

Together, these reforms can build a legal framework that supports technological innovation while safeguarding the role of human agency in the creative.

<u>Conclusion</u>

The explosive growth of generative artificial intelligence has dramatically reshaped how we create and consume content. Tools like GPT-4, Mi journey, DALL·E, and Stable Diffusion now produce art, music, literature, and even software with astonishing fluency—often requiring little to no human input. This shift has not only redefined what is possible in creative

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[69] https://arxiv.org/html/2505.00018v1

[70] https://www.revenera.com/blog/software-monetization/flexible-license-models-which-one-is-right-for-you/

industries but has also exposed the shortcomings of existing copyright laws, which were designed for a world where only humans could be creators.

At the core of the current legal impasse lies a fundamental question: *Who is the author of an AI-generated work?* In most major jurisdictions—including the U.S., U.K., EU, and India—copyright law remains deeply rooted in the assumption that creativity stems from human intellect. Legal concepts like originality, authorship, and creative intent are inherently tied to traits like consciousness, decision-making, and individual personality—none of which AI possesses. As a result, courts and copyright offices have consistently ruled that works created solely by AI cannot qualify for copyright protection.

Cases such as *Thaler v. USPTO* and *Zarya of the Dawn* in the U.S., and *Thaler v. UKIPO* in the U.K., reaffirm this stance by holding that only human beings, or legal persons acting through human agency, can be recognized as authors. These decisions reinforce a core principle: copyright law protects human creativity—not machine output.

Yet despite this legal position, AI-generated content is already woven into everyday creative and commercial activity. AI is being used to write children's books, produce digital art, compose music, and assist with journalism and academic writing. These works are being published, sold, shared, and consumed—whether or not the law formally recognizes their authorship. The disconnect between technological reality and legal doctrine is becoming increasingly problematic. Without clear rules, creators, developers, users, and consumers are left in a legal grey zone, unsure about rights, responsibilities, and ownership.

This growing gap suggests that while the current legal system resists the notion of AI authorship, change is inevitable. Rather than granting AI full legal personhood, the future of copyright law may lie in adapting existing principles to reflect new realities. Potential paths forward include:

- **Introducing sui generis protections** specifically designed for AI-generated works that don't meet traditional human authorship criteria.
- **Establishing licensing systems** that fairly govern the commercial use of AI-generated content while respecting the rights of developers, users, and original human creators;
- **Recognizing human–AI collaborations** under a co-authorship model, where copyright is tied to the level of human creative input involved.

Each of these approaches seeks to strike a delicate balance: on one hand, protecting the moral and economic value of human creativity; on the other, ensuring that the law remains relevant and adaptable in an age of technological co-creation.

Beneath these legal and policy questions lies a deeper philosophical issue: *What does it mean to be creative in the digital age?* As AI systems begin to produce works that mirror—or even rival—human expression, the distinction between "tool" and "creator" becomes blurred. Legal systems must evolve to reflect this reality, rethinking not only who qualifies as an author, but also how originality, agency, and intent are defined in a world of seamless human–machine collaboration.

Ultimately, the debate around AI and copyright is not just about closing legal loopholes—it's about reimagining the foundations of authorship for the 21st century. Thoughtful and inclusive legal reform is essential if copyright law is to remain a relevant and effective tool. Only by embracing change—while staying true to the core goal of encouraging creativity—can we ensure that the legal system continues to support the generation and sharing of knowledge, culture, and innovation for the benefit of all.