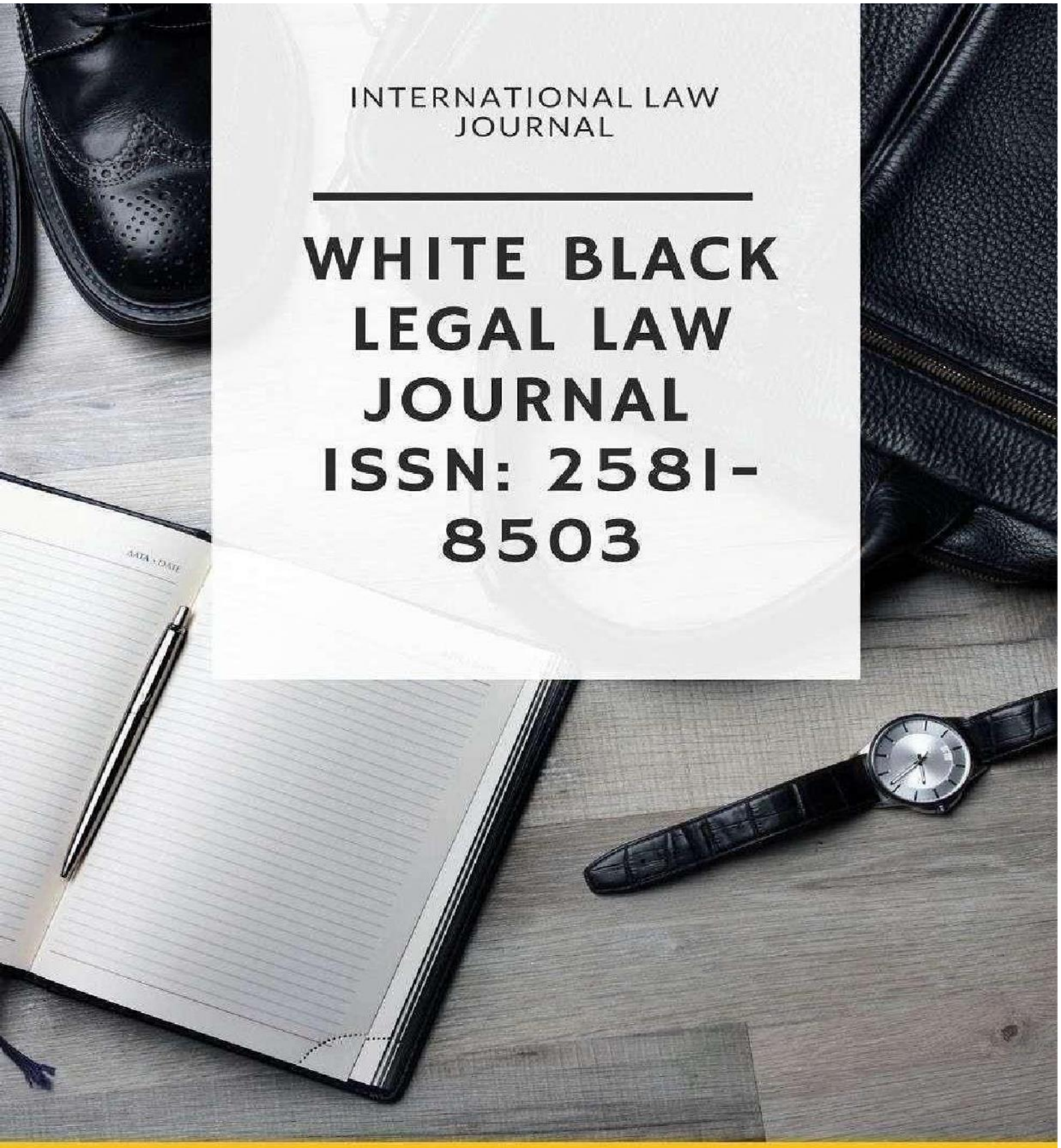

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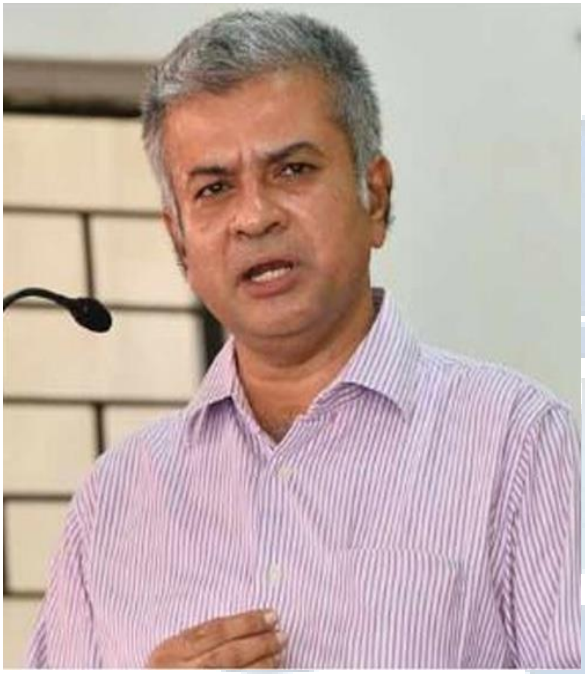

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WHITE BLACK LEGAL is an open access, peer-reviewed and

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With this thought, we hereby present to you

THE INTERSECTION OF AI AND COPYRIGHT LAW: A LEGAL PRESPECTIVE FROM INDIA

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Abstract:

Intellectual Property Laws holds their significance from many decades which enabled the protection to the innovations in the field of artistic, literature and dramatic works in addition to thenew innovations in the field of science and technology, primarily based upon the human intelligence. Modern technology has undergone a paradigm shift, with Artificial Intelligence (AI) emerging as the pinnacle innovation, marking significant development in IPR. Considering the rapidadvancement of AI will have tremendous impact on various sectors throughout the world, not limited to a single industry. The Intellectual Property Rights regime which sustainably focuses on human creativity is currently seeing the drastic changes in terms of innovations and creations of AIgenerated. As AI capable of producing more creative works, and even new technologies, traditional intellectual property rules encounter difficulties in determining ownership, rights, and protection. Thus, AI has both positive and harmful effects on the domain of intellectual property rights. On theone hand, it will promote prompt and precise research, which is essential for developing a system for stratifying discoveries and ideas in the patent domain, as well as patent search tools. On the flipside, it will have a negative impact on the global sphere of intellectual property rights. This paper focuses on how generative AI and deepfake effects the copyright law and necessary measures to protect the human works from AI infringement.

KEY WORDS: Artificial Intelligence, Copyright Act 1957, Intellectual Property Rights, Generative AI, Deepfake.

Introduction:

Since intellectual property rights and artificial intelligence are distinct domains, it seemed unfeasible to amalgamate them together. Human intelligence is a crucial notion in the intellectual property rights regime. Intellectual property laws primarily regulate and deal with an individual's inventiveness, creativity, and knowledge, which were primarily used in the work the individual produced. A person's right to intellectual property is a reward for using their own intelligence. As previously stated, the fundamental purpose of intellectual property rights is to leverage human intelligence to secure patents, trademarks, or copyright; nevertheless, technical breakthroughs have made it possible for artificial intelligence (AI) to produce art, much of which iscreated by artists. During the last few decades, the world has undergone a phenomenal advancementin use of technology which resulted in a shift from human aided technology to machine aided technology. The concept of machine aided technology resulted in the inception of Artificial Intelligence. In a 1956 conference, computer scientist Mr. John McCarthy officially introduced thephrase "artificial intelligence." He explained that it was the idea of a computer analysing and responding to data in a way that is comparable to how an intelligent human would react to the same input. In the last few years usage of AI has increasingly integrated into our daily lives, with devicessuch as Alexa, Siri, Cortana, Amazon, Netflix, and others analysing our preferences and making recommendations in the form of "you may like" ideas. One of the best and the astonishing innovation made by AI is the introduction of AI driven cars which uses machine learning and functions on their own by learning about driving. The above-mentioned AI devices are potential examples which can generate independent outcomes due to eight interrelated features: creativity, unpredictable results, independent and autonomous operation, rational intelligence, evolution, ability to learn, collect, access, and communicate with outside data, efficiency and accuracy, and free choice goal orientation.

The dissertation uses the Oxford Learner's Dictionary to define artificial intelligence (AI) in the context of intellectual property. AI is the study and creation of computer systems that can mimic intelligent human behaviour, including machine and deep learning techniques. The World Intellectual Property Organisation (WIPO) one of the essential organs of United Nations, headquartered in Geneva, is dedicated to improving intellectual property protection and stimulatingcreative activity around the world. According to the 2019 WIPO Technical Trends on Artificial Intelligence, Intellectual Property offices have received about 340,000 AI-related applications sincethe inception of the technology. WIPO has already held six sessions on artificial intelligence and intellectual property rights.

LITERATURE REVIEW:

"Artificial intelligence and automated content creation: Copyright scenario in India," Ashna, S., Akanksha, C., & Sarthak, S. (2022). The authors delve into the challenges and opportunities AI brings to content creation, particularly in the context of Indian copyright law. They explore how automated content generation through text, music, or visual art raises questions about authorship and ownership under existing copyright frameworks. The study emphasizes the need for clearer guidelines on the copyrightability of AI-generated works and discusses the evolving role of AI in creative industries within India's legal system.

"Interplay Between Artificial Intelligence and Copyright Law in India: Issues and Challenges", Singh and Shanker. This article analyse the complex relationship between AI-generated content and Indian copyright law. The authors discuss how traditional copyright principles of authorship, originality, and ownership struggle to accommodate AI-generated works, given that copyright lawswere designed with human creators in mind. They highlight specific challenges, such as determining authorship and ownership for content created autonomously by AI, and discuss the legal ambiguitythis creates.

"Artificial Intelligence and Copyright: Issues and Challenges," Ahuja, V.K. (2020). This paper explores the copyright implications of AI-driven creations and the complexities surrounding AI as a possible "author." He discusses key issues like originality, ownership, and accountability when amachine generates content independently. The article underscores the challenges posed by AI undertraditional copyright law and calls for legal reforms to ensure AI's increasing role in content creationis supported by an appropriate legal framework.

*"AI-IPR Intersection: An Analysis of Emerging Issues in the Indian Context," Swamy, R.N. (2021).*This paper examines the complex intersection of artificial intelligence and intellectual property rights (IPR) in India. The paper highlights several key challenges that AI presents, such as defining originality and inventorship when machines generate content or inventions. Swamy suggests that the rapid advancement of AI requires India's legal system to adapt, proposing potential policy adjustments and enhanced legal frameworks to address the unique demands AI places on IPR laws.

"Balancing Indian Copyright Law with AI-Generated Content: The Significant Human Input

Approach", Harshal Chhabra Kanishk Gaurav Pandey. This blog examines the challenges AI-generated content poses to Indian copyright law, emphasizing the need for human involvement in authorship for copyright protection. The authors advocate for a "significant human input" criterion, arguing that without human creative input, AI-generated works may lack the originality required under current copyright frameworks.

Statement of Research Problem:

Rapid advancement of AI technology has significantly transformed content creation across various domains in India. The use of AI has been intensively increased in the fields of music, literature, dramatic and artistic works which was created and needto identify threat. The ability of artificial intelligence (AI) to generate creative works autonomously calls into question established intellectual property (IP) regulations, raising concerns about ownership, authorship, and copyright protection. This study seeks to determine how existing copyright regimes can adapt to AI's unique capabilities while safeguarding human creativity and intellectual property.

Objectives of the study:

- To investigate the potential impact of AI-generated content on existing Indian copyrightlaws.
- To investigate the issues of identifying authorship and ownership in AI-generated works.

Research Questions:

- How do AI-generated works fit into the existing Indian copyright framework?
- What are the obstacles in determining authorship and ownership of AI-generated content?

Scope and Limitation:

This study focuses on the copyright law framework in India, specifically asit relates to generative AI. It examines relevant legal challenges and case studies, but does not extendto patent law or trademark considerations. Limitations include the evolving nature of AI technology,which may outpace legislative responses, and the jurisdictional focus on Indian law, potentially limiting applicability in other regions.

Research Methodology:

The research methodology is based on the doctrinal research. The most precise secondary data had been collected from authentic sources. The data used here has been collected from different articles, journals and legislations.

Legal Personhood of AI under IP Laws:

The existing Intellectual Property laws in India the Copyright Act 1957 exclusively grants the patent right to only legal persons. To be precise the lawconsiders following persons as legal persons: a) Natural Persons (Human beings), b) Artificial Persons- Includes artificial bodies like companies, trusts and other institutions being controlled andfunctioned by natural persons. Section- 2(d) of Copyright act 1957[1] defines: -

"author" means, —

i. in relation to a literary or dramatic work, the author of the work;
ii. in relation to a musical work, the composer;
iii. in relation to an artistic work other than a photograph, the artist;
iv. in relation to a photograph, the person taking the photograph;
v. in relation to a cinematograph film or sound recording, the producer; and
vi. in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;]

The closer interpretation of the definition author provides that a person who has created such workwill be regarded as an author. The Copyright Act, 1957 amended in 1994 to provide for the possibility that computer-generated artistic, theatrical, musical, or literary works could occur.

Thus, "the person who causes the work to be created" is defined as the creator of such "computer-generated works" in Section 2(d)(v). Depending on how this definition interprets the term "person," AI may or may not be granted authorship.

In the case of Rupendra Kashyap v. Jiwan Publishing House Pvt. Ltd[2]., the Delhi High Court adopted a conventional approach in deciding whether the Central Board of Secondary Education (CBSE) may assert copyright over a series of examinations. The Court ruled that

[1] The Copyright Act, 1957, § 2(d), Act No. 14 of 1957, India.
[2] 1996(38) DRJ81

since the CBSEis an artificial entity, it cannot assert copyright unless it can demonstrate that it hired people to prepare the test questions. Thus, in the context of Indian copyright law, authorship can only be asserted by a natural person. This stance was upheld by the court in Tech Plus Media Private Ltd.

v. Jyoti Janda[3], wherein it was decided that, although the copyright owner may be the author,authorship cannot reside in a juristic person.

The jurisprudential concept of granting of a copyright to a non- natural and juristic person can be much expeditiously dealt in the case of Naruto v. David Slater[4], often known as "The Monkey SelfieCase," is one of the copyright cases that has excited the legal community throughout the world. Thisis the first time a monkey has taken a selfie with a camera, and it occurred without any prior instruction. This is a unique and exciting event. In this case, an important question has arisen as to whether the monkey Naruto can be given a copyright claim. PETA (People for the Ethical Treatmentof Animals) has launched a federal lawsuit against Slater on behalf of the monkey who took the selfie, claiming that the monkey owns the current and future earnings from the selfies. PETA's petition was dismissed by the Ninth Circuit Court of California, and William H. Orrick, J., stated that an animal is not covered by copyright. No law or precedent mentions an animal getting a copyright. As a result, Naruto doesn't own the copyright.

In Indian Scenario, the copyright office in India, albeit incorrectly, recognised an AI system RAGHAV as a co-author of an artistic work and registered the application for copyright protectionin November 2020. However, the first time Ankit Sahni, the designer of the AI system RAGHAV,filed an application designating the AI system as the sole author of such work, the copyright officerejected it. Later, the copyright office filed a notification to retract the registration, stating that it had wrongly awarded it, and urged the human co-author, Mr. Sahni, to consider the legal standing of the AI system RAGHAV. However, the Indian Copyright Office filed a withdrawal notice, requesting that Mr. Sahni give additional information regarding the legal status of the AI tool RAGHAV. The notification emphasised Sections 2(d)(iii) and 2(d)(vi) of the Copyright Act of 1957, stating that an 'author' must be an artist or anybody who causes the artistic work to be made.The application status is still represented as 'registered' on the website of the copyright office, although the court has yet to rule on this.

[3] 2014 (60) PTC 121 (Del)
[4] Naruto v. Slater, No. 16-15469 (9th Cir. 2018)

Regarding the term "owner," Section 17 of the Copyright Act, 1957, lists specific examples of whoowns a work that is protected when it is created for artificial persons like the government and international organizations through an apprenticeship or service agreement. However, the ownership of content created by artificial intelligence has not been thoroughly examined or addressed by Indian courts. The need for such jurisprudence extends beyond merely determining the author and owner of copyrighted works; it also requires clarifying the applicability and enforceability of these rights. It is crucial to recognize that AI is neither a natural person nor a juristic entity, meaning it cannot benefit from the rights granted under the Act, including moral rights, nor can it be held liable or penalized for unauthorized use under the current legal framework.Therefore, the legislature will need to evaluate the scope and nature of these emerging technologiesand amend the legislation accordingly.

Conflict in term of Copyright Protection:

Sections 22 – 29 cover copyright for published literary, dramatic, musical, and creative works, including anonymous and pseudonymous works, posthumous works, pictures, films, sound recordings, government works, PSUs, and international organisations.

Section	Term of Copyright	No. of years
22	Term of Copyright in PublishedLiterary, Dramatic, Musical and ArtisticWorks[5].	Published within the lifetime of the author until sixty years from the beginning of the calendar year next following the year in which the author dies. In the case of a work of joint authorship, be construed as a reference to the author who dies last

[5] The Copyright Act, 1957, § 22, Act No. 14 of 1957, India.

23	Term of Copyright in Anonymous and Pseudonymous Works[6]	Copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the work is first published. If identity of author disclosed before the expiry of the said period, copyright shall subsist until sixty years
24	Term of Copyright in Posthumous Work[7]	Copyright subsists at the date of the death of the author or, in the case of joint authorship, at or immediately before the date of the death of the author who dies last, but which, or any adaptation of which, has not been published before that date, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the work is first published or, where an adaptation of the work is published in any earlier year, from the beginning of the calendar year next following that year. Such work shall be deemed to have been published, if it has been performed in public or if any

[6] The Copyright Act, 1957, § 23, Act No. 14 of 1957, India.
[7] The Copyright Act, 1957, § 23, Act No. 14 of 1957, India.

		sound recordings made in respect of the work have been sold to the public or have been offered for sale to the public
26	Term of copyright in cinematograph films[8]	Copyright shall subsist until sixty years, from the beginning of the calendar year next following the year in which the work is first published.
27	Term of copyright in sound recording[9]	Copyright shall subsist until sixty years, from the beginning of the calendar year next following the year in which the work is first published.
28	Term of copyright Government works[10].	Wherein the government is the first owner, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the work is first published
28A	Term of copyright in works of public undertakings[11].	If public undertaking is first owner, then copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the work is first published.

[8] The Copyright Act, 1957, § 26, Act No. 14 of 1957, India.
[9] The Copyright Act, 1957, § 27, Act No. 14 of 1957, India.
[10] The Copyright Act, 1957, § 28, Act No. 14 of 1957, India.
[11] The Copyright Act, 1957, § 28A, Act No. 14 of 1957, India.

29	Term of copyright in works of international organisations[12]	If section 41 is applicable, copyright shall subsist until sixty years, from the beginning of the calendar year next following the year in which the work is first published.

An inference can be drawn from the literal interpretation of the abovementioned provisions reiterating that the term of copyright protection i.e., the enjoyment of copyright ownership by the owner is not perpetual in nature but it is limited to 60 years plus the lifetime of an author.

If AI-generated work is given copyright, another issue will arise regarding the duration of the termfor which the AI-generated work will be protected. The term may be calculated from the date of publication for a period of 50 or 60 years, depending on the laws of the nations. The copyright lawsprotect the author for life plus 60 years. Because AI is not a human being, determining how long the protection should last would be a source of contention. The "term" of copyright is another problem because AI is regarded as a "robot" and does not exist in a human-like manner. The phrasecopyright is until the author's death and sixty years after that, at which point the work becomes public domain. Given the nature of AI, it will be challenging to give works created by AI the title of copyright. An AI can produce an endless quantity of work, is eternal, and never gets weary. Because of this, copyright protection for works produced by AI is unclear and up for debate. If anyorganisation has published the work, it will be protected for 60 years beginning with the date of publication. Technology's dynamic nature makes it difficult to assign an age. As a result, the most effective way to assure copyright protection is to grant it to a natural person, in this case, the user of AI software. The operation of artificial intelligence, as well as the relationship between this technology and its users, cannot be considered a single entity. The user cannot claim to be the authorbecause an author utilises his intellectual abilities to create something new. However, the technology possesses the brains and skills required to create new work, whereas the user only has an idea. To summarise, the user cannot claim authorship under the usual norm, and this case must be included as a legislative exemption.

[12] The Copyright Act, 1957, § 29, Act No. 14 of 1957, India.

Legal Approaches to AI and Copyright in Different Jurisdictions:

In Europe, the Court of Justice of the European Union (CJEU) has declared on several occasions, particularly in its landmark Infopaq decision (C-5/08 Infopaq International A/S v Danske Dagbaldes Forening[13]), that copyright only applies to original works, and that originality must reflect the "author's own intellectual creation." This is commonly believed to suggest that an original work must represent the author's personality, implying that a human author is required for a copyrighted work to exist.

China: In a landmark decision, the Beijing Internet Court granted copyright protection to an AI- generated image, upsetting worldwide conventions and providing new insights into the legal position of AI-generated work. Mr. Li utilised text-to-image software, Stable Diffusion, to create an image, which was then used without permission, prompting the complaint. The court's decision,which recognises the image's "originality" due to human-originated creative investment, contrasts strongly with the US Copyright Office's position, which has generally denied copyright protection to AI-generated photographs. The Beijing court emphasises strong human involvement and aligns AI with traditional instruments for human ingenuity. This verdict has far-reaching repercussions, defying conventional wisdom and spurring a global rethinking of legal frameworks for the proper recognition and protection of AI-generated output inside creative processes. As artificial intelligence advances, this landmark decision will become an important reference point, promptinglegal regimes around the world to adapt to new kinds of creative expression.

Shenzhen Tencent v. Shanghai Yingxunxxvi:

The People's Court of Nanshan District Shenzhen, China, rendered a copyright decision in relationto an essay created by the artificial intelligence application Dreamwriter. The article was accompanied by a disclaimer that read, "was automatically written by Tencent Robot Dreamwriter".

The court concluded that the article's expression and articulation had "certain originality" and met the requirements for copyright protection. The court ordered Shanghai Yingxun Technology Co Ltd. to pay 1,500 yuan (US$216.02) to Tencent as compensation for the illegal use of this article. met requirements for copyright protection. The court ordered Shanghai

[13] ECLI:EU:C:2009:465

Yingxun Technology Co Ltd. to pay 1,500 yuan (US$216.02) to Tencent as compensation for the illegal use of this article.

USA: USA Copyright act does not recognise AI generated contents. USA copyright is of the view that solely does not create any contents, rather it compares all the data from all the sources and compiles the same and gives the output, thus lacking creativity. Basically, it is a human being whogives command to an AI for creating contents, without human involvement AI cannot generate output. The United States District Court for the District of Columbia, in Stephen Thaler v. Shira Perlmutter, Register of Copyrights and Director of the United States Copyright Office, et al., discussed and decided on the main issue of whether work generated autonomously by an AI systemis copyrightable in the United States. After deliberating on the question, the honourable court ruledthat the Copyright Office behaved appropriately in denying copyright registration for a work madewithout human involvement. The U.S. District Court for the District of Columbia ruled that the Register of Copyrights did not err in rejecting Thaler's copyright registration application since only works created by humans are protected by copyright law in the United States. The District Court ruled that although copyright law has shown elastic enough to adapt to works utilising new technology, human creativity nonetheless remains the basic condition at the foundation of copyrightability, even as that human creativity is directed through new instruments or into new media. The District Court ruled that, contrary to Thaler's request, copyright has never extended to include works produced by new technologies that function without human guidance.

In September 2022, a comic book made with AI assistance received a first-of-its-kind registration from the US Copyright Office (the "USCO"), which was startling and revolutionary.[14] The artist behind Zarya of the Dawn, Kristina Casanova, disclosed that the USCO had requested that she provide details of the process that showed a high level of human involvement in the creation of thisgraphic novel.

However, a few months after granting such copyright registration, USCO contacted the artist to lether know that it had started a process to overturn its previous copyright decision, stressing that human creation is required for copyrighted works to be officially granted for a comic book

[14] Joseph F. Borg , Galyna Podoprikhina and Laurence Alexander, *Worldwide: AI-Generated Art: CopyrightImplications*, MONDAQ (Feb. 23, 2023), https://www.mondaq.com/Blog/Index.

createdusing artificial intelligence. There is a lot of confusion surrounding AI-generated art and copyrightbecause the case is currently pending.

The Role of Copyright in Protecting AI-Created Works:

The convergence of AI-generated workand copyright law presents various issues, reigniting the continuing debate about how AI-generatedcontent is governed by the law. The key component of copyright law is the originality criterion, which is used as a benchmark to assess whether a particular work qualifies for copyright protection.

This phrase is frequently used to distinguish between works that are original and those that are not.In essence, "originality" means that a work that should be protected must come from a known creator or author, expressing the author's unique personality rather than being completely new or derivative.

Intellectual property rights, such as copyright and related rights, grant exclusive rights to the originalowner, who is a legal person, for a specified period of time. These rights permit the protection of the work, invention, or creativity and make it possible to receive royalties through licensing. In order for a right to be awarded, the owner must fulfil the legal requirements. As a signatory to all significant international conventions and accords pertaining to the protection of intellectual property rights, India offers sufficient protection for works produced by legal persons through copyright lawand the patent system for inventions. In its 161st report[15], the Parliamentary Standing Committee, which reviewed the Indian Intellectual Property Rights (IPR) regime two years ago, recommendedcreating a separate category of rights for Artificial Intelligence and related innovations, as well as solutions for protecting them as intellectual property rights. Consequently on February 9, 2024, India's Ministry of Commerce and Industry[16] confirmed that the country's current legal system forpatents and copyrights can safeguard AI-generated works and breakthroughs. Therefore, it is not required to define separate rights for AI-generated works. India's Copyright Act of 1957 offers adequate and effective civil and criminal consequences for infringement, including digital circumvention.

[15] "Review of the Intellectual Property Rights Regime in India",161st Report: Department-related Parliamentary Standing Committee on Commerce, Rajya Sabha, (2023)
[16] India, Ministry of Commerce & Industry, Press Release, "Existing IPR Regime Well-Equipped to Protect AI Generated Works, No Need to Create Separate Category of Rights" (Release ID: 2004715) (Feb. 9, 2024).

As a result, the Indian IPR Regime does not need to establish a distinct category of rights for AI and related innovations. Consequently, the current legal structure under the Patent and Copyright Act is well-equipped to protect works generated by artificial intelligence (AI) and associated breakthroughs, even if AI and related innovations are a rapidly developing field of technology. As of right now, there is no plan to establish a distinct legal right to stop the law from being applied tocontent produced by artificial intelligence. The Copyright Act of 1957 grants a copyright owner exclusive economic right such as the right of reproduction, translation, adaptation, and so on, requiring the user of Generative AI to obtain permission to use their works for commercial purposesif such use is not covered by the fair dealing exceptions provided under Section 52[17] of the Copyright Act. The Indian Copyright Act was amended in 1994 to address scenarios in which artistic works may be generated by a computer. By adding Section 2(d)(vi) to the act, theamendment made it clear that the person who created computer-generated works is the rightful owner of those works. According to copyright law, an author is protected if their creative work or product satisfies the requirements to be considered "original." The "sweat of the brow" theory, which holds that an author obtains copyright rights based on their own mere diligence and effort, isthe simplest standard for awarding copyright protection to the author (this level is not applicable inIndia). The absence of uniqueness is a primary argument against the protection of anything producedby generative AI. Due to their inability to think for themselves, these chatbots produce no original content. The result we get is a blend of pre-existing content found on the internet, hence it is argued that AI-generated compositions cannot be copyrighted. However, when we examine the "originality" level required in India for claiming copyright protection, that assumption falls apart.

Liability and Infringement Concerns in AI-Generated Works:

Since intellectual property rightsare private, the owners of those rights are responsible for enforcing them. The Copyright Law provides sufficient and efficient civil remedies as well as criminal penalties for any infringement orunauthorised use of works, including circumvention of digital rights. This is where things become interesting in terms of the law and how it interacts with generative AI. As of right now, the Copyright Act of 1957 contains no clause addressing the liabilities of works produced with artificialintelligence. The issue of who will be responsible for any infringements committed by AI or its creation emerges if AI is acknowledged as the author and owner of the content it generates. The term "person" is included in Section 51 of the

[17] The Copyright Act, 1957, § 52, Act No. 14 of 1957, India.

Copyright Act[18], 1957, which addresses infringement, and it enumerates specific acts by "persons" that would constitute a violation of copyright. It is evident from examining the aforementioned section that the Act exclusively regulates "persons" whose actions violate the copyright of third parties. Since artificial intelligence has not yet been given legal status or recognised as a separate legal entity, any transgression by AI will be a seriousproblem. As a result, every AI-generated work must have a human author or owner who will be incharge of any infringement-related matters. Concerning these copyright issues with AI, A class- action lawsuit was filed in January by 13 artists, including Andersen and Ortiz, against three AI models that generate images utilising art that was found online: Dream Up, Midjourney, and StableDiffusion. In the class action law suit they filed in California, they claimed that respondents StabilityAI LTD., Midjourney, and Deviant Art had committed massive and illegal copyright infringementby profiting from AI-enabled products that are entirely based on the creative works of artists worldwide. According to their lawsuit, artists believe AI developers should be required to get consent before utilising their creations in training software, and they should have the option to opt out. They also want fair recompense. They expressed concern that artistic creativity would be lost as a result of this AI work.[19]

Another challenge posed by use of AI in Copyright works is the evolvement of Deepfake technology. The meaning of the phrase deepfake is Deepfakes, a mix of deep learning and 'fake', are photos, videos, or sounds that are manipulated or generated with artificial intelligence techniques that may show actual or non-existent persons. They are a sort of synthetic medium. In alayman sense, Deepfakes are videos that employ deep learning, artificial intelligence, and photoshopping techniques to produce images of events in order to convey disinformation. A deep-fake is any form of media (audio, video, or else) that has been partially or completely recreated or altered. The videos are created by combining technology such as GANs (Generative Adversarial Networks) and ML (Machine Learning). Copyright infringement, data protection, privacy, defamation, freedom of speech and expression, content moderation, intermediary liability, and even criminal law are all violated by the deepfake technology since it is a tool for digital fraud and is frequently used against women for harassment and revenge porn. Under Section 52 of the Indian Copyright Act[20], 1957, the notion

[18] The Copyright Act, 1957, § 51, Act No. 14 of 1957, India.
[19] Corrado Rizzi, *Artists Filed lass action Against AI Art Generators Over Alleged Copyright Infringement*, CLASSACTION (Sept. 28, 2023 07:45 PM), https://www.classaction.org/blog.
[20] The Copyright Act, 1957, § 52, Act No. 14 of 1957, India.

of fair dealing addresses which works are not deemed to be infringing in India. In contrast to the US viewpoint, the law has established a comprehensive list ofacts that are not considered to be infringing, and the doctrine of fair dealing is an exception to copyright infringement. Although the Indian stance on fair dealing is frequently criticised for beinginflexible, it works well in combating maliciously manufactured deepfake technology because its use is exempt from all of the crimes listed in Section 52 of the ICA. However, the employment of deepfake technology for legitimate objectives may not be protected by the rule.

Policy considerations:

We propose the "Significant Human Input" criteria to achieve a balance between the conflicting principles of recognising the copyrightability of AI-generated content and protecting human input in creative works. It is a straightforward test designed to determine how much human input went into making an "original" product. To clarify, we are not proposing a completely new framework for assessing copyrightability; rather, this test operates within the existing "Skill and Judgement" framework, but with an additional query attached that determines whether the "original" product in issue would still exist in its tangible form without human involvement. The "Significant Input" test lays forth two fundamental conditions that must be met in order to decide whether or not an author who used AI to help create a work is eligible to claim copyright. The first criterion is objective, and it should be verified if humans were involved in the creation process at all. Second, assess the consideration of human involvement. The 'extent' of human ability, judgement, and labour spent in its development must be substantial enough that theoutput would be fundamentally different or non-existent without it.

The *Zarya* Standard:

A similar right was recently established by the USA in the wake of the Zarya of the Dawn (or "Zarya") case. In this instance, despite the fact that every image was produced by artificial intelligence, the US copyright office acknowledged protection for a graphic novel. Following this,an official policy statement was released by the USA copyright office stating that if a work has enough human authorship to meet the requirements for copyright protection, it may be granted copyright even though it was created using AI.

Conclusion:

Artificial intelligence (AI) has impacted almost every business, and its benefits for intellectual property rights are indisputable. For example, people would take years for originality which can be done by AI in a substantially smaller amount of time, by contributing advancement tothe country. However, before adopting AI, particularly in the area of intellectual property rights, it is crucial to make sure that our system is capable of handling the ambiguities and gaps that arise inAI creations and determining out who is accountable for IPR violation. Narrow AI, which requireshuman intervention, offers significant benefits and can greatly enhance various fields, proving to be a boon for humanity. However, when AI reaches a stage where it operates independently or its intelligence equals or surpasses that of humans, some suggest it could pose an existential threat to the human race. Copyright law and artificial intelligence provide a complicated environment that needs careful thought. India and other countries must modify their copyright rules to handle the particular difficulties presented by AI-generated works as AI technology develop. To create a just and equitable environment for all parties involved, this will necessitate striking a balance between innovation and invention and the defence of intellectual property rights.

REFERENCES:

1. Ashna, S., Akanksha, C. and Sarthak, S., 2022. Artificial intelligence and automated content creation: Copyright scenario in India. *International Journal of Legal Science &Innovation (IJLSI), 4*(1), pp.580-592.
2. Swamy, R.N., 2021. AI-IPR Intersection: An Analysis of Emerging Issues in the IndianContext. SCMS Journal of Indian Management, 18(3).
3. Mishra, P., Thakur, V.S., Shandilya, S., Singhal, A.K. and Kishore, Y., 2023. Emerging Technologies and Intellectual Property Rights: A Cross-Jurisdictional Examination of AIand Patent Laws in India and the USA. Journal of Intellectual Property Rights (JIPR), 28(5), pp.413-421.
4. Dwivedi, A., 2022. Convergence of Artificial Intelligence with IP Laws. *Jus Corpus LJ*, *3*,p.791.
5. Biolung, N.S., 2022. Chat GPT: Patentability of AI Inventions. *Jus Corpus LJ*, *3*, p.102.
6. Jenny Quang, Does Training AI Violate Copyright Law?, 36 BERKELEY TECH. L.J. 1407 (2021).

7. Ahuja, V.K., 2020. Artificial Intelligence and Copyright: Issues and Challenges. *ILI LawReview Winter*, (2020).
8. Thushar V Senan , Abey Augustine and Aswathy Krishnan , AI, Creativity, and CopyrightLaw in India: Navigating the Boundaries of Originality and Authorship, 6 (3) IJLMH Page2941 - 2949 (2023), DOI: https://doij.org/10.10000/IJLMH.115166
9. Sharma, K. and Vardhan, D.R., 2024. Artificial Intelligence and Copyright in India: A Socio-Legal Perspective. Library Progress International, 44(3), pp.749-754.
10. Gaffar, H. and Albarashdi, S., 2024. Copyright protection for AI-generated works: Exploring originality and ownership in a digital landscape. Asian Journal of InternationalLaw, pp.1-24.
11. Singh, A. and Shanker, N., 2024. INTERPLAY BETWEEN ARTIFICIAL INTELLIGENCE AND THE COPYRIGHT LAW IN INDIA: ISSUES AND CHALLENGES *Tec Empresarial*, *6*(1).
12. Tiwari, S.K., 1957. AI-Generated Content and Copyright Law: Challenges and Adaptations in India.
13. India Today, ChatGPT: AI-Generated Content Raises Copyright Ownership Complexitiesin India (Sep. 22, 2023), https://www.indiatoday.in/law/story/chatgpt-ai-generated- content-copyright-ownership-complexities-india-2439165-2023-09-22.
14. India, Ministry of Commerce & Industry, Press Release, "Existing IPR Regime Well-Equipped to Protect AI Generated Works, No Need to Create Separate Category of Rights" (Release ID: 2004715) (Feb. 9, 2024).
15. Review of the Intellectual Property Rights Regime in India",161st Report: Department-related Parliamentary Standing Committee on Commerce, Rajya Sabha, (2023).