

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper is partially shown, and a black leather watch with a silver dial is resting on the desk. A large, semi-transparent white rectangular box is centered over the notebook, containing the journal's title and ISSN information.

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# **COPYRIGHT: AI GENERATED WORKS**

AUTHORED BY - KAAVYA MITTAL

Jamnalal Bajaj School of Legal Studies, Banasthali Vidyapith, Tonk, Rajasthan

## **ABSTRACT**

The rapid advancements in Artificial Intelligence (AI) have ushered in a new era of content creation, presenting both opportunities and challenges within the realm of copyright law. As AI systems increasingly generate original works across various domains, the existing legal framework in India faces significant scrutiny. The current provisions do not adequately address the complexities surrounding AI-generated content, particularly concerning issues of ownership, originality, and copyright protection.

This paper aims at pointing out the challenges and proposing recommendations aimed at clarifying ownership rights and establishing criteria for originality in AI-generated content.

**Keywords:** AI-Generated Content, AI Law, Copyright Act, Copyright Protection, Owner.

## **1. Introduction**

The day my father brought home an Android phone remains etched in my memory. It sparked a curiosity that defined my early years, coinciding with the smartphone revolution in India. It is remarkable to see how quickly we have transitioned from that initial spark to an era where artificial intelligence and robotics are no longer futuristic dreams, but everyday realities.

Artificial Intelligence or AI “refers to the simulation of human intelligence in machine that are programmed to think, reason, and learn like humans. AI systems use algorithms and vast amounts of data to recognize patterns, make decisions, and improve their performance over time.”<sup>1</sup>

Basic components of AI are: **(i) Learning:** it enables AI systems to learn from data and improve

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<sup>1</sup> What is AI(Artificial Intelligence)?, GeeksforGeeks), <https://www.geeksforgeeks.org/what-is-ai-artificial-intelligence/> (last visited Jan. 22, 2025).

performance without being explicitly programmed by a human. **(ii) Reasoning and Decision Making:** AI systems can use logical rules, probabilistic models, and algorithms to draw conclusions and make inferred decisions. **(iii) Problem Solving:** AI systems take in data, manipulate it and apply it to create a solution that solves a specific problem.<sup>2</sup>

The rise of AI has ushered in an era of unprecedented creativity, with machines now capable of generating text, music and even visual art. This technological advancement, however, presents a profound challenge to traditional notions of copyright and authorship. As AI systems become increasingly sophisticated, the lines between human and machine creativity blur, raising critical questions about who owns the rights to AI-generated works and how to ensure that human creators are fairly compensated for their contributions.

## 2. Copyright Laws in India

Copyright law in India is primarily governed by the Copyright Act of 1957, which provides a legal framework for the protection of original works of authorship, including literary, dramatic, Musical, and artistic creations, as well as cinematographic films and sound recordings. It aims to protect the rights of creators while promoting the dissemination of knowledge and creativity. Rights granted under this Act to Authors are: **(i) Economic Rights:** Authors have the exclusive right to reproduce their work, distribute copies, perform or display it publicly, and create adaptations or translations. **(ii) Moral Rights:** These rights protect the personal and reputational interests of authors. They include the right to attribution i.e., the right to be recognized as the author and the right to integrity i.e., the right to object to derogatory treatment of the work.<sup>3</sup>

The Copyright Act of 1957 serves as a crucial mechanism for protecting intellectual property in India. By conferring exclusive rights to creators while allowing for certain exceptions under fair use provisions, it fosters an environment conducive to creativity and innovations. As technology evolves, so too does the need for copyright law to adapt to new challenges in protecting creative works in a digital landscape.

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<sup>2</sup> Branches of Artificial Intelligence, Soci.ai, <https://www.soci.ai/knowledge-articles/branches-of-artificial-intelligence/> (last visited Jan. 22, 2025)

<sup>3</sup> Copyright Law in India, Legal Service India, <https://www.legalserviceindia.com/article/1195-Copyright-Law-in-India.html> (last visited Jan. 25, 2025).

Though the Act does grant copyright protection to computer-generated works by considering the persons who have caused the work to be created as the ‘author’. But the personhood of the author is assumed to be ‘natural person’ by default. The Act does provide the authorship to legal or artificial persons but that too only in respect of certain categories of work. However, in respect of computer-generated work, no such express mention of legal or artificial person is present which makes the possibility of a person “who has caused the work to be created”, to be “an artificial person” or “a legal person” is implicitly excluded.<sup>4</sup>

The current landscape of copyright law in India does not explicitly address the complexities surrounding AI-generated content. This omission poses significant challenges as AI technology continues to evolve and generate original works.

### **Fundamentals of Copyright Law and It’s Challenges to AI-Generated Works**

The fundamentals of copyright law are:

(i) **Originality:** To be protected by copyright, a work must be original. This doesn’t mean it has to be groundbreaking or novel, but it must be independently created by the author and possess a little bit of creativity.<sup>5</sup>

But determining whether an AI-generated work exhibits sufficient originality can be difficult as AI systems often draw upon vast datasets of existing works, raising questions about whether the output is truly independent and creative or merely a derivative of existing content.

(ii) **Authorship:** The author is generally considered the initial owner of the copyright. But in some cases, determining authorship can become complex in cases of works created by employees within their scope of employment where the employer may be considered the author or in the context of collaborative efforts involving multiple individuals and technologies.<sup>6</sup>

The concept of authorship becomes problematic when AI is involved. It can be the programmer, the user who provides inputs to the AI, or the owner of the AI system or whether the AI itself be considered the author but is it possible to consider an algorithm as a creator?

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<sup>4</sup> Adv. Prashant Mali, Artificial Intelligence (AI) and Copyright Law: Analysis of Issues in International IP Laws, 6(3) Indian J.L. & Legal Res. 564,578

<sup>5</sup> What is Copyright?, U.S. Copyright Office, <https://www.copyright.gov/what-is-copyright/> (last visited Jan. 25, 2025).

<sup>6</sup> Copyright Ownership, BitLaw, <https://www.bitlaw.com/copyright/ownership.html> (last visited Jan. 25, 2025)

**(iii) Ownership:** Copyright ownership grants the author exclusive rights to reproduce the work, create adaptations, distribute copies of the work etc. The ownership can be transferred through assignment or licensing.<sup>7</sup>

If authorship is unclear then determining ownership of the copyright becomes complex. To whom can the work generated by an AI system be attributed to?

Without clear legal recognition, AI-generated works risk falling into the public domain allowing anyone to use them without compensation or attribution to the creators or developers of the AI systems. This scenario could be viewed as unfair, particularly for those who invest significant resources into developing AI technologies and algorithms.

### **3. Rightful Owner of AI-Generated Content**

To determine the rightful owner of the AI-generated content is difficult. Traditional copyright law centers around human authorship, yet AI systems lack the capacity for independent thought or creative expression. Understanding who can claim ownership of such works is an intricate question under law, whether it be the owner of the AI system or the developers or the user of the same.

**Owner:** That the owner of the AI system should be considered the owner of such generated works. Just as a painter owns the painting, and not the brush, the owner of the AI system could claim ownership of the outputs.

**Developers:** The developers i.e., those who wrote the algorithm and codes for the AI system may claim ownership based on their intellectual contributions. However, under current Indian copyright law, the authorship of computer-generated works is attributed to the person who causes the work to be created. It means that while developers contribute significantly to the creation of AI systems, they may not automatically hold copyright over outputs generated by those systems unless they directly influence the content produced.

**Users:** Users who input prompts into AI systems to generate content often have a more direct claim to ownership. If a user engages creatively with the output such as editing, arranging, or substantially modifying it, they may be able to claim copyright protection for their

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<sup>7</sup> Scope of Copyright Protection, BitLaw, <https://www.bitlaw.com/copyright/scope.html> (last visited Jan. 25, 2025)

contributions. However, if a user merely inputs a prompt and receives an output without further modification, that output may not be eligible for copyright protection due to a lack significant human authorship.

These competing claims for ownership highlight the complex interplay between human and machine in the creative process. The current legal framework does not clearly define the rights of owners, developers, or users concerning purely AI-generated content. This ambiguity creates challenges in asserting ownership and enforcing rights over such works.

### **Originality of AI-Generated Content**

The originality of AI-generated content is a critical issue in the context of copyright protection under Indian law. As AI systems generate work by processing vast amounts of existing data, questions arise regarding the originality of these outputs and the implications for copyright eligibility.

According to the Copyright Act, 1957, for a work to be eligible for copyright protection, it must originate from the author's intellectual effort. The Act does not explicitly define what constitutes originality in the context of AI-generated content, leading to ambiguity about whether such works can be considered original if they are derived from existing materials.

AI systems, particularly generative models, are trained on extensive datasets that include texts, images, and other forms of existing content. This reliance on pre-existing works raises concerns about whether the outputs can truly be classified as original creations. If an AI-generated work closely resembles or replicated elements from its training data, it may lack the necessary originality to qualify for copyright protection.

### **Fairness To Other Creators**

One significant concern surrounding AI-generated is its potential unfairness to human authors who create original works through their intellect and creativity. Traditional authors invest time and effort into their creations, often drawing from personal experiences and insights, which is fundamentally different from how AI systems operate.<sup>8</sup>

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<sup>8</sup> AI and the Copyright Dilemma: What India Needs to Do, Governance Now, <https://www.governancenow.com/views/columns/ai-and-the-copyright-dilemma-what-india-needs-to-do> (last visited Jan. 27, 2025)

If AI-generated works are granted copyright protection despite being derived from existing resources, it could undermine the rights of human creators who produce original content without relying on AI. It raises ethical questions about equity in creative industries and whether AI-generated outputs should receive the same legal protections as works created solely by humans.<sup>9</sup>

While there is potential for such works to be considered original under specific conditions, their reliance on existing resources complicate matters. Furthermore, granting copyright protection to AI-generated outputs raises ethical concerns regarding fairness to human creators who rely solely on their intellect and creativity. As India navigates these complexities, developing clear guidelines and frameworks will be essential to ensure equitable treatment for all creators in an increasingly AI-driven landscape.

#### **4. International Development**

Countries like the US, EU, and UK are actively working on frameworks to address copyright issues related to AI-generated content:

**US:** The U.S. Copyright Office has clarified that for a work to be copyrightable, it must have a human author. AI-generated content, which lacks human authorship, generally does not qualify for copyright protection unless there is significant human involvement in its creation.<sup>10</sup> Courts are beginning to address these issues, and ongoing litigation will likely shape future interpretations of copyright law relating to AI. The outcomes could establish precedents that define what constitutes sufficient human input for copyright eligibility.

**EU:** They have drafted the Artificial Intelligence Act. It establishes a comprehensive framework for AI development and use. While it does not directly address copyright ownership of AI-generated works, it emphasizes the importance of transparency regarding the data used for training AI models. This could indirectly influence copyright considerations by requiring AI developers to disclose the source of their training data.<sup>11</sup>

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<sup>9</sup> The Legal Landscape of AI-Generated Content: Ownership and Copyright Issues Explored, Juris Centre, <https://juriscentre.com/2024/08/26/the-legal-landscape-of-ai-generated-content-ownership-and-copyright-issues-explored/> (last visited Jan. 27, 2025)

<sup>10</sup> U.S. Copyright Office, Compendium of U.S. Copyright Office Practices § 306 (3rd ed. 2014)

<sup>11</sup> Artificial Intelligence and Copyright: Use of Generative AI Tools to Develop New Content, European IP Helpdesk, <https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/artificial-intelligence-and->

**UK:** The UK stands out as one of the few countries that explicitly offers copyright protection for works generated solely by computers. This legal recognition allows for more straightforward ownership claims over AI-generated content compared to US.<sup>12</sup>

As countries like the US, EU, and UK navigate the intersection of copyright law and AI-generated content, they are establishing frameworks that may serve as models for others, including India. These developments highlight the necessity for legal systems worldwide to adapt to technological advancements while ensuring that creators' rights are protected.

## **5. Policy Recommendations**

To tackle the intricacies of AI-generated content and its effects on copyright protection in India, the following policy recommendations should be taken into account:

### **(1) Definition of AI-Generated Works**

The Copyright Act, 1957 should be revised in order to acknowledge AI-generated creations and set forth criteria for their eligibility for copyright protection. Presently, Indian copyright legislation lacks a definition for AI-generated content, resulting in legal uncertainties. By introducing a statutory definition, lawmakers can clarify what constitutes an AI-generated work and the conditions under which such material may be protected by copyright.

Just like Copyright, Designs and Patents Act, 1988 of UK, attributed copyright to the individual responsible for making the necessary arrangements for an AI-generated output, India could adopt a comparable framework by describing whether the copyright belongs to the owner of the AI system or the developers or the user of the same.<sup>13</sup>

### **(2) Significant Human Involvement Standard**

AI systems produce content based on existing data and algorithms, which raises questions about originality. A standard requiring a substantial degree of human engagement such as the selection of input data, creative direction, or post-production processes would ensure that copyrighted material embodies human creativity.

In the case of *Thaler v. Perlmutter* (2023), the US Copyright Office rejected copyright

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[copyright-use-generative-ai-tools-develop-new-content-2024-07-16-0\\_en](#) (last visited Jan. 26, 2025)

<sup>12</sup> AI and Copyright: Who Owns AI-Generated Content?, Built In, <https://builtin.com/artificial-intelligence/ai-copyright> (last visited Jan. 26, 2025)

<sup>13</sup> Copyright, Designs and Patents Act 1988, c. 48 (UK), <https://www.legislation.gov.uk/ukpga/1988/48/contents> (last visited Jan. 31, 2025)

protection for an image created by AI, underlining that copyright necessitates human authorship. India might implement a similar standard to prevent purely machine-generated content from being granted copyright.<sup>14</sup>

### **(3) Licensing and Compensation**

Numerous AI models are trained on copyrighted works without obtaining explicit consent. Establishing a licensing framework that permits the commercial use of AI-generated works while securing fair payment for human creators, would guarantee that AI-generated content adheres to intellectual property rights and compensates original creators whose works contribute to the datasets used for AI training.

The EU's Artificial Intelligence Act, promotes transparency in AI-generated material by requiring developers to disclose the sources of their training data. Similar licensing system in India could impose a requirement for AI companies to secure licenses when utilizing copyrighted content for training their models.<sup>15</sup>

### **(4) Regulatory Authority**

Due to the complexities associated with AI-generated works, a specialized authority would oversee disputes related to AI and copyright, provide guidelines, and ensure adherence to changing legal standards. This organization could also maintain a public register of AI-generated works to monitor ownership claims.

Just like the Indian Patent Office manages matters pertaining to patents, a similar office could address issues regarding authorship, licensing, and the copyrightability of AI-generated content.<sup>16</sup>

### **(5) Transparency and Disclosure**

The AI developers and users could be obligated to indicate when content is generated by AI and specify the level of human involvement. Ensuring transparency in AI-generated content would prevent misrepresentation and aid in more effectively enforcing copyright laws. Such a requirement could also guard customers against misleading AI-generated media.

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<sup>14</sup> Thaler v. Perlmutter, No. 1:22-cv-01564 (D.D.C. 2023), <https://copyright.gov/rulings/thaler-decision.pdf> (last visited Jan. 31, 2025)

<sup>15</sup> European Union Artificial Intelligence Act, 2023, <https://artificialintelligenceact.eu> (last visited Jan. 31, 2025)

<sup>16</sup> Indian Patent Office Guidelines on Computer-Related Inventions (CRI), 2017, <https://ipindia.gov.in> (last visited Jan. 31, 2025)

## **(6) Public Domain**

If an AI-generated work lacks identifiable human authorship, it should automatically be classified as public domain. Copyright law is designed to reward human creativity. If no human contribution is traceable in the production of AI-generated material, granting exclusive rights could lead to monopolies over machine-created works, hindering creativity and innovation.

In the case of *Naruto v. Slater* (2018), a US court determined that a monkey could not possess copyright for a selfie it took. A similar concept could be applied to AI, ensuring that works solely generated by machines remain freely accessible.<sup>17</sup>

## **Conclusion**

The evolution of AI has fundamentally transformed the landscape of content creation, presenting significant implications for copyright law in India. As AI systems become more sophisticated, generating works that range from literature to art, the existing legal framework established by the Copyright Act, 1957 struggles to address the unique challenges posed by these advancements.

To navigate these complexities, the above-mentioned suggestions could be taken into account. Such measures would not only protect the rights to traditional authors but also encourage innovation in the use of AI technologies.

As India navigates the intersection of AI advancements and copyright law, it is imperative to adapt legal frameworks to reflect the realities of technological progress. By addressing ownership issues and establishing clear guidelines for originality and copyright protection, a balanced ecosystem can be created that respects both human creativity and the potential of AI-generated works. The suggestions outlined in this paper may serve as a foundation for developing a robust legal framework that safeguards intellectual property rights while protecting innovation in an increasingly digital landscape.

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<sup>17</sup> *Naruto v. Slater*, 888 F.3d 418 (9<sup>th</sup> Cir. 2018), <https://casetext.com/case/naruto-v-slater> (last visited Jan. 31, 2025)