

## **Generative AI and Copyright Law: A Comparative Analysis with an Indian Perspective**

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### **ABSTRACT**

The invention of artificial intelligence has brought several positive changes worldwide, which have made people's lives simpler. Though with the rapid upsurge of this technology, it has given rise to new challenges that violate copyright laws. Specifically in the context of India, the Copyright Act, 1957, provides a human-centric definition of terms like "author", which ultimately creates an important legal vacuum.

The "intermediary liability" – this is another important concept under the "Information Technology Act, 2000" which talks about a concept of "safe harbour" as this protects them from any sort of liability. But, as of now, it is "being reevaluated mainly in the aspects of deepfake and misinformation.

In this paper, I will analyse the crucial legal and policy challenges posed by AI. Also, here the researcher will examine the question of who holds the copyright in case of an AI-generated work. As in the act, the basic requirement is for a human author. The paper will also try to consider the varying levels of human involvement that range from simple text prompts to substantial editing.

**Keywords-** Generative AI, Copyright Act, 1957, Authorship and Originality, AI-generated Works, Legal Reforms and Comparative Analysis

## INTRODUCTION

Today's world has seen a lot of development after the advent of Generative AI, and this evolving realm has been undergoing a lot of changes, as now the generative AI has become more innovative with its response generation by often using copyrighted work. This time has raised a lot of copyright issues in different realms of work, whether it be Music or acting, etc, and the same is being done by AI apps like CHATGPT, Midjourney, which is used for image generation and many more. So, for example, if an AI is trained on a thousand classical compositions, then it will generate a symphony when the following prompt is given: "compose music in Mozart's style"<sup>1</sup>.

This, in turn, has resulted in a lot of cases being filed, and this model works very specifically on the principle of prompt engineering, which in turn works on the command prompt given by the user, who in this case is a human. Also, the Copyright Act, which we have in India, is not robust enough to tackle the AI problem, as nowhere has the provision for the same been given.

## THE COPYRIGHT LAW IN INDIA

So, just like the Patent, Trademark Act, the "Copyright Act of 1957" is seen as an important act under the "Intellectual Property Rights, where it basically protects the creative works in India. Also, the said act grants the protection to the "original" "literary, dramatic, musical and artistic work and also in areas of cinematograph films and lastly the sound recording", and all this operate on one fundamental concept which states that protection under the copyright starts "from the moment a specific work is created and also fixed at a tangible medium". Further, an important feature of this act is that it can subsist its derivative work only when it has sufficient intellectual inputs to be credited as original in its own right.

### Authorship

Before delving deeper into the concept, it is important for us to first understand the concept of author in the light of the Copyright laws. "Under Section 2(d)<sup>2</sup> of the said act, the definition of who can be an author is given. Here, its definition relies on the

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<sup>1</sup> Dhruv Verma, *Mind over Machine: Reimagining Indian IP Law in the Age of AI*, VII *Int'l J. Legal & Law Research* 1579, 1583 (2025).

<sup>2</sup> Copyright Act of 1976, § 2 (d)

type of work that he/she creates. But here one interesting thing we can see is that if any work is there which is computer-generated, then the person who creates it will be considered as the author, though this part of the definition is ok, but is still ambiguous in nature, the reason being it does not address the concerns related to AI. The whole point of this principle of authorship is tied to human involvement, specifying a kind of involvement that helps in the creation of a fundamental point of conflict with the AI content.

### **Doctrine of originality**

So, originality as an important concept is given under the Copyright Act, 1957, which talks about the safeguarding of any kind of new work or creation from any other unauthorised uses, etc, which has been made without the consent. Further, it is considered the yardstick of the copyright law, which determines the applicability of this. Also, Section 13<sup>3</sup> The Act of 1957 specifically uses the word “original” but explicitly does not define it. <sup>4</sup> Also, historically, the Indian courts had adopted the concept of “sweat and brow”, which states that the work

But in recent times, some significant progress has been seen in this, which can be understood through the case of “Eastern Book Company vs DB Modak.”<sup>5</sup> So this was a Supreme Court case. Basically, in this case, it was seen that the court had removed the doctrine of sweat & brow and instead went ahead to adopt a new test, which was “a modicum of creativity”. Further, it also held that concepts like the substantial intellectual effort and the minimum level of creativity are to be considered valid under the copyright laws.

Also, it is to be noted that such kind of transition in the judgement of this particular case from a more labor focused one to that of creativity shows an interesting legal basis for the protection of specific AI- assisted work, further it stated that any work which is placed in the public domain can be copyrighted only if a human chooses to

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<sup>3</sup> Copyright Act of 1976, s. 13

<sup>4</sup> Amit Kaur, Overview of Tests of Copyright Protection in India (Sept. 14, 2025), [https://blog.iplayers.in/overview-of-tests-of-copyright-protection-in-india/#Tests\\_of\\_copyright](https://blog.iplayers.in/overview-of-tests-of-copyright-protection-in-india/#Tests_of_copyright).

<sup>5</sup> Dixit Parakh, Copyright Protection in India: Doctrine of Originality (Sept. 14, 2025), <https://boudhikip.com/copyright-protection-in-india-doctrine-of-originality/>.

add the aspect of MLC. In accordance with all this, it is imperative to understand what exactly “artificial intelligence”

### **Artificial Intelligence**

The AI (artificial intelligence) is seen as a branch of “computer science” which “mainly focuses on the development” of a machine that can, in a way, partially mimic human intelligence, unlike AI, these can only solve the problem through human intervention. Whereas in the context of this “AI-generated” work, it refers to various kinds of outputs which it can provide, such as written text, video. Also, these tools are being trained on a huge amount of data so that tomorrow, when we provide a word or a phrase, they can search as well as use this knowledge to generate new content.

Though in one way it is good, the increased amount of dependency on this actually raises a lot of legal concerns. So, below are some of the examples as to how work is generated by AI:

- a. Music – nowadays, in this field, we see a lot of AI being used for composing tracks and music. A best example is this AI app like Suno, which is an AI-generated music-making app that, through careful presentation of prompts, helps a professional as well as a novice player to compose a track.
- b. AI-authored books – this is very much prevalent in Japan, as short novels are sort of co-written with the help of an AI and have even made it through the initial screening for a national Literary award.

All these examples, in a way, show how the growth of AI is helping the various creative fields and often blurring the line between the two.<sup>6</sup>

### **CAN AI BE AN AUTHOR?**

Admits all the arguments, one of the major questions arises as to who will be called as an author for an AI-generated content, as we look through the act, then there is no scope for the same, as it only recognises the human creative work. But further to understand this better, we need to look into the primary claims of ownership that might compete for the same:

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<sup>6</sup> Hoshiar Singh & Kiran Sharma, *Copyright in the Age of Artificial Intelligence: Unravelling the Complexities for the Protection of AI-Generated Work* (2025).

The Developer- In cases like these, many might argue that, in the case of AI-generated work, the User or the person who is giving the prompt can be considered as an author; however, this reasoning is ineffective because just simply giving the prompt does not describe sufficient control over the final response.

The developer – In this, as we all know, AI, being a complex tool, is created by the developer through the process of coding, which is done by a manufacturer or the software programmer. But, in this case, the chances are slim because they are just mere developer and are not directly engaged with the whole process of the generation of work by the AI.

The “intermediary liability” – this is another important concept under the “Information Technology Act, 2000” which talks about a concept of “safe harbour” as this protects them from any sort of liability. But, as of now, it is “being reevaluated mainly in the aspects of deepfake and misinformation”.

### **Ownership**

It is one of the “most important under the copyright law”, and in simple words it basically refers to the ownership towards one’s particular creative work. So, this is given under “Section 17 of the act, which implies that the author is the first owner”, but there are several exceptions to the same, these are:

- a. Like in Section 17(c) for any work which are being made during the course of employment under any contract, then in that case the employee will be considered as the first owner unless otherwise specified.
- b. Next is section 17 (b), which talks about the aspect of commissioned work, like photography, painting, etc, where an individual, on whose instruction the work is being made, will be called as the first owner.
- c. Subsequently, Section 17(a), which deals with the literary, dramatic work, etc, which are being made for the newspapers under a specific contract, there the proprietor will be deemed as the first owner, but behind this, the author will have the right to retain the other rights.<sup>7</sup>

### **Doctrine of Fair Use**

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<sup>7</sup> The Legal School, Authorship and Ownership in Copyright Law: Meaning and Differences (Sept. 14, 2025), <https://thelegalschool.in/blog/authorship-and-ownership-in-copyright-law>.

This doctrine is governed under Section 52 of the act, which basically lays down specific acts that will not be counted as an infringement under the act, which are

- a. “The fair dealing of any work which is not a computer program, and majorly for private or personal use, which is inclusive of research”.
- b. The incidental storage of work is mostly a technical process of the electronic transaction.
- c. “The reproduction of any work for the purpose of a judicial proceeding<sup>8</sup>.”

As a result of this, the court, along with the above-stated provisions, works efficiently to provide these solutions. Along with this, we have to keep one thing in mind, that the Indian Legal framework, which has been designed, is more individual and non-commercial in nature and is not actually meant for full-scale TDM operations conducted by the AI companies.<sup>9</sup>

## COMPARATIVE ANALYSIS

Different countries have different takes on the integration of AI under the copyright laws, which will be analysed here:

### United State

Here, the copyright aspect is seen by the “United States Copyright Office” and also by the courts, and in most of the cases, the constant requirement of human authorship has been seen, which acts as a fundamental principle, so in matters of this, the following pointers are:

- a. The requirement of “human authorship- basically, the US copyright act states that the work which has been created by the human author” can receive the said protection, and also, the AI work does not qualify under this unless it has some amount of human input.
- b. USCO Guideline – this states that any kind of AI work will not receive a copyright unless and until it has human inputs in it.<sup>10</sup>

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<sup>8</sup> Rajshree Mukherjee, Fair Use in India under the Copyright Act (Sept. 14, 2025), <https://blog.iplayers.in/fair-use-law-india-copyright-act/>.

<sup>9</sup> Shourya Shekhar, Training AI, Testing Law: India’s Copyright Challenge with TDM, Law School Policy Review (Sept. 14, 2025), <https://lawschoolpolicyreview.com/2025/08/08/training-ai-testing-law-indias-copyright-challenge-with-tdm/>.

<sup>10</sup> Mackenzie Caldwell, *What Is an “Author”?—Copyright Authorship of AI Art Through a Philosophical Lens*, 61 *Hous. L. Rev.* 411 (2023).

- c. Also, an important observation was made that if any human has used an AI tool, but under it the human has contributed towards its creative control, then this work might qualify for protection.

### **United Kingdom**

This country has a very different approach, which is more liberal in nature. As “under Section 9(3) of Copyright, Design and Patent Act, 1988 it implies that in the case of computer-generated work, if there is no human author, then in that case the author will be considered as someone who has made important changes to the creation of the work.

### **European Union**

So, here they follow a specific approach which helps in the balancing of the human authorship with that of the technological advancement:

1. Instructions on Copyright – In this, the EU puts more pressure on human creativity and does not recognize AI as an independent author.
2. AI-assisted work – “So if a human contributes in a creative manner towards the AI work, then in that case they may be granted copyright protection.”
3. It is also to be noted that the EU law somewhat aligns with the US laws in the matter of the requirement of human authorship. Along with the CJEU<sup>11</sup> it has put more importance on the necessity of an original intellectual creation.
4. Further, another Significant development here was that the EU parliament and also the stakeholders brought changes which will address the growing “role of AI in the field of content creation”.
5. “Also, under the European AI Act, Article 10 serves as an excellent example of direct regulation, which mainly deals with data and its governance. Also, the Indian authorities are still a little on the fence about bringing in the statute, which will specifically deal with the AI training data. Though there are some appropriate laws that are currently in force in India.<sup>12</sup>”

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<sup>11</sup> Comparative Analysis of Copyright Laws for AI-Generated Works in the USA, EU, and Japan (Sept. 4, 2025), <https://www.sonisvision.in/blogs/comparative-analysis-of-copyright-laws-for-ai-generated-works-in-the-usa-eu-and-japan>.

<sup>12</sup> Chinmay, *The AI-Copyright Challenge: Authorial, Infringing and Culpable Attributes of AI Models*, 10 NUJS J. Regul. Stud. 75 (Jan.–Mar. 2025).

## China

Here also, just like some of the countries, they protect the AI-generated work if a human plays an important role in the matters of the creation process, which also includes the selection of data format or the setting up of the parameters for the AI.

So, in one of the landmarks cases of China Shenzhen Tencent v. Shanghai Yingxun it was seen as to how Ai work has been treated under the copyright laws, and also here the court had stated that the output “from AI tools like the Dreamwriter can be copyrighted, though to claim this copyright, the person” who is doing so must have to show some level of intellectual creativity.<sup>13</sup>

## CHALLENGES IN AI-GENERATED CREATIVITY

Although machine-generated creativity makes it helpful and efficient for us, through the legal aspect of this, we face a lot of challenges. These are:

1. **Violation of training data** – this is one of the major challenges in using copyrighted content in order to train the AI. So, this can be better understood from the point of view of ANI vs Open AI, 2024

So, in this case, it was a copyright dispute, where ANI had filed a lawsuit against OpenAI, contending that it had committed copyright violation.<sup>14</sup> Further, they have made allegations that OpenAI had used its news content to train its Language Learning Model, which is ChatGPT, without their permission. So, as a result of this, it had maligned their reputation, so they were seeking damages and also an order of permanent injunction against them.

To which the Open, in its defence, argued the usage of publicly available data for the training of the LLM<sup>15</sup> In a way, it comes under the doctrine of fair use. They also stated that they had immediately blocked the ANI domain the moment they were served the legal notice. Ultimately, the “Delhi High Court” in this case formed the major issues being

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<sup>13</sup> Hoshier, 2 supranote at 3

<sup>14</sup> Aklova Panwar, Generative AI and Copyright Issues Globally: ANI Media v. OpenAI, TechPolicy.Press (Sept. 8, 2025), <https://www.techpolicy.press/generative-ai-and-copyright-issues-globally-ani-media-v-openai/>.

<sup>15</sup> Shruti Kakkar, ‘Infringement Does Occur’: ANI on OpenAI Using Its Data for Training, Hindustan Times (Sept. 13, 2025), <https://www.hindustantimes.com/india-news/infringement-does-occur-ani-on-openai-using-its-data-for-training-101741637235991.html>.

- a. Whether storing particular copyrighted data for the training of LLM<sup>16</sup> Falls under copyright infringement. Whether generating users from such copyrighted data would amount to infringement or not?<sup>17</sup>

So, currently this case is under consideration, but it has to be kept in mind that whatever the outcome of this case will be, it will have a major impact on copyright laws with respect to AI in future.<sup>18</sup>

2. **Attribution and Moral Rights** – So for this, we have to under “Section 57 of the act”. This section basically provides the author with two non transferable “moral rights” which are (1) the “right of paternity” for the claiming of authorship and (2) “right to integrity which basically removes any kind of distortion or modification from the work that might create a prejudice to the author’s reputation.” This basically poses as a challenge for them why because the concept of non- human entity has not been identified and it turn makes it difficult for the AI model to be the moral right holder.

Aside from this, there are challenges that we face in matters of attribution as well. How this happens, so basically when we give a prompt to AI and it generates the work, then it does this in a style which might be similar to a particular artist and as a result of this raises the red flags about the moral rights.

3. **Originality and Creativity** – the main purpose of the whole copyright law act is to protect the uniqueness and the originality of the work, which is an outcome of human creativity. Contrary to this, the AI work is majorly created through different algorithms and data, which generate materials based on the human prompt, which raises an important question about the uniqueness of that particular work. This is mostly seen in the field of music, writing, etc.

A fantastic case for this is the “Anil Kapoor vs Simply Life India & Ors”<sup>19</sup>. So, in this case the Delhi High Court had basically issued an ex parte order which was given for the protection of actor Anil Kapoor’s personality rights and also the copyright protection for the dialogue against the sale and used of his image

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<sup>16</sup>Sharveya Parasnis, ANI vs OpenAI: Is Storing Copyrighted Content an Infringement?, Medianama (Mar. 12, 2025), <https://www.medianama.com/2025/03/223-ani-vs-openai-does-storing-copyrighted-content-equal-copyright-infringement/>.

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> *Anil Kapoor v. Simply Life India & Ors.*, CS (COMM) 652/2023 (Del. H.C.).

along with merchandising of the tagline and lastly the use of generative AI for the creation of deep fake in which his image was morphed.

Another case of this is where the famous Composer A R Rahman has recently used the voice of the late singer Bamba Bakya for the composition of a track in a film.<sup>20</sup> Though this was welcomed by the Film industry, he had to take due permission and also compensate the late singer's family.

4. **Copyright and its duration** – So “usually under “Section 22 of the Copyright Act, 1957” the ownership of the authors work usually lasts throughout the life of the author plus the additional 60 years”, but in AI generated work it is very difficult as it does not have any human author for this which raises significant questions as to whether copyright can be given to an AI work.

## **PROPOSED REFORMS AND WAY FORWARD**

After analysing all the aspects, the following points are being considered by the policymakers as well as by the legal experts:

- a. **“Sui generis for AI creation”** - So, the doctrine of fair use gives the leverage of using the copyrighted work without the explicit permission of the owner of the stated copyright and can be for any purpose, like criticism, comments, news, etc. So, in these cases, if the AI developer uses a certain kind of database that is freely available on a streaming website with the motive of training AI, then this should not in any way violate the copyright law.
- b. **Adoption of the UK model** - After much scrutiny, it's been seen that India could actually make an effort to adopt some of the provisions which are not exactly mimicked but very similar to the “UK's Section 9(3) which, as mentioned earlier, talks about the attributes of authorship, stating that any person/individual by whom such a necessary arrangement has been made.
- c. Also, since post-COVID, which has seen a lot of digitalisation, we see that a lot of copyright works are freely available online, and also, the same can be used as legitimate data, which can be used to train the AI program. So, if we try to

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<sup>20</sup> A.R. Rahman, Over AI Use to Recreate Late Singers' Voice: Took Permission, Sent Deserving Remuneration, PTI (Jan. 31, 2024), <https://news.abplive.com/entertainment/movies/a-r-rahman-ai-creation-of-late-singers-voice-bamba-bakya-shahul-hameed-rajinikanth-lal-salaam-thimiri-yezhuda-1660676>.

regulate this, then we might even end up destroying the creativity, but we also need to understand that AI needs these regulations.

- d. **Transparency and Oversight mechanism** - This compels the AI developers to disclose any kind of training database, which can be either by the public registries or by the way of certification, with its own compulsory compliance officer.
- e. **Maintenance of Innovation with Protection** - It is very difficult to maintain a relationship between these two, so in order to solve this, we can adopt “remunerated exception”, which can help in the framing of a licensing system, which further can help in compensating the copyright holders for the very use of their work under the training data. This kind of outlook will actually help the AI developers to have access to the necessary data while also ensuring that the creators of this work, on the other hand, are fairly compensated for their valuable contribution, which in turn will result in a balance of competing interests and will also encourage a sustainable ecosystem.

## **CONCLUSION**

Lastly, I would like to conclude by saying that Indian copyright law is very outdated, which, as a result, has created high uncertainty, the reason being that the act itself is very human authorship centric. As a result of this, it becomes very difficult to give recognition to AI-generated work. So, in accordance with this, we have tried to propose reforms that will help in addressing these issues. As we do need to keep in mind that with the change in the world, it is necessary that we also change some things so that we are up to date with the recent opportunities coming our way.

Plus, we need to make some amendments to our existing copyright law specifically under “section 2 (d) which talks about the definition of the author, by broadening its scope and introducing the concept of AI generated work and simultaneously” the government can come up with a proposed bill framework for the regulation of AI, so that it becomes easy for the individual or party. The landmark cases like “Eastern Book Company vs DB Modak” offer a potential insight into the limited judicial solution, but it still cannot remove the most fundamental issue, which is infringement of training data.

So, through all this, we understand one thing: the future of technology here in India depends on a balanced approach.

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