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COMPUTER GENERATED WORKS & COPYRIGHT: *Navigating The Landscape In The Age Of Artificial Intelligence*

INTRODUCTION

In the last year or so, the tech industry has been buzzing with the entry of several powerful AI chatbots which were initially deemed to be a revolution of some sort. Among these we can name ChatGPT, Bard, Midjourney, Poe, Jasper, and many more. With the rise of Artificial Intelligence (AI) and machine learning, computer-generated works have taken centre stage, thus, challenging the traditional notions of creativity and raising intriguing questions about authorship, ownership, and aesthetics. This has raised concerns among researchers and scholars as to whether AI-generated works can be subjected to Intellectual Property Right Laws.

COMPUTER GENERATED WORKS

Computer-generated work has a rich history that dates back to the mid-20th century when pioneering artists and computer scientists began to explore the creative potential of machines. Section 2(ffc) of the Copyright Act, 1957 talks about ‘computer software and programmes’. It states that, “*computer programme*’ means a set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result”.¹

The concept or idea of algorithms, frequently used in computer programming is not capable of copyright protection. Programmes devised for the working of computers is generally regarded as coming within the definition of literary and artistic work.²

A computer programme is considered a “literary work” that is either written down, recorded, or expressed in a tangible form. Copyright protection applies to a computer programme if it

¹ ACT 14 of 1957

² Narayanan, P. (2007, January 1). *Law of copyright and industrial designs*.

demonstrates sufficient effort or skill in its creation, resulting in a new and original character. However, if a computer program merely produces basic content like multiplication tables or the alphabet, then, it does not qualify for copyright protection. This is because the level of skill or effort involved in such a task is too insignificant to make the resulting work something that is genuinely new and original.

CURRENT INDIAN LAW ON COMPUTER PROGRAMMES

According to Section 2(o)³ of the Indian Copyright Act, 1957⁴, any author can protect their software code and programming work from copyright infringement software by not copying, duplicating, translating, or changing it. It qualifies as intellectual property and is officially protected in India. Copyright rules protect software, with the person who makes the software's source code, or the author, having ownership of the software's copyright.

Copyright does not protect the concept or facts themselves, but rather how they are represented and displayed in physical form. As a result, only the ultimate physical means of expression that may be copied is protected by copyright. Section 13⁵ of the Act specifies which categories of work are protected by copyright, including original literary work. Additionally, as per the 1957 Act, computer software with no technological impact is not protected by copyright law. Copyright protection needs computer software to be unique and important work, as well as competence to show its originality. To qualify for copyright protection, computer software must be original, and the writer must have put in a sufficient amount of time and effort to make it so.

Who is the “author” for AI- generated work?

Today, AI-powered algorithms can create paintings, compose music, generate poetry, etc which has arisen the issue of whether AI- generated content can be protected under the Copyright laws or not. Machine learning algorithms, such as generative adversarial networks (GANs) and recurrent neural networks (RNNs), have demonstrated remarkable capabilities in producing works that mimics human creativity. Even though the 1957 Act has specified the authorship criteria for computer- generated works as ‘literary devices’, but in its current state it stays silent when it comes to AI- generated works. The term “author” under Section 2(d)(vi) of the Act is

³ According to Section 2 (o)- “literary work” includes computer programmes, tables and compilations including computer databases.”

⁴ Act 14 of 1957

⁵ Section 13 states “Works in which copyright subsists.”

defined as, “the person who causes the work to be created.” If we go by the liberal interpretation of this clause, we might be able to integrate AI under the letterhead of “author” because under this it can include individuals who provide the necessary data and commands to an AI chatbot which then produces a computer-generated work crafted as per the prompts provided to it. Some argue that the programmer should be credited as the author since they designed the algorithm and provided the framework for AI system’s creativity. Others believe that the AI system itself should be recognised as the author, as it autonomously generates the artwork based on its learned knowledge.

Copyright laws further complicate matters. The 161st Parliamentary Standing Committee, which reviewed the Intellectual Property laws two years ago, was of the opinion that the Parliament should create a separate category of rights for AI and related inventions and thus, suggesting solutions regarding their protection under the IPR laws of the country. But the government’s stance on this is starkly different as per the statement put forward by the Ministry of Commerce and Industry on 09th February, 2024, “*there is no requirement to create a separate category of rights for AI and related innovations in the Indian IPR Regime..... the current legal framework under the Patent and Copyright Act is well-equipped to protect Artificial Intelligence generated works and related innovations. Presently, there is no proposal to create any separate right so ram end the law in the context of AI-generated content.*”⁶

In a general sense, copyright protection is contingent upon human involvement in the creative process. This means that if an AI system generates a work with human intervention or with minimal human input, it may not be eligible for copyright protection in India or in many other jurisdictions.

CONCLUSION

It is worth noting that the legal and regulatory frameworks around AI and copyright are evolving rapidly in response to technological advancements. Some countries are exploring the possibility of granting certain rights to AI systems or considering alternative approaches to address the challenges posed by AI-generated works. As AI algorithms continue to advance, we must navigate the legal, ethical, and philosophical implications they bring. By embracing the method of collaboration and co-creation, artists and creators can unlock new realms of artistic expression and push the boundaries of what is possible in this age AI.

⁶ Existing IPR regime well-equipped to protect AI generated works, no need to create separate category of rights. (n.d.). <https://pib.gov.in/PressReleasePage.aspx?PRID=2004715>