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AI-GENERATED WORK AND COPYRIGHT LAW IN INDIA

~ Shubhshri

Scope of the Paper

This paper examines the legal position of AI-generated works under Indian copyright law, with a focus on authorship, ownership, originality, infringement, and fair dealing. It analyses the Copyright Act, 1957, particularly provisions relating to the definition of author, ownership of copyright, moral rights, and exceptions to infringement under Section 52.

The scope of the paper includes the major uncertainty created by generative AI. It considers whether content produced by an AI system can receive copyright protection and, if so, who should be considered the rightful owner, such as the user, developer, employer, or another legal entity. It also discusses whether the use of copyrighted material for training AI models may amount to copyright infringement under Indian law.

The paper further considers India's present legal gap by referring to recent judicial and regulatory developments, including the ANI v. OpenAI case and government responses to AI-related copyright concerns. It also briefly compares India's approach with selected international jurisdictions such as the United States, the United Kingdom, China, Singapore, Japan, and the European Union.

The study is limited to copyright-related issues and does not provide an in-depth technical analysis of artificial intelligence. Its main aim is to identify the challenges posed by AI-generated content and suggest the need for a balanced legal framework that protects human creativity while also supporting technological innovation.

Introduction

Artificial intelligence may appear to be a relatively recent development in technology. Even though AI has only just become widely used, its underpinnings date back to the early 20th century.

Even though the biggest breakthroughs didn't happen until the 1950s, early pioneers in a variety of fields made these improvements feasible. Gaining an understanding of AI's past is essential to understanding its present situation and possible future paths. From the early 1900s foundations to the major current developments, we examine all the major turning points in AI in this article.

Artificial intelligence is a specialty within computer science that is concerned with creating systems that can replicate human intelligence and problem-solving abilities.

AI and copyright regulations pose significant challenges for governments to address. A recent report (2025) indicates that India's AI market is projected to exceed $17 billion by 2027, which necessitates establishing clear regulations, policies, and guidelines for content produced by AI.

The problem is how to develop laws that not only promote the development of technology but also protect individual creativity. India's technology is developing much faster than ever before. The concern is that whereas India’s technology is moving ahead much faster, there is also need for the law to keep up with the changing times. The Copyright Law of 1957 of India has been amended several times since then. In 1994, it was made in order to accommodate computer creations, and in 1999, it was amended again to bring it in line with the TRIPS agreement.

Issues

Under the law, the use of AI-generated literary works does not constitute an infringement when used under section 52 of the Act. However, if the generated content is used for commercial purposes or in ways that are not covered by any exemptions from infringement under the law, then it may be an infringement of copyright.

The other issue to consider is whether there is a possibility of protecting AI-generated content under the category of a ‘derivative work’. The ‘derivative work’ is based on an original copyrighted work and may qualify for intellectual property rights if it introduces significant changes to the original copyrighted work. In light of this, one may ask whether, if Gen AI creates something from a dataset with existing works, making substantial modifications to the original while retaining recognizable features of the original, it would be copyright infringement.

While countries such as Singapore and Japan have provisions allowing the use of copyrighted content in AI, India lacks a regulatory framework in this regard.

Setting specific guidelines for the allowable use of copyrighted content in AI training is vital to reconcile the interests of all involved parties.

Nevertheless, hope remains for understanding in the current case of ANI v Open AI, which revolves around the question of whether copyrighted content can be utilized for AI training. As the case develops, it is anticipated that it will set a significant precedent that will influence India's legal structure regarding AI and copyright

1. AI and copyright infringement

Shashi Throop, an MP representing Thiruvananthapuram in India, mentioned:

"On one side, writers could become destitute if their copyrights are not upheld, while on the other side, innovation could not occur if large quantities of copyrighted material weren't permitted for training new AI systems[1]."

As AI successfully enhances our lives, worries about the relationship between AI and copyright are rising rapidly. It is widely known that a large volume of data is provided to GenAI through texts, images, audio, and visuals. Using this dataset, the AI assesses the response to a possible inquiry and presents a result that merges the provided dataset. It is not just possible but quite likely that the AI's output will resemble a work that exists within its dataset. Consequently, there is increasing worry among the creative community that the rise of AI will result in a decrease in the economic worth of their original material.[2]

This brings up a significant issue: "Is it lawful to utilize a dataset that includes copyrighted content for training AI models? Response varies from nation to nation because different nations follow their own set of legal principles[3]."

The United States follows the 'fair use' legal principle that permits the usage of copyrighted work without the consent of the author. Nonetheless, its definition continues to be unclear and requires clarification regarding its application for training AI tools. Likewise, India adheres to the 'fair dealing' principle established by the Copyright Act of 1957, which applies to the restricted use of copyrighted content. India's copyright framework[4] includes particular exceptions, such as research, personal study, criticism, reviews, news reporting, and judicial processes. Nonetheless, the extent of fair dealing is viewed as more limited than that of fair use. Although their scopes vary, both

[1] Shashi Tharoor, AI, Copyright and the Future of Creativity, (2024) (statement on balancing innovation and authors' rights).

[2] Artificial Intelligence: A Modern Approach (4th ed. 2020).

[3] World Intellectual Property Organization, Generative AI and Copyright Issues (2023).

[4] Copyright Law in India (LexisNexis, latest ed.).

concepts have not been tested within the realm of AI, as their relevance to AI training is still unclear and needs additional legal clarification[5].

The evaluation for copyright violation mainly depends on whether the material involved is 'substantially similar' to a protected work and if it meets the exceptions specified in section 52 of the Copyright Act 1957[6].

2. Historical Background:

India has a rich tradition of honoring literary figures. Its abundant heritage of written works is evidence of this truth. In ancient times, an informal method of promoting literature and writers was present through royal patronages, but the dissemination of their works can be largely credited to the people's passion for literature, creating a vibrant cultural mosaic that encouraged creativity. Nonetheless, contemporary times demand updated methods for fostering creativity within the community.

It is therefore expected that India would establish an effective legal framework to safeguard creators and encourage innovation. The copyright system recognized today was established in India as early as 1847 with the first Indian Copyright Act's passage. This Act, which had the long title "an act for the promotion of learning," sought to dispel any doubts about the applicability of British copyright law in the East India Company-governed Indian provinces[7].

Before the Indian Copyright Act of 1914[8] applied the British Act of 1911 to India[9], this was the general position for about 70 years. This law remained in force until 1957. The Berne Convention for the Protection of Literary and Artistic Works (1886) and its important Berlin revision from 1908 were incorporated into the Imperial Act of 1911.

In order to meet the needs of Indian authors and copyright-dependent enterprises, the Indian Parliament decided shortly after independence to improve and broaden the scope of copyright protection. As a result, on January 21, 1958, the Indian Copyright Act of 1957 became operative. In order to provide authors with adequate protection, the Act underwent multiple revisions over the course of four decades to solve the issues with copyright protection that regularly surfaced.

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[5] Fair Use Doctrine, 17 U.S.C. § 107 (U.S.).
[6] Copyright Act, 1957, § 52 (India).
[7] Copyright Act of 1847 (India).
[8] Copyright Act of 1914 (India)
[9] Copyright Act of 1911 (U.K.).

In 1983, 1984, 1992, 1994, and 1999, the Act was amended. The Berne Convention's[10] Paris Act provisions were incorporated into the 1983 amendment. The updated ways of enjoying creations such as video films necessitated a 1984 amendment to reinforce the rights of authors.

3. Moral Rights:

Section 57 of the Copyright Act provides authors with unique rights commonly known as moral rights. These rights typically consist of two elements: the paternity right, which is the right to assert ownership of the work, and the integrity right, which allows one to oppose any distortion or mutilation of the work, both of which are provided under this section. This part therefore, raises the author to a prestigious position aligning with the idealistic views of authorship. These rights cannot be taken away from the author and remain intact even after the transfer of the economic rights.

According to section 53A of the Act[11], artists and writers are entitled to a portion of no more than ten percent of the selling price from the subsequent sale of original copies of their paintings, sculptures, drawings, and original manuscripts of literary, dramatic, and musical works. The Berne Convention states that this right, known as droit de suite, is optional, but India has decided to accept it. Like moral rights, this privilege is exclusive to the author. The Act recognizes certain rights that result from copyright works in addition to the rights granted to the author; these rights are frequently referred to as related rights or neighboring rights[12].

These rights, which are known as the Performers' Right and the Broadcast Reproduction Right, were created by the 1994 amendment. Performers are granted limited rights under Section 38 of the Performers' Rights for their live performances for a period of fifty years following the performance. An actor, singer, musician, dancer, acrobat, juggler, magician, snake handler, lecturer, or anybody else performing is considered a performer.

The performance includes a visual or acoustic presentation made by one or more performers. Any person who:

[10] Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886.
[11] The Copyright Act, 1957 (Act No. 14 of 1957)
[12] Intellectual Property Law (Eastern Law House, latest ed.).

(a)makes a sound recording or visual recording of the performance, or
(b) reproduces a sound recording or visual recording made without the performer's consent; or (c) broadcasts the performance, or
(d) communicates the performance to the public without the consent of the performer infringes the performer's right. However, once the performer consents to the incorporation of his performance in a cinematograph film, this right ceases to exist.
Broadcast Reproduction Right Section 37 grants broadcasting organizations a special right in respect of their broadcasts. This right, which lasts for 25 years, gives the right holder the ability to stop unauthorized:
(i) rebroadcasting of the broadcasts,
(ii) communication of the broadcast to the public upon payment of fees,
(iii) making a sound or visual recording of the broadcast and reproducing it, and
(iv) selling or hiring such records to the public or offering them for sale or hire.

Copyright Owner According to Section 17 of the Act, the initial owner of copyright in a work is its author. However, the employer is the initial proprietor of any literary, theatrical, or artistic work created by an author while they are employed, unless there is an agreement to the contrary. Similarly, unless there is an agreement to the contrary, the first owner of copyright in a photograph, painting, portrait, engraving, or cinematograph film created for valuable consideration at the request of another person is that person. When it comes to government labor, the government is the original owner.
When it comes to a public lecture, the first owner is the person who gives the speech, or whether it is given on someone else's behalf. Usually, the author is the one who created the piece.

4. Legal Framework Gaps:

The Copyright Act 1957 lacks provisions for AI-generated content, creating uncertainty for both creators and technology companies. Section 27(2) of the Trade Marks Act, 1999 states that nothing in the Act shall affect the right to take or continue an action against another for passing off. In other words, the Act says that it does not stop anyone from taking legal action against someone who wrongly passes off someone’s goods/ services as their own. This protection covers even unregistered trademarks or distinctive artistic styles from unauthorized use if such use causes

confusion or misrepresents the origin of goods or services. Under Sections 2(d), 3, and 15 of the Indian Designs Act, 2000, protection is granted to new and original designs defined by their visual features applied to articles through industrial processes, giving the registered owner exclusive rights to use and commercialize such designs. This system protects the aesthetic elements of products; however, it needs creativity and industrial utility for its registration and implementation. The recent court case RAGHAV AI clearly shows the absence of regulations, in which initially copyrighted materials are then stripped of their copyrights due to the uncertain legal status of AI as an author. International Environment: The global responses to address copyright issues with AI-generated materials differ greatly, ranging from the stringent US policy that mandates human authorship to the advanced Chinese stance that acknowledges AI-produced work with human intellectual input.

5. Challenges in Implementation:

The advisories given by MeitY in March 2024, in regard to "Due Diligence by Intermediaries/ Platforms under the Information Technology Act, 2000 and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021" give guidelines regarding the responsibilities of platforms, but there is no clear outline in regard to the process involved in implementing these guidelines, including those involving content labelling, assessment of liability, data gathering procedures, and enforcement mechanisms. Some critical questions to be addressed through this case study include how Indian copyright laws may develop with respect to the AI-generated content and still not hamper technology development, what legal problems arise when AI systems employ copyrighted materials in the learning process, how India can control the abuse of AI in generating deep fakes and misinformation while still ensuring the academic freedom required for technological advancement, and what regulation strategy would fit India's ambitions for becoming an AI leader.

6. Understanding Generative AI and the Legal Challenge of Copyright Ownership:

According to current technical rules, generative AI refers to systems that may produce text, images, code, and other outcomes that mimic the creative process of humans. Large amounts of data, primarily copyrighted content gathered online, are used to train the systems, which include models like GPT-4 from OpenAI, Google's Gemini, and Claude from Anthropic.

The Copyright Act of 1957 serves as the primary framework for copyright laws in India. The Act grants ownership and authorship of creative literary, artistic, musical, and dramatic works to any natural or legal person. The explanation of "author" is provided in Section 2(d) of the Act, and in relation to literary works, means the creator of the work.

But there is a legal gap with generative AI technology: who is the "author" of an autonomous generative AI system?

Non-human creators are presently not recognized under Indian copyright rules. There are still the following queries:

(a) Can AI be acknowledged as a writer?

The answer is no, according to existing legislation. Authorship is limited to humans, both natural and legal, under Indian copyright rules, which are comparable to those in the US and the UK.

(b) Does the AI developer own the work?

If a business develops a Gen AI system that generates a poem or design on its own, it may claim ownership as it produced the tool for doing so. However, unless the invention is coded or within the company's control, this claim has no legal support in India.

What happens if the input is created by the user? Would using prompts on an AI-based platform be enough to prove someone's creative contribution in order to claim an astroship?

Courts in India have not ruled on this matter yet, but according to the principle of "minimal creativity," minor creative inputs may qualify for copyright protection if they can be linked to a human creator.

Consequently, Indian law currently does not acknowledge AI-generated material as copyrightable unless a human is identifiable as its author or controller. This gap has prompted the expert panel to reevaluate the extent of Sections 13 and 17 of the Copyright Act, 1957, concerning which works qualify for copyright and who possesses initial ownership.

7. Judicial Trends and Regulatory Signals in India

While Indian courts have not made a conclusive ruling on generative AI and copyright ownership, recent judicial and regulatory changes indicate a rising concern and focus on the matter.
Court Indicators: Open AI v. ANI (2024)

In a landmark 2024 case before the Hon'ble Delhi High Court, Ani Media (P) Ltd. v. Open AI Inc., 2024 SCC Online Del 8120, ANI argued that Open AI's large language models (LLMs) were trained on ANI's copyrighted news material without a license or authorization. Sections 51 (copyright infringement) and 55 (civil relief) of the Copyright Act were mentioned in ANI's petition, which claimed that ANI's exclusive rights were violated when copyrighted information was used to train AI systems without being replicated in the final result.

The Delhi High Court heard this appeal and served letters to the respondents, emphasizing that Gen AI firms are currently not immune from copyright laws for training. Although it is still pending, many consider this case to be a turning point in Indian copyright law.

Regulatory Guidance: Stance of DPIIT

As part of the Ministry of Commerce, the DPIIT underlined in the middle of 2024 that, in accordance with international norms and to promote India's commitment to the Berne Convention, AI developers must get permission before using copyrighted content for training. Crucially, the DPIIT rejected the idea of a broad definition of fair use for AI training under Section 52 of the Copyright Act of 1957.

This stance is more in line with the European Union's Artificial Intelligence Act and the UK Intellectual Property Office's consultation publications.

8. Way forward for India

Given that AI technology is becoming a common phenomenon in our day-to-day activities, the way forward for India is to address the legal problems surrounding copyright and artificial intelligence. The existing Copyright Act of 1957 does not recognize creations by AI, leading to confusion regarding who owns the rights to that material. As we are witnessing the use of AI tools in our day-to-day activities, it becomes imperative to have a clear-cut legal framework to address the present challenges.

One way to achieve this objective is by amending their intellectual property laws in line with technological advancements. For instance, one approach can be by having a different legal categorization for creations of AI compared to regular human-made products.

In addition to this, there is a need to strengthen data governance in order to regulate the usage of copyrighted works by AI programs. AI companies have to abide by strict guidelines when using the data for model training, ensuring that the work used does not infringe on any copyright laws.

With rapid developments, it is important that the laws are modified accordingly in order to remain relevant. Through amendments to the existing laws or creation of new categories within the legal structure, a legal framework can be established for addressing these concerns.

9. Conclusion:

AI will play an increasingly important part in every aspect of our daily lives. Its uses must be governed by the law.

AI will continue to be crucial when it comes to intellectual property rights, especially copyright. The international community has been obliged to consider and come up with a workable solution for all nations due to the copyright law concerns around authorship and ownership of AI-generated works.

Every regulation has its own shortcomings, and there is no one-size-fits-all solution to this problem. Offering human authorship to works created by others will have dire repercussions. Placing AI-generated works in the public domain is also a bad idea since it would discourage firms and AI programmers from investing more in the field.

The WIPO is putting a lot of effort into resolving these problems. The sui generis system could be a preferable choice; alternatively, this problem might be resolved by certain clauses in the copyright laws of the nations that were created especially for AI and AI-generated works.

In any event, human originality should take precedence over machine creativity, and AI-generated works should receive less protection. Therefore, a balanced strategy is urgently needed.