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THE ‘PROMPTER’ AS AUTHOR: EVALUATING HUMAN CONTRIBUTION THRESHOLDS IN AI-ASSISTED CREATIVE WORKS

ABSTRACT

With the emergence of generative artificial intelligence tools, a once-in-a-lifetime issue with intellectual property has been thrown into a crisis: who, if anyone, is the 'author' of a work created with the help of AI? This article examines the legal position of the ‘prompter', the human who gives an AI system instructions via natural language, as a possible copyright author for the AI system, as it currently stands in the USA, UK, EU, and India. The article, which analyses key precedents and developing administrative law, points to the main gap in the doctrine of human authorship: the lack of a legally defined ‘human contribution threshold' that can distinguish between works created with AI assistance and AI-generated works that are not protectable. Based on comparative analysis, it offers a hierarchical authorship model, specific legislative changes and sui generis protection as remedies to fill the gap.

Keywords: Generative Artificial Intelligence, Copyright Authorship, AI-Assisted Works, Human Contribution Threshold, Prompt Engineering, Intellectual Property Law, Computer-Generated Works, Copyright and AI Regulation.

I. INTRODUCTION

The traditional structure of creative production has been revolutionized by generative AI systems like GPT-4, Midjourney, and Stable Diffusion. A user types a prompt, sometimes a single sentence, sometimes an elaborately engineered paragraph, and in turn receives a poem, a painting, or a musical composition, which is indistinguishable in aesthetic quality from human-crafted work. This technological reality has, with time, collided with a legal framework designed for an age when authorship was itself self-evidently human.

It is not just an academic question whether a human 'prompter' can be considered to be an 'author' under copyright law. It clarifies the rules for the protection of ownership in works created by AI, the liability of websites on which these works are published and the protection of the investments made in the production of culture with the support of AI[1]. Current legal provisions are overrun. The United States Copyright Office has been undecided and grudgingly partial in its denials[2]. The Indian Copyright Act, 1957 has a computer-generated works provision that was added decades prior to its current crisis. The European Union has been taking steps towards a more formalized approach with its Artificial Intelligence Act and updated Copyright Directive. However, none of these regimes has clearly defined a set of rules for human contribution that can be implemented. This article diagnoses that lacuna and recommends solutions for the same.

II. THE HUMAN AUTHORSHIP DOCTRINE: FOUNDATIONS AND FISSURES

In common law countries, the idea of human authorship is at the heart of copyright law. The Copyright Act of 1976[3] entrusts copyright in 'works of authorship,' and the U.S. Copyright Office Compendium[4] explicitly states that the Copyright Office 'will not register works created by a machine or mechanical process without any creative input or intervention by a human author. This position received early judicial imprimatur in the case of *Burrow-Giles Lithographic Co. v. Sarony*[5], where the Supreme Court tethered authorship to human intellectual labour.

In the famous case of Naruto v. Slater[6], in a clear statement of the obligation of the Copyright Act to be anthropocentric, the Ninth Circuit decided in 2018 that animals cannot be authors of works under the Copyright Act. Naruto was about a macaque, but more readily applies to non-human systems such as AI systems. Most directly, in Thaler v. Perlmutter[7], the D.C. District Court reaffirmed the Copyright Office's position that ‘A Recent Entrance to Paradise’ was not eligible for copyright registration under the Copyright Act because it was ‘created without the

[1] Aditi Bharti & Gagandeep Kaur, Determining Authorship & Ownership of AI-Generated Work Under Indian Copyright Law, 14 Eur. Econ. Letters 1928, 1935–41 (2024).
[2] U.S. Copyright Office, Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence, 88 Fed. Reg. 16,190, 16,194–97 (Mar. 16, 2023).
[3] The Copyright Act of 1976, 17 U.S.C. §§ 101–1401 (2018).
[4] *U.S. Copyright Office, Compendium of U.S. Copyright Office Practices* § 306.1 (3d ed. 2021).
[5] Burrow-Giles Lithographic Co. v. Sarony, 111 U.S. 53 (1884).
[6] Naruto v. Slater, 888 F.3d 418 (9th Cir. 2018).
[7] Thaler v. Perlmutter, No. 22-1564, 687 F. Supp. 3d 140 (D.D.C. 2023).

aid of a human creator.' The court concluded that copyright protection has 'never extended so far' as to cover works lacking human creativity[8].

Under copyright law in India (the Copyright Act, 1957 ('the Act')) the author of a computer-generated work is 'the person who causes the work to be created'. The question that immediately springs to mind is whether or not the process of inducing an AI to create a work is 'causing' the work to be created[9]. The provision, added by the Copyright (Amendment) Act, 1994, was rather more limited and simpler in terms of assisting with computation, and offers little guidance in modern times for so-called generative AI, where the developer of the AI system, the trainer of the AI system, and the person who provided the prompt are all arguably the 'cause' of its existence.

Section 9(3) of the Copyright, Designs and Patents Act 1988[10] is relevant to computer-generated works and constitutes a definition of 'author', which says that the author of a computer-generated work is 'the person by whom the arrangements necessary for the creation of the work are undertaken'. In Nova Productions Ltd v. Mazooma Games Ltd[11], the Court of Appeal held that if a human sets the rules and parameters for a computer's creative production then that computer is authored by a human, suggesting that, while not a perfect fit, the relationship between the prompter and the AI would fit the theory of the Court of Appeal in Nova Productions Ltd.[12] The CJEU's 'own intellectual creation' test, first expressed in Infopaq International A/S v. Danske Dagblades Forening[13], has not been expressly adopted by the EU, and national courts have been applying it in varying ways.

III. THE ORIGINALITY THRESHOLD AND THE PROMPTER'S DILEMMA

Originality is copyright's admission ticket In the United States, Feist Publications, Inc. v. Rural Telephone Service Co.[14], held that originality is a modicum of creativity plus independent creation. The Supreme Court denied protection to mere labour, even if it is great, and without the creative spark. It is determinative for the prompter, that if he makes a prompt out of an effort but not a selection and arrangement, he does not give himself credit for being an author.

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[8] Ryan Abbott, The Reasonable Robot: Artificial Intelligence and the Law, 86 Geo. Wash. L. Rev. 1211, 1248–52 (2018).
[9] Daniel J. Gervais, The Machine as Author: Rethinking Intellectual Property in the Age of Artificial Intelligence 63–71 (2022).
[10] Copyright, Designs and Patents Act 1988, c. 48, § 9(3) (UK).
[11] Ibid
[12] Nova Prods. Ltd. v. Mazooma Games Ltd., [2007] EWCA Civ 219 (Eng.).
[13] Infopaq Int'l A/S v. Danske Dagblades Forening, Case C-5/08, [2009] E.C.R. I-6569.
[14] Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340 (1991).

However, The Copyright Office's ruling in the Zarya of the Dawn case[15] indicates a more complicated stance. The Office awarded copyright to Kristina Kashtanova for the text and selection/arrangement of images in her AI-generated graphic novel, but not the individual images created by Midjourney. This split takes the position that curation, selection and arrangement by humans of AI-generated expressions may be protected by copyright. The ruling encapsulates an important dichotomy, one that the law hasn't formally theorized: the prompter who wrote the compilation, and the prompter who wrote the underlying generated work.

Indian jurisprudence on the point remains sparse but instructive. The Supreme Court of India in Eastern Book Company v. D.B. Modak[16], has defined the copyright ownership in terms of 'modicum of creativity' and rejected the ‘pure sweat of brow' doctrine, meaning that the creator of such a work must have applied ‘some amount of creativity' in the selection or arrangement of material. The higher the standard of the level of prompting, the more iterative, elaborate and aesthetically purposeful, the more the claim to authorial creativity is strengthened when applied to AI prompting, where the specifications for artistic style, tonal register, structural architecture, and thematic content would be more elaborate and of higher order[17].

The intersection of these doctrines reveals the prompter's dilemma. A prompter used to type the word write a poem about autumn and let the AI pick out words, metaphors, form, etc. at random. This is certainly a series of creative choices that the AI is simply following through with, rather than making: "But a prompter who specifies 'write a sixteen-line poem in the style of Neruda, in iambic heptameter, employing synesthetic imagery to describe the decay of political idealism, avoiding clichés of falling leaves'"[18]. Both are treated the same now under the law. This is the core of the doctrinal failure.

IV. THE CENTRAL LACUNA: ABSENCE OF A HUMAN CONTRIBUTION THRESHOLD

A. THE PROBLEM STATED

The key shortfall shared by all the jurisdictions analysed is the lack of a legislation-based threshold to establish when a minimum human contribution to an AI-generated creative work is required for the work to be protected by copyright. The current law provides only binary

[15] Zarya of the Dawn, Registration No. VAu001480196 (U.S. Copyright Off. Feb. 21, 2023).
[16] E. Book Co. v. D.B. Modak, (2008) 1 S.C.C. 1 (India).
[17] European Parliamentary Research Service, Intellectual Property Rights and Artificial Intelligence 22–27 (2020).
[18] Andres Guadamuz, Do Androids Dream of Electric Copyright? Comparative Analysis of Originality in AI-Generated Works, Artificial Lawyer (Apr. 14, 2023), at 7–11.

answers – was the work created by a human or was it not, whereas the truth of AI-assisted creation requires a spectrum sensitive analysis[19].

This binary approach produces three compounding dysfunctions. First, it encourages the prompt engineers to either over claim their authorship, claiming that only "few" prompts are considered full authorship, or under claim their authorship, fearing a challenge to the valid IP rights stemming from their prompt[20]. Secondly, it leaves downstream users, licensees and platforms uncertain about the copyrightability of AI-assisted creations, which cannot adequately determine copyright status without the expense of litigation. Third, it does not consider the 'heterogeneity' of AI engagement; it does not distinguish between a work that resulted from 50 rounds of human selection and rejection and redirecting AI outputs, and a single uncurated prompt[21].

B. DOCTRINAL INCOHERENCE IN PRACTICE

The Copyright Office had released a guidance on AI-generated content, 88 Fed., published in March 2023. Reg. In 16,190 (Mar. 16, 2023)[22], wherein the Court had recognized that 'whether a specific piece of material is a work of authorship will depend on the facts of each case, including how the AI tool was applied. But offers no criteria, no factors, and no advice regarding how that determination is to be made. This type of transferring a fundamental legal question to ad hoc case-by-case adjudication is not predictable and not scalable in the context of the number of works created using AI[23][24].

The Indian Act's section 2(d)(vi)[25] language "the person who caused the work to be created" offers no clarity as to the level of causal involvement. By the principles of causation, the work is "caused" by the prompter and the programmers of the AI. The provision does not address the conflict of interests between them, and will spark plenty of litigation as commercial AI products come to market. It is not however the EU AI Act (Regulation 2024/1689)[26], which will enter

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[19] Ryan Abbott, The Reasonable Robot: Artificial Intelligence and the Law 183–96 (2020).
[20] Pamela Samuelson, Allocating Ownership Rights in Computer-Generated Works, 47 U. Pitt. L. Rev. 1185, 1214–1220 (1986).
[21] Karun Sanjaya & P.R.L. Rajavenkatesan, Artificial Intelligence and Intellectual Property Rights—A Copyright Perspective, 30 J. Intell. Prop. Rts. 1, 12–18 (2025).
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[23] Andres Guadamuz, Copyright and Artificial Intelligence: The Case of AI-Generated Works, 41 Comput. L. & Sec. Rev. 245, 258–60 (2024).
[24] Jane C. Ginsburg & Luke Ali Budiardjo, Authors and Machines: Copyright Challenges in Generative AI, 98 N.Y.U. L. Rev. 1145, 1172–73 (2024).
[25] Copyright Act, No. 14 of 1957, § 2(d)(vi) (India).
[26] AI Act, Regulation (EU) 2024/1689, 2024 O.J. (L 1689) 1.

into force from August 2024) that specifically sets out a copyright authorship requirement, leaving the question of copyright outside of its regulatory purview under Article 50(1)[27], which does impose a disclosure requirement for AI-generated content[28].

V. RECOMMENDATIONS: TOWARD A CALIBRATED LEGAL FRAMEWORK

A. A TIERED AUTHORSHIP FRAMEWORK

Legislative reform must have a step-by-step strategy, based on the level of human creativity. Tier One — Full Copyright: If a person uses AI as an assistant tool that they are controlling, they should have the copyright. The test is whether the human made creative choices that, to a greater or less extent, shaped or influenced the selection, arrangement, and expressive content of the work, including through iterative prompt-engineering, curation of multiple outputs and post-generation editing. Tier Two — Reduced-Term or Sui Generis Protection: If the generative autonomy of the AI is significant, but its contribution to the creation is still meaningful, it can be protected for a reduced term (fifteen years) or by sui generis neighbouring right, on a logic similar to the case of the EU database right under Directive 96/9/EC[29]. Tier Three — Public Domain: If the AI produces a work that is very little directed by human input, that is, no curation, prompt, etc., is added to it, and essentially just a bare work, it should be immediately in public domain, as in the Feist opinion, works that lack a human creative spark are not subject to copyright[30][31].

B. STATUTORY AMENDMENT IN INDIA

Section 2(d)(vi) of the Copyright Act, 1957[32] should be amended to read: 'In case a work is created with the substantial assistance of an artificial intelligence system, the author shall be the natural person who exercised a creative judgment in directing, curating, selecting, arranging and/or substantially modifying the output of such system, provided that the contribution satisfies the originality standard under Section 13 of this Act as interpreted by the Supreme Court, in the case of Eastern Book Company v. D.B. Modak[33].' There is also a need to add a new category of 'AI-assisted works' to section 13 of the Copyright Act that clearly distinguishes

[27] Copyright Act, No. 14 of 1957, § 50(1) (India).
[28] Pratham Ahuja, AI-Generated Works and the Crisis of Authorship under Copyright Law: An Indian Perspective, SSRN Electronic J. 6–13 (2026).
[29] Council Directive 96/9/EC, of 11 March 1996 on the Legal Protection of Databases, 1996 O.J. (L 77) 20.
[30] Lionel Bently & Brad Sherman, Intellectual Property Law 142–148 (5th ed. 2018).
[31] Shlomit Yanisky-Ravid & Luis Antonio Velez-Hernandez, Copyrightability of Artworks Produced by Creative Robots, 21 Minn. J.L. Sci. & Tech. 1, 44–49 (2020).
[32] Copyright Act, No. 14 of 1957, § 2(d)(vi) (India).
[33] Ibid.

from 'AI-generated works' so that the latter are not covered by copyright protection, but rather given to the public domain.

C. MANDATORY DISCLOSURE AND A MULTI-FACTOR JUDICIAL TEST

The copyright offices around the world should enforce mandatory AI-disclosure guidelines at the time of registration, with a specific requirement to indicate: (i) the AI system used; (ii) the extent and nature of AI prompting; and (iii) any changes made after generation. This enables fact-specific adjudication and builds an empirical record for legislative refinement. The EU AI Act's transparency requirements in article 50 offer an easily transferable statutory framework to this end.

Without the passage of specific legislation, courts should craft a multi-faceted test for human contribution, based in part on the flexible inquiry used in Campbell v. Acuff-Rose Music, Inc.[34]. Proposed explanations include: (1) the specificity of the prompt and the creative elaboration of this prompt; (2) the degrees of iterative human directed refinement; (3) the degree of post-generation editing; (4) whether the human chose a prompt from multiple AI-generated ones; and (5) whether the human provided a conceptual framework that the AI simply followed. All these together would constitute a principled contribution threshold without the categorical declaration by the legislature.

VI. CONCLUSION

At its heart, the ‘prompter as author' debate is about what sorts of things can be done in a world of machines producing culturally significant work. The current response of the law to this issue is binary, unreasoned, and jurisdiction-inconsistent, which is problematic. It creates a legal "no man's land" that is not in the best interests of the creators, investors and the public in the digital age.

The gap is evident: there is no principled and calibrated standard in any jurisdiction that requires a minimum contribution by humans when creating creative works with AI. As generative AI grows common, the effects, such as uncertainty, inadequate protection of actual creativity and excessive protection of throwaway AI creations, will accumulate. A multi-layered authorship structure, statutory changes to provisions like section 2(d)(vi) of the Indian

[34] Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994).

Copyright Act, mandatory disclosures of AI use and judicially crafted multi-factorial tests provide a comprehensive and practically viable solution.

From the printing press to the computer program, the law has always had to adapt itself to new creative technologies. The creative contribution, that is, the selection, the judgment and the direction within the scope of the prompter where it attains a meaningful degree of expressive selection, judgment and direction, is worthy of the recognition granted by the law as an author. Establishing such a boundary with care and purpose isn't just a matter of drafting the statute—it's the essential—and most important—step in making sure human creativity remains legally respected in an AI age.

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