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AUTHORSHIP WITHOUT AUTHORS: ANALYZING COPYRIGHT PROTECTION FOR AI-GENERATED WORKS IN INDIA

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ABSTRACT

The emergence of generative artificial intelligence systems, which are capable of producing literary, artistic, musical, and dramatic works of remarkable sophistication has indeed precipitated a sort of jurisprudential crisis, at the intersection of technology and intellectual property law. The basic principle of copyright law, namely that authorship attaches to the person, not the object, and that the person is endowed with ‘creative volition' is conceptually undermined, particularly if the originating intelligence is synthetic. This paper conducts a thorough legal analysis of the Copyright protection of the AI generated works, which falls within the ambit of Indian law, in light of the uncertainties of the Copyright Act, 1957, the judicial interpretation and the comparative legislative approach of the UK, USA, and EU. The paper highlights the critical research gaps such as the lack of a statutory definition of artificial intelligence in the Indian law, the uncharted territory of the exception of 'computer-generated works' in the Copyright Act, 1957, as well as the undecided issue of moral rights attribution, and the policy lacuna around platform liability and AI training data. The paper concludes that judicial interpretation alone, without legislative action, may indeed not be enough to meet the need of the machinery of creativity in the face of a structural mismatch between the human-centric architecture of copyright law and the new reality.

Keywords: Artificial Intelligence, Copyright Act 1957, Authorship, AI-Generated Works, Computer-Generated Works, Intellectual Property, India, Generative AI, Section 2(d)(vi)

I. INTRODUCTION: THE CREATIVE MACHINE AND THE LEGAL VOID

The question of who owns a painting created by a robot, a novel authored by a language model, or a musical composition generated by an algorithmic system is no longer a speculative philosophical inquiry. It is a pressing legal and economic reality. GPT3, Google's Gemini, Stability AI's Stable Diffusion, and Anthropic's Claude are among the various systems that use generative AI to challenge the traditional notion of originality as a product of human effort. The traditional idea of originality through human effort has been broken apart by generative artificial intelligence models like GPT3 from OpenAI, Google's Gemini, Stability AI's Stable Diffusion, and Anthropic's Claude. These can produce text, graphics, music, code and architectural designs of quality comparable to human production and trained on large bodies of human-generated content.

However, Indian copyright law, as enshrined in the Copyright Act 1957 (hereinafter ‘the Act’) is based firmly on an assumption that the copyright holder is a natural human being who has intellectual judgment, aesthetic taste and creative insight. The digital revolution of machine creativity has left the legal world facing an 'authorship gap,' a legal void where important creative and economic value is created but where there is no legally recognisable author who can vest, exercise or transfer copyright. This breach has multiple repercussions: it distorts the incentive framework of copyright; it leaves investors and businesses vulnerable to changes in the deployment of AI tools; it puts a disadvantage on Indian creative industries in a world growing increasingly dominated by AI; and importantly, it poses deep doubts regarding the validity of the doctrine of ‘originality' as a basis for copyright. There is little discussion about this in India. The United Kingdom has introduced a sui generis rule for computer-generated works in 1988 under Section 9(3) of the Copyright, Designs and Patents Act (CDPA), and the United States Copyright Office has issued more and more guidance on works created with the help of AI.

Legislative and judicial responses are still in their infancy in India, whereas the UK introduced a sui generis rule for computer-generated works via Section 9(3) of the Copyright, Designs and Patents Act (CDPA) as early as 1988, and the United States Copyright Office has gradually issued guidance on works created with the assistance of AI. Neither the National Intellectual Property Rights Policy 2016 issued by the Department of Promotion of Industry and Internal Trade (DPIIT) nor the later consultation process by the government has explicitly mentioned AI. The government has made only tentative observations and not introduced any statutory changes as part of the consultation process, and the National Intellectual Property Rights Policy 2016 issued by the Department of Promotion of Industry and Internal Trade (DPIIT) does not

mention AI[1]. The paper is organized into seven sections of analysis. Part II provides a background to the doctrine of copyright and authorship in India. Part III discusses the statutory regime and its interaction with AI-generated works. Comparative analysis is addressed in Part IV. Part V identifies and discusses the critical research gaps. The policy recommendations are given in Part VI. Part VII concludes the whole paper.

II. DOCTRINAL FOUNDATIONS: AUTHORSHIP, ORIGINALITY, AND THE HUMAN PRESUMPTION

2.1 THE PHILOSOPHY OF AUTHORSHIP

The history of the concept of copyright in common law countries like India can be traced back to two philosophical schools of thoughts. The Lockean labour theory, which was expressed in his Second Treatise of Government (1689), states that where a man 'mixes his labour' with the intellectual commons he creates a natural property right. By contrast, the Hegelian personality theory bases copyright in the expression of the will and self of the author, and identifies the work as an extension of the author's will and self. Both traditions have the essential starting point that the creator is a living person (a sentient agent with will, purpose and expression)[2].

In Indian Copyright Law, the concept of authorship has been more of a practical than philosophical nature, with the notion of authorship being grounded in the requirements of the Act as opposed to abstract natural rights theory. However, the human assumption is to be found throughout the statutory structure. In Section 2(d) of the Copyright Act, 1957[3], 'author', in each of the categories of works, is clearly defined to mean a human being. A 'person' covered by the definition in Section 3(42) of the General Clauses Act, 1897[4], for the purposes of the Copyright Act, is defined as ‘any company or association or body of individuals, incorporated or not'.

2.2 ORIGINALITY AS A CRITERION

Although the Act doesn't expressly state what constitutes ‘originality’, the Supreme Court of India has taken the ‘Skill and Judgment' test from the Canadian Supreme Court's CCH Canadian Ltd. v. Law Society of Upper Canada[5]. The Court decided that the work must be created by the author and not copied and that it must require "skill and judgment greater than

[1] Lionel Bently & Brad Sherman, *Intellectual Property Law* 112–128 (4th ed. Oxford Univ. Press 2014).

[2] Aravind Prasanna, *John Locke’s Labour Theory: A Justification of IPRs*, Legal Services India
[3] Copyright Act, 1957, § 2(d), No. 14 of 1957 (India)
[4] General Clauses Act, 1897, § 3(42), No. 10 of 1897 (India)
[5] CCH Canadian Ltd. v. Law Society of Upper Canada [2004] 1 SCR 339

is trivial. The Court expressly rejected the 'sweat of the brow' standard of University of London Press v. University Tutorial Press[6], without accepting the heightened standard of 'creative spark' set forth in Feist Publications Inc. v. Rural Telephone Service Co.[7].

The Eastern Book Company standard, however, immediately poses problems in the context of AI-generated works. The ‘skill and judgement’ is not that of any human agent but of the machine (which is done via statistical pattern recognition, transformer architectures, and probabilistic token prediction)[8]. The human operator that enters a prompt has what may be said to be ‘curatorial’ or ‘directional’ judgment in the input, but the relationship between the human and the creative output is usually too indirect to meet the authorship criterion, as it is traditionally defined. There is no meaningful sense in which the work 'originates from' the human apart from the original instruction.

III. STATUTORY ARCHITECTURE: THE COPYRIGHT ACT, 1957 AND AI-GENERATED WORKS

3.1 SECTION 2(D): THE DEFINITION OF 'AUTHOR'

The definition of 'author' under the Act is found in Section 2(d): (i) in relation to a literary or dramatic work, the author of that work; (ii) in relation to a musical work, the composer; (iii) in relation to an artistic work, the artist; (iv) in relation to a cinematograph film, the producer; (v) in relation to a sound recording, the producer; and (vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who caused the work to be created[9].

The legislative prism of any discussion on AI creations in India is sub-section (vi). This is part of a more extensive definitional framework that imagines a situation in which a literary, dramatic, musical or artistic work is 'computer-generated'. The provision in this policy is based on the wording from Section 9(3) of the UK CDPA[10], which is identical to that used in this policy. But the Indian provision is a very different one, as it is set out: 'the person who has caused the work to be created'.

[6] University of London Press v. University Tutorial Press [1916] 2 Ch 601
[7] Feist Publications Inc. v. Rural Telephone Service Co. 499 US 340 (1991)
[8] Bhakti Savith Salian, *The Modicum of Creativity Standard: An Analysis of Eastern Book Company v. D.B. Modak*, IP & Legal Filings
[9] Copyright Act, 1957, § 2(d), No. 14 of 1957 (India)
[10] Copyright, Designs and Patents Act 1988, § 9(3), c. 48 (U.K.).

II. DOCTRINAL FOUNDATIONS: AUTHORSHIP, ORIGINALITY, AND THE HUMAN PRESUMPTION

2.1 THE PHILOSOPHY OF AUTHORSHIP

In common law countries such as India, copyright law can be said to be rooted in two different theories. The Lockean labour theory, outlined in the Second Treatise on Government (1689), is the theory that an individual who 'mixes their labour' with the intellectual 'commons' has a natural right to the product. In contrast, the Hegelian perspective focuses on the expression of the author's will and self in the work, considering it to be an extension of the author's personality, and therefore, copyright can be considered in this respect. Both traditions have the essential common basis that the creator is a human person, a sentient being who has the power to choose, to act, to intend, and to express himself or herself[11].

Indian copyright jurisprudence has been in the instrumental rather than philosophical mode with the emphasis on authorship in the real rather than abstract natural rights paradigm of the Act. However, the human assumption has been running through the statutory structure since time immemorial. Under Section 2(d) of the Copyright Act, 1957[12], the term ‘author' is defined in a variety of works – and in each case the intended author is clearly human. The term ‘person' used in Section 3(42) of the General Clauses Act, 1897[13], in the context of the Copyright Act, 1957, covers ‘any company or association or body of individuals, whether incorporated or not'. The term ‘person' does not include an artificial intelligence system, which is neither a company nor an association of persons.

2.2 ORIGINALITY AS A CRITERION

The Act does not explicitly define 'originality', however, the Supreme Court of India in the case of Eastern Book Company v. D.B. Modak[14], followed the 'Skill and Judgment' standard, which was laid out by the Canadian Supreme Court in CCH Canadian Ltd. v. Law Society of Upper Canada[15]. In holding that copyright protection requires the work be the product of the author and not simply copied, and to involve more than a trivial exercise of skill and judgment, the Court found the requirements for copyright protection to be peculiar to the field of music. The Court expressly disavows the lower 'sweat of the brow' standard set forth in University of

[11] William Cornish, David Llewelyn & Tanya Aplin, *Intellectual Property: Patents, Copyrights, Trademarks and Allied Rights* 241–259 (9th ed. Sweet & Maxwell 2019).
[12] Ibid
[13] Ibid
[14] Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1
[15] CCH Canadian Ltd. v. Law Society of Upper Canada [2004] 1 SCR 339

London Press v. University Tutorial Press[16], and also rejects the higher 'creative spark' standard of Feist Publications Inc. v. Rural Telephone Service Co.[17].

The Eastern Book Company standard poses immediate issues with AI-generated content. The required 'skill and judgment' does not belong to a human agent, but rather to the machine, through statistical pattern recognition, transformer architectures and probabilistic token prediction. The human actor who provides a prompt makes what can be seen as ‘curatorial' or ‘directional' evaluation, yet there is commonly a too-thin connection to the ultimate creation to meet the authorship requirement as commonly understood. The work does not 'originate from' the human, in the sense of the original instruction.

III. STATUTORY ARCHITECTURE: THE COPYRIGHT ACT, 1957 AND AI-GENERATED WORKS

3.1 SECTION 2(D): THE DEFINITION OF 'AUTHOR'

The key provisions of the Act relating to authorship are set out in Section 2(d)[18] and define the term author as follows: (i) author of a literary or dramatic work, the author of the work; (ii) author of a musical work, the composer; (iii) author of an artistic work, the artist; (iv) author of a cinematograph film, the producer; (v) author of a sound recording, the producer; and (vi) author of a literary, dramatic, musical or artistic work created by means of computer, the person by whom the work is caused to be created.

The legislative hinge of all discussions on AI-generated works in India is sub-section (vi). This is one of a wider definitional framework, and envisages a situation where a literary, dramatic, musical or artistic work is 'computer-generated' and identifies as its author 'the person who causes the work to be created'. The provision is based on Section 9(3) of the UK CDPA[19], which is worded exactly the same as the provision to which this relates in Denmark. The Indian provision is, however, quite different in its wording: ‘the person who causes the work to be created', which is also an area of interpretation.

3.2 THE 'COMPUTER-GENERATED WORK' PROVISION: INTERPRETIVE CHALLENGES

[16] University of London Press v. University Tutorial Press [1916] 2 Ch 601
[17] Feist Publications Inc. v. Rural Telephone Service Co. 499 US 340 (1991)
[18] Ibid
[19] Copyright, Designs and Patents Act 1988, § 9(3), c. 48 (U.K.).

There are several interpretive issues with respect to Section 2(d)(vi)[20]. First, the Act does not define what is meant by the term 'computer-generated. When the Act was first enacted in 1957, there was no such sub-clause and the sub-clause has been inserted by the Copyright (Amendment) Act, 1994. The 1994 amendment was written decades before the advent of modern generative AI, and was likely intended to cover more basic computer-generated outputs, like computer-typeset books, tables of data generated by a database, or graphics produced by a computer program. No Indian court has definitively answered the question whether a neural network trained to millions of parameters is a 'computer' under the definition in the provision, or whether output from such a system is a 'computer-generated' work.

Secondly, the term ‘the person who causes the work to be created' is semantically flexible. It could be a developer who created the AI system, a company that trained and introduced the system, or the user who gave the prompt. Commercial Generative AI developers and end-users are different entities. The user of an AI system who inputs data into the system to trigger the production of a haiku is said to cause' it, in a more distillate sense, the developer of the system that allows the user to say 'write me a haiku about monsoon rains' is said to cause' it. Of course, courts will have to deal with the issue of whether there was a "proximate" or "distal" cause in the authorship determination[21].

Third, the provision is expressed in textual terms to only cover 'computer-generated' literary, dramatic, musical or artistic works. The question then becomes whether a work that is simply computer assisted (that is, the computer is used by the human author) falls under the ordinary authorship provisions or the computer-generated exception. The nature of the distinction between 'AI-generated' and 'AI-assisted' works is missing from the Act and is an important gap[22].

3.3 TERM OF PROTECTION UNDER SECTION 22

The Act provides for copyright in literary, dramatic, musical and artistic works to be enjoyed for 60 years after the life of the author (Section 22[23]). Other provisions under Sections 23–29

[20] Ibid

[21] Dep’t for Promotion of Indus. & Internal Trade, *National Intellectual Property Rights Policy* 14–27 (Gov’t of India, May 2016).

[22] Hrithhika Deb, *Protecting AI-Generated Works Under the Indian Copyright Law: The Emerging Void!*, Khurana & Khurana (Dec. 18, 2025)

[23] Ibid

apply to posthumous works, and works of government and international organisations. Most importantly, there is no specific provision in the term for computer generated works. In Section 2(d)(vi)[24] the 'causing person' is the author, and if the person is human, the term of existence would be 60 years after his death and 50 years after publication. The provisions of Section 26 (anonymous works)[25] or Section 28 (government works)[26] may apply by analogy if the ‘causing person' is a corporate entity, but this is not clear.

3.4 MORAL RIGHTS UNDER SECTION 57

Section 57 of the Act[27] gives authors certain 'special rights' which are usually described as moral rights: the right to be recognized as the author of the work (the right of paternity); and the right to prevent or claim damages for any distortion, mutilation, modification of the work or other act similarly prejudicial to the author's honour or reputation (the right of integrity). These rights are independent of copyright and cannot be transferred. They are highly problematic for the use of AI-generated works. Does the 'author' of an AI-generated work, who caused the creation, have moral rights with respect to a work not created by his/her own creativity, honour and reputation? But can an AI system have honour or reputation that might be stained? There are no clear answers to these questions in the current legislation[28].

IV. JUDICIAL LANDSCAPE: CASE LAWS AND THEIR IMPLICATIONS

4.1 EASTERN BOOK COMPANY V. D.B. MODAK (2008)[29]

As mentioned above, the Supreme Court's 'skill and judgment' originality test in Eastern Book Company is most directly relevant. Although AI was not in mind, the Court's reasoning, based on the functional need of the work to reflect the author's intellectual effort, offers an analytical framework for AI cases. A court called to determine copyright in an AI-generated work would seem to pose the question: has any human contributor used enough skill and judgment to be considered the work's originator? Although quick input may be enough, still there might be a

[24] Ibid
[25] Ibid
[26] Ibid
[27] Copyright Act, 1957, § 57, No. 14 of 1957 (India).
[28] *Section 57 of Copyright Act: An Overview of Author's Moral Rights*, The Legal School

[29] Eastern Book Company v. D.B. Modak (2008)[29] 1 SCC 1

need for substantial human curation, editing, selection, and arrangement of the AI generated output[30].

4.2 NAVIGATING THE THRESHOLD: ANIL GUPTA V. KUNAL DASGUPTA (2002)[31]

Delhi High Court in Anil Gupta v. Kunal Dasgupta[32] has considered the copyrightability of a television format and concept. The Court reiterated the idea-expression dichotomy that has formed the basis of all copyright analysis, holding that copyright protects the expression of an idea, rather than the idea itself. The principle is important, and is particularly relevant to works created with the help of AI: The prompt input by a user (the 'idea' or instruction sent to the AI system) is not itself copyrightable, and the resulting expression of that idea in a particular creative or artistic form is not necessarily the AI's expression. Anil Gupta's analysis in the Court highlights the importance of precision in the identification of the place of protectable expression[33].

4.3 RUPENDRA KASHYAP V. JIWAN PUBLISHING HOUSE (1996)[34]

The Delhi High Court in Rupendra Kashyap considered the issue of copyright in examination question papers prepared by a board of examiners which is a collective, institutionalised, creative process. The Court found that the Central board of Secondary Education as the employer owned the copyright in the papers because produced by its employees in the course of their employment. Likewise, if the employer provides the employee with an AI tool and the employee uses the AI tool to create a work, then the employer will likely be the first to own the copyright of the work under Section 17 of the Act, which states that the employer is first to hold the copyright of a work created by an author while working for the employer with an AI tool provided by the employer. This is one possible avenue of potential copyright ownership in practice for AI-generated works, but it does not rule out or answer the question of authorship for the foundational work[35].

4.4 THE UNENACTED HORIZON: INTERNATIONAL JUDICIAL DEVELOPMENTS

[30] Shreya Sampathkumar, *Eastern Book Company & Ors. v. D.B. Modak and Anr.*, The IP Matters (Oct. 3, 2021).
[31] Anil Gupta v. Kunal Dasgupta (2002) 25 PTC 1 (Del)
[32] Ibid
[33] Case Brief on Anil Gupta v. Kunal Dasgupta 2002 (25) PTC 1 (Del), BareLaw (July 25, 2022).
[34] Rupendra Kashyap v. Jiwan Publishing House (1996) PTC (16) 439 (Del)

[35] Rupendra Kashyap v. Jiwan Publishing House & Ors., Patenevo (Mar. 1, 2026).

The question of authorship of AI has not been directly addressed by Indian courts; however, developments in foreign courts provide a glimpse of the path of judicial analysis. Thaler v. Perlmutter[36] is a precedent US case that upheld the refusal of the US Copyright Office to register a copyright work that was created by an AI system called DABUS, stating that "copyright law has 'never stretched so far' to cover works that are not human authored." The CDPA's computer-generated work provision was recognised as a provision that may need to be updated for modern generative AI in the UK's consultation on AI and IP in 2023 by the Intellectual Property Office. The developments are persuasive and not binding to Indian courts and policy makers[37].

V. COMPARATIVE ANALYSIS: GLOBAL FRAMEWORKS

5.1 UNITED KINGDOM: THE COMPUTER-GENERATED WORKS REGIME

The United Kingdom is the most advanced jurisdiction with legislation relating to the authorship question of computational works. Under Section 9(3) of the CDPA, the 'author' of a computer-generated literary, dramatic, musical or artistic work is the 'person by whom the arrangements necessary for the creation of the work are undertaken'. Under section 12(7) of the CDPA, the term of copyright in such works is 50 years from the calendar year of the work's creation. This sui generis regime was established in 1988, before generative AI, and primarily applied to an expert system and automated output[38]. It has been seriously challenged for its relevance to contemporary LLMs, as commentators have pointed out that the 'arrangements necessary for creation' in a diffusion model or transformer architecture are too complex and so widely spread that it is near to impossible to determine the 'causing person'[39].

5.2 UNITED STATES: HUMAN AUTHORSHIP AS CONSTITUTIONAL REQUIREMENT

The United States Copyright Office has long held the view that copyright only attaches to human-made works, which it expressed more fully in its AI Policy Statements (February 2023,

[36] Thaler v. Perlmutter, 22-1564 (DDC 2023)
[37] Jane C. Ginsburg & Luke Ali Budiardjo, Authors and Machines, 34 Berkeley Tech. L.J. 343, 361–378 (2019).
[38] European Parliament, Resolution of 20 October 2020 on Intellectual Property Rights for the Development of Artificial Intelligence Technologies, 2020/2015(INI), ¶¶ 18–31.
[39] William Cornish, David Llewelyn & Tanya Aplin, *Intellectual Property: Patents, Copyrights, Trademarks and Allied Rights* 241–259 (9th ed. Sweet & Maxwell 2019).

March 2023 and the Copyright and Artificial Intelligence report of August 2024). The Office has made it clear that AI-generated content with limited or no human creativity does not qualify for copyright protection, but content created by humans who have made significant creative decisions, arrangements, or modifications of the AI-generated content may be eligible for copyright. This complicated 'human creative control' standard has been faulted for its vagueness, the level of 'sufficient' human control has not been clearly defined[40]. This decision was affirmed in Thaler v. Perlmutter[41] and again on appeal before the US Court of Appeals for the DC Circuit in 2024[42].

5.3 EUROPEAN UNION: THE EMERGING FRAMEWORK

The EU's strategy is developing in several different instruments. The EU Artificial Intelligence Act[43], which will enter into force in August 2024, introduces a risk-based regulatory regime for AI systems and does not specifically cover the issue of copyright authorship. The EU Copyright in the Digital Single Market Directive (Directive 2019/790) gives an opt-out for text and data mining, which is obviously relevant to the training of AI systems based on copyrighted data, but not sufficient to solve the downstream issue of copyright in AI-generated outputs. Legislatively, consensus is still far from being achieved on the European Parliament's 2020 resolution on intellectual property rights for the development of AI, which urged the EU to have a nuanced approach to AI that avoids stifling innovation while continuing to respect human creators[44].

VI. CRITICAL RESEARCH GAPS: AN ANALYTICAL CARTOGRAPHY

The above analysis shows the landscape of the scholarly and legal discourse on AI copyright in India is extremely fragmented. The following research gaps are identified as research gaps which need immediate academic research and policy interventions.

6.1 GAP ONE: THE ABSENCE OF AN AI DEFINITION FRAMEWORK

[40] Jane C. Ginsburg & Luke Ali Budiardjo, Authors and Machines, 34 Berkeley Tech. L.J. 343,361–378 (2019).

[41] Ibid
[42] Thaler v. Perlmutter, 130 F.4th 1039 (D.C. Cir. 2025).
[43] Regulation (EU) 2024/1689
[44] EU AI Act: First Regulation on Artificial Intelligence, European Parliament

There is no statutory definition of intelligence in any law of the land in India that defines ‘artificial intelligence'. Currently, the Information Technology Act, 2000[45] (amended in 2008) covers computer related offences and intermediary liability but does not consider AI as a separate group of technology. As far as the proposed Digital India Act is concerned, which is to replace the IT Act, it is still in the consultation phase as of 2024. Because there is no clear statutory definition of what constitutes an 'artificial intelligence system' rather than an ordinary software or process or algorithmic decisions, it will be difficult to identify the point at which the computer-generated works provision in Section 2(d)(vi)[46] of the Act applies[47]. The research gap here is basic, as there is no academic discussion on the issue of what the definition of AI should be in the context of the Copyright Act and its provisions on authorship.

6.2 GAP TWO: THE UNTESTED SCOPE OF SECTION 2(D)(VI)

Section 2(d)(vi)[48] is of paramount importance but has not been interpreted substantively by any Indian court in the context of the present times where generative AI has become a reality. The current scholarly literature, which is scanty, largely ignores the provision in its application, a fact indicative of the difficulties with which it is fraught. Given the difficulties involved, the current scholarly literature is largely unengaged with the provision in a careful textual analysis. In particular, there has been no scholarly work on: (a) whether the reference to 'computer-generated' includes works created by neural networks; (b) how to determine the 'person who causes the work to be created' in situations involving multiple parties in development, deployment, and use of an AI system; (c) whether that provision applies to sound recordings and cinematograph films; and (d) the relationship between Section 2(d)(vi) and the first-ownership provision of Section 17 in the employment context[49].

6.3 GAP THREE: THE AI TRAINING DATA PROBLEM

The data that is used to train generative AI systems contains many copyrighted literary, artistic, musical, and dramatic works. The training process consists of reproducing these works in the machine memory, extracting the patterns, and using the patterns to produce new output which can significantly resemble training material. There is no exception for text and data mining in

[45] Ibid
[46] Ibid
[47] Understanding the Information Technology Act, 2000 in E-commerce, Lloyd Law College
[48] Ibid
[49] P. Narayan, *Intellectual Property Law* 87–104 (5th ed. Eastern Law House 2012).

Indian copyright law, similar to Article 4 of the EU Copyright Directive[50], and no research exemption that is as comprehensive to clearly cover large scale commercial AI training. The only exceptions in the Act that arguably could apply are Section 52(1)(a)[51] (fair dealing for the purposes of research or private study) and Section 52(1)(q)[52] (reproduction for certain institutional purposes), which were not intended to cover commercial AI training.

There is a dire lack of research in this area as there is no sustained academic study on whether the training of AI models using copyrighted Indian work amounts to infringement under the Act, what defences could be granted to AI trainers, and what changes are required in the law[53]. The gap comes with a huge economic consequence, as the Indian government is pushing for an indigenous AI development with policies like the National AI Strategy and IndiaAI mission.

6.4 GAP FOUR: MORAL RIGHTS AND THE NON-HUMAN AUTHOR

The moral rights of Section 57 create specific problems in the AI context that have hardly been discussed in India's literature. Where the 'person who causes the work to be created' is an author under Section 2(d)(vi), it is uncertain whether that person has the moral right of paternity (the right to claim authorship) and the right of integrity (the right to object to distortion) in respect of a work not created out of personal creativity. The moral rights argument, based on the close link that exists between the work and the author's personality, is lost when the 'author' is the user of an AI system[54]. On the other hand, the moral rights cannot be vested in the AI system. The question here is whether the existing Section 57 should be amended to add an exception to moral rights protection for works created with AI, or whether a different exception, such as one based on the extent of the human creative contribution, should be applied.

6.5 GAP FIVE: PLATFORM LIABILITY AND INTERMEDIARY RESPONSIBILITY

AI-generated content is increasingly disseminated through digital platforms — social media networks, content streaming services, and creative marketplaces — that function as

[50] Kalin Hristov, Artificial Intelligence and the Copyright Dilemma, 57 IDEA: J. Franklin Pierce Ctr. Intell. Prop. 431, 447–466 (2017).

[51] Ibid

[52] Ibid

[53] Vivek Wadhwa, *The Driver in the Driverless Car: How Our Technology Choices Will Create the Future* 56–73 (Berrett-Koehler 2017).

[54] Pankaj Kumar, *Moral Rights under Section 57 of the Indian Copyright Act, 1957: An Expanded Analysis with Recent Developments, Waivers, and Limitations* 12–26 (Feb. 9, 2026), SSRN, https://ssrn.com/abstract=6201678

intermediaries between the AI system's output and the public. In India, the Supreme Court in the Shreya Singhal v. Union of India (2015)[55] case has laid the groundwork for determining the liability of platforms by striking down Section 66A of the Information Technology Act[56] and outlining the intermediary liability regime in the Information Technology Act, 2000. But the scope of its application to platforms that host, distribute or monetize AI-generated content — especially if the content infringe on the copyright of the content used to train the AI is completely unexplored in Indian legal scholarship.

6.6 GAP SIX: ECONOMIC RIGHTS AND THE INCENTIVE STRUCTURE

The primary economic principles behind copyright law are to give the creators of creative works economic support for their creation in order to encourage them to create for the public benefit. This utilitarian justification assumes a maker for the human person who needs some kind of monetary compensation for his or her creative work. The incentive theory of copyright in AI-generated works needs to be expressed in a new and different way, because AI systems could produce an unlimited number of creative works at a low marginal cost[57]. However, there is no Indian academic work that considers the question of whether the copyright in AI-generated works does indeed provide any beneficial incentive to the ‘person who causes the work to be created’ or whether other legal systems, such as database rights, trade secrets or unfair competition law, would better serve the interests of the economic actors.

VII. POLICY RECOMMENDATIONS AND THE WAY FORWARD

The analysis presented in this paper supports the following policy recommendations, addressed to the Indian legislature, the Copyright Office, and the judiciary.

7.1 LEGISLATIVE REFORM: AMENDMENT OF THE COPYRIGHT ACT, 1957

The most pressing need in the legislation is a clear definition of ‘computer-generated works' that explicitly includes outputs from modern AI systems, such as large language models, diffusion models, and multimodal AI systems, which is currently not provided by Section 2(d)(vi). The amended provision should establish a clear hierarchy of authorship, replacing the

[55] Shreya Singhal v. Union of India (2015) 5 SCC 1
[56] Information Technology Act, 2000, § 66A, No. 21 of 2000 (India).
[57] World Intellectual Property Organization, *WIPO Conversation on IP and AI: Summary of the Third Session* 9–22 (Geneva, Nov. 2020).

old terminology of 'causing person' with the new 'presumptive causing person', which should be the end-user, as the person who first exploits the work, and which may be displaced if otherwise agreed. It should be expanded to include sound recordings and cinematograph films. The definition of 'artificial intelligence system' needs to be added to the Act referencing any definition as provided in the upcoming Digital India Act.

Further, a text and data mining exception to be incorporated as a new section into Section 52 should be based on Article 4 of the EU Copyright Directive, with the proviso that rights holders may opt out if they wish. This would bring India in sync with the international best practices while safeguarding the legitimate interest of Indian authors and creators in the training corpus of the AI.

7.2 ADMINISTRATIVE ACTION: COPYRIGHT OFFICE GUIDELINES

Until the law is amended, the Copyright Office of India should provide administrative guidance on the registrability of works created by AI, based on the US Copyright Office's AI Policy Statements[58]. Such guidance should: (a) make clear that AI-generated works that are not created with ‘meaningful human creative contribution' are not registrable; (b) make the disclosure requirement for copyright registration applications involving AI-generated works clear; and (c) provide guidance on what constitutes a 'meaningful human creative contribution' that would justify copyright protection for AI-generated works. While legislative reform is necessary, administrative guidance would give the creative industries and the AI industry some interim certainty.

7.3 JUDICIAL DEVELOPMENT: PURPOSIVE INTERPRETATION

While awaiting legislative reform, the courts in India should interpret AI copyright cases with a view to their purpose in accordance with the comparative jurisprudence of the UK, USA and EU. Courts should be wary of granting complete copyright protection to AI-generated works for two reasons: 1) because allowing AI to produce works entirely without human input will create a perverse incentive in the design of AI, and 2) because granting copyright protection without questioning the extent of the human creative contribution will undermine the concept of authorship as a human norm. The skill and judgment standard of Eastern Book Company is to be understood in light of the context, and courts have asked whether such a human

[58] United States Copyright Office, *Copyright and Artificial Intelligence: Part 1 — Digital Replicas* 33–57 (Report, Aug. 2024).

contributor (prompt engineer, curator, editor, or developer) has engaged in enough mental effort to make his or her contribution more than mechanical or routine operation of an AI system.

VIII. CONCLUSION

If the question is raised of a work without an author — a creative work that can even emerge from silicon and not from man, it is an attack on foundational assumptions of copyright law, which have been made during three centuries. A complex and flexible document in many ways, the Copyright Act, 1957, was not written with a computerised world in mind in which the most prolific creators are not men and women, but programs. The tenuous connection between the earlier technological landscape and the AI-powered creative economy in the Act is provided by Section 2(d)(vi), added in 1994 to deal with a much simpler one.

It has been argued in this paper that in order to achieve an effective governance of these AI-generated works in India, a multi-pronged approach is necessary, which involves legislative reform, administrative guidance, judicial development and academic research. Part VI identified the substantial research gaps that need to be filled in order to enable an effective governance of the AI-generated works in India. If India does not take concerted action on all these fronts, it is likely to find itself in an uncomfortable position – neither being able to protect the economic interest of using AI to create content, nor adequately safeguarding the legitimate concerns of human creators who feed the AI that is creating that content.

The creative machine has indeed come to stay. Now Indian law will have to decide what rights, if any, its output warrants — and who, without an author, is entitled to claim them? The response to this question will not only define the future of the Indian copyright law but also influence India's ability to be a part of the global AI-powered creative economy in an equitable manner. It's time to take a second look and now is the time for in-depth legislative and judicial action.

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