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AUTHORSHIP IN THE AGE OF ‘GENERATIVE AI’: RE-EXAMINING INDIA’S COPYRIGHT ACT, 1957

(Nandni Kamal)

INTRODUCTION

Over the last few years, generative AI has gone from being a laboratory experiment to generating artwork, news articles, music, code, and even legal documents.¹ The Indian-made RAGHAV Artificial Intelligence Painting App is a tool that generates artworks that are often indistinguishable from those created by humans.² This change raises a question that copyright law in India does not seek to answer: who is the author of a work created by a machine with little to no human input? Authorship was believed to be an activity of human beings only when the Copyright Act, 1957³ was drafted. Even following the 1994 amendment which added the term “computer-generated works”, its definition of “author” does not seem to fit with the autonomous, probabilistic nature of such modern generative systems. This article explores the issues that have arisen under the Act relating to authorship of AI-generated works, the cases that have been bringing these issues to light, and the proposed reforms.

THE STATUTORY FRAMEWORK: WHO IS AN ‘AUTHOR’

Section 2(d) of the Copyright Act provides different definitions of “author” for each type of work. These five clauses assume that the author of a literary or dramatic work, the composer of a musical work, the artist of an artistic work other than a photograph, the person who takes the photograph, and the producer of a cinematograph film or sound recording is a natural person who used skill and judgment to create the

¹ Andres Guadamuz, *Do Androids Dream of Electric Copyright? Comparative Analysis of Originality in Artificial Intelligence Generated Works*, 2 INTELL. PROP. Q. 169 (2017).

² Vedika Chawla, *Ankit Sahni’s AI “Co-authored” Artwork Denied Registration by US, Continues to be Registered in India*, SPICYIP (May 17, 2026, 5:00 PM), <https://spicyip.com/2023/12/ankit-sahnis-ai-co-authored-artwork-denied-registration-by-us-continues-to-be-registered-in-india.html>.

³ Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

work.⁴ The last clause, Section 2(d)(vi), was added by the Copyright (Amendment) Act, 1994⁵ and is the only one that touches on non-human creation. It sets out as the definition of the author of a computer-generated literary, dramatic, musical or artistic work “the person who causes the work to be created”.⁶

The 1994 amendment was a well-considered amendment to its context. In the early nineties, computer generated works were predominantly deterministic. A spreadsheet, a database, or a software-rendered graphic was the product of explicit human instruction. The drafters were able to assume the computer operator as the author.⁷ Generative AI turns that assumption on its head. The user types in a prompt, and the model with billions of parameters spits it back out, in a way that the user cannot predict or predictably control. The connection between human input and final output becomes fuzzy, and it becomes genuinely difficult to identify who has “caused” the work to be created.⁸

THE ORIGINALITY THRESHOLD AND THE HUMAN AUTHOR

The Originality Threshold appears to be the most significant factor in identifying human authorship. Indian copyright doctrine also demands that a work have a level of creativity before gaining protection. In *Eastern Book Co. v. D.B. Modak*⁹ the older “sweat of the brow” test was replaced by the “modicum of creativity” test, which requires the exercise of skill and judgment that is not mechanical. If the generative model is generating an image from a single sentence, the question becomes: is the single sentence sufficiently skilled and judged, or is it the job of the generative model to make meaningful creative decisions? The answer can have serious implications. If the human contribution is too insignificant, the work is not copyrightable at all; if the model’s contribution is the substantial one, there is no human author to whom the modicum of creativity standard can attach.

THE RAGHAV EPISODE: A TEST CASE WITHOUT RESOLUTION

The first real test of Section 2(d)(vi) in the era of generative AI took place when a young Indian engineer, working for the IP lawyer Ankit Sahni, invented the RAGHAV Artificial Intelligence Painting App. In November 2020, the Indian Copyright Office registered an artwork titled *Suryast*, created by feeding a

⁴ Copyright Act, 1957, § 2(d), No. 14, Acts of Parliament, 1957 (India).

⁵ Copyright (Amendment) Act, 1994, No. 38, Acts of Parliament, 1994 (India).

⁶ Copyright Act, 1957, § 2(d)(vi), No. 14, Acts of Parliament, 1957 (India).

⁷ ALKA CHAWLA, LAW OF COPYRIGHT: COMPARATIVE PERSPECTIVES 70-80 (LexisNexis 2013).

⁸ Aishwarya Pandey, *The Missing Author: Artificial Intelligence And The Limits Of Copyright Law*, MONDAQ, (MAY. 22, 2026, 9:29 PM), <https://www.mondaq.com/india/patent/1787252/the-missing-author-artificial-intelligence-and-the-limits-of-copyright-law>.

⁹ *Eastern Book Co. v. D.B. Modak*, (2008) 1 SCC 1 (India).

photo captured by Sahni and Vincent Van Gogh's painting 'The Starry Night' into RAGHAV as a style-transfer input. Sahni and RAGHAV were registered as co-authors and the registration was reported as the first time in the world that an AI tool is recognized as a co-author of a copyrighted work.¹⁰ The Copyright Office later issued a withdrawal notice, which requested Sahni to clarify the legal status of RAGHAV as an author. No final decision has been made and the registration does not seem to have been resolved.¹¹ It took another route internationally. The United States Copyright Office objected because *Suryast* didn't have the human authorship required for copyright to be valid.¹² The difference between the Indian and American interpretations of the same work in the context of this case underscores the ambiguity of the law and how much weight a small interpretive choice on Section 2(d)(vi) can carry.¹³

THE OTHER SIDE OF THE COIN: ANI MEDIA vs OPENAI

While RAGHAV poses the question of protectability of AI output, the question of existing copyright infringement due to AI training is raised by the case of *ANI Media Pvt. Ltd. v. OpenAI Inc*¹⁴ before the Delhi High Court. ANI claims that OpenAI "used to scrape news content, both free and paid, from the website of news sources to train its ChatGPT without obtaining licenses or permissions". OpenAI has been fighting it on jurisdictional grounds, saying that training and storage is done outside India and thus, Indian copyright law does not apply to their activities.¹⁵ It further contended that use of factual content for model training is not an exercise of reproduction right as it is not an exercise of the copyright right. If the Court does take this view, as it did in prior decisions,¹⁶ then it will have to determine whether the use of copyrighted material for training a LLM satisfies one of the existing exceptions in Section 52¹⁷ or whether a new exception is necessary or the legislature needs to be adapted to accommodate it.¹⁸

¹⁰ Sukanya Sarkar, *Exclusive: India recognises AI as co-author of copyrighted artwork*, MANAGINGIP, (MAY. 23, 2026, 10:00 PM), <https://www.managingip.com/article/2a5bqo2drurt0bxl7ab24/exclusive-india-recognises-ai-as-co-author-of-copyrighted-artwork>.

¹¹ Id.

¹² U.S. Copyright Office Review Board, *Second Request for Reconsideration for Refusal to Register SURYAST* (Dec. 11, 2023), <https://www.copyright.gov/rulings-filings/review-board/docs/SURYAST.pdf>.

¹³ K&S Partners, *The Divergence in Copyright Recognition for AI-Generated Works: An In-Depth Analysis of Ankit Sahni's Case in the US and India*, K&S PARTNERS (May 17, 2026, 5:00 PM), <https://ksandk.com/intellectual-property/divergent-copyright-recognition-ai-generated-works-sahnis-case-us-vs-india/>.

¹⁴ ANI Media Pvt. Ltd. v. OpenAI Inc. & Anr., CS(COMM) 1028/2024 (Delhi H.C. 2024)

¹⁵ Karishma Mehrotra & Gerry Shih, *ANI Sues OpenAI in India in Landmark Test of Copyright Law*, WASH. POST (MAY. 23, 2026, 10:00PM), <https://www.washingtonpost.com>.

¹⁶ Super Cassettes Industries Ltd. v. Chintamani Rao, (2012) 49 PTC 1 (Del.) (India).

¹⁷ Copyright Act, 1957, § 52 No. 14, Acts of Parliament, 1957 (India).

¹⁸ Arul George Scaria, *Does Human Learning Equal Machine Learning? High Court of Delhi to Rule on Lawfulness of TDM for Machine Learning*, KLUWER COPYRIGHT BLOG (May 24, 2026, 5:00 PM), <https://legalblogs.wolterskluwer.com/copyright-blog/does-human-learning-equal-machine-learning-high-court-of-delhi-to-rule-on-lawfulness-of-tdm-for-machine-learning/>.

OTHER JURISDICTIONS: WHAT IS HAPPENING?

The closest parallel to Section 2(d)(vi) of India is the U.K. Section 9(3) of the UK Copyright, Designs and Patents Act, 1988, which vests authorship of a computer-generated work, in which there is no human author, in the person by whom the arrangements necessary for the creation of the work are undertaken.¹⁹ Though it is helpful, this is a proviso that is disputed and, in *Thaler v. Comptroller-General of Patents*,²⁰ decided under the UK's patent regime, court decisions have hinted at a lack of willingness to consider AI as an author or an inventor.

The United States has gone more of a people-first approach. In the Ninth Circuit case of *Naruto v. Slater*,²¹ the court ruled that a non-human cannot be the copyright owner and the US Copyright Office has consistently refused to register works without human authorship, such as *Suryast*. The doctrinal touchstone in the United States is the originality standard set forth in *Feist Publications, Inc. v. Rural Telephone Service Co.*,²² which would bar the use of a work unless it possessed a "minimal degree of creativity by human authorship.

China, however, is taking the opposite route. The Nanshan District People's Court in Shenzhen has granted copyright protection to a financial article created by Tencent's *Dreamwriter* software,²³ and the Beijing Internet Court has determined that an image generated by the text-to-image model is copyrightable because the user's input of the prompts, parameters and iterative editing constitutes sufficient intellectual investment.²⁴ These rulings demonstrate how a court that can find originality in the user's creative decisions, rather than requiring actual human performance, can extend copyright protection to AI-assisted works without changing the statute's language. While India's Section 2(d)(vi) may already be quite broad to allow for such a reading, there are no Indian courts that have been asked to interpret the provision in the context of a generative-AI cause of action.

THE DPIIT WORKING PAPER AND THE REFORM QUESTION

¹⁹ Copyright, Designs and Patents Act, 1988, c. 48, § 9(3) (UK).

²⁰ *Thaler v. Comptroller-General of Patents, Designs and Trade Marks*, [2023] UKSC 49 (U.K.).

²¹ *Naruto v. Slater*, 888 F.3d 418 (9th Cir. 2018) (U.S.).

²² *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991) (U.S.).

²³ *Shenzhen Tencent Computer Sys. Co. v. Shanghai Yingxun Tech. Co.*, (2019) Yue 0305 Min Chu No. 14010 (Nanshan Dist. People's Ct., Shenzhen) (China).

²⁴ Yan Wan & Hongxuyang Lu, *Copyright Protection for AI-Generated Outputs: The Experience from China*, 42 COMPUT. L. & SEC. REV. 105581 (2021).

As of December 18, 2016, the DPIIT Working Paper and the Reform Question have been revised. The Department for Promotion of Industry and Internal Trade published a Working Paper on Generative AI and Copyright on 8 December 2025, which provides an overview of the approaches used in the United States, the United Kingdom, the European Union, Japan and Singapore to conclude that there are no fixed models that will be enough for India.²⁵ It calls for the consideration of a blanket licensing approach where AI developers could use copyrighted materials for training, but in return pay royalties through a collective licensing system to rights holders.²⁶ It's a bold and thoughtful suggestion that seeks to strike a balance between innovation and fair remuneration for copyright owners. It will, however, require legislative change. The Delhi High Court's interpretation of the exceptions for 'fair dealing' is exhaustive and Section 52 of the Copyright Act in its current form does not envision such a licensing approach.²⁷

WHERE INDIA STANDS: INTERPRETIVE GAPS AND PRAGMATIC PATHS

A unique combination of three problems is brought together in the current statute. The first is authorship of AI-generated works. Section 2(d)(vi) can plausibly continue to vest authorship in the user who provides the prompts and curates the output, provided their contribution clears the modicum-of-creativity threshold.²⁸ If the AI uses an autonomous system, with minimal human involvement, then there is no author under the Act, and the work is considered to be in the public domain. This is a position that is neither easy nor comfortable, but that is defensible and fits with the human-centric architecture of the statute, such as its protection for first ownership (Section 17)²⁹ and moral rights (Section 57).³⁰ The latter recognized in *Amar Nath Sehgal v. Union of India* as personality-based protections that only a human can hold.³¹

The second challenge involves copyright infringement in training AI models. This is at the centre of the ANI controversy. The outcome will depend on whether the copying for training is a use that involves the reproduction right, and whether it is within the scope of Section 52. If the Court interprets Section 52

²⁵ Dep't for Promotion of Indus. & Internal Trade, Gov't of India, *Working Paper on Generative Artificial Intelligence and Copyright* (Dec. 8, 2025), <https://www.dpiit.gov.in/static/uploads/2025/12/ff266bbeed10c48e3479c941484f3525.pdf>.

²⁶ Anand Padmanabhan & Eashan Ghosh, *The Future of Indian Copyright Legislation in the Wake of ANI Media v OpenAI*, IAM (May 24, 2026, 5:00 PM), <https://www.iam-media.com/guide/india-managing-the-ip-lifecycle/2026/article/the-future-of-indian-copyright-legislation-in-the-wake-of-ani-media-v-openai>.

²⁷ *Super Cassettes Indus. Ltd. v. Hamar Television Network Pvt. Ltd.*, 2010 SCC OnLine Del 2982

²⁸ *Eastern Book Co. v. D.B. Modak*, (2008) 1 SCC 1 (India).

²⁹ Copyright Act, 1957, § 17 No. 14, Acts of Parliament, 1957 (India).

³⁰ Copyright Act, 1957, § 57, No. 14, Acts of Parliament, 1957 (India).

³¹ *Amar Nath Sehgal v. Union of India*, (2005) 30 PTC 253 (Del.) (India).

broadly, it will be able to fit a transformative-use space into fair dealing, but if it is read narrowly, the space will need to be filled by a legislative change.

The third problem is the enforcement against tools like AI that create derivative AI or substantially identical outputs from copyrighted training data. Such outputs can be attributed to the operator of the model, to the user who prompted it, or to both; and, the current allocation of liability in the Act does not neatly correspond to a system in which the proximate cause of the infringing output is an opaque statistical process.³²

CONCLUSION

The Copyright Act, 1957, was a far-sighted statute for its time, and the 1994 amendment was a thoughtful response to the rise of computer-generated works. None were created with the intent to be used in generative artificial intelligence. The RAGHAV episode shows that a single application can be approved, withdrawn and not approved simply because it does not correspond to the technology that led to its creation. Litigation in the ANI Media will force the Delhi High Court to decide if training a large language model on Indian content amounts to infringement and the DPIIT Working Paper has brought the reform debate onto the policy table. The most defensible immediate view is to interpret Section 2(d)(vi) as preserving copyright for works created by the human user whose creative choices meet the modicum-of-creativity requirement, but abandoning any copyright for works created by AI without their human user's intervention. A more ambitious reply would be an amendment to the definition of computer-generated works that would be more specific, and an express recognition of text and data mining as a regulated exception under Section 52, with a licensing or compensation mechanism for those rights-holders who have had their works used to train commercial models. Either way, that decision is a tough one and is not going to be delayed for long. Having authorship in the era of generative Artificial Intelligence has ceased to be a hypothetical scenario and the copyright regime will have to answer this question in the Indian context.

³² Devanshi Saxena, *IPR and the Impact of AI on Artists and Creative Industries in India*, BAR AND BENCH (May 25, 2026, 5:00 PM), <https://www.barandbench.com/columns/intellectual-property-rights-and-the-impact-of-artificial-intelligence-on-artists-and-creative-industries-in-india>.