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CAN IP SURVIVE AI? RETHINKING OWNERSHIP IN THE ALGORITHMIC AGE

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INTRODUCTION

With AI invading every sphere of our lives, the domain of intellectual property has remained orthodox in its treatment of authorship and ownership. It was 1882 when Oscar Wilde had a photograph taken and caused a legal debate on whether photographs could qualify as intellectual property. The US Supreme Court answered in affirmative, provided there was *creative human input* rather than mechanical reproduction.

Intellectual property law has always been, at its core, a deeply human enterprise. What the framers of the Statute of Anne could not have anticipated is a world where a machine trained on human expression could generate a novel, compose a symphony, or invent a drug molecule, without any human sitting down to do the creative work. That world is now here. And the question it forces is not a trivial one: can a legal system designed to reward human creativity survive when creativity is no longer exclusively human?

HOW AUTHORSHIP REMAINED HUMAN

Before we get to AI, it is worth understanding just how the law has refused to extend IP protection beyond the human being. The most charming example of this rigidity is, of course, *Naruto v. Slater*. In 2011, a crested macaque named Naruto, whilst rummaging through the camera equipment of wildlife photographer David Slater in Indonesia, managed to take a selfie. PETA later sued Slater on Naruto's behalf, arguing that the monkey held copyright over the photographs he had taken. The Ninth Circuit was unpersuaded. Affirming the district court, the court held that the Copyright Act did not confer standing upon animals, noting that the statutory

language referring to "children," "grandchildren," "widows," and similar terms inherently "imply humanity and necessarily exclude animals."¹

The rejection of non-human authorship was equally swift in the patent context. Dr. Stephen Thaler, a computer scientist who has become something of a one-man stress-test of intellectual property doctrine, filed patent applications in multiple jurisdictions listing his AI system, DABUS (Device for the Autonomous Bootstrapping of Unified Sentience), as the sole inventor. The U.S. Court of Appeals for the Federal Circuit ruled that under the Patent Act, an "inventor" must be a natural person. DABUS, being a machine, was ineligible.² Similar outcomes followed in the United Kingdom, Australia and India with courts consistently holding that inventorship requires a human mind. It was South Africa that did grant the patent. Scholars continue debating whether it was an administrative oversight or policy innovation.³

These cases reveal a jurisprudential instinct. The law reflexively identifies creativity with personhood, and personhood with humanity. Non-human outputs, whether from a macaque or a machine, have been treated as belonging to nobody, or at best to the human who facilitated their creation. The framework was not built with any other option in mind.

AI: HOW IT DIFFERS

The problem with applying this same framework to AI is that artificial intelligence occupies a genuinely different ontological space from a camera-wielding monkey. Naruto had no understanding of composition, framing or photography. A large language model or a generative AI system does something considerably more complex. It synthesises patterns from vast corpora of human-generated material and produces outputs that can be novel and commercially valuable.

This distinction matters enormously for IP policy. The traditional justification for denying protection to non-human creators was that animals or machines are merely passive conduits through which human intention flows. The camera does not "create" the photograph; the photographer does. But this instrument metaphor breaks down with contemporary AI. When a

¹ *Naruto v. Slater*, 888 F.3d 418 (9th Cir. 2018).

² *Thaler v. Vidal*, 43 F.4th 1207 (Fed. Cir. 2022).

³ Meshandren Naidoo, *In a World First, South Africa Grants Patent to an Artificial Intelligence System*, THE HINDU (Aug. 6, 2021), <https://www.thehindu.com/sci-tech/technology/in-a-world-first-south-africa-grants-patent-to-an-artificial-intelligence-system/article35817497.ece>

model like DABUS independently identifies a new technical solution to a problem, the degree of human "creative control" over the final output can be vanishingly small.

This raises the question of what we mean by "creative independence." AI systems today operate through sophisticated neural architectures that do not merely retrieve stored information but generate genuinely new combinations of ideas. Whether this constitutes "creativity" in any philosophically meaningful sense is a debate that remains open. But from a purely functional standpoint, the output of a sufficiently advanced AI can be indistinguishable from human-generated work. The novelty of the creation is real, even if the nature of the creator is contested.

WIPO HAS BEEN ASKING THE RIGHT QUESTIONS

The World Intellectual Property Organization has been grappling with these tensions more seriously and more publicly than most national legislatures. Since 2019, WIPO has held multiple sessions of its *Conversation on Intellectual Property and Artificial Intelligence*, an open forum designed to facilitate global dialogue among governments, creators, academics, and technologists on precisely these questions. As WIPO's own platform notes, the Conversation has engaged nearly 17,000 participants from 172 countries over the course of five years, reflecting the sheer scale of global interest in getting this right.⁴

The sessions have progressively deepened in focus. Early sessions addressed broad conceptual questions about how AI challenges the IP system. Later sessions drilled into specific issues: whether AI-generated content should be eligible for copyright protection at all, training data and the rights of creators whose work was used without consent, and the role of infrastructure in enabling transparency, consent, and compensation. The tenth session specifically examined *Generative AI: IP and Output*, exploring whether AI tools serve as valuable collaborators or existential threats to human creators.⁵

WIPO launched a new initiative, the *Artificial Intelligence Infrastructure Interchange* (AIII), in March 2026, signalling a shift from dialogue toward action. The initiative focuses on the technical and operational dimensions of IP infrastructure in the context of AI including

⁴ World Intellectual Property Organization, *The WIPO Conversation on Intellectual Property and Frontier Technologies*, WIPO, https://www.wipo.int/en/web/frontier-technologies/frontier_conversation (last visited June 17, 2026).

⁵ World Intellectual Property Organization, *WIPO Conversation on Intellectual Property (IP) and Frontier Technologies: Tenth Session* (Nov. 5–6, 2024), https://www.wipo.int/meetings/en/details.jsp?meeting_id=84809

watermarking, fingerprinting, rights management, content identification; reflecting a growing recognition that the problem is not merely theoretical but immediately practical.⁶

What is significant about WIPO's engagement is not just its breadth but its candour. The organisation has acknowledged that existing IP frameworks were enacted before the emergence of generative AI and may not adequately cover the questions it raises. This is institutional honesty of a kind that national legislatures have been somewhat slower to display.

WHERE THINGS STAND: A JURISDICTIONAL SURVEY

United States

The American position, at least for now, is clear: purely AI-generated works receive no copyright protection. The trajectory of *Thaler v. Perlmutter* tells the story neatly. Thaler sought copyright registration for an image titled "A Recent Entrance to Paradise," listing his AI system, the Creativity Machine, as sole author. The U.S. Copyright Office denied registration on the basis of its longstanding human-authorship requirement. The D.C. District Court upheld this in August 2023, calling human authorship a "bedrock requirement" of copyright and drawing expressly on the *Naruto* precedent.⁷ When the Supreme Court declined certiorari in early 2026, it effectively cemented the current legal landscape: autonomous AI output cannot be copyrighted in the United States.

On the patent side, the Federal Circuit's ruling in *Thaler v. Vidal* remains the controlling authority.⁸ AI cannot be listed as an inventor. The grey area that both courts have left untouched, however, is the "human-as-tool" question: where a human uses AI with meaningful creative control, how much human input is enough? Neither the Copyright Office nor the courts have provided clear guidance on this, and the uncertainty is already proving commercially significant.

European Union

Europe's approach is shaped by its own doctrinal foundations. The Court of Justice of the EU has long held that copyright protection requires that a work reflects the "author's own

⁶ World Intellectual Property Organization, *Artificial Intelligence Infrastructure Interchange (AIII)*, <https://www.wipo.int/en/web/frontier-technologies/artificial-intelligence/ai-infrastructure-interchange> (last visited June 17, 2026).

⁷ *Thaler v. Perlmutter*, 687 F. Supp. 3d 140 (D.D.C. 2023).

⁸ *Thaler v. Vidal*, 43 F.4th 1207 (Fed. Cir. 2022).

intellectual creation", a standard that presupposes a human author.⁹ The European Parliament has been consistent in its position: purely AI-generated content should remain ineligible for copyright protection, and AI-generated content must be labelled as such.¹⁰ The EU's AI Act, published in July 2024, introduced transparency obligations for general-purpose AI models including requirements around technical documentation and the content used for training but deliberately did not resolve the question of AI authorship, leaving that to future copyright-specific legislation.¹¹

The Parliament's 2026 compromise amendments reinforced this human-centric stance, proposing a more robust licensing and remuneration regime for training data and enhanced transparency obligations on generative AI providers.¹²

India

India's position is, in many ways, the most legally interesting and the most unresolved. The Copyright Act, 1957 defines "author" in Section 2(d) to include "the person who causes the work to be created." This language is borrowed from a pre-AI era of automated software output and it offers a potential hook for recognising the human who operates or deploys an AI system as the author of its outputs. However, its application to generative AI has not been authoritatively settled.

The Thaler saga reached India as well. Thaler filed a copyright application with the Indian Copyright Office in 2023, listing the Creativity Machine as author. The Copyright Office issued a discrepancy letter asking him to identify a "natural person" as author signalling that it leaned toward the human-authorship requirement.¹³

The more consequential litigation for Indian law is *ANI Media (P) Ltd. v. OpenAI Inc.*, currently before the Delhi High Court. ANI Media has alleged that OpenAI used its copyrighted news content to train ChatGPT without authorisation, raising questions of infringement, fair use

⁹ Case C-5/08, *Infopaq Int'l A/S v. Danske Dagblades Forening*, 2009 E.C.R. I-6569, ¶ 37.

¹⁰ European Parliament Committee on Legal Affairs, *Report on Copyright and Generative Artificial Intelligence* (Jan. 26, 2026).

¹¹ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence.

¹² European Parliament Committee on Legal Affairs, *Report on Copyright and Generative Artificial Intelligence* (Jan. 26, 2026).

¹³ *The Missing Author: Artificial Intelligence and the Limits of Copyright Law*, Mondaq (2026).

under Section 52 of the Copyright Act, and jurisdictional applicability.¹⁴ No final judgment has been delivered, but the case is likely to shape how Indian courts approach both the input and output dimensions of AI and copyright.

At the legislative level, in May 2025 the Ministry of Commerce and Industry constituted an eight-member expert panel to evaluate whether the Copyright Act, 1957 adequately addresses the challenges of generative AI. Among the proposals reportedly under consideration is attribution of authorship to the person who causes the work to be created. This is modelled on Section 9(3) of the UK's Copyright, Designs and Patents Act, 1988 along with mandatory disclosure norms for training datasets. India's AI Governance Guidelines, released by MeitY in November 2025, acknowledged that AI's creative capacities "blur the lines of authorship and ownership" and that AI-generated works currently occupy a legal grey zone under Indian law.

India's situation is distinct in one important respect: it is simultaneously a major consumer of AI tools, a growing developer of AI systems, and home to a significant creative industry that has legitimate interests in not seeing its output exploited without compensation. How it resolves the AI-authorship question will likely reflect that triangular tension.

WHERE DOES THIS LEAD?

The probable direction of travel is not difficult to discern, even if the pace is uncertain. Three trajectories seem most likely.

First, the "human-as-operator" model will likely emerge as the dominant framework for copyright. Rather than recognising AI as an author, jurisdictions may increasingly vest copyright in the human who made the creative choices. This approach has the virtue of preserving the human-centric structure of IP law while accommodating AI-assisted creativity. It is, notably, the direction that India's proposed reforms seem to be contemplating.

Second, new, purpose-built protections distinct from traditional copyright or patent may emerge for purely AI-generated outputs. Ukraine has already adopted such a right for AI-generated images. The advantage of this approach is that it does not require contorting existing doctrine; it simply creates a new category for a genuinely new kind of creative output. WIPO has signalled openness to this kind of framework evolution.

¹⁴ *ANI Media Pvt. Ltd. v. OpenAI OpCo, LLC*, CS (COMM) 1028/2024 (Del. H.C.).

Third, the training data problem, separate from the authorship question but equally urgent will force a reckoning. The lawsuits proliferating across the United States, Europe, and India, all alleging that AI developers used copyrighted material without consent or compensation to train their models, are pushing courts and legislatures toward mandatory licensing frameworks or compensation schemes for creators whose work feeds the AI ecosystem.

What seems increasingly untenable is the status quo. A legal system that leaves the outputs of one of the most economically significant technologies of our time in a state of ownership limbo is not a sustainable equilibrium. Whether IP law bends to accommodate AI, or whether AI forces the creation of something genuinely new, the reckoning is coming.