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CAN AI BE AN AUTHOR? RETHINKING COPYRIGHT AND CREATIVITY IN THE AGE OF GENERATIVE AI

Imagine just by typing a few sentences into an AI system it can produce an entire book within seconds, a work that may take a human author years to complete. The human in this scenario is giving prompt commanding the system according to whose instruction the AI system generates the entire structure and story of the book. Now arises the question regarding the ownership of the book. Who is the owner? The human who gave the prompt or the AI system who generated the book?

Today, with increase in AI technology this question has become a widespread legal question and a genuine legal challenge. AI is capable of generating text, images, music, software and other forms of creative expression. While this has all led to simplification of human life there has been development of challenges towards the ownership of work, Can AI be an owner of the work produced by it?

WHEN A MACHINE BECOMES THE CREATOR

Copyright law has always been based on creativity. A person writes a novel, paint a picture or composes music and the law gives reward to creator and protection to the result. Generative AI makes this more complicated because the final result come from a machine and not from a person.

Think of two situations. One, wherein a person types prompt “Write a 2000 words essay on socio-legal issue” and other wherein, person uses AI primarily for research and independently develops his own essay.

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The user may start the process but does it mean the user created the work? The answer is not clear. It depends upon the contribution of the human on the work. There is difference between using AI as a tool and letting AI make creative work on its own. Thereby the question of who is creator of work depends upon the contribution in creativity and originality.

IS A PROMPT ENOUGH TO MAKE SOMEONE AN AUTHOR?

The most common notion is that the person who gives the prompt should be recognizes to be the author its because that person decides what the AI is going to generate based on the prompt provided to the system. The user spends considerable amount of time improving the prompt, giving details, choosing the results and editing the final version. The final work produced the would be based on the authors prompt and direction but this does not necessarily award the authorship.

A simple prompt might not show the kind of human creativity that is usually linked with being an author. Authorship is dependent upon the creative efforts and expression that brings original work into creation.

There is a difference between saying:

"Create a picture of a sunset over the ocean" and guiding an AI system through many steps about how the picture should look what the perspective should be, how the lighting should work, who the characters are, what symbols to use and what style to follow then doing a lot of editing by hand.

In the first scenario, the human part is small, there is no human creativity involved while in the other scenario there is human creativity with development of final work which involve creative efforts and expression the human has put into producing the final piece.

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The authorship is not dependent upon the level of prompt but the input of human creativity over the work. This means the central legal question may not be "Was AI used?" but how much human creative efforts was reflected over the final work?"

THE COPYRIGHT PROBLEM

With increase use of AI in creation of a piece of artistic work it becomes difficult to award the authorship for that work. This raises question concerning copyright law, can a work generated by AI claim copyright protection, and, if yes who owns that copyright?

The ownership for this copyright is usually contested between the one who gave the input, the one who modified the output considerably, or the creator of the AI software itself. Each of these possible claimants raises different legal issues. The developer of the AI system is not necessarily the author of all works generated using it.

AI system does not have separate legal identity so recognizing it as an author might pose even greater challenges. They lack legal rights and liabilities and cannot independently enter into contract, own or bear responsibility, so treating it as author would require to address various question regarding accountability, ownership, right etc.

The question "Can AI be an author?" extend beyond technology and is primarily about how copyright law sees as creativity.

WHO OWNS WHAT RIGHT NOW?

The ownership of work produced by AI system depends following rules of copyright:

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- In the current legal framework in countries like the US and India, art created by artificial intelligence alone is not covered under any copyright laws and hence falls under the public domain as there must be an authorship involved for an artwork to qualify for any copyright laws.
- Work that is completely produced by AI system with no human input is not owned or protected under copyright by anyone. Not user of AI, not the AI company, not the AI system. It goes into the domain as soon as it is created.
- The parts of a work that are made by a human can be protected. If you write a book with AI-written parts that you changed a lot your changes, the way you put it all together and your original words can be copyrighted. The parts that stayed exactly as the AI wrote them usually can't.
- A prompt by itself usually isn't enough. The Copyright Office has said clearly that it treats a prompt like a request given to a worker than a creative act. Typing "write me a noir detective story set in Mumbai" doesn't make you the author of whatever comes out even though it feels like your idea.
- This method tackles issues regarding copyright protection is proper and guided. It ensures that rights are protected where they are linked to individuals but will refuse to protect anything that cannot be identified to individuals. It is consistent as far as a legal framework goes. It does not necessarily make sense as far as a framework for understanding creativity, because creativity has never been easily divided into a "human/part" and a "machine part."

The Indian Legal Perspective

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In India, the statutory framework for establishing authorship and copyright protection is given under the Copyright Act, 1957[1]. Section 2(d)(vi) of the act states that, in relation to a literary, dramatic, musical or artistic work that is computer-generated, the author is "the person who causes the work to be created."[2] This provision raises question regarding the authorship as to whether a person who provides prompts to an AI system qualify as the author, and what degree of human input is necessary?

Indian copyright law has always focused on the human brain power that goes into making something. As more people use AI to help create things courts might have to decide if just telling an AI what to do is creative work or if a person needs to do a lot of the thinking and making. This doesn't mean every AI helped work should not get protection. Instead, the law might need to tell the difference between works that are helped by AI and works that are made entirely by AI.

Conclusion

Generative AI has not just made a kind of creative tool; it has made copyright law think about what it means to be an author.

The law doesn't have to pick between creativity and new technology. Instead, it needs to find a line between AI that helps and AI that creates on its own.

AI can make a book, a painting or a song. Saying the machine is the author would change the whole idea of copyright. A better way is to ask a question: what did the human add that was creative to the final piece?

[1] the Copyright Act, 1957
[2] the Copyright Act, 1957, s 2(d)(vi)

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As AI gets better at making things that look like they came from a person the future of copyright might depend not on whether machines can create. On whether the law should see machine made creativity the same, as human made creativity.