

# Critical Analysis of Copyright and its Digital Content in Context of AI in India

**Snehal Ashokrao Watane**

Research Scholar , SGBAU, Amravati

snehalbanking6@gmail.com

**Abstract:** *Artificial intelligence is recognized to be capable of mimicking the intellectual thinking of a human being. The role of Artificial Intelligence has been increased in the area of medical science, transportation, aviation, space, education, entertainment (music, art, games, and films), industry, and many other sectors which transformed our day-to-day lives. AI plays very important role in copyright, patents, designs, and trade secrets among various types of IPRs. AI also inter-related with compose music, write blogs, novels, poetry, generate paintings and drawings. This distinction however, has to be made between the works created by a human being alone with the help of AI and the one created by AI itself without any human intervention. The present paper discusses how AI is important in producing creative works such as arts, music, poem, novels as well as the issues of authorship and “deep fakes” in the work produced by the AI autonomously.*

*This abstracts explores the complexities of copyright law in India in relation to AI-generated content, focusing on musical works. The focus area of the research paper is to understand the upcoming challenges of the copyright protection relating to AI.*

*The research paper raises a question on the relationship between use of Artificial Intelligence and the protection of copyright. Artificial Intelligence is a weapon in the hands of many which is being misused it. The research paper suggests certain solutions to avoid such misuse by referring to the AI regulation provisions of different foreign nation-states and specific laws related to it..*

**Keywords:** artificial intelligence, copyright law, intellectual property rights, AI-generated works, copyright ownership, copyright infringement and etc

## I. INTRODUCTION

The emergence of Artificial Intelligence (AI) technology has brought significant changes in the creative industry, which is primarily built upon the foundation of intellectual property rights, particularly copyright law. AI technology has the ability to create original works that were previously thought to be the sole domain of human creativity, and this raises new challenges and opportunities for copyright law. This article will critically analyze the copyright issues that arise in the era of AI. AI-generated works are often indistinguishable from human-created works, and this raises questions about who owns the copyright to such works.

In traditional copyright law, the author of the work is the owner of the copyright. However, when we talk about AI-generated works, the question of authorship becomes more complicated. As AI systems can create works without human intervention, it is unclear whether the creator or the owner of the AI system should be considered as the author or the owner of the copyright. The use of AI technology in the creative industry also raises concerns about the infringement of existing copyrighted works.

The rise of user-generated content platforms such as YouTube and TikTok has created new challenges for copyright owners. These platforms not only allow users to create and share their own content, but also raises questions about the extent to which copyright owners should have control over user-generated content and the responsibility of platforms for copyright infringement. As digital technology continues to developed, a significant challenge for policymakers, businesses, and consumers are becoming more challenging now a days.

**Objective:**

- To strike a balance between the competing principles of safeguarding human involvement in creative works and recognizing the copyrightability of AI-generated content.
- To examine the current state of copyright law in relation to AI technology, including the challenges and opportunities presented by AI-generated works.
- To critically analyze the impact of AI technology on copyright law, including its implications for authorship, infringement, and fair use.
- To identify the challenges and opportunities presented by AI-generated works in relation to copyright law and to provide recommendations on how copyright law can evolve to address these challenges.

**Hypothesis :**

- There is a need to develop specific mechanism for implementation of copyright in AI and also need of specific legal framework to claim copyright in AI with claim of originality
- Artificial Intelligence is equally important in modern era with future aspects
- It is hoped that the findings of this research will provide valuable insights to policymakers, legal practitioners, and other stakeholders in the creative industry.

**II. RESEARCH METHODOLOGY**

The paper will adopt a doctrinal legal research approach, analyzing and interpreting relevant statutes, case law, and legal commentary. It will also draw on the insights of copyright experts and scholars to provide a comprehensive analysis of the copyright issues in the era of AI.

**What is copyright**

**Meaning**

When a work is exclusively created by the independent intellect of a creator with the use of his own mindset or own ideas without any duplication is called Original Work of Authorship (OWA). Anyone who is the original creator of any work and not the duplicate person he automatically has a right over it and he also can prevent any person of being uses of his creation or copy of it or modify of its creation.

The word copyright is a mixture of two words – ‘copy’ and ‘right’. To be more precise copyright means ‘right to copy’, wherein only the creator or his authorized person has a right to reproduce a work. In simple words, a legal right which is possessed by the owner of Intellectual Property is a copyright.

**Originality of copyright**

The lack of originality is the major argument against protecting anything created by generative AI. These arguments are not capable of independent thought and thus, there is no novelty in any output. The output we receive is a combination of pre-existing material found over the internet, thus, it is hold that AI-generated works cannot be copyrighted. However, that contention does not hold true if we found that the standard of “originality” required in India for claiming copyright protection.

The Supreme Court considered different standards of “originality” to determine the standard for India. It finally settled on the Canadian test which says that the work in question must be a product of the author’s skill and judgement. The exercise of skill and judgement should not held as a mechanical exercise. Ultimately, it was held that the human skill and judgement involved legal knowledge, skill and the author’s judgement and thus the SCC version of judgements is copyrightable.

**What Is Artificial Intelligence**

Artificial intelligence refers to computer systems that are capable of performing tasks traditionally associated with human intelligence — such as making predictions, identifying objects, interpreting speech and generating natural language. AI systems learn how to do so by processing massive amounts of data and looking for patterns to model in

their own decision-making. In many cases, humans will supervise an AI's learning process, reinforcing good decisions and discouraging bad ones, but some AI systems are designed to learn without supervision.

#### **“Significant Input” Test For Determining Copyrightability**

AI has rapidly become an integral tool across industries such as art, software and literature and various other domains. AI has proven its ever-increasing presence in shaping our work intelligently and determining our work gracefully. AI is bound to be everywhere soon, in the software for the technology we use, in the books we read, and even in the art we see and hear.

To strike a balance between the competing principles of safeguarding human involvement in creative works and recognizing the copyrightability of AI-generated content, we propose the “Significant Human Input” test. It is a simple test that will check the extent of human involvement in the creation of an “original” product. It is not a new framework to govern copyrightability, rather this test operates within the existing framework of the “Skill and Judgement” but it evaluates whether the “original” product in question would exist in the same tangible form without human intervention. If the product meets the standard of “Significant Input” set in the test, it can be granted copyright protection.

#### **Significant Input and Human authorship**

It is also important to remember that the copyright act has an important place for a Human author. Usually, AI-generated work includes very little human involvement or human labour as much of the labour is done by the AI itself. Most of the requirements in any work or hardships are done by the AI itself, and not the human.

The “Significant Input” test includes two essential requirements for determining whether an author, who made a product with the assistance of AI can claim copyright or not. The first requirement is an objective criterion where it should be checked whether there was any human involvement at all in the creation of a product. Second, the extent of that human involvement should be considered. The ‘extent’ of human skill, judgment, and labour includes in its creation must be significant enough that the product would be fundamentally different or non-existent without it.

An example will make the above position clearer. Let's consider an example in the field of legal academia. Legal commentaries provide a detailed and comprehensive overview of the law. Writing a legal commentary is a monotonous work. It involves reading almost every important case and analysing the statute. With the help of AI technology to summarize judgments and extract vital points, the author can trim their research work. This not only allows authors to focus more on critical analysis and interpretation of the law but also improving the overall efficiency and quality of their work. But though the author is a non-native English speaker, he has completed the initial draft and wishes to improve the language and grammar of certain sections of the text using ChatGPT. Here it should be noted that ChatGPT can only assist with form, structure, and grammar but not make any substantive improvements. The author has his own trust on ChatGPT, so he will use it to improve its level of work and the structure of the commentaries. Those commentaries would not have taken their current form without the use of AI assistance.

The question which arises now is whether the author can claim copyright over the commentary. According to the test, the answer is yes. Although AI assistance was utilized in the process, the author fulfils the twin requirements of the test. Firstly, there was human input in the creation process as the author conducted research, found relevant judgments, and composed a draft. Secondly, the extent of human input, in terms of labour, skill, and author's ability exercised was significant enough that the commentary would have either been fundamentally different or non-existent without it.

#### **Overview of Copyright Issues in the Era of AI**

Copyright issues in the era of AI are similar to those in other countries. However, there are some important challenges that are unique in their nature to the Indian context. Indian copyright law currently does not provide any clear guidelines on the ownership of AI-generated works. This can create confusion and uncertainty about who owns the rights to such works, especially when they are created by an AI system without any human intervention. India has a rich cultural heritage, and there are possibilities that AI-generated works could infringe upon traditional knowledge and cultural expressions. For example, an AI system may generate a piece of music or artwork that is similar to a traditional Indian folk song or any kind of work like painting or writing there is a possibility that a question should be raised raising about whether such works are original or infringing on traditional knowledge. Like in other countries if it comes to AI-

generated works in India fair use is an important issue. However, in India there is currently no legal framework that specifically addresses the use of AI-generated work under fair use. This can create specific questions about what constitutes fair use when it comes to AI-generated works.

#### **Case laws**

An important case for understanding it is

#### **University of London Press Ltd v. Tutorial Press Ltd,**

where a publisher made a compilation of question papers released by the University of London. The university challenged it on the grounds that it was infringing the copyright of professors who put in their skill and time to create those papers. In response, the publisher argued that the papers were created from an existing body of knowledge and thus were not “original” and could not be copyrighted. However, the court held that even if the paper was created from an existing body of knowledge, a certain amount of effort was exerted, and this is enough to qualify the papers for copyright protection. This standard of ‘originality’ grants copyright on the basis of diligence and effort and does not include a requirement for subsequent creativity. However, an output based on a simple prompt – no matter its distinctiveness from other work – is not copyrightable due to the lack of effort put in by human authors in writing a single-line prompt.

#### **Eastern Book Company v. D.B. Modak**

In this case, SCC, a journal run by the EBC since 1969, published all Supreme Court cases with a few additions such as paragraph numbers, headnotes, formatting and cross-references. In 2004, the respondents launched software which contained copies of judgements lifted directly from SCC. Eastern Book Company filed a copyright violation suit for copying “original” elements. In response, respondents argued that since government documents are not copyrightable, that will apply to judicial decisions as well and thus, SCC held no copyright over them.

#### **Anil Kapoor v. Simple Life India & Ors.**

A year ago, on September 20th 2023 the Delhi High Court delivered an order regarding the defense of the personality rights of Indian actor Anil Kapoor. This is a major case, especially for people in the entertainment industry to seek protection of their image with the growth of malevolent AI use. The case was brought to court by the renowned Indian lawyer Pravin Anand, from the firm Anand & Anand.

In this particular case, the defendants had used generative AIs to create deepfakes of the actor as other famous actors and actresses, as well as Disney cartoon characters. M. Kapoor’s image was also used to sell merchandise, or motivational courses by creating false endorsements. Others were charging fees for its service as well as using his name, dialogues and voice as ringtones. Justice Prathiba M. Singh said in his order:

“The Court cannot turn a blind eye to such misuse of a personality’s name and other elements of his persona.”

This case has set a precedent for others to take action to protect their personality rights, offering remedies such as the removal of infringing content and the awarding of compensatory damages: in July 2024, the Bombay High Court granted interim relief to Indian singer Arijit Singh, after unauthorized AI platforms mimicked his name.

#### **Justice K.S. Puttaswamy v. Union of India (2017)**

In Justice K.S. Puttaswamy v. Union of India the Supreme Court of India recognised the right to privacy as a fundamental right under the Indian Constitution. Although not directly related to AI, this judgment sets a precedent for protecting personal data, which is crucial for AI systems that often process sensitive information.

#### **Zakir Hussain vs. State of Manipur**

The Manipur High Court, during a judgement on 23 May, 2024, used ChatGPT to conduct research before passing an order, according to a report by Live Law. The case pertained to petitioner Md. Zakir Hussain, a retired member of the Village Defence Force of his district in Manipur. Hussain was dismissed from service in 2021 without receiving a copy of his dismissal order, due to a criminal having escaped from the police station he was working at while he was on duty.

Subsequently, in December 2023, Justice A Guneshwar Sharma, the presiding judge of the Manipur High Court, sought a response from the police counsel, Advocate Shyam Sharma, on the grounds for such a dismissal.

However, when he discovered the affidavit submitted by the police to be inadequate, he referred to GPT 3.5 to conduct further legal research.

### **What Was The Final Judgement?**

GPT 3.5 provided Justice Guneshwar with information pertaining to Manipur's Village Defence Force (VDF), to the effect that it consists of volunteers from local communities, who are trained in assisting the police in dealing with insurgency and intercommunity conflicts in order to improve local security in rural areas of the state. Based on this information, and further investigations conducted by the Court which revealed that a Show Cause notice needs to be issued to dismissed personnel to explain any charges against them, Hussain was reinstated to his service.

### **III. CONCLUSION**

India is the leading country of AI development, with significant investments and policy frameworks in making different kind of innovation. However, the country still faces challenges in making a powerful legal framework for AI. Though the existing laws like the IT Act, Digital Personal Data Protection Act, and IT Rules provide a foundation for AI regulation still there is a need for AI-specific legislation which provides rules and regulations regarding the AI technologies.

AI technology can be used to analyze copyrighted works, which can blur the line between fair use and infringement. This requires careful consideration to ensure that fair use rights are protected while still providing adequate protection for copyright owners. In addition not only collaboration between stakeholders is essential to address these challenges but also collaboration between AI developers, copyright owners, users, and policymakers is necessary to ensure that copyright law is updated. Finally, education and awareness are also important in facing copyright issues in the era of AI.

### **IV. SUGGESTION**

- The law of copyright should be updated since with the emergence of AI technology, traditional copyright law may not be sufficient.
- The policy makers should work on amending the existing copyright law and creating new regulations which should be applicable to AI generated work.
- The new legal framework should be developed to enhance the quality of AI -generated work which resulted into the flexible approach to the copyright protection.
- Collaboration and dialogue should be arranged between AI developers, copyright owners, users, policymakers, and other stakeholders is essential to address copyright issues in the era of AI.
- Policymakers and stakeholders should work together to develop guidelines and best practices to ensure that AI systems are used in a responsible and effective manner.
- Education and awareness should be increased to address copyright issues in the era of AI and current requirement for human authorship in copyright law.

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