

## **AUTHORSHIP OF WORKS CREATED BY ARTIFICIAL INTELLIGENCE**

- Aditi Gouda<sup>1</sup>

### **Abstract**

The rapid advancement of Artificial Intelligence (AI) has transformed creative industries by enabling machines to generate literary, artistic, musical, and technological works with minimal human intervention. This development has raised complex legal and ethical questions regarding the authorship and ownership of AI-generated content. This study critically examines the concept of authorship in the context of works created by artificial intelligence, focusing on the adequacy of existing intellectual property laws to address emerging challenges. Traditional copyright frameworks are premised on human creativity, originality, and intent, thereby creating uncertainty when AI systems independently produce creative outputs. The research explores whether authorship should be attributed to the programmer, the user, the owner of the AI system, or whether such works should remain in the public domain. It further analyzes international legal approaches, including those of the United States, the United Kingdom, and the European Union, alongside the evolving legal landscape in India. The study also highlights ethical concerns relating to accountability, innovation, and economic rights. It concludes that a balanced and adaptive legal framework is essential to foster technological progress while safeguarding human creativity, ensuring fair attribution, and promoting clarity in intellectual property regimes in the age of artificial intelligence.

### **I. INTRODUCTION**

A copyright subsist in rights lies with the person who creates "original works of authorship". It protects the author's literary, musical, dramatic, artistic, and other qualified creative works.

Although, most of the copyright laws leave the word "creations" open to interpretation, a number of works generated by Artificial intelligence (hereinafter referred as AI) frequently depart from its scope because they failed to meet all of its conditions. Registering work created by autonomous AI is additionally complicated

---

<sup>1</sup> Student at Amity Law School Noida (Amity University Noida)

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

<https://www.ijalr.in/>

by a number of international and state legislations, as well as Copyright Office requirements. In reality, if a creative work is created completely by AI robots and does not meet the human author criteria, is it copyrightable? As a result, whether it would be right, the works created by AI robots that are not directly accountable to the human creator should go in public domain or kept free from copyright. All these questions have been discussed in this chapter, so that the authorship of AI-generated work could be determined.

This chapter explored numerous prospects and concerns about the 'author'. It primarily addresses concerns of authorship of AI-generated work in light of the necessity for human authorship as well as the attribution of legal personality to AI. This chapter also discusses potential alternative solutions to grant authorship for AI-generated work in order to reduce the legal issues of authorship.

## **II. MEANING AND DEFINITION OF AUTHOR**

The terms 'work' and 'creator' are compatible. In intellectual property regulation creation is unimaginable without presence of work. On the other hand, assuming there is no work, there will be no creator; origin might be addressed whenever it has been demonstrated that there is a work to which authorship can be assigned. It is hard to characterize the creator of a work, yet as a rule, one might say that the creator is the proprietor of the work.

Most of the country designates the authorship to a person who really creates a copyrightable work. If work is generated during course of employment, in general the employer would be the author of the work. If a work is original and fixed in physical form, the author is entitled to get copyright in the work.

### **a. ESSENTIALS OF AUTHORSHIP**

In most of nation to be eligible for authorship under Copyright Law, there are two main requirements needed to fulfil from the perspective of AI generated works. These are as follows:

- i. Author to be human being
- ii. Legal Personality for Non-Human Author

### **b. AUTHOR MUST BE A HUMAN BEING**

There are two different ways that copyright regulation can manage works that have almost no human communication. It can either deny copyright insurance to works made by a computer or ascribe the authorship to the program's maker.

It has never been explicitly forbidden to grant copyright to works created by artificial intelligence. However, most of the countries have not provided copyright to the works generated through AI. This is so because there is need of human authorship to get copyright protection under Copyright Laws.

#### **i. THE GOAL OF HUMAN AUTHORSHIP**

The ultimate purpose of assigning copyright to human author is to provide economic encouragements to encourage the development and expansion of the AI business. So that the distribution of AI created works could be assured. As a result, monetary incentives should be held in reserve for those who have made the most significant contributions to AI development and dissemination.<sup>2</sup>

Unlike human developers, AI devices do not require financial incentives. Their success is determined by the time and expertise invested by AI programmers, as well as the financial support provided by companies for whom they work. AI machines generally would not be available for general public if it weren't for their contributions.<sup>2</sup> As a result for the purpose of financial matter and liability with regard to AI generated work there is need of human being which cannot be denied.

#### **ii. INTERNATIONAL LEGAL FRAMEWORK**

In general most of the international conventions require that to get copyright protection there must be creativity on the part of a "author". The Berne Convention<sup>3</sup> states, "*protection should work for the advantage of the author*" on an international basis, although it does not define "author."

Generally, majority of international copyright conventions do not expressly state that author must be human being but their legislative intent was to denote human being, because at that time it was not sought that machine can replace human intellect. Regarding attribution of authorship to AI, the position till date is that, most of the AI system doesn't work autonomously and require human involvement in some manner.<sup>3</sup>

In this way, AI being used as tool to create work and these works deserve to get copyright protections. If such protection is not given to these works, it may discourage

---

<sup>2</sup> Hristov Kalin, 2016, Artificial Intelligence and copyright dilemma, *IDEA: The IP Law Review*, vol. 57, no. 3

<sup>3</sup> Arthur R. Miller, 1993, 'Copyright protection for computer programs, databases, and computer-generated works; is anything new since CONTU?', *Harvard Law Review*, March, vol. 106, no. 5, pp. 977-1073.

the people who use AI as tool in creation of works.<sup>5</sup> Therefore, it is necessary to analyse the relevant provision of various international convention and treaties over this issue.

### 1. TRIPS AGREEMENT

Although works created through other than human are not protected under any provision of TRIPS, as a result no authorship can be attributed for such kind of works. There is a provision given under Article 12<sup>4</sup>, which adversely talks about the “calculation of term of protection on the basis of other than the life of natural person” Article 12 of the TRIPS, 1994 doesn't require that the author to be a natural or non-natural person. On the basis of this provision national legislature by making *sui-generis* law can include the AI into the list of author. Although this authorship will not be recognized for all purposes but for giving recognition to the AI-generated work and this provision can be proved as mile stone.

### iii. NATIONAL LEGAL FRAMEWORK - UNDER

Till now the numerous provisions concerned with copyrightability of AI-generated work has been discussed. The next oblivious issue which has to be addressed in the study is the problem of authorship of the copyrighted work. In this study the researcher has examined the various regulations of different nations relating to authorship of copyrighted work. Currently, no specific provision in any country's copyright legislation can answer the broad question of "who can be considered as author of AI-generated works created independently?" On this point analysis of copyright laws of various nations *prima-facie* show that in most of the countries only humans are only considered as author under present copyright rules. This poses the issue of how to judge the authorship of works produced by AI.

In terms of protection granted authorship of AI-generated work, there appear to be two possibilities to consider. *Firstly*; when under human assistance the work is created by AI. In this situation as the work is created with the human contribution, the originality of the work may be inferred from human, and the authorship of the work can be credited to the individual who provided the input. *Secondly*, there may be situation where work can be produce by the AI without any human input, in such a case the position of author is not clear.

---

<sup>4</sup> Robert A. Jacobs, 1993, Work-For-Hire and the Moral Right Dilemma in the European Community: A U.S Perspective, *B.C. Int'l & Comp. Law Review*, vol. 16, no. 1, pp.29-79, p.37,

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

<https://www.ijalr.in/>

In this part of the study, the researcher has examined the problem of authorship using national legislation from the EU, the United Kingdom, the United States, and India.

## 1. EUROPEAN UNION

Despite the fact that the EU copyright directives have regulated most parts of laws related to copyright but present Copyright Law of EU is silent on topic “authorship of works covered by the copyright system”, and there is no single rule that harmonises the concept of authorship in general.

In this context, the EU *acquis* can be taken into consideration, as it expressly harmonises distinct kinds of copyright-protected subject matter, such as; works of visual arts, database and computer programmes. Because directives states that the work is only protected when they are "*original in the sense that it is the author's own intellectual production.*" The use of word "*author's own intellectual production*" in this context strongly suggests that the creator of the work is the one who is generating it.

However, the requirement of human author has not been really addressed by the copyright directives. In this regard, the following provisions appear to be crucial in determining the authorship:

According to the provision of the Sat-Cab Directive 93/83<sup>5</sup> under Article 1(5), the primary director of cinematographic films or audio-visual works is considered to be the author and Member States are free to add additional people as co-authors. The Software Directive 2009/24 under Article 2(1) provides that, if there is case of computer program, the author shall be that one who has created the computer program. Legal person can also possess authorship but only when, the legislature of Member States allows for this.

In consonance with the Database Directive 96/9, Article 4 provides as like the Software Directive. It provides that if the work is in form of database then the authorship not attributed to natural person or group of person, but also to the legal person designated for this purpose.

Additionally, Recital 14 of the Term Directive 2006/116<sup>25</sup> provides that protection of copyright shall be available to the author for his life time. Using the phrase “for

---

<sup>5</sup> Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, OJ L 248, pp. 15–21.

author's life" this provision also shows the requirement of human authorship.

The Council Directive 91/250/EEC, 2009/24/EC, Art 2(1) also required that the author to be a natural person who produced the programme, however Member State legislation may designate a legal person as the right-holder.

According to Article 1(3) "*a work should be protected in the sense that it is the author's own intellectual production*". Not at all additional standards intended to be used for establishing its protection eligibility." This emphasises the need of intellectual labour of human in the development of work, and eliminates the possibility of works made only by AI.<sup>6</sup> Furthermore, the DSM Directive's preamble provides that "the writers, who would allow to be relying on the rules of contracts, must be natural person, barring non-human authors from the area of applicability. On the basis of this clause also, it may be argued that AI cannot be treated as author of work created through AI.

Likewise, the Report 2020 of European Parliament on the IP and AI also indicates that "*the natural person is behind the concept of originality under copyright,*" and "*the personality of the creator is reflected though the every intellectual creation.*" Also "*the AI must be approached from a human-centred perspective to guarantee that technology and remain as a tool that serves people and the common good.*" From this perspectives, the basis of the IP rights system as provided are author who is natural person and the producers.

Still on the point of the authorship of AI these provisions do not give clear cut solution in such situation the researcher would like to give much emphasis on Software Directive<sup>7</sup>, which not only protects computer software but extended its protection over software-generated output, It came into effect in 1991, standardised the requirements for protection to software-generated outputs. However, it is a fascinating to discuss whether works generated through AI can likewise be liable for protection under copyright. In this regard widely recognised principle is that the copyright in software does not protect software-generated items unless the outcome is predetermined by the programmer and hence in such situation authorship can be credited to the software engineer who designed the software.<sup>33</sup> Likewise, where the

---

<sup>6</sup> *Martin Luksan v. Petrus van der Let*, C-277/10, EU:C:2012:65

<sup>7</sup> Hartmann/Prinz, 2018, Rechtsfragen digitaler Transformationen, Tagungsband Herbstakademie p. 769 (774 et seqq.).

work is created through AI can be assigned in favour of programmer. In this way, it can be said that although the AI in itself may not be regarded as the author of the work but for works created through AI the programmer may be a potential applicant for authorship.

## 2. UNITED KINGDOM

The UK Copyright Designs and Patents Act 1988 (hereinafter referred as CDPA, 1988) presume legal fiction about the authorship of works created by computer. A bare reading of sections 178 and 9(3) of the CDPA, 1988, it appears that "*the intention of legislature to enact Sections 178 and 9 (3) that to promote the development of such computers which would be able to works without support of human being*".

The definition of "computer-generated work" is provided under Section 178 as "*work created by a computer in situations where there is no human creator of the work.*" The object of this provision is "*to offer fair acknowledgment and protection for the labour that goes into designing a programme capable of autonomously generating works by introducing an exemption to the requirement of human authorship.*"<sup>8</sup> In terms of authorship of computer-generated work, CDPA, 1988 states that "*the author must be understood to be the person who makes the essential arrangements for the creation of the work.*"<sup>9</sup> This clause presumes some type of creative participation by a person, rather than autonomous or human-less generation by a computer programme alone. Importantly, this legal framework altogether does not eliminate requirement of human element; the aforementioned legal provision simply relocates it to a different stage of the creation process. Although the human being does not involve in creation process, but it does give necessary input required for creation of work. As a result, the individual supplying the contribution is granted copyright protection. Applying provisions in such a way the AI developers might be identified as authors of AI-generated works.

However, this approach is not free from criticism when it comes to the pioneering technologies of computer science. Currently fully automated systems are being developed, which are able to manufacture new works depending solely on the

---

<sup>8</sup> Niebla Zatarain, Jesus Manuel. 2017, The role of automated technology in the creation of copyright works: the challenges of Artificial Intelligence. *International Review of Law, Computers & Technology*, 22 Feb, vol. 31

<sup>9</sup> UK CDPA, 1988.

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)  
<https://www.ijalr.in/>

characteristics of the surroundings.<sup>10</sup> In such situation the role of human in creation process is relegated to a secondary or can say no use of human being and even yet the existing legal system of UK do not give protection of copyright for works resulting of these technologies.

A preliminary analysis of the relevant provisions of CDPA, 1988 discloses that the British legislature intended to offer protection for automated inventions, such as satellite pictures, when passing the CDPA. Furthermore, careful examination reveals that this clause does not provide much legal clarity. It eliminates the requirement that the creation can only attributed to a human creator. However, the problem of who owns the copyright in a works generated by computer remains unanswered. With this regard, section 9(1) gives a broad definition about the authorship, stating that "author, in relation to a work, is the person who makes it." This section is talk about the person, and AI cannot be considered as a person under any circumstances. Therefore on the preliminary examination of section 9(1) at this stage the researcher conclude that AI in any situation cannot be the author of the work generated through AI under Copyright Law of United Kingdom.

### 3. UNITED STATES OF AMERICA

Since the incorporation of copyright in the US Constitution, it is being utilised to incentivise the creation rather than as a means of author acknowledgment.<sup>46</sup> This approach looks to be more realistic and the opposition to machine development protection appears to be less intense in the past. As a result, it appears to favour the computer-generated works like AI. But on the point of authorship of AI is silent.

The Copyright Act, 1976 of USA provides that "*copyright protection subsists only in works of authorship*". It does not define "work of authorship", however clause (a) of Section 102 provides that what are included in "work of authorship". This Section states that "*the work of authorship shall be available for musical and literary work along with used words, theatrical works associated with music ..... and architectural works*".

Although the works included in this section comprehensively represent all the works,<sup>11</sup> but Congress has the constitutional authority to include any other works time

---

<sup>10</sup> Nina Fitzgerald and Eoin Martyn, 2020 An In-depth Analysis of Copyright and the Challenges presented by AI, *Ashurst's Website*

<sup>11</sup> Pamela Samuelson, 2016, Evolving Conceptions of Copyright Subject Matter, 78 *U. PITT. L. REV.* vol. 17, no. 51

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)  
<https://www.ijalr.in/>

to time if required, as per need of the society by amending the Act or by enactment of a new legislation. Therefore, in order to be eligible for copyright protection, a work must, however hazily, fit within any of the types as stated in Section 102(a).

Further on the subject of authorship, Section 306 of the United States Copyright Act, stipulates that "*the United States Copyright Office will register an original work of authorship, provided that the work was created by a human being,*" and that "*the United States Copyright Office will not register works produced by nature, animals, plants, machines, or mechanical processes that operate without any creative intervention from a human author.*"

Human requirement for authorship of a work under copyright was pointed out by renowned legal scholar Jane Ginsburg who says that "*U.S. authorship is also normally reserved for human beings*".<sup>54</sup> Also the Copyright Office in their statement has confirmed that "*works produced by nature, animals or plants cannot be granted copyright protection*".<sup>12</sup>

Beyond that, authorship is mostly a matter of local interpretation, which creates ambiguity and delays the creation of a formal, broadly accepted definition. National courts are allowed to interpret matters as they see fit, and they do so in accordance with their respective domestic legal systems. This has had legal repercussions and hasn't enhanced people's understanding of the term "authorship."

At the moment, assuming AI produces work on little contribution of human and if US law presumption for copyright is incentive then on the basis of this presumption AI cannot be an author because AI does not work for an incentive.

#### **4. INDIA**

There is no formal statute or law in the Indian context to govern AI. Existing rules are based on traditional intellectual property kinds such as books, creative writing, and discoveries. As a result, it appears difficult to draw any conclusions about authorship of AI-generated works.

In earlier part of this chapter, this study has examined the two major theories that characterise the uniqueness of the work under this Act. Those are the "Doctrine of Sweat of the Brow and the Modicum of Creativity", which do not exclude AI-generated work from being copyrightable. However, if it is copyrightable, the issue arise who will be the author, must be addressed. That is why in this context the

---

<sup>12</sup> Jane Ginsburg, 2003, 'The concept of authorship in comparative copyright law' *De Paul Law Review*, vol. 52 p.1063

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)  
<https://www.ijalr.in/>

examination of Section 2(d) of the Indian Copyright Act, 1957, would be more appropriate which deals with authorship of works.

On a bare assessment of the Indian Copyright Act, 1957 it appears that, the word "author" is sufficiently defined for many categories of work, but it is left relatively open-ended in the case of autonomously created computer work.

The general definition of author is given under Section 2(d)<sup>56</sup> "which define "author" in terms of literary, dramatic, musical work, photograph, cinematograph film and sound recordings. There is also a special provision under Section 2(d)(vi) is given which define author in terms of "works generated by computer".

Assuming computer-generated works are similar to works generated by AI, the definition of "author" can be found in section 2(d), which defines "author" as "*the person who causes the work to be created*" in relation to "*any literary, dramatic, musical, or artistic work that is computer-generated.*" However, unlike the CDPA, the Indian Copyright Act does not define "computer-generated work."<sup>13</sup> It also contains no express exclusion of non-human author creations for computer-generated works and is unclear about the term "who" used in the provision and states "who made the necessary arrangement." But this clause, in its current form, fails to handle any circumstance in which no 'person' is engaged in the creation of the work. For example, AI, which has recently being utilised to create dramatic and creative works in music, journalism which was not developed by a human author as defined under copyright regulations. In such case where nobody is there to causes the work to be created whether authorship can be awarded to a computer program or the person who owns the AI will hold the authorship?

*Prima-facie* AI cannot be an author of the creative work. If we accept this argument, the following question may arise that who can be author?

To come up with a solution in the Indian context, the example of "RAGHAV," an Artificial Intelligence Painting App that was recently acknowledged as a tool for creating copyrightable work and also recognised as a co-author of a copyright-protected creative work has been taken into his consideration by the researcher. How has painting made by "Raghav" been acknowledged by the Copyright Registration Office if the human criterion is so great. This example gives hope for the person who uses AI as tool optimism that their work will be recognised under the present

---

<sup>13</sup> V. K. Ahuja, 2020, Artificial Intelligence and Copyright: Issues and Challenges, *ILI Law Review*, Winter Issue p. 280, e-ISSN-0976-1489

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)  
<https://www.ijalr.in/>

copyright law and also recognized AI as joint author of the work.

### **COMPLICATIONS IN RECOGNISING AI AS AUTHOR IN INDIA**

The exploration of some more instances would be helpful in order to analyse position of AI under existing Copyright Laws of India.

In this context Section 17 of the Indian Copyright Act, 1957 seems to be more appropriate on the complexities involved in recognising AI as an author. According to Section 17<sup>58</sup> “the author is the first owner of the work” and by virtue of Section 17 ownership may be transferred from author to the employer or person on whose behalf the work is generated under an agreement. However, if AI is supposed to be the author, how would AI transfer ownership if it is unable to implement any agreement? Also, if the agreement is detrimental to the author, he will be free from terms of the agreement; but, when the author is AI, how would it refuse to execute on the basis of terms of agreement that are detrimental to AI?

Further Section 57 provides for certain special rights which are called moral rights of author, in which right to paternity and integrity are included. This clause also raises an issue in a way that if AI being as author of a work, these rights as provided under Section 57 may become redundant because it is impossible to determine whether any conduct has harmed the AI's honour or reputation.

These are the concerns that cannot be resolved under present copyright legislation. As a result, under the Indian copyright law, AI cannot be the author of the work on its own.

#### **iv. JUDICIAL APPROACH - UNDER**

##### **1. EUROPEAN UNION**

As discussed European Copyright laws doesn't provides any provision for work created through AI and mostly remain silent on the issue of authorship in such work. Although Law has been harmonized over the subject matter of copyright but it could not come up with proper legislation for authorship such kind of works.

The Court of Justice of the European Union (hereinafter referred as CJEU), yet to address subject of who or what constitutes an author. In the landmark cases of *Eva-Maria Painer v. Standard Verlags*<sup>14</sup>, the court demanded "personal touch of author,"

---

<sup>14</sup> *Eva Maria Painer v. Standard Verlags GmbH*, CJEU, ECLI:EU:C:2011:798.

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

<https://www.ijalr.in/>

yet in the case of *SI, Brompton Bicycle Ltd v. Chedech* (popularly known as *Get2Get case*),<sup>15</sup> the criterion of originality was "free and creative choices of the author."

Apart from this some of the important decisions have helped to standardise the originality requirement to a large extent throughout the years.<sup>16</sup>

In a landmark decision of *Infopaq International A/S v. Danske Dagbaldes Forening*<sup>17</sup>, it was decided by the CJEU in 2009 that "copyright may only be claimed and applied to original works under Article 2(a) of the Copyright Directive but it's possible only when originality stem from authors own intellectual creation". In order to get a copyright over the granted work, it must reflect the personality of author. Here requirement of personality can come from human being, therefore can be stated that the requirement of human seems prerequisite under EU Copyright Directive.

The same approach has been confirmed in subsequent judgments; some of most recent judgements are as follows:

Although EU copyright law does not clearly expresses about the requirement of human under Copyright Laws, but on the basis of decision as given in *Levola Hengelo BV v. Smilde Foods BV*<sup>18</sup> it is again CJEU followed anthropocentric approach which require living person for being an author.

In the case of *Eva Maria Painer v. Standard Verlags GmbH* the question raised that whether copyright protection be available to Austrian photographer who had taken a portrait photograph of a school girl. CJEU held that "the creator of the photograph can stamp his personality through personal touch which can be proved from the 'arrangements' which he made while taking a photograph through his camera". Here use of word 'personal touch' clearly indicates that it requires human authorship.

In case of *Cofemel v. G-Star Raw*<sup>19</sup> the requirement of human authorship again reconfirmed by saying that "in order for a work to be original, it must reflect the personality of the creator sufficient to show his creative and free choices" here again using the phrase author's personality reconfirm the requirement of human authorship.

The CJEU further in the case of *Hewlett-Packard Belgium SPRL v. Reprobel* clarified that,

---

<sup>15</sup> *SI, Brompton Bicycle Ltd. v. Chedech/Get2Get*, ECLI:EU:C:2020:461.

<sup>16</sup> France Vehar, Thomas Gils, 2020, I'm sorry AI, I'm afraid you can't be an author (for now), *Journal of Intellectual Property Law & Practice*, vol.15, no.9, September, pp.718–726

<sup>17</sup> *Infopaq International v. Danske Dagblades Forening* (2009) ECLI:EU:C:2009:465, C-05/08.

<sup>18</sup> *Levola Hengelo BV v. Smilde Foods BV* (2018) ECLI:EU:C:2018:899, C-310/17, paras. 38–39.

<sup>19</sup> *Cofemel -Sociedade de Vestua ´rio SA v. G-Star Raw CV* (2019) ECLI:EU:C:2019:721,C-683/17, para. 30.

even under the InfoSoc Directive, the authorship has been attributed to the creator if he is human being and not to a legal organisation. As a result, a producer of film or producer cannot be deemed as work's author.<sup>20</sup>

All the judicial approaches signified by the CJEU on the definition of a copyrighted work imply, at least indirectly, that some sort of human authorship is essential. In this way in the absence of any special requirements in European or national legislation to the contrary, no copyright protection is available for objects created by autonomous intelligent agents such as AI that are not touched by humans.<sup>21</sup>

On the basis of foregoing findings, the researcher is of opinion that if a human touch is the only required criteria, then AI may be utilised as a tool to generate work that should be copyrightable because there are no restrictions in this respect.

## 2. INDIA

In general, “*author is the person who comes up with the creative works in form of expression that is fixed in a tangible form*”. The Copyright Act limits author to living human beings for all purposes. This may be seen in the several parts that explain the author's kin, lifetime, and death. These words clearly indicate that in Indian copyright regime the author should be human being.

But has India also made provision for “computer generated work” under copyright Act it gives hope that works generated by AI could also considered eligible for protection under copyright. In India, the Section 2(d)<sup>101</sup> defines “*author in relation to copyrightable works*” as “*the person who causes the work to be made, in relation to any literary, dramatic, musical, or aesthetic work which is computer-generated.*” As a result, the definition does not differentiate between works either created by natural or by legal person. Even if the work is generated by A.I. the Copyright Act does not give provision to entitled AI as an author. Because only the natural person's name may be provided in the "Colum 7" of “who created the works” for the application for the registration of works, as provided in the draft of Practice and Procedure Guidelines Rules 2018.

In this context the case of *Rupendra Kashyap v. Jivan Publishing House Pvt. Ltd.*,<sup>22</sup>

---

<sup>20</sup> *Hewlett-Packard Belgium SPRL v. Reprobel SCRL* (2015) ECLI:EU:C:2015:750, C-572/13.

<sup>21</sup> Jeremy A. Cubert and Richard G.A. Bone, 2018, Research handbook on the law of Artificial Intelligence, Edward Elgar Publishing Ltd., Massachusetts, USA, p.520, ISBN-9781786439048.

<sup>22</sup> 1993 SCC OnLine Del 660 : (1994) 28 DRJ 286.

seems important to be mentioned. In this case the Delhi High Court said that “*for the purpose of Copyright Laws the person claiming authorship must be natural person and not an artificial or legal person, as a result in this case the person who has compiled the question paper not the Central Board of Secondary Education (hereinafter as referred CBSE) would be the author*” Therefore copyright cannot be granted in favour of CBSE.<sup>23</sup>

Prior to this, in the case of *Eastern Book Company v. D.B. Modak*<sup>24</sup> it was held that

*“the standard for claiming Copyright is skill and judgment of the author and not merely labour and capital. It was further clarified that the skill and judgment required to produce the work must not be so trivial that it could be characterized as a purely mechanical exercise. In this way this case also indirectly says that work created through only mechanical process cannot be copyrightable.”*

Despite these regulations and decisions, India has recognised “AI RAGHAV” an AI based Painting App as co-author and gave copyright protection to works titled “Suryast”. It is the first country in the world which do so. The Copyright Office only approved the application with both of their names included as co-authors of the artistic work, according to another co-author, Mr. Sahni. However, as an independent author, he was not acknowledged. This might serve as a model for other countries to follow and consider AI as an author. Currently, the works involving human intervention are only protected with the exception of the United Kingdom, Ireland and India.

### **c. AUTHOR MUST HAVE LEGAL PERSONALITY**

With regard to authorship the first problem that Artificial Intelligence faces is determining whether it can be granted a legal identity.

#### **i. CONCEPT OF LEGAL PERSONHOOD**

Legal personhood means artificial attribution of personality. Any entity which possesses legal personality indicates that the concerned legal system has conferred certain rights and imposes responsibilities on it. Legal personhood is divisible because

---

<sup>23</sup> *Navigators Logistics Ltd. v. Kashif Qureshi & Ors.* (2016) CS COMM 735.

<sup>24</sup> *Eastern Book Company v. D.B. Modak* (2008) 1 SCC 1.

it consist a bundle of legal rights and duties. Different bodies have varying rights and responsibilities. As a result, if the government body decides to attribute legal personality in AI then it must specify which precise legal rights and responsibilities this conferral entails.<sup>25</sup>

According to Black's Law Dictionary, 'Legal Entity' means "*the lawful or legally standing association, corporation, partnership, proprietorship, trust, or individual*". "*It has the legal capacity to enter contracts, assume obligations, incur and pay debts, sue and be sued in its own right, and to be accountable for illegal activities.*"<sup>26</sup>

The law only grants rights to those who are formally acknowledged as being either natural persons or artificial people. Recent trends suggest that such legal personhood can be bestowed to robots. Sophia, an Artificial Intelligent Robot, was recently awarded full citizenship in Saudi Arabia, making her the world's first robot<sup>107</sup>. Dr. David Hanson, who created Sophia, stated in article "*Entering the Age of Living Intelligence Systems and Android Society that by 2045, robots will have advanced to the point that they would demand civil rights.*"<sup>108</sup> Japan has also awarded artificial intelligence 'boy' "Shibuya Mirai" residence rights. SAM, the artificially intelligent robot has its own bank account.<sup>109</sup>

Since the industrial revolution, firms and other body corporates have been required to be recognised as distinct legal organisations with the ability to assert their rights, and jurisprudence has evolved in response. The researcher has discuss here the jurisprudence of possibility of attributing legal personhood to AI systems based on the requirement of a living person in this discussion, but with regard to computer generated works as Copyright Acts of either the United Kingdom or India state that "the person who makes the necessary arrangement" would be considered as author of work" by the application of the "doctrine of work made for hire," the researcher will discuss the possibility of attributing legal personhood to AI systems based on the requirement of a living person. In order to further advance the legal personality of AI, the purpose of this discussion is to identify areas of convergence and compatibility

---

<sup>25</sup> Eliza Mik, 2021, AI as a Legal Person, In: Jyh-An Lee, et.al., Artificial Intelligence and Intellectual Property, Oxford University Press, Oxford, United Kingdom, 1<sup>st</sup> ed., p. 430 ISBN 978-0-19- 887094-4.

<sup>26</sup> Legal Entity, as defined in 2014, Black's Law Dictionary, Thomson West, May 9, 10<sup>th</sup> ed. ISBN-13: 978-0314613004.

between AI and legal personality.

## ii. CONDITIONS OF LEGAL PERSONHOOD

Legal personhood is a legal concept that applies to both corporations and human. Generally, any robot or animal are considered as property, regardless of their consciousness, intelligence or level of autonomy. Robots and similar entities are classified as 'products' for liability purposes. Therefore, giving artificial intelligence or robots legal personality is outside the purview of IP law.

## iii. INTERNATIONAL LEGAL FRAMEWORK

Under international perspective in terms of legal personality, AI and robots are two separate things. The robot is the physical cover of AI in which AI runs, whereas AI is found in codes or software. In this way AI is the brain of robot which cannot be subject matter of legal personality.

But also when the matter is about the legal personality of AI, it cannot be ignored that AI is mostly a product of its creator's intellect known as a programmer who creates the AI's algorithms. The algorithms is claimed to be protected as software under current copyright laws. Even TRIPS and WCT also recognises this aspect.<sup>27</sup>

The issue of AI's legal personality has come up on several occasions. However, they were regarded as a work of fiction rather than a viable notion. The notion of giving AI a legal personality is gaining popularity these days. The autonomy and independence of AI, as well as the lack of human control, can be used to justify it. However, swift progression of AI technology is most essential reason for this concept's appeal.

The European Parliament has suggested that the following aspects be examined and considered as a potential legislative solution:

*“creating a specific legal status for robots in the long run, so that at least the most sophisticated autonomous robots could be established as having the status of electronic persons responsible for making good any damage they may cause, and possibly applying electronic personality to cases where robots make autonomous decisions or otherwise interact with third parties independently.”*

Later on the European Commission approved a proposal for establishing uniform guidelines for the Artificial Intelligence Act in 2021, which address the issues brought

---

<sup>27</sup> Lawrence B. Solum, 1992, Legal Personhood for Artificial Intelligences, *The North Carolina Law Review*, vol.70, no.4, p.1231

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)  
<https://www.ijalr.in/>

on by the establishment, application and liability of AI, but which omits any reference to the legal personality of robots. However, this suggestion was dropped very quickly after that.



**REFERENCES**

1. Agarwala T. Gender hierarchy to gender equality: An agenda for transition in higher education. *Gender in Management: An International Journal*. 2015 Jul 6;30(5).
2. Aina OI. Gender equality in higher education in Nigeria: The case of Obafemi Awolowo University-Carnegie gender equity initiative. *InProceedings of the Women Conference 2005*.
3. Aktas SG, Kumtepe EG, Kantar YM, Ulukan IC, Aydin S, Aksoy T, Er F. Improving gender equality in higher education in Turkey. *Applied Spatial Analysis and Policy*. 2019 Mar 15;12:167-89.
4. Albenga V. Between knowledge and power: Triggering structural change for gender equality from inside in higher education institutions. *The politics of feminist knowledge transfer: gender training and gender expertise*. 2016:139-56.
5. Beauchamp-Pryor K. From absent to active voices: Securing disability equality within higher education. *International Journal of Inclusive Education*. 2012 Mar 1;16(3):283-95.
6. Berggren C. Gender equality policies and higher education careers. *Journal of Education and Work*. 2011 Feb 1;24(1-2):141-61.
7. Black SE, Brainerd E. Importing equality? The impact of globalization on gender discrimination. *ILR Review*. 2004 Jul;57(4):540-59.
8. Bönisch-Brednich B, White K. Whatever happened to gender equality in Australian and New Zealand universities?. In *Gender, Power and Higher Education in a Globalised World 2021* Aug 25 (pp. 93-115). Cham: Springer International Publishing.
9. Cardona-Moltó MC, Miralles-Cardona C. Education for gender equality in teacher preparation: Gender mainstreaming policy and practice in Spanish higher education. In *Education as the Driving Force of Equity for the Marginalized 2022* (pp. 65-89). IGI Global.
10. Cobanoglu F. Gender Equality in Turkish Higher Education. *International Journal of Higher Education*. 2018;7(5):97-113.