
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**NAVIGATING THE LAWS AROUND ARTIFICIAL INTELLIGENCE &
COPYRIGHT LAWS IN INDIA, U.S. & UK.**

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**INTRODUCTION TO ARTIFICIAL INTELLIGENCE & INTELLECTUAL
PROPERTY RIGHTS**

Artificial Intelligence consists of two words: 'Artificial,' which means 'man-made,' and 'Intelligence,' which means 'thinking power.' Hence, we can say AI is "a man-made thinking power."³ So, we can interpret it as AI being machines that can act and think like humans and are capable of making decisions like them.⁴ Different AI tools do various tasks like gathering and rearrange textual and numerical data, for example, Deep AI and Midjourney, provide visual content, and ChatGPT and Google Bards produce written responses.⁵ As a result, AI technologies are created with particular demands and applications.

With the latest developments of text, images, graphics, animations, poems, songs, and music, it seems evidentiary that how creative and knowledgeable AI systems are getting intertwined henceforth, with growing technologies, we must overview the existing IPR laws that will be relevant in the field of AI. The issue that is of utmost importance in the field of AI & IPR is who will hold ownership and authorship of the works generated through AI. At present, under the Copyright Law only human creations are given protection.⁶

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³World Travel & Tourism and Microsoft, "Introduction to Artificial Intelligence Technology" 4 (JANUARY 2024) available at <https://cdn-dynmedia-1.microsoft.com/is/content/microsoftcorp/microsoft/final/en-us/microsoft-brand/documents/2024-wttc-introduction-to-ai.pdf> (last visited on Mar. 26, 2025)

⁴*Ibid.*

⁵*Ibid.*

⁶Aditi Chauhan and Kashmir Singh, "Intellectual Property Rights and Artificial Intelligence: A Path to the Future" 29 *Researchgate* 655-72 (2023).available at <https://www.researchgate.net/publication/377002448> (last visited on Mar. 23, 2025)

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Considering the importance of the issue, the World Intellectual Property Organization has organised various sessions regarding AI & IPR. In 2019, WIPO launched a public consultation and its Second Session was held on 13th December, 2019, discussing about impact of AI in the field of Copyright, Patents, data, design etc.⁷ Till now, WIPO has conducted 10 sessions have been held and 10th session was held on November, 2024.

Some of the recent case laws that highlights AI & IPR:-

- *The DABUS case*,⁸ an AI system under the name of DABUS was used to invent two products, the application was filed before various countries for patenting the products. US, UK, EU and Germany did not give patent to AI. South Africa allowed AI as an inventor and Australia initially, allowed DABUS (AI) as inventor but, it was later overturned in an appeal.
- *Image Processing Technologies LLC v. Samsung Electronics Co*,⁹ the plaintiff in this particular case filed a case against Samsung for infringing various patents using AI. After findings by the court, it was observed by the Court and ruled in favour of Image processing stating that Samsung has violated patents.

These case laws show that in the field of IPR, AI is advancing at a swift pace and there is a need for a better legislative framework to keep the pace. We can encourage innovation and guarantee that the advantages of AI are equitably distributed by making sure that IPR regulations keep up with technical developments.

ARTIFICIAL INTELLIGENCE & COPYRIGHT LAW

⁷ World Intellectual Property Organization. "Draft issues paper on intellectual property policy and artificial intelligence" (2019), available at https://www.wipo.int/edocs/mdocs/mdocs/en/wipo_ip_ai_2_ge_20/wipo_ip_ai_2_ge_20_1.pdf (last visited on Mar. 25, 2025)

⁸ Saransh Chaturvedi, The Curious Case of Dabus: Who should own the AI-Related inventions? *SCC TIMES ONLINE*, (26th December, 2020), available at <https://www.scconline.com/blog/post/2020/12/26/the-curious-case-of-dabus-who-should-own-the-ai-related-inventions/> (last visited on Mar. 23, 2025)

⁹ Mohd Akhter Ali and M. Kamraju, "Impact of Artificial Intelligence on Intellectual Property Rights: Challenges and Opportunities" 1 *Osmania University Journal of IPR [OUJIPR]* 21-50 (July, 2023), available at https://www.researchgate.net/publication/376751087_Impact_of_Artificial_Intelligence_on_Intellectual_Property_Rights_Challenges_and_Opportunities (last visited on Mar. 26, 2025).

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With more usage of AI for creativity, it has started to challenge copyright law. In the case of “*Edmond de Belamy*” artwork,¹⁰ a French artist used AI system to make a portrait called ‘Edmond De Belamy’ and it was sold for \$400,000 at an auction. The creator was given credit but raised concerns regarding the amount of AI used in the creation. Such cases pose pertinent questions, who will be the author/owner in AI-generated work? If humans and AI are involved, can they get the status of co-authorship? Can AI-generated work be given copyright protection?

In 2022, the Colorado State Fair Fine Arts Competition was held. Artist Jason Allen used Midjourney, an AI image-generation tool, to create an artwork under the name ‘*Théâtre D’Opéra Spatial*’ and won first place in the digital category.¹¹ This news sparked criticism on Twitter and one of the users commented, ‘We’re watching the death of artistry unfold before our eyes’.¹²

Thus, AI is giving tough challenges to Copyright Law, and it is getting difficult to cope with the new technology as it surrounds so many burgeoning issues like data training the AI, ownership, AI input to output, prompts etc. Many countries are facing this issue. Through this paper, we will discuss a comparative study between India, US and UK and what is the current scenario, the steps taken towards this issue and how they will tackle the issue.

COMPARATIVE ANALYSIS

❖ INDIA

India's copyright system is governed by the Copyright Act, 1957. This Act gives copyright protection to creativities like sound recordings, cinematograph films, and literary, dramatic, musical, and creative works.¹³ However, many factors, including the work's uniqueness and the author's inventiveness, must be met for a generated work to be granted copyright. With the rise in technology, AI is used to produce literary work like poems, musical work, sound recordings etc but, the Act at present gives protection to human creativity and not to AI-

¹⁰Ziv Epstein, Sydney Levine, David G. R., and Iyad Rahwan, "Who Gets Credit for AI-Generated Art?" *iScience*, 23, 101515 (2020), available at [https://www.cell.com/iscience/fulltext/S2589-0042\(20\)30707-0](https://www.cell.com/iscience/fulltext/S2589-0042(20)30707-0) (Last visited on Mar. 23, 2025).

¹¹Matthew Gault, “An AI-Generated Artwork Won First Place at a State Fair Fine Arts Competition, and Artists are Pissed”, *Vice*, Aug. 31, 2022, available at: <https://www.vice.com/en/article/an-ai-generated-artwork-won-first-place-at-a-state-fair-fine-arts-competition-and-artists-are-pissed/> (last visited on Mar. 25, 2025).

¹²*Ibid.*

¹³*Supra* note 3 at 37.

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generated work.¹⁴ AI is trained by feeding massive data and by giving a certain prompt can produce an output. This leads to certain issues like: -¹⁵

- i. Does training AI data models with copyrighted material result in copyright infringement?
- ii. Can AI-generated output have an element of originality?
- iii. Who will be the author in case of AI-generated work?

➤ *Training AI Data Models*

The bigger issue is that most of the data through which AI is being trained consumes enormous data available on the internet for example: Google Bard is built through a language model 'LaMDA' which uses 1.56 trillion words from the internet and 137 billion parameters which helps the AI to interact with the user.¹⁶ Other AIs, like ChatGPT and DeepAI have been trained using enormous data from the internet and give output accordingly.¹⁷

The data used to train AI is copyrighted, and the companies do not obtain consent from the artists. Thus, this results in Copyright infringement. Copyright Law, 1957, has no particular law to control violation of such infringements, and it defeats the purpose of the act i.e. to encourage and boost creativity.

On February 13, 2025, Big music companies like Saregama, T-Series, and the Indian Music Industry (IMI) voiced their concerns before the Delhi High Court, alleging that OpenAI trains its AI models using recordings, compositions, and song lyrics that are protected by copyright without obtaining the required permissions or royalties.¹⁸

Under the Copyright Act, 1957, S.2(m) defines 'infringing copy' and S. 14(a)(i) mentions reproduction of Copyright work in any material form including the

¹⁴*Supra* note 3 at 38.

¹⁵V.K.Ahuja, "Artificial Intelligence and Copyright: Issues and Challenges" *ILI Law Review* 270-285 (2020), available at <https://ili.ac.in/pdf/vka.pdf> (Last Visited on Mar. 24, 2025).

¹⁶*Supra* note 3 at 37.

¹⁷*Supra* note 3 at 37.

¹⁸Krishna Yadav, "ANI v. OpenAI: Delhi HC Orders OpenAI to Respond to Plea by Indian Music Industry in Copyright Case", *Mint*, Feb. 17, 2025, available at: <https://www.livemint.com/news/india/ani-vs-openai-copyright-infringement-indian-music-industry-lawsuit-ani-lawsuit-against-openai-training-ai-models-11739791694307.html> (last visited on Mar. 30, 2025).

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storing of it in electronic means including in the case of a literary, dramatic or musical work.¹⁹ Thus, there is a difference in reproducing a work and infringing the work. The Copyright Act gives protection only to expression of idea and not to the idea and the same was reiterated in *RG. Anand case*.²⁰ The demarcation between idea and expression entails that if reproduction exploits the expression of an idea stored in some material format will come under the purview of Copyright and not the idea. This principle prompts a complex compromise that copyright is restricted only to the extent of reproduction, which is to appreciate the creator but the idea in the creativity is not covered under the Act.²¹ India also recognizes the *de minimis* criterion i.e. if only small portions of the expression are used and does not amount to a substantial portion of the creative work.²² The question arises whether copying or storing something that is wholly non-expressive or non-consumptive—that is, copying that is done solely to extract information/ideas for training AI models can result to copyright infringement rather than appropriating the expression of the said work or exposing it to any human being.²³ At present, the Copyright Act, 1957 is not equipped enough to cover such infringements, and this calls for a better legal framework to tackle issues of AI & Copyright.

➤ *Element Of Originality*

In *D.B. Modak and Anr. v Eastern Book Company and Ors.*,²⁴ the Court rejected the doctrine of the ‘sweat of the brow’ and focused on minimum creativity i.e. modicum of creativity. The Court ruled that creativity should have a minimum level of creativity to be protected under the Copyright Act. But, in the case of AI it is difficult to say that the output given by AI will hold any element of creativity or originality as they are machines and are trained by feeding information.²⁵ The output generated is a manipulation of a chunk amount of data fed into the machine from various sources to generate an output. Additionally, AI has not done any

¹⁹ COPYRIGHT ACT, 1957

²⁰ *RG. Anand v. Delux Films*, (1978) 4 SCC.

²¹ Sneha Jain and Akshat Agrawal, “Indian Copyright Law and Generative AI”, *SAIKRISHNA & Associates Advocates*, Feb. 17, 2025, available at: <https://www.saikrishnaassociates.com/indian-copyright-law-and-generative-ai/> (last visited on Mar. 23, 2025).

²² *Ibid.*

²³ *Ibid.*

²⁴ *Supra* note 3 at 38.

²⁵ *Supra* note 3 at 38.

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laborer effort to qualify for the 'sweat of the brow' doctrine, it can withhold a minimum level of creativity.²⁶

In the case of AI, since the input given is human-controlled, the output generated cannot be controlled by humans. Also, the output can be distorted, toxic, or obscene, which is beyond human power.²⁷ Considering the same, how can we maintain originality in creativity, and who will be given credit for the same AI or humans?

➤ *Ownership/Authorship in AI-Generated Work*

The Copyright Act protects human creativity and originality. With the increase in the application of AI it is a challenge to understand whether AI can be recognised as an author in creative works.²⁸ At present, most countries give more preference to human creativity and in an AI-generated work only if there is a good amount of human creativity or only that part where human creativity is involved gets copyright protection.

In India, the *RAGHAV* case is one of the landmark cases of authorship under Copyright Law and AI-generated work. In the *RAGHAV case*,²⁹ Ankit Sahni, Artist and Attorney, used an AI-program called RAGHAV ("Robust Artificially Intelligent Graphics and Art Visualizer") to produce an artistic piece called "SURYAST". Ankit then filed this piece for copyright registration in the Copyright office under the authorship of 'RAGHAV'. The Copyright Office refused to give copyright registration to an AI, and the application was rejected.³⁰ Thereafter, Ankit again applied for Copyright Registration before the office under the co-authorship of 'RAGHAV & ANKIT,' which was accepted by the Indian Copyright Office. Ankit then applied for Copyright Registration with the U.S. Copyright Office, and they rejected the application of Sahni, saying that the piece lacks human creativity and after rejection by the US Copyright Office, India in

²⁶*Supra* note 3 at 38.

²⁷*Supra* note 14 at 275.

²⁸*Supra* note 14 at 274.

²⁹Stuart D. Levi, Mana Ghaemmaghami, *et.al.*, "Copyright Office Rejects Application for AI-Generated Work Based on a Photograph", *Lexology*, Dec. 14, 2023, available at <https://www.lexology.com/library/detail.aspx?g=ec8ed199-352b-4c6b-aad9-2b6d85dcf300> (last visited on Mar. 23, 2025).

³⁰*Ibid.*

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December 2023 withdrew the application and refused to give copyright protection.³¹

This was the first case in India dealing with authorship in AI-generated work. It is important to note that India is not willing to give copyright protection solely to AI but there seems to be a possibility that co-authorship between humans and AI would be allowed depending upon the involvement of humans in AI-generated work. So, this case gives hope that co-authorship between human and AI-generated work can be given copyright protection depending upon the quantum of human input in that creativity. This case shows that sole ownership will not be granted to AI work, and without human intervention, AI work has no meaning under Copyright Law.

Currently, India is silent on such issues by far, RAGHAV is the only case that has thrown certain light on this issue. It is difficult to contemplate the application and extent of the fair-use doctrine in cases of AI. Henceforth, to encourage creativity, a balance is needed to restrict generative AI models.

❖ **UNITED KINGDOM (UK)**

With the third-highest number of AI research paper contributions per capita worldwide, the UK boasts top-notch talent and research.³² From music, cinema, and design to visual arts, theatre, and media, the UK is a global leader in creative industries, a rapidly expanding field driven by human ingenuity.³³ Through the development and utilization of intellectual property, particularly copyright, these sectors improve our quality of life and generate economic and social value. The usage of AI is becoming more apparent in almost all industries, including the creative area, and this certainly challenges the copyright law. Considering the depth of the issue, UK along with Intellectual Property Office, Department for Science, Innovation and Technology and Department for Culture, Media and sport launched a public consultation on 17th December, 2024 and published it on Gov.UK. The UK government posted various issues, proposals, recommendations to

³¹*Ibid.*

³²Gov.UK (Intellectual Property Office), "Copyright & Artificial Intelligence" 1-42 (2024), available at <https://www.gov.uk/government/consultations/copyright-and-artificial-intelligence/copyright-and-artificial-intelligence> (last visited on Mar.26, 2025).

³³*Ibid.*

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cater to the issues and opened it for the public to give their suggestions by 25th February, 2025.³⁴

❖ *Training AI and AI Inputs*³⁵

To train AI models enormous data is fed into them which includes copyright work as well. 'Data Mining' is a technique that processes humongous amount of information to train AI models and if the data uses any copyright protected work, then the consent of the copyright owner is required. UK is facing similar issue of copyright infringement while training AI data model. In December, 2024, to tackle the problem a public consultation was launched where questions on training AI, AI inputs and AI outputs were and violation of copyright law due to AI-generated work.

Getty Images, Inc. v. Stability AI, Inc.,³⁶ in February 2023, the image licensing company filed a case against Stability AI company alleging that the latter had unlawfully duplicated more than 12 million of the images in its collection, altered or deleted its copyright management information, and provided false copyright management information.

There were various proposals to change the current Policy to achieve its goals for AI inventors and the creative sectors. The recommendations for Policy changes were as follows:-³⁷

- 1) *OPTION 0*: No change in the current Law and status quo is maintained for creators and innovators, and AI can take large datasets from the internet and face legal issues.
- 2) *OPTION 1*: To train AI models with data, proper licenses have to be taken by AI companies to use data and give proper remuneration to the artists. There will be more control of the copyright owners in such cases.
- 3) *OPTION 2*: In this AI models can use broad data mining information without any intervention of copyright owners. With few or no limits, the

³⁴*Ibid.*

³⁵*Id.* at 42

³⁶Peter Dalton, Heather Newton, et.al., "Navigating Representative Actions: Takeaways from Getty Images V Stability AI", Herbert Smith Freehills, Jan. 31, 2025, available at: <https://www.herbertsmithfreehills.com/notes/ip/2025-01/navigating-representative-actions-takeaways-from-getty-images-v-stability-ai> (last visited on Mar. 27, 2025).

³⁷*Supra* note 31 at 15-17.

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exception would allow commercial use for any purpose. Hence, no remuneration can be claimed by the creators of copyright work from AI firms.

- 4) *OPTION 3*: This allows that AI can be trained on data where creators have not reserved their rights and AI can have full access. AI developers can train on large volumes of web-based material without risk of infringement.

There were certain proposals made in the consultation report to deal with AI & Copyright Law:-

a) *Exception with Right Reservation*³⁸

Under this data mining can be allowed for commercial purpose if that data is readily available on the internet or under any contract like through a subscription model like access to e-library etc. This process would help creators with some remuneration or incentives. It is important to note, this would be allowed only if the creator has not reserved any right but, if any rights are reserved by the creator then requisite license is needed for data mining. Through the process of licensing the creators understand that their work is used in training the AI models and to what extent. If licenses are not obtained then that will be copyright infringement and creator can ask for remuneration from AI developing companies. This would enhance transparency between creators and AI-firms.

b) *Technical Standards*³⁹

The creators can use various technologies to show that the work is not available to copyright. Like flagging or notification to AI model that this work cannot be used for training purposes. There are various technologies available through which the process of notification becomes convenient like Spawning. AI's "Do Not Train" registry.

c) *Contracts & Licensing*⁴⁰

³⁸*Supra* note 31 at 18-20.

³⁹*Supra* note 31 at 20-22.

⁴⁰*Supra* note 31 at 23-24.

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To access information, AI firms can directly approach creators and, by way of contract or by obtaining a license, can use that information to train AI models. Usually, the creators' and performers' licenses are obtained through collective management organisations (CMOs). At present, there is no such law or license available to AI firms, but if it becomes mandatory to obtain licenses through CMOs would be easy.

To make this a practice, new regulations will be needed to formalise the procurement of licenses to AI developers.

d) *Transparency*⁴¹

Requirements for AI companies and other parties involved in text and data mining to reveal the use of particular works and datasets could be one example of transparency measures. Additionally, information about web crawlers may be revealed, such as who owns the content and why it is being crawled.

➤ **AI OUTPUT**⁴²

These days, generative AI may produce content that closely relates to content produced by humans. The creative industries have expressed several concerns about this, including the necessity for proper labelling and copyright violation in outputs.

Computer-generated work can be categorised into the following parts: -⁴³

- *First*, any work under S.1(1)(a) of the Copyright, Designs and Patents Act, 1988 (CDPA), i.e., any Literary, dramatic, musical or artistic work, should be original and should involve human creation. Any AI is merely used as a tool to edit or arrange human-created work. For example, an AI tool is used to edit a photograph taken by a human. This can be called AI-assisted work.
- *Second*, the output could be a published edition, broadcast, movie, or sound recording. For such "entrepreneurial works" to be protected, they do not have to be unique. Therefore, regardless of how much

⁴¹*Supra* note 31 at 25.

⁴²*Supra* note 31 at 30.

⁴³*Supra* note 31 at 30-31.

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human input was used to create the music, a recording of AI-generated music will benefit from protection.

- *Third*, the CDPA's section 9(3) gives "computer-generated works" (CGWs) special protection. A literary, dramatic, musical, or artistic work that is "generated by computer in circumstances such that there is no human author" is covered by this 50-year protection. This received heavy criticism on 2 main grounds: -⁴⁴

- *Firstly*, it only applies to certain works that are original and the main test for originality is that it should be created by the author which reflects their intellect and personality. It was contradictory that work created by a computer cannot be original; hence, giving copyright protection to non-humans is not fair.
- *Secondly*, that they don't need protection neither economically nor morally. Only humans deserve copyright protection.

Through the discussion, it can be observed that the UK's approach is to maintain a balance between humans and AI-generated creations. The country believes that usage of AI will increase, which will pose more challenges and new challenges and it's important to address certain issues. This country's thought is more forward compared to India and US as it is more susceptible to allow AI firms to generate more creations but, legally or with proper permissions like contracts or licensing. The UK consultation report is more forward with proposals like using notifications or using robot.txt (a tool that prompts on a website which part of website is allowed or disallowed to access). The approach is more prospective and channelizes the control or usage of copyright work in a more legalised manner.

❖ **United States (U.S.):**

Technology has long been used to produce works of authorship. For many years, authors have expanded their range of expression and advanced the objectives of the copyright system by

⁴⁴*Supra* note 31 at 31-32.

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using computer-assisted technology to improve, alter, and add to their works.⁴⁵ However, the potential of the most recent generative AI technologies poses difficult queries regarding the character and extent of human authorship.⁴⁶

The Copyright Law of 1976, over the period, has expanded its horizon and is capable enough to give protection to changing technologies and can protect photos, cinematography, games, computer programs etc. There were few cases before the US Copyright Office to address the issue of ownership in case of AI & Copyright. Some of them are highlighted as follows: -

- In 2022, in the matter of '*Zarya of the Dawn*',⁴⁷ an application was made before the U.S. Copyright Office for a work that combined generative AI and human creativity. The project was a graphic novel with graphics produced by the generative AI system 'Midjourney' and prose written by the human applicant. The Office concluded that copyright covered the human-authored text as well as the human selection and arrangement of the text and photos but not the AI-generated images themselves after asking the applicant about the steps involved in creating the work. Thus, partial copyright protection was given to the human author and not to AI-generated parts.
- In 2023, the case of '*Thaler v Perlmutter*',⁴⁸ came before U.S. Copyright Office. In this case, Thaler created a two-dimensional artwork that was "autonomously created by a computer algorithm running on a machine," the Office declined to register a claim. The Office's Review Board clarified that human authorship is a prerequisite for copyrightability, as well as the fact that the work was created "without any creative input or intervention from a human author," which prevented it from being registered.⁴⁹ A federal district court recently upheld the Office's registration denial.

⁴⁵U.S. Copyright Office, "Copyright and Artificial Intelligence" 1-41 (January, 2025), available at <https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf> (Last visited on 20th March, 2025).

⁴⁶*Ibid.*

⁴⁷Tony Analla, "Zarya of the Dawn: How AI is Changing the Landscape of Copyright Protection", *Jolt Digest*, Mar. 06, 2023, available at: <https://jolt.law.harvard.edu/digest/zarya-of-the-dawn-how-ai-is-changing-the-landscape-of-copyright-protection> (last visited on Mar. 30, 2025).

⁴⁸David Grossman and Keane Barger, "Thaler v. Perlmutter", *Loeb & Loeb LLP*, Aug. 18, 2023, available at: <https://www.loeb.com/en/insights/publications/2023/08/thaler-v-perlmutter> (last visited on Mar. 20, 2025).

⁴⁹*Ibid.*

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The U.S. Copyright office had taken various initiatives to address the issues of AI & Copyright like:-⁵⁰

- a) *Registration Guidance*, in March 2023, under this a policy was issued reaffirmed the idea that human authorship is necessary for copyright protection in the US.
- b) *Public Listening Sessions*: In April & May, 2023, to get feedback on the copyright concerns brought up by generative AI, the Office hosted four public listening sessions. Every session concentrated on a distinct type of creative activity, such as software and print journalism; visual art; audiovisual, including video games; and sound recordings and music.
- c) *Educational Webinars*: In June and July 2023, two public webinars on generative AI were organized by The Office, and almost 2,000 people participated. The first webinar focused on the registration of works with content produced by artificial intelligence and the second webinar was taken by specialists from around the globe to speak about international advancements in copyright law and generative AI.
- d) *Engagement with Stakeholders*: through dozens of meetings with academics, trade associations, individual creators, technological businesses, the creative industries, and many others. The technical details of generative AI models and systems, how creators are utilizing generative AI, and the ongoing concerns of copyright applicants over the registration of works that contain AI-generated content.

The quick rise in the use of AI systems, entanglement between AI & Copyright, and rise in cases garnered a lot of public and media spectacle. Henceforth, the U.S. Copyright Office in August 2023, researched the policy and copyright concerns brought up by "AI" systems.⁵¹ The U.S. Copyright Office issued a Notice of Inquiry (NOI) and invited public comments in this proceeding.⁵²

The issues raised by the U.S. Copyright Office were:⁵³

⁵⁰United States Copyright Office, "Artificial Intelligence and Copyright" 1-18 (August, 2023), available at <https://www.copyright.gov/ai/docs/Federal-Register-Documents-Artificial-Intelligence-and-Copyright-NOI.pdf> (last visited on Mar. 22, 2025)

⁵¹Supranote 49.

⁵²Supranote 49.

⁵³Supranote 49 at 4.

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- (1) *The use of copyrighted works to train AI models:* This Notice requests details regarding the gathering and selection of AI datasets, their usage in training AI models, the origins of training materials, and whether or not copyright owners consent and/or payment is necessary when their works are used.
- (2) *The copyrightability of material generated using AI systems:* The office seeks comments on the appropriate level of copyright protection for content produced with generative artificial intelligence. Even though the law makes it clear that only works written by humans are protected by copyright in the US, there are still concerns regarding where and how to distinguish between information produced by AI and that created by humans.
- (3) *The Potential liability for infringing works generated using AI systems:* This point of contention by the Office is to understand that generative AI systems infringe the copyright law. But how to demarcate the system and dataset developers and the user whose instructions generated the output? If the output is significantly similar to a copyrighted work that was included in the training dataset and the use does not qualify as fair.
- (4) *The treatment of generative AI outputs that imitate the identity or style of human artists:* Even though copyright law often does not protect certain personal characteristics, copying them may violate several state rights of publicity and unfair competition laws.

Through this entire process, the Notice aims to gather opinions and factual data pertinent to the copyright legal and policy concerns brought up by current developments in generative artificial intelligence.⁵⁴ Further, through this information, the Office is trying to analyse the existing law, the unresolved issues, and the Office will use this methodology to provide better information to the public, courts, and other regulatory bodies regarding this matter.⁵⁵

⁵⁴Supranote 49 at 4.

⁵⁵Supranote 49 at 4.

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The U.S Copyright Office (USCO), after contemplating the copyright law and policy issues raised by AI, issued and categorised the report in three parts:-⁵⁶

1. The first part was issued in July, 2024 and discussed 'Digital Replicas'
2. The second part was issued in January, 2025 under the heading 'Copyrightability,' which discussed Copyright and Artificial Intelligence.
3. The third part is yet to be released, which will address the impact of training AI models on copyrighted works, licensing considerations, and the allocation of potential liability.

To understand the current position of Copyright Law we will discuss the first and second part of the report.

a) DIGITAL REPLICAS

Under Federal Law, the Copyright Act gives protection to original work, which encompasses photos, audio or video recordings which can be a base for digital replica.⁵⁷ Digital replicas are digital creations of the subsisting copyright-protected work, for example, by superimposing a person's face onto an audiovisual work or mimicking their voice while singing the lyrics of a musical piece.⁵⁸

Senator Chris Coons, is a member of the United States Senate, and is extremely active regarding the use and regulation of artificial intelligence (AI), he has emphasized towards Artificial Intelligence Initiative Act.⁵⁹

Through a proposal, Digital Replicas was broadly categorised into 2 parts:-

1. No Artificial Intelligence Fake Replicas And Unauthorized Duplications ("No AI FRAUD") Act,⁶⁰ This Act will safeguard against the use of unapproved digital voice

⁵⁶United States Copyright Office, "Artificial Intelligence and Copyright" (August, 2023), available at <https://www.copyright.gov/ai/> (Last visited on Mar. 19, 2025)

⁵⁷ United States Copyright Office, "Copyright and Artificial Intelligence Part 1: Digital Replicas" 1-72 (July, 2024), available at <https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-1-Digital-Replicas-Report.pdf> (last visited on Mar. 20, 2025).

⁵⁸*Ibid.*

⁵⁹*Id.* at 37.

⁶⁰*Id.* at 38.

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copies and digital representations that easily identify a person, as well as create intellectual property rights in voice and likeness.

2. Nurture Originals, Foster Art, and Keep Entertainment Safe (“NO FAKES”) Act of 2023,⁶¹this Act authorizes the use of the image, voice, or visual likeness of the individual in a digital replica” is included in the NO FAKES Act discussion draft. This bill also discussed liability to be imposed under the proposed bill for creating and sharing a digital copy without permission.

The USCO agrees that the ease with which generative AI technologies can be used to produce digital copies of people's voices and images has brought attention to legal loopholes and sparked worries about the potential harm that could result from improper use. The USCO suggests that Congress should create a federal right that shields everyone from the deliberate dissemination of illegal digital copies for the duration of their lives.

b) COPYRIGHTABILITY

A work created using AI, will be given copyright protection or not will depend upon facts and circumstances of the creation. It is important to adjudicate in an AI-based case, whether AI acted as an assistant or the work was dominated by AI or the entire work was produced by AI.

The main issue concerning copyrightability is authorship and ownership in case of Artificial Intelligence. There are few concerns with regard to ownership which are discussed below:-

➤ *Technological Background*⁶²

- A large number of AI systems that are now accessible to the general public may produce an output from one or more inputs, including text, images, audio, video, or a mix of these. A "prompt" is a typical input format, frequently text, that conveys the desired output characteristics.

⁶¹*Id.* at 40.

⁶² United States Copyright Office, “Copyright and Artificial Intelligence Part 2: Copyrightability” 1-41 (January, 2025) available at <https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf> (Last visited on Mar. 21, 2025).

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- In response to these inputs, the AI system produces an output in the format that has been requested (text, image, audio, video). In addition to describing the general style, tone, and/or visual method, prompts usually identify a topic, theme, and/or issue that the user wishes to invoke.

➤ *Legal Background*⁶³

- In U.S., the Copyright law gives protection to human creations and through various case-laws like ‘Zarya of the Dawn’, ‘Thaler v Perlmutter’, the courts have re-iterated that they only believe in human ownership and not in non-human creations.
- Humans must be involved in the creation process, further, the work should be original, and only time or effort involved in the creation will not be the criteria to qualify for copyright protection.⁶⁴
- In the case of *Burrow-Giles Lithographic Co. v. Sarony*,⁶⁵ it was discussed that the tool used for photography is a ‘camera,’ so will photography come under the purview of copyright protection? The U.S Supreme Court gave the answer in affirmation, stating that during photography, many parameters are corrected by the photographer like lighting, posing, selecting the apparel, composition etc. Thus, this decision was important to showcase the usage of technological means.
- To adjudge joint authorship, there should be sufficient contribution to be considered an author, and in the case of AI-generated output, the involvement of humans seems difficult. Only giving commands to AI for a certain output will not qualify for copyright authorship under the Copyright Act.

➤ *ASSISTIVE USE OF AI-SYSTEMS*⁶⁶

- Well, there is certainly a demarcation between AI-generated work and AI-assisted work. However, this varies from case to case and depends on how much AI has been used.

⁶³*Id.* at 15.

⁶⁴*Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. at 352–61.

⁶⁵111 U.S. 53, 55–57 (1884).

⁶⁶*Supra* note 61 at 19.

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- AI is already in use in many fields like in case of music, many Academy members are already using generative AI as a tool to assist them in creating new music," as reported by Recording Academy.
- Although, in 'Zarya of the Dawn', partial copyright protection was granted to human creation and AI-generated work was not given protection. So, it seems difficult to contemplate that whether AI-Assisted works will be given protection under the US Copyright act is difficult at present.

➤ *PROMPTS*⁶⁷

- "Prompt engineering" is the term used to describe the process of creating prompts that are most suited to elicit a desired response.⁶⁸
- The complication in the usage of generative AI is that input is in the control of the user, but output is not in the control of the person, and AI can give endless results of the same input in a variety of ways since, there is no user control on the output.
 - For example: the prompt given by the author to CHATGPT is *"please show me an image of a girl standing on a beach and reading a book with a cup in her hand and wearing glasses(centred image composition), (professionally color graded), ((bright soft diffused light)), volumetric fog, hdr 4k, 8k, realistic.*⁶⁹ The output generated by AI was this: -



- Now, the above image shows that it has taken most of the inputs, but most important is whether the output generated harmonizes with the imagination or idea of the creator.

⁶⁷Supra note 61 at 20.

⁶⁸Supra note 61 at 13.

⁶⁹Supra note 61 at 27.

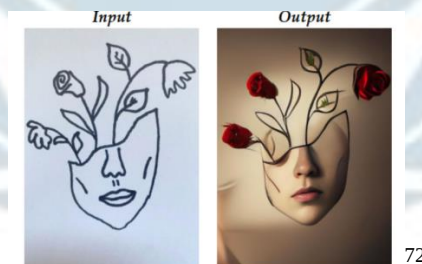
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- The final output indicates the user's acceptance of the AI system's interpretation, not the authorship of the statement it contains, regardless of how many times a prompt is edited and resubmitted.
- It is important that resubmitting or revising prompts might give different results every time. However, the final output must be AI-generated and not in control of the user or the user's imagination.

➤ *EXPRESSIVE INPUTS*⁷⁰

- Well, a pertinent view was put forward in the report that the creator can claim authorship on the inputs created by a human author and entered into AI system as there is the limited scope of expressive output in such a case. For example, a human author has created an image and has put it into AI system and prompted the AI to do certain enhancements like colour or make it high resolution etc. Can such a case be given copyright protection, and can the author claim authorship?

- Let's consider this case: a prompt is given to AI *"a young cyborg woman (roses) flowers coming out of her head, photorealism, cinematic lighting, hyper realism, 8k, hyper detailed."*⁷¹



- Considering this case, the USCO didn't give Copyright protection to the output but gave only to the input, saying

⁷⁰*Supra* note 61 at 30.

⁷¹*Supra* note 61 at 31.

⁷²Tom Hals and Blake Brittain, "Insight: Humans Vs. Machines: The Fight to Copyright AI Art", Reuters, Apr. 01, 2023, available at <https://www.reuters.com/default/humans-vs-machines-fight-copyright-ai-art-2023-04-01/> (last visited on Mar. 18, 2025).

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that the illustration in itself is copyrightable material, and no protection was granted to the output generated by AI.

- A human will be credited as the author of at least that part of the output if they enter their own copyrightable work and it can be seen in the final product.

➤ *MODIFYING or ARRANGING AI-GENERATED CONTENT*⁷³

- A human may pick or arrange AI-generated content in a sufficiently creative way that ‘the resulting product as a whole constitutes an original work of authorship’. An AI-generated work can also be modified to such a degree that the modified work can be given protection under the Copyright Law.⁷⁴
- There are many well-known AI platforms offering tools that encourage users to select, edit and modify AI-generated content in an iterative fashion.
- When AI-generated content is incorporated into a larger human-authored work, the overall copyrightability of the bigger work remains unaffected. For example- in a movie some special effects might be given with the help of AI it will be given copyright protection but, AI generated work will not be separately given copyright protection.
- Even though AI-generated special effects and backdrop art are not copyrighted independently, a movie that incorporates them is.

Considering the discussion above, it seems that at present, no new legislation is needed to tackle the problem of AI and Copyright law and there seems to be enough acknowledgment in the current law. The reports show that Copyright Law is and will pre-dominantly protect human creations and with technology change, the USCO is still not willing to accept AI as a single author or under joint ownership. For a work to obtain copyright protection, the work should majorly be done by humans to get copyright registration.

⁷³*Supra* note 61 at 32.

⁷⁴*Supra* note 61 at 32.

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In *Feist Publications, Inc. v. Rural Telephone Service Co.*,⁷⁵ the Court rejected the theory that “sweat of the brow” alone could be sufficient for copyright protection and explained, “that there should some element of originality even though the creativity involved is very less but, will get the status of copyright” requisite level of creativity is extremely low; even a slight amount will suffice. Currently, the U.S. Copyright Law is not willing to give Copyrightable status to AI-generated work and considering the Thaler case and Zarya of the Dawn it seems the Office will only consider human idea, effort, labour and time and even if the creativity level is low.

CONCLUSION

It can be inferred that the US & UK are concerned about the challenges of AI on Copyright Law and have launched public consultations to understand the public’s views and opinions on the topic. Through Part-2 of the report released by U.S. Copyright Office, it can be inferred that copyright protection to AI-generated work will not be given and only human creativity can claim copyright protection in the current law. Through cases of Zarya of the Dawn and Thaler, it can be adjudged that the part created by humans will be granted copyright registration and anything else created by non-humans will not fall under the purview of copyrightability. So, the U.S. stands on the point that originality and efforts done by human towards their creativity will be given copyright protection.

The UK also launched its public consultation, and through the report, it can be deduced that they want to adopt a balanced approach. The UK agrees that the future is AI, and it will be difficult to stop creativity generated by AI, so it would be better to tackle the issue at present. It can be inferred from the report that the UK is willing to give authorship to AI-generated work but in a legalised manner by way of licenses, taking consent from creators; content which is not reserved on the internet. The report suggests that notification techniques can be used by the creators to prompt AI developers about reserved rights. So, through this report, it can be gathered that the UK has a more balanced approach and wants to adopt the same.

In India, at present, there is no public document available about AI & Copyright. The RAGHAV case is the only one discussed on AI & Copyright law through which it can be adduced that India is more inclined towards human creations and AI solely will not be given authorship or ownership there should be human intervention. When the US office rejected

⁷⁵*Supra* note 63.

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RAGHAV's application because there is less human creation. Thereafter, India also withdrew copyright registration to RAGHAV.

In my perspective, the approach taken by UK maintains that equilibrium between humans and AI and therefore, it is important to make copyright registration stringent and mandatory to adjudge the ratio of human brain and efforts to AI. Therefore, it seems that it is important to disclose in the application the quantum of AI to human or the steps where AI was used to create an object it would be easy to assess whether it is human-made, AI-generated or both. If the nitty-gritty details are disclosed in the registration application then it would be easy to adjudge the quantum of creativity between AI & humans and henceforth, it will reduce the burden on Copyright Offices and Courts. Since, the essence of the Copyright Act, 1957 is to protect human intellect and creativity, it would be unfair to give protection to AI-generated work. Unlike UK, US has made it clear that they are not willing to give copyright to AI-generated work and only to human generated work thus, it prioritizes human creations.

Also, India has portals like 'INDIAAI' launched under the Ministry of Electronics and Information Technology, an initiative by the Government of India. Such platforms can be used to educate students and teachers about aspects of AI, including Copyright Law. '*Public Awareness*' is the key to making the public, along with AI developers, understand about Copyright, Copyright Infringement, and fair-use and educate that all things available on the internet cannot be used for personal or professional use. Also, launching various programs or faculty development programs in this sphere will create more awareness amongst teachers and students. To boost creativity and to incentivize artists, certain steps must be taken by the Government to achieve the balance between human creativity and AI.

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