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Artificial Intelligence as a Creative Entity: Legal Standards, Copyright Limitations, and Emerging Frameworks for Authorship

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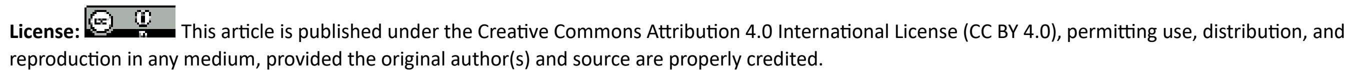
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ABSTRACT

Artificial Intelligence now is far beyond the scope of the first application as the device that helps humans. The existing AI has the power to compose music, draw, compose stories, create videos, create architecture and even compose computer code. The legal question, which this development raises, is: Who is the author of an AI-generated work?

The copyright laws in India were fashioned in a way that could only allow human beings to produce works of creativity. With AI being a significant component of the creativity process, the issues of ownership, rights, and legal protection arise. The notion that humans are the only potential authors provides loopholes in a great majority of jurisdictions, providing that AI-generated works do not fall under the current copyright laws.

The trend in the treatment of the AI-generated works will be discussed in the United States of America, European Union, the United Kingdom, Australia, and India in this paper. Conclusion The findings reveal the fact that the US and EU do not know that AI is an author and its authorship is attributed to the human operator in the UK and Australia. The nation of India is not forthright with varied rulings and lack of information regarding the law. The paper concludes that the existing laws are weak and proposes the new laws to address AI-based creativity.

KEYWORDS

Artificial Intelligence, Copyright Law, Authorship, AI-Generated Works, Originality, Intellectual Property Rights, Comparative Jurisprudence, Legal Reform.

INTRODUCTION

Artificial intelligence (AI) has already become an unavoidable component of human life, even though this can be overlooked; Google search, YouTube recommended videos, autocorrect programs, and so on. Recent technological developments have enabled AI to produce outputs that are more or less akin to the human-created artistic expression, such as paintings, poems, essays, films and computer code. The possible disruptive character of AI in the creative content facet can be observed in the trendy systems, which include ChatGPT, Midjourney, and DALLE.[1]

[1] OECD, *Artificial Intelligence in Society* (OECD Publishing 2019).

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The copyright law was however established on the ground that the authors are human beings at all times. This brings a lot of doubt. Who owns a poem which is made by a machine? It is questionable whether a non-human person can be having rights. Otherwise, who is the owner of it; either the user, the programmer or the company that is implementing the AI model?[2]

These are questions that are bedeviling the courts, legislators and even academicians. The research paper will discuss the underlying problems of legal issues presented by AI-generated creativity. It investigates what it means to be an author, the requirements of originality, the absence of intent in AI systems and the inconsistencies between jurisdiction in the world. The paper will also examine the trends in the judiciary and propose reforms that are acceptable in the present technological landscape.

HISTORICAL BACKGROUND

The copyright law was created to safeguard the human creative expression based on originality, labour, skill and judgment concepts[3]. The early copyright laws and the Berne Convention presuppose that the authors are natural persons. Since ancient times, the artistic works were possible only through the work of human creativity.

The development of digital technology was also bringing in new forms of authorship, and even there, the computers were only considered as a means. The advent of AI generated works dispels these tenets. The revolutionary aspect of AI in relation to the old laws and new realities is that unlike the traditional tools, AI can generate creative work independently without the human intervention, which provokes disagreement with the established rules.[4]

LEGISLATIVE & CONSTITUTIONAL FRAMEWORK

In India, copyright act 1957 recognises human being as the sole author of any work as it just means that an author is a natural person. The law does not state that a non-human entity could create something and since the law has no amendments to consider the AI-generated work, the legal situation is ambiguous.

This traditional direction is also taken by the big copyright treaties of the international level. The Berne Convention makes the assumption that authorship is only by human authors and so do the TRIPS Agreement. Currently, no international convention provides the artificial intelligence with any rights of the author and provides certain principles of protecting AI-based works.

It is because of this fact that there is a major challenge in both courts and policymakers to establish how originality, ownership, and liability should be used to apply to the AI-created works and therefore regulatory framework is less than adequate with the recent technological advances.

CASE ANALYSIS

Stephen Thaler v. Copyright Office

In this case, Stephen Thaler was trying to patent one of his creative pieces that was made entirely under his AI system known as the Creativity Machine[5]. He registered as the author of the copyright registration with the AI itself. The copyright office of U.S rejected the application stating that the copyright act serves to only recognize humans beings as the authors. Thaler further argued that AI was to be considered as an author because the system must have worked out the job independently yet the court did not. The court said protection of copyright requires human creativity, will and mind and none of them can be attributed to an AI. The law that was in place was unable to protect the work since nothing was done

[2] WIPO, 'WIPO Conversation on Intellectual Property and Artificial Intelligence – Issues Paper' (2020)
[3] Laddie, Prescott & Vitoria, *The Modern Law of Copyright and Designs*, 4th ed. (Butterworths, 2011), pp. 91–95.
[4] WIPO, *Revised Issues Paper on Copyright in the Digital Environment* (2020), addressing autonomous AI creativity.
[5] *Thaler v. Perlmutter*, 2023 WL 5333236 (D.D.C. 202

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by a human being in a creative manner. It was adequately established in this case that full AI-generated works are not subject to being copyrighted in the United States.

Zarya of the Dawn (U.S. Copyright Office, 2023).

The case involved a graphic novel in which the writing is created by a human author, whereas the images are created using the assistance of the AI-based Midjourney application.[6] To begin with, the author registered the copyright of the entire piece of work. However, the Copyright Office discovered that the pictures are created through the assistance of AI upon examining the application. The office subsequently revoked copyright on the illustrations and only gave the copyright on the human text written and selection, arrangement, and narrative put in place by the author. The Copyright Office made it clear that any prompt that an AI receives is not a human authorship as the final artistic specifications are not provided to the user. This rendered AI-made images not fit to be copyrighted. The case exemplified the fact that the input of human creativity is very high and it was evident that the visual works produced by AI could not be copyrighted unless a person is involved in a material manner.

History.

Naruto v. Slater (Monkey Selfie Case)

In this bizarre tale, the monkey had caused a controversy in that one of the monkeys had captured an image using a camera of a wildlife photographer thereby leaving a question to whom could own the picture. One of the animal right organizations stated that the monkey had a right to own the copyright as it was the one that was actually used to create the picture[7]. The court ruled out this and the copyright law is simply a recognition of human beings as the authors. In its ruling, the court emphasized that non-human objects like animals cannot enjoy copyright as the formulation of the law is done with the assumption that it is being written by human beings. Although the case is not a direct one regarding AI, nowadays it occupies a very prominent role in the AI discussion. It is also frequently referred to as an effort to prove that animals cannot be writers, thus AI, which is also non-human, cannot be writers. As such, the case supports the legal view that creativity of a human brain work should be copyrighted.

Rupa & Co. v. Dawn Mills Co. (2000)

The court ruled that originality can only be had when a work contains the human skill, effort and judgment[8]. It underlined the fact that the protection of copyright is supposed to be extended to the creations that are constituted due to the intellectual contribution and free will of an individual. The court made the conclusion that creativity must have been the personal touch of the writer and the mental use.

In the case of the application of this principle to AI-generated works, a limitation surrounds the same. The artificial intelligence systems are founded on computer algorithms and robotic processes and they do not rely on the willful movement of an individual, emotional perception, or self-directed creative thinking. Because of this fact, the originality criterion in place in the case is not attainable when utilizing the output of AI-generated outputs as they are people-oriented.

This ruling therefore favors the idea that the Indian copyright law is founded on human authorship. It implies that the human creative contribution that is necessary to implement to safeguard the works created by AI is not presented in the works created by AI exclusively and, thus, it cannot be regarded as an original one in the Indian law.

Comparative Jurisprudence

The problem of AI authorship is handled in a vastly diverse manner in different jurisdictions. The position of the United States is obvious in this case: it is impossible to afford the copyright protection to the work, which was created by non-

[6] *Zarya of the Dawn* (U.S. Copyright Office Review Board, Feb. 2023).
[7] *Naruto v. Slater*, 888 F.3d 418 (9th Cir. 2018).
[8] *Rupa & Co. v. Dawn Mills Co.*, (2000) 76 DLT 499 (Delhi High Court).

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human being, and AI systems simply should not be perceived as the authors at all. This is the same opinion of the European Union, as even their copyright system continuously stresses the fact that the authorship must be of the natural person.

On the other hand, the Commonwealth jurisdiction is less stringent. The United Kingdom recognizes the existence of computer generated works and invents the human person who provides the required facilities in the process of creating the work as the legal author. Australia also follows a very similar strategy where the assignment of authorship is based on the work of humans and not on the idly-AI system.

In India, the law is highly uncertain, and the existing copyright regulations do not apply to AI-generated content, not to mention the inconsistency of the court decisions. Meanwhile, China and Japan are engaged in the consideration of potential changes, but neither country has formulated or enacted any specific AI authorship legislation.

ISSUES, GAPS, AND CHALLENGES IN THE CURRENT LEGAL SYSTEM

The most significant problem is that the existing copyright laws are simply humanistic and they are created with the assumption that creativity is merely the product of human thought and images. This is a tremendous strain in the instance of artificial intelligence content.
The originality test is also not an easy issue since AI systems do not possess intent, mind, and discretion all of which are traditionally held as part of creative expression, and it is difficult to expect a court to legalise AI output as original.Besides, the works never come out of an emotional, personal, or artistic intent by AI systems. Instead they exist as formulas and patterns of data and, in this way, they resist the conventional ideas of artistic motivation and expression.
The matter of ownership is rather debatable as well since the developers, users, companies are all engaged in the generation of the AI outputs, and the current legislation does not offer the clear picture of who should be regarded as the rightful owner.The second major loophole is the liability since it is not evident who should be held accountable in the event that AI generates content that violates, harms or deceives. In such cases, it is often difficult to place blame that is the responsibility of the courts.In terms of economics, the ability of AI to produce a huge amount of cheap material within a limited period of time could negatively affect human creators, artists, as it would flood the market and reduce the value of products made by humans.
The other ethical concern is that AI systems are easily trained to generate biased or discriminatory or plagiarised information by accident because the information that they are being trained on is biased.In addition, there is the international dimension that makes it complex. The legal basis of the AI-generated work in the lawyer standards in various countries vary and lead to imbalance in the protection and enforcement across the borders, leading to uncertainty, in the international digital marketplace.

CRITICAL ANALYSIS & DISCUSSION

Artificial Intelligence fundamentally destabilizes classic ways of thinking of authorship, creativity, and meaning. The existing copyright policy has not been able to match the existing technological developments and thus, there is a lot of confusion regarding who should be regarded as the generator of AI-generated content. The confusion compromises the effectiveness and enforceability of copyright protection in the contemporary digital production.
The solutions adopted in both the United Kingdom and Australia are not complete as they place authorship on the human being who works or coordinates the process of creation and not on the AI. Whereas this model functions at the present level, it falls short when there is high-level AI deployment when much or no human assistance is required.
In its turn, the position of the United States and the European Union is purely humanist, asserting that natural persons should be the only authors. Although such an approach permits retaining the traditional concepts of the creative process of art, most AI-created pieces are not subject to the jurisdiction of the copyright law whatsoever, which leaves a legal loan gap by the new forms of creativity to the new types of creative works.
The most dubious example is India, in which both legislature and court decisions fail to give an educative opinion. This has been augmented by underdeveloped statutory reform and unequal administrative reactions to provide a very uncertain legal climate.

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Scholars and international organisations are increasingly arguing that a hybrid regulatory framework is required such as WIPO, OECD and UNESCO. In this type of model, there would have to be a balance established between giving technological innovation a boost and safeguarding human creativity, reasonable economic incentives and ethical considerations which pertain to AI-generated works.

CONCLUSION

Artificial Intelligence is still an unprecedented evolution, which demonstrates the capacity to give birth to artworks in every of its facets. Despite this technical breakthrough, the copyright law and its general position remain on the premise that, only humans are capable of being creative, as a human prerogative. AI is therefore not an independent author in any of the jurisdictions, and this leaves a lot of uncertainty concerning originality, the ownership of AI-created content plus responsibility.

In the comparative analysis, it is indicated that even though the various countries have adopted many approaches, none of the models that have been implemented can adequately address the issues that AI-generated creativity raises in a different light. It demonstrates how desperate the legislators must feel about the need to revise and modernise the copyright systems that will allow protecting human creators, encourage innovativeness and create a fair creative environment.

The future reforms must be geared at enhancing the level of transparency in the use of AI, establishing clear parameters on the extent of human interaction that is necessary and setting clear cut parameters on the liability and encouraging greater harmonisation across the borders. In the absence of such updates, the courts and creators will be in the dark, and AI-generated work will not be in a grey area.

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