AI And Copyright

[Saurabh R. Wagh, Dr. Shaista Peerzada, Prof. Nikhil Rote]

[Research Scholar, Associate Professor, Assistant Professor]

Abstract: In the realm of AI and copyright, secondary data analysis reveals a landscape characterized by the burgeoning capabilities of artificial intelligence to autonomously generate creative content, challenging traditional copyright principles and raising questions about authorship and ownership. This analysis delves into the evolving debates surrounding copyright infringement, as AI's capacity to replicate and transform copyrighted materials blurs the lines between original works and derivative content. The nuanced concepts of "fair use" and "transformative works" are under scrutiny in the context of AI-generated content, leading to legal disputes and the need for sophisticated copyright infringement detection mechanisms. Additionally, secondary data underscores the complexities of licensing and royalty arrangements for AI-generated content and highlights the ethical and social concerns associated with the impact on human creativity and potential job displacement in creative industries. It emphasizes the importance of global considerations and harmonization of international copyright laws. Ultimately, this secondary data analysis illuminates the multifaceted nature of the AI-copyright intersection, necessitating ongoing research and informed policy decisions to navigate this evolving terrain.

Keywords: Artificial Intelligence, Copyright, WIPO, Legal, WTO

1. Introduction

There have been major shifts in how intellectual property rights are protected in recent years. While governments have been working to address concerns raised by the World Intellectual Property Organisation and the World Trade Organisation, experts in the field have noted that the pace of recent scientific advancements in the intellectual property sphere appears to outpace existing scholarly literature in the field. This highlights the urgent need for additional in-depth study in the IP field and its regulation to stay up with the rapid developments in this area.

One such area that has come to the forefront is machine learning, more commonly known as Artificial Intelligence (AI). AI is “the ability of a computer or a robot controlled by a computer to do tasks usually done by humans because they require human intelligence and discernment. Although there are no AIs that can perform the wide variety of tasks an ordinary human can do, some AIs can match humans in specific tasks.”

From when until when, the Director General of WIPO organised three meetings to address the implications of AI for IP rights. Concerns about government engagement in AI-related concerns at the time included, among other things, the creation of policies and plans meant to encourage AI development and the introduction of regulatory efforts. The complicated issues of who should get credit for ideas and creations that were helped along by AI were discussed by a panel of specialists.

2. Objectives of study

1. To define the concept of artificial intelligence.
2. To define the concept of copyright.
3. To define the relationship between AI and copyright.
4. To prevent copyright infringement when using AI for content creation.

3. Research Methodology

The study's analysis draws from a wide range of secondary sources, including reports from both government and non-government organisations, books, periodicals, and research papers. Journal articles, online reports, etc.
4. Artificial intelligence

The term "Artificial Intelligence" was coined by John McCarthy in 1956 to describe the burgeoning discipline of computer technology. The term "artificial intelligence" is currently undefined in the legal system. A machine's "artificial intelligence" could be defined as its capacity to do tasks traditionally associated with human intelligence." With the goal of "the science of making computers do things that require intelligence when done by humans," Ray Kurzweil first used the phrase "artificial intelligence" in 1990. "The ability of machines to perform cognitive tasks such as thinking, perceiving, learning, problem solving, and decision making" is a typical definition of artificial intelligence (AI).

According to Russ Pearlman, the primary goals of artificial intelligence are reasoning, knowledge, planning, learning, natural language processing (e.g., understanding and speaking languages), perception, and the ability to move and manipulate objects. Specifically, (i) "expert (or knowledge-base) systems," (ii) "perception systems," and (iii) "natural language systems" are the three types of AI systems recognised by WIPO.

"Artificial neural networks" are the backbone of artificial intelligence because they are "brain-inspired systems that are designed to emulate the way the human mind learns". Because of their inherent capacity for self-improvement, artificial neural networks "enable them to produce better results as more data becomes available". Thus, AI produces a computer capable of independently or with minimum human aid doing activities that would ordinarily require human intelligence. Some of the various subfields that make up artificial intelligence include machine learning, robotics, language processing, and deep learning. Therefore, two branches of artificial intelligence are "machine learning" and "deep learning. Any method that "allows it to learn from data input, and to evolve and make future decisions" automatically or under human guidance is necessary for a computer to engage in machine learning. Machine learning algorithms, in other words, learn from the information the programmer gives them in order to make decisions independently. That's why it's up to the programmer to set limits and the AI to generate assignments. "The terms "deep learning" and "natural language processing" appear frequently in discussions of AI. By combing through massive volumes of data and spotting patterns, these techniques can teach computers to do tasks like the creation of unique material.

When artificial intelligence (AI) is applied, two sorts of creative results can be achieved: (i) "AI-generated" results and (ii) "AI-assisted" results. "AI-generated works" (also "generated autonomously by AI") refers to creations made by AI without any input from a human creator. AI "may change its behaviour during operation to respond to unanticipated information or events" and produce unanticipated work. However, "AI-assisted" works are created with significant human input.

5. Preventing Copyright Infringement When Using AI for Content Creation

a) Properly Source Training Data
First, you need to check that the AI model used to develop the work wasn't trained on any protected content without the owner's consent. Training data should be either freely available or used after obtaining the necessary permissions.

b) Review Output for Similarities
Secondly, it is essential to review the output of the AI-generated work and ensure that it is not substantially similar to existing copyrighted works. This can be done by conducting a thorough search of existing works, using specialized software to identify similarities, and engaging a copyright attorney to assist with the review process.

c) Include AI Notice in Generated Work
Third, it's best practice to add a disclaimer in the output that explains how AI was utilised, how much human input was used, and where the training data came from. This can serve as evidence that the work was made with a regard for copyright regulations and the rights of other artists in mind.

d) Stay Informed on Evolving Laws and Best Practices
Last but not least, it's crucial to stay abreast of legal and ethical issues pertaining to the usage of AI-generated works. Copyright rules and regulations will certainly change as AI develops to account for the realities of AI-created content.
6. Copyright

Indian law provides copyright protection for writers (including creators of computer programmes, tables, and compilations, as well as creators of dramatic, musical, artistic, cinematic, and sound recordings expressed in words, codes, schemes, or any other form, including a machine readable medium).

The copyright system does not protect ideas but rather the ways in which those ideas are communicated. Under section 13 of the Copyright Act of 1957, authors and creators of literary, dramatic, musical, artistic, cinematic, and sound recordings are all guaranteed legal protection. Books and computer programmes alike are safeguarded by the law.

According to Section 14 of the Act, the owner of copyright is granted a set of exclusive privileges. Only the copyright holder, or a third party with the copyright holder's express permission, may exercise these rights. The right to modify, reproduce, publish, translate, and disseminate is included here, among other rights.

All creative works, whether literary, artistic, musical, dramatic, cinematic, or audio recorded, are entitled to copyright protection. The term "original" refers to a piece of work that has not been plagiarised. A work is automatically covered by copyright protection upon creation, and registration is completely voluntary. But being registered is usually a good idea because it provides additional security. A copyright registration is only prima facie evidence that an entry has been made in respect of the work in the Copyright Register maintained by the Registrar of Copyrights and does not provide any rights.

7. Artificial intelligence and Copyright Law

Since the 1970s, computer programmes have been widely used in the creation of copyrighted works. The ownership of copyright for computer-generated works was not a major issue. The reason for this is that computers and software were seen as nothing more than aids to activities that required human creativity and intervention. These applications were analogous to office supplies in that they required the intervention of a human in order to be put to use. The situation has evolved dramatically. With AI, computers are no longer passive instruments; they can make creative decisions on their own and produce original things.

Artificial intelligence has the ability to generate a humongous amount of work with comparatively little effort and in a remarkably short time frame. The AI-generated works may be eligible for copyright protection in all jurisdictions. The "programming and parameter on which such AI actually compiles and creates the work" may be judged to be sufficient evidence that the criteria of use of "skill and judgement" in originality has been met. However, in the case of AI-generated work, there will be no author. Humans still need to be involved in AI projects, though. Therefore, in the latter scenario, the person who caused the work to be made by utilising AI may claim authorship, but in the former case, the work must have been created by AI itself without any human interference in order to be considered the work of that particular AI. The question of authorship in these situations has baffled nations all across the globe. The authorship question can be resolved in one of three ways: (i) the copyright system should recognise authorship for AI; (ii) no authorship should be assigned to AI-generated work, and the work should fall into the "public domain;" or (iii) sui generis law, rather than copyright law, should be used to protect such works.

The protection afforded by copyright laws encourages authors to continue putting their time, effort, and insight into new works. Copyright protection for AI-generated works would put them on par with those created by humans, elevating the status of both "human creativity" and "machine creativity" to the same level. On the other hand, removing copyright protections for AI-generated works would imply that human innovation is valued more highly than that of machines. Long-term, it's not a good idea to value machine innovation as highly as human creativity or to treat them as interchangeable.

There could be a number of problems if AI was considered to be the author of the AI-generated work. It's possible that AI-created work will have flaws. A potentially biased and poisonous AL could use language. It could lead to slander or obscenity, inspire violence based on differences in race, religion, or ethnicity, or have any number of other unintended consequences. Since AI has not yet been legally recognised as a person, it will be difficult to address issues related to its civil and criminal accountability in such a situation. Even if such material is eventually erased, or the relevant AI software is eventually prohibited, by that point the damage it has already done may be beyond repair. Another
concern is how the AI will be held liable for infringing on copyright if the AI-generated work is found to be "substantially similar" to an existing work that already exists. And if AI is given author status, it cannot legally sell its creation because it is not a person.

The notion, which originates in civil law countries like Germany, France, and Spain, states that creators must leave a "imprint of author's personality" on their works. Since artificial intelligence lacks individuality, human authors should not be given credit for their creations using AI. If AI is to be treated as a person under the law, it must be able to form binding contracts with humans. It will also be responsible for its actions and subject to legal obligations. Having the legal right "to sue and be sued" is a crucial requirement. Most nations oppose giving AI the protection of the law.

It should be noted, however, that the European Parliament has pushed for "autonomous robots" to be accorded the legal status of "electronic persons" for the purposes of copyright protection.

Even more impressively, "music composing AI becomes the first in the world to be officially given the status of a composer" as a result of AIVA Technologies' efforts. The "SACEM, France and Luxembourg author's right society" has officially recognised it as a composer, allowing AIVA to publish music and earn royalties. Sophia, a humanoid robot programmed with artificial intelligence, was granted citizenship in Saudi Arabia in 2017. Creator of Sophia, Dr. David Hanson, claims in his paper "Entering the Age of Living Intelligence Systems and Android Society" that "robots will awaken and insist on their rights to exist, to live free, and to evolve to their full potential" in the future. This also means they will try to secure legal protection for any intellectual property rights (hereafter "IPRs") they create. According to him "advanced robots will have the right to marry, own land, and vote in general elections by 2045" according to him.

Several countries' copyright laws provide the author moral rights in addition to the legal protections provided by the TRIPs Agreement. The author is typically accorded two moral rights: (i) the right of paternity, and (ii) the right of integrity. The former protects the author's right to be identified with his or her work and to be given credit as its creator, while the latter allows the author to seek compensation for harm done to his or her reputation as a result of the work's being altered in any way. In *Amar Nath Sehgal v. Union of India*. A recent ruling by the Delhi High Court affirmed this principle, saying, "In the real world, laws are designed to safeguard the right to equitable remuneration.” But material possessions aren't everything in this world. It also includes the passage of time. Some of us feel that we possess an immortal spirit. A writer's moral rights are the lifeblood of his or her works. The author is responsible for protecting and promoting his works as part of his moral rights as the creator. Moral rights depend on the reader's emotional connection to the work. Artificial intelligence (AI) should not enjoy these privileges.

Another unanswered question concerns the durability of AI-generated artwork. The AI will live on in perpetuity. It might be argued that the period begins on the date of publication and runs backwards by 50 or 60 years depending on the laws of the countries involved. Since human labour has intrinsic limitations—such as mortality and exhaustion—copyright protection for AI-generated works is problematic. Therefore, a copyright exists for the limited works produced by a human author throughout his or her lifetime, and this copyright is justified because the author's efforts merit recompense. Artificial intelligences, on the other hand, never tire or deteriorate and can produce an infinite number of works of art. Copyright protection for AI-generated works is thus "equivocal and disputable". Further, those who are against copyright protection for AI-generated works argue that the AI will always produce the same result if given the same model and inputs. Therefore, assertions of "originality" and "originality" should be taken with a grain of salt.

AI will also have trouble negotiating fees with third parties and upholding the rights granted to authors by copyright law. Integrating AI into the creative process is not an easy task, and is likely to create more issues than it solves.

Another topic of discussion is whether or not AI-generated works should be designated "public domain" and immune to claims of authorship. There are many upsides to releasing AI-generated art into the public domain. It makes logical to make AI-generated works freely available to the public, as AI doesn't incur any costs when creating a work. Second, AI can rapidly generate several iterations of the same work with minimal human intervention. Finally, one of the aims of copyright law is to incentivise the creator of the work by providing him with economic rights and moral rights so that he is more likely
to create more works for the benefit of society. Due to its artificial nature, AI does not require creative input like this to generate output.

However, it is important to remember that companies that invest heavily in the AI system to generate these works may go out of business if the public is allowed to freely use these works without authorization or payment. Smart people will begin profiting off of these works in a variety of ways, at no cost to themselves, creating competition for businesses that have put up the capital. As a result, it's possible that protecting AI-generated works will be necessary to motivate both AI developers and businesses to keep pouring resources into R&D for the field.

Work created on a computer is covered by the UK Copyright, Designs and Patents Act, 1988 (hence referred to as "CDPA"). According to CDPA, "computer-generated" means "the work is generated by a computer in circumstances such that there is no human author of the work". To "provide due recognition and protection for the work that goes into creating a programme capable of independently generating works," this section "creates an exception to the requirement of human authorship". The CDPA states that the "person by whom the arrangements necessary for the creation of the work are undertaken" is considered the author of a "literary, dramatic, musical, or artistic work which is computer generated."

According to Andres Guadamuz, it is the programmer, not the user, who should be credited for writing such code. His argument relies on Microsoft's creation of the word processing programme "Word" with the intention of facilitating user-generated content. A user's creations made in Microsoft's software cannot be protected by the company's copyright. The creator of the work made with the software will be legally recognised as the owner of the copyright to that work. In Express Newspapers plc v. Liverpool Daily Post & Echo, The court equated the computer to a pen in terms of its status as an instrument. Copyright protection may extend to works generated with the assistance of AI in the United States if the author can prove that an AI programme was employed as a tool or medium. The American court in Naruto v. Slater, also known as the "Monkey Selfie" case, ruled that the monkey could not be considered the author of the selfies it took. The United States solely recognises human authors for copyright purposes, not animals or computers.

But when it comes to so-called "artificial intelligence algorithms" with the ability to develop their own assignments, the situation will be very different. Using AI as a "independent actor" that generates works "algorithmically, sequentially, or non-deterministically" gives the sense of a "apparent gap between the human's input and the computer's output". In such a case, the user may not participate much beyond the click of a button. So, a programmer might be understood to be "the person making the arrangements for the work to be generated" here. Also, "the creativity may vest with the programmer who has created the AI, with sufficient programming," since "an assumption can be derived that the programming of the AI is made in such a way that it can create and identify equations to generate a result on its own," as one would put it."

Based on his findings, Sik Cheng Peng contends that Section 9(3) of the CDPA can be read differently. He believes that when a user helps choose what information will be used by an AI system, that user should be recognised as the product's inventor. The "necessary arrangements" for the development of the work should therefore be attributed to the user, rather than the AI, the programmer, or the company holding the AI. Therefore, it is fair to credit the user, not the AI or the programmer, with the creation of an AI-generated piece.

In the same way that "computer-generated work" is not defined in the CDPA, the Indian Copyright Act does the same thing. However, it defines "author" in the context of "any literary, dramatic, musical, or artistic work which is computer-generated" as "the person who causes the work to be created". In Camlin Pvt. Ltd. v. National Pencil Industries, Additional clarification on the meaning of "author" was provided by the Delhi High Court. Due of the impossibility of determining authorship, "mechanically reproduced printed carton" is not covered by copyright. Moreover, the Court ruled that "copyright is conferred only upon authors or those who are natural persons from whom the work has originated." Therefore, the plaintiff does not own any cartons that have been printed using a mechanical printing process, as these cannot be regarded the author's original creation. A machine cannot produce original artwork or claim ownership over that artwork". In Tech Plus Media Private Ltd v. Jyoti Janda, Since "the plaintiff is a juristic person and is incapable of being the author of any work in which
copyright may exist," the Delhi Court found that the plaintiff lacked standing. A copyright to the work may be acquired by the plaintiff through a contract with the creator, the Court stated.

Due to the lack of human participation, the designer of an AI machine in Australia only has copyright in the "machine's source code" and not in the AI-generated work. The best approach is to analyse the evidence around the question of authorship in each specific case.

Assigning equal authorship to the AI and the human collaborators would be a mistake. The AI is so perilous because it can act autonomously, without any human interference. This does not qualify as "works of joint authorship" under the usual definition. For instance, the Indian Copyright Act, 1957 defines "work of joint authorship" as "a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors.". The models that machine learning tends to produce are extremely complicated, as Rich points out. It is unclear how or why the produced model generates reliable predictions, even to the original algorithm's designers. It's also not a good idea for the creator of AI software to collaborate with the person who will be using the software to create something new.

The global intellectual property law known as the Berne Convention of 1886 failed to consider "non-human authorship". Since the provisions of the Berne Convention are incorporated into the Trade-Related Aspects of Intellectual Property Rights (hereafter "TRIPs") Agreement, the same approach may be recognised as proper in the case of TRIPS. Similar interpretations may be applied to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty of 1996 (all of which are referred to as the WIPO Internet Treaties). The worldwide legal regime on copyright may not have barred the possibility of a non-human authorship in state legislations, nonetheless. Minimum standards are typically laid out in international treaties. States are expected to abide by these treaties, but they are free to go beyond the minimum requirements if they so choose.

To protect AI-generated works, beyond the current copyright framework, a sui generis system may be implemented. The strength of copyright protections, including their duration, could be compromised in such a system. Somewhere between five and 10 years has been suggested as a minimum time for such works by one author. He argues that the new model of AI copyright protection will have much less of an impact on the copyright system's established norms of copyright law because it provides protection for shorter periods of time. Artificially-created works will have less of an opportunity to substitute human-created works in the creative markets if copyrights are promptly revoked for them". Sik Cheng Peng suggests that AI-generated works could be granted legal protection through the application of a sui generis right analogous to that granted on "databases" under the European Union Database Directive. With this protection, "outright and unfair exploitation of the works" may be avoided".

One potential problem with such a setup is that the owner might not come clean about the system's reliance on AI. Therefore, the system must guarantee full transparency over the use of AI in the production of such works. The protection of AI-created works could likewise be sought through antitrust legislation. Authorship and potential authorship laws are already being discussed at the World Intellectual Property Organisation (WIPO).

The World Intellectual Property Organisation (WIPO) has discovered a new problem, the copyright problem in "deep fakes," in addition to the authorship problem. Creating a "deep fake" entails simulating a person's "voice and appearance" as well as other identifying characteristics. Artificial intelligence is becoming increasingly important in deep fakes technology. When someone is depicted in deep fake without their permission and the actions and views of the person depicted in the audiovisual work are not true, there may be other difficulties outside copyright, such as privacy, defamation, etc. Audiovisual deep fakes of famous athletes, musicians, politicians, and other prominent figures may find an enthusiastic audience. These deep fake works may also generate substantial income for their authors long after their deaths.

Whether or not such a deep fake work, if created without the consent of the person concerned, should be protected under copyright law at all, is a moot question here. What are the rights of the individual who gave permission to use his or her work under copyright legislation? Is there a way to ensure that those responsible for producing deep fakes and the people whose likenesses appear in them receive fair compensation? Growing AI adoption will only bring more obstacles, thus these problems
must be fixed. Work is also being done at the World Intellectual Property Organisation to address these concerns.

8. Conclusion

The importance of AI in our daily lives is only going to grow exponentially. Its applications must be governed by the law. When it comes to protecting one's intellectual property, especially one's copyright, AI will continue to play a crucial role. In copyright law, questions of who should claim credit for AI-generated works have prompted a global discussion and the development of a workable solution. There is no one rule that can solve this problem entirely because every rule has its own limitations. Giving AI-created works the same author credit as human-authored works will have serious consequences. It's also not a smart idea to make AI-created works freely available to the public, as this could deter developers and owners of AI from making additional investments in the field. The WIPO is exerting significant effort to resolve these problems. To solve this problem, some countries have adopted copyright laws that are tailored to artificial intelligence and AI-generated works, while others use the sui generis approach. Human originality should be valued more than machine creativity, and the AI-generated creations should receive less legal protection. Therefore, a moderate strategy is urgently required.

Since there is currently no global consensus on how to handle copyright issues surrounding AI-generated works, this presents a serious problem for governments around the world. Industry-specific AI are already being utilised to make works in music, journalism, filmmaking, and games, and weaker AI like Siri and Alexa have already been adopted by the general public.

As AI develops further in terms of strength, sophistication, and independence, the border between human and AI-created works becomes increasingly blurred, leading to increased use of AI by artists and the general public. For India's part, the country's lawmakers should draft a copyright law that takes artificial intelligence into account. This could begin with recognising AI's legal status—that is, by giving it a legal personality and the ability to exercise its rights. Finally, it is urgent that nations agree on who should own intellectual property rights to AI-created works, and that nations begin drafting AI-specific copyright laws at the national level to head off future complications and to prevent misuse of this gaping legal loophole.

Bibliography


