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Artificial Intelligence and Copyright Law: The Indian Perspective

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Abstract

AI-generated content" encompasses a wide range of applications, such as targeted advertisements, automated news articles, virtual influencers and movies. These AI systems use sophisticated algorithms and machine learning techniques to comb through massive databases and generate content that mimics human creativity and cognitive processes. While this technological development offers unparalleled opportunities for efficiency and scalability, it also raises significant questions about who should be held responsible for negative outcomes resulting from AI-generated material. The study's goals are to investigate the legal and ethical frameworks that govern AI-generated content, analyze the challenges associated with determining who is to blame when autonomous AI systems are involved, and offer strategies for increasing accountability while promoting the responsible use of AI technologies in content creation.

Keywords: *Artificial Intelligence, Copyright Law, Intellectual Property Rights, Lawsuits, Machine Learning*

Introduction

The term "AI-generated content" refers to a broad range of applications, including - movies, virtual influencers, and automated news articles and targeted adds. These AI systems examine enormous databases and produce material that imitates human creativity and thought processes by utilizing complex algorithms and machine learning approaches. Even though this technical advancement presents unmatched chances for effectiveness and scalability, it also poses important concerns regarding who should bear accountability when AI-generated content has unfavorable effects. An overview of the intricate topic of liability and accountability in content generated by artificial intelligence is given in the current introduction. It offers a structure for talking about the challenges of determining who should be held responsible for content produced by AI systems that propagates misinformation, feeds bias, or infringes against intellectual property rights. By examining these subtleties, we may be able to gain a better understanding of how AI-generated content affects society, culture, and the legal system. This will pave the way for moral laws, innovative technologies, and moral practices in this quickly evolving field. The media and entertainment industry is a broad and dynamic field that includes a variety of industries like music, film, television, fashion, and more. To protect the rights of creators, artists, and inventors in this field, intellectual property (IP) must be protected. It is estimated that India's media and entertainment industry will bring in \$100 billion by 2030. The importance of intellectual property rights in this business is becoming more and more important as the industry grows exponentially. In this business, copyright and trademark are very important since they protect content from infringement and recognize the rights of authors, while trademarks protect movie titles, significant characters, and other film components.

But as the industry increases, so does the problem of copyright infringement, cybercrimes, intellectual property rights infringement, and trademark infringement. By guaranteeing its unhindered flow and concurrently trying to prevent abuse, the law and the courts aim to promote innovation. The Indian film, television, digital, print, music, gaming, and entertainment industries are all part of the country's rapidly expanding media and entertainment landscape. This business is governed by a patchwork of laws and rules pertaining to labor, contracts, censorship, and intellectual property. Revisions have been made to the Information Technology Act of 2000 and related rules and regulations to better regulate social media, e-commerce, and online content. Additionally, the government has imposed new regulations on digital media, especially over-the-top (OTT) platforms, requiring adherence to a code of conduct and self-regulation system.¹

The protection of Intellectual Property Rights has changed significantly in recent years. Even though countries have made an effort to act quickly to address IP-related concerns as well as issues brought up by the WIPO and WTO, intellectual property experts believe that recent scientific advancements in this area appear to be surpassing the body of knowledge already available in the field. This suggests that in order to stay up with these developments, there is an urgent need for more thorough research in the IP domain and its governance.

Machine learning, or artificial intelligence (AI), is one such field that has gained prominence. AI is defined as "a computer's or a robot's ability to perform tasks that are typically performed by humans because they require human intelligence and judgment." While AIs cannot accomplish the vast range of jobs that a typical human can, certain AIs are comparable to humans in some skills. Three sessions (from when to when) were organized by the WIPO Director General to discuss how AI will affect intellectual property rights. The concerns regarding governments' involvement in artificial intelligence-related matters that were then discussed included, among other things, developing strategies and policies to support AI development as well as regulatory activities. A group of specialists discussed the challenges associated with identifying the creator, author, and owner of creations and innovations that either originated from or were aided by artificial intelligence.

In the context of copyright, patents, and trademarks, this article discusses the protection of intellectual property rights for works produced by and supported by AI.

Lawsuits and Artificial Intelligence

When awarding copyright protection to any kind of work, the main factors to take into account are authorship, ownership, and the work's ability to be considered an original production. When artificial intelligence (AI) is used to create a work, it can be challenging to assign authorship or ownership to the person using AI. Is the creation's credit to be given to the programmers or developers who created the AI system, the company (if any) that used the AI system and hired people to create something using the AI technology, or the end-user who used the AI tool developed by a programmer to generate something on his own through creative thought? AI-generated works are not granted protection in the US since they do not meet the "human authorship requirement." As a result, these works are made available to the general public. The necessity of having a human author is crucial in the majority of nations. In general, works created by intellectual minds that, after learning specific techniques and putting in specific effort, produce something so original that it is very impossible to classify it as a duplicate of an already-existing work are the subject matter of copyright (the originality requirement). According to US law, end users of AI who create a work utilizing AI and acknowledge employing an AI tool in it are entitled to an intellectual property claim for that work.

¹Artificial Intelligence Generated Content and Copyright Creativity And Authorship Issues

<https://kilinlaw.com.tr/en/artificial-intelligence-generated-content-and-copyright-creativity-and-authorship-issues/>

The "Made For Hire" Option From The US

There have been suggestions that the US Copyright Act of 1976's "made for hire" concept² seeks to address the problem of who is the owner and author of works produced by AI. According to the doctrine, authorship of works created by employees under a made-for-hire agreement belongs to the employer. It has been proposed that the definitions of "employer" and "employee" under the statute be changed in order to address the current conundrum regarding authorship of AI-created works. An employer could be an AI programmer or a body corporate that owns the AI device, and a "employee" could be an AI program or device that operates under orders from the employer. This, however, does not address scenarios in which the AI creates a work entirely on its own without assistance from humans. When an application for copyright registration is submitted under the AI's name, an issue occurs. The AI tool was identified as the creator of the autonomously created work in a copyright registration filed with the US Copyright Office (USCO) in 2018–19 by DABUS, also known as the "Device for Autonomous Bootstrapping of Unified Sentience." The Copyright Review Board upheld the USCO's decision in 2022, stating that the doctrine (work for hire) requires binding legal contracts, which the AI cannot enter into, and that copyright protection cannot be extended to non-human creations under the current regime. The USCO had rejected the application on the grounds that the work lacked the human authorship necessary to support a copyright claim. As per the Board's declaration, a work that is intended for hire needs to be prepared by an employee or by one or more parties who have explicitly agreed in a written instrument. Either a work-for-hire arrangement or an employment agreement results in a legally binding work in both situations.

Similar to this, Section 9(3) of the UK Copyright, Designs and Patents Act of 1988 declares that "the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken in the case of a literary, dramatic, musical, or artistic work which is computer-generated." Consequently, the copyright protection afforded to AI-generated works under this Section may be fated similarly to the DABUS case that was heard by the US Review Board and USCO. In situations where a human co-author is involved, the circumstances may vary. For instance, the identities of the human co-author Ankit Sahni and the AI painting App "RAGHAV" were stated in a copyright registration application filed in Canada. The copyright was registered with the Canadian Intellectual Property Office (CIPO) because the human authorship criteria was circumvented by listing the human co-author.

The Challenge of India

According to Section 2(d)(vi) of the Copyright Act of 1957, in the context of India, an author of a computer-generated artistic work is the one who causes the work to be created. Once more, a work produced entirely by AI is not covered by this criterion, as demonstrated in the DABUS case. Moreover, in the absence of a contrary agreement, Section 17(c), in some accordance with the foreign "made for hire" theory, designates an author employed under a contract of service or apprenticeship as the initial owner of the copyright therein. In the case of Neetu Singh vs. Rajiv Saumitra and Ors., the Delhi High Court held that the employer, the defendants, had to prove, through any terms and conditions, that the literary work was also a part of the plaintiff's (the employee's) duties and obligations in her capacity as an employee. If this was not established, the employer could not be granted copyright. In other words, this rule and Section 2(d)(vi) taken together demonstrate that, for the purposes of the Act, an employer is considered an author if he causes, authorizes, or directs the creation of a work. Consequently, copyright protection ought to be in place for AI-generated or AI-assisted works that are produced by or with help from a "human co-author." Works produced entirely by AI that assert protection for themselves continue to be problematic. This would be especially challenging to accomplish because numerous courts have determined that intellectual property rights are exclusive to humans since (i) people can typically only use their intellect, labor, and skills to create something (or invent something) voluntarily, and (ii) an author is "the person who translates an idea into a fixed, tangible expression entitled to copyright protection." Such requirements cannot be satisfied by an AI-only work since it does not have the ability to translate a concept into a concrete expression through free will.

²Reference to the "made for hire" doctrine under the US Copyright Act of 1976.

The same concerns that copyright laws normally pose are addressed by patent laws: for example, is an AI invention patentable under the current patent laws, and who is the rightful inventor? In the aforementioned case, DABUS also filed a patent rights request with the US Patent Office for its inventions. Even though Stephen Thaler, the computer scientist who created DABUS, filed paperwork granting him the rights to DABUS as an inventor, DABUS was listed here as the only creator. Due to the "human inventor ship" requirement, the United States Patent and Trademark Office (USPTO) nevertheless rejected each and every claim. The Court of Appeals for the Federal Circuit and the Court of Eastern District of Virginia both heard arguments about the case, but both courts maintained the USPTO's ruling, stating that innovators must be human. In the US Patent Act, the terms "individual" and "whoever" are defined to encompass "AI software" and "corporations and other non-human entities," respectively. Thaler even urged for a broader and more inclusive interpretation of these terms. Nonetheless, the court upheld that "individuals—and, thus, inventors—are unambiguously natural persons under the Patent Act."

Conclusion

The current issue of AI as an inventor cannot be resolved by modifying specific definitions or adopting an inclusive meaning for phrases like "inventors," "individuals," "inventions," etc., as in the copyright cases. Various stakeholders have made an effort to identify potential strategies for achieving this.

Furthermore, as a potential remedy, the "made for hire" theory in copyright laws ought to be extended to "made for hire" inventions, wherein corporations or institutions that possess or establish artificial intelligence systems would be considered inventors. Even when seeking protection under the "made for hire" theory, copyright claims under this doctrine have, in the absence of a human, been denied by US courts in cases where AI was the only author, as demonstrated by the review board's ruling in the DABUS copyright registration application.

Furthermore, compared to conventional content generation techniques, AI-generated content has a number of benefits. First of all, it makes content production fast and scalable, allowing businesses to produce enormous volumes of customized material far faster than they could with human labor. Businesses looking to simultaneously engage with their audiences across several media will find this efficiency very advantageous.

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