COPYRIGHT ISSUES IN AI: CHALLENGES AND PERSPECTIVES

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ABSTRACT

The intersection of artificial intelligence (AI) and copyright law has emerged as a compelling and intricate subject, raising critical questions about ownership, creativity, and legal frameworks in the digital age. The advent of AI-powered technologies, such as machine learning algorithms and neural networks, has revolutionized content creation and dissemination. While AI-generated works present new avenues for creativity, they also raise crucial questions regarding copyright ownership, authorship attribution, and infringement. This article examines landmark legal cases and legislative developments that seek to address these issues, shedding light on the evolving legal frameworks governing AI-generated content. The article first investigates the conceptual underpinnings of copyright, probing whether AI-generated works can be attributed to human creators and qualify for copyright protection. It scrutinizes the developing conceptions of authorship, originality, and the personal touch that copyright usually rests upon. Furthermore, the article enquires into the complexities of identifying infringing AI-generated content and determining liability, both for AI developers and end-users. In essence, this article illuminates the interplay between AI and copyright, unravelling the legal, ethical, and practical implications that this synergy presents in the evolving landscape of digital creation through analysing law which are currently applied across the world, various lawsuit which are filled in the court of various nation and their interpretation to this new phenomenon of AI and Copyright ownership.

Keywords: Authorship, infringement, liability, copyright law, artificial intelligence.

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Introduction

Science and technology are the core part of human life; directly or indirectly, we are affected by the evolution and innovation done in the field, and the most recent and life-changing innovation after the mobile phone would be the development of Artificial Intelligence or AI. To explain what AI is can be done in a simple statement 'AI is the human version of the computer'. AI is that part of science and technology that develops technologies that allow computers to provide datasets to algorithms and resulting in the creation of the ability to carry out a task or make autonomous decisions. The most used and appropriate case study to explain better is Tesla's autopilot car, where the car, through its software and algorithm, takes data input in the form of the camera surrounding the car, and the prior information in its earlier memory decides to stop the car at a red light or if someone is walking in front of it. Artificial Intelligence is the next big thing in science and technology. It has applications in many areas of life like healthcare, transportation, education etc. Many times, is overlooked, like Google Maps, which gives us the ETA of your destination or which road which take you faster and traffic condition on the highway all of this possible due to AI being applied in it.

Apart from all the mentioned use of AI, one area that is used today is generating images, videos music with the help of Artificial Intelligence, which is creating problems in society.

Authorship and Ownership

The question arises here who would have the authorship/ownership of the work generated by AI? To understand, we need to look into what is defined as the author/owner of the work.

In general, an author is the one who publishes or writes the work, either entirely personally or with the help of another person. When a copyrightable piece is generated, the author uses their intellectual ability to create it. In contrast, the legal definition differs in every country authorship is defined differently, which gives rise to confusion about whom the authorship should go to, whether it should go to the AI or to the person who prompted the AI to create it.

In the Indian Context, the Indian Copyright Right Act of 1957, which governs the copyright aspect, defines authorship under **section 2** of the act, which defines authors under various domains like literature, music, artwork, photography, and computer-generated work.

In the case of Computer-generated work, such as art, music, photos etc., the copyright of the same work would give to the person who prompted it to get the response[1]. The United Kingdom

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[1] The Copyright (Amendment) Act, 1957, section No 2, Acts of Parliament, 1957 (India).

also follows similar guidelines in authorship, where it grants the authorship to the person who prompted the machine to derive the resulting photo, art, music etc[2].

However, there is still ambiguity regarding the 'person' as it is not defined in the copyright act, and in the USA, through multiple court cases on a similar topic, have concluded that authorship can only be vested to humans for their creative work and not the computer or artificial intelligence as cannot be considered as a legal entity. US copyright rights offices stripped down various copyright awards after discovering it was AI-generated. A recent example is Zarya of the Dawn, a comic book created by an AI algorithm called Midjourney[3].

There is a further issue of granting copyright when the work is generated through AI as there exist two ways of generating work through AI: through a human prompt or command or the AI Suo-motto generates the work. In the case of AI generation without any human intervention, the authorship title is again in contest as to whether it should be provided to AI or Nobody. No Country in the world has a law regarding giving authorship to AI, as giving copyright to AI would mean that AI has the same rights as the person of the country, which can't be possible. The second criterion of providing copyright ownership demands proof of creativity in the work as learned under the **Feist Publications v Rural Telephone Service Company, Inc**[4]. In India also, the copyright office allowed the claim of AI named Raghav and its owner as co-author of a painting called 'Suryast', but later the copyright office revoked the status of the same, citing it did not fulfil the criteria of authorship[5]. Allowing authorship of the work to AI would result in a complex procedure as it would require more work to determine who would receive the royalties or who would be liable in case of an infringement.

If the authorship is not provided to anybody and kept the work in the open domain, then it would be beneficial to the public, but the company or individual who has invested much capital into building that AI algorithm will suffer a loss which is morally right.

Infringement and Liability

Infringement of the copyright, in simple terms, means when a person uses it to make an economic gain from a copyright-protected work without proper license and agreement from

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[2] Copyright, Designs and Patents Act 1988, § 9 (3) (UK).
[3] Mohit Khanna, *Comic Book Made By AI Loses Copyright Protection*, INDIA TIMES (July 10 2023), https://www.indiatimes.com/technology/news/comic-book-made-by-ai-loses-copyright-protection-588388.html .
[4] Feist Publications v Rural Telephone Service Company, Inc. 499 U.S. 340 (1991).
[5] Sukanya Sarkar, *Exclusive: Indian Copyright Office issues withdrawal notice to AI co-author*, MANAGING IP (July 11 2023), https://www.managingip.com/article/2a5d0jj2zjo7fajsjwwlc/exclusive-indian-copyright-office-issues-withdrawal-notice-to-ai-co-author.

the owner of the copyright. With AI being trained on the available dataset, there is a chance of the algorithm using the work with having authorized access to the said data. There are two famous cases where in the said thing of AI using protected work. The first case is of **Perfect 10 vs Google**[6], where in the Perfect 10 (plaintiff), an adult entertainment company sued Google over infringement of the copyright. When searching for a particular thing, the image results from Google would show protected images from the Perfect 10 website in a thumbnail format. This was in direct copyright infringement as the company was suffering loss due to it being paid to the view-based company, and due to Google, they were suffering the loss[7].

Another such case on a comparable matter was **Getty Image vs Stability AI** in the UK; Getty Images(plaintiff) sued Stability AI over the Diffusion of a tool; Getty Images alleged that Stability used Getty Images photos as a dataset and generated different images based on the images of the owned by Getty through written prompt command.

Another Similar Case was filed in California, where three visual artists filed a suit against Stability AI, Midjourney, and Deviant Art and claimed that the companies used the copyrighted material in the training of the AI as a dataset and produced derivative work from the same. As per the law in the USA, the right to transform the art rests with the copyright owner.

Now, the question arises who is to blame for the copyright infringement, whether the AI or the person who prompted the command to generate the said infringed work or who wrote the program? In the Indian context, the law is silent on infringement and liability.

Fair Use Dealing

Fair use dealing doctrine in copyright refers to an exception to copyright infringement where the copyright law does not get violated when using the copyrighted work for a reason like the purpose and character of the use, nature of the copyrighted work, amount and substantiality of the portion used about the copyrighted work as a whole and the effect of the use upon the potential market for or value of the copyrighted work[8].

The argument here is, can the output generated by AI be considered under Fair Use Dealing?

A Case similar to the Level is of **Authors Guild vs Google Book**. The plaintiff, Authors Guild, sued Google Books over the issue that Google is creating a database of all the existing books and allowing people to search for anything within the books. Google here argued that it was not allowing full access to the books but only a small part which the user searched in its search

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[6] Perfect 10, Inc. v. Google Inc., 508 F.3d 1146.
[7] ELECTRONIC FRONTIER FOUNDATION, (JULY 12 2023), https://www.eff.org/cases/perfect-10-v-google.
[8] The Copyright (Amendment) Act, 1957, Section No 52, Acts of Parliament, 1957 (India).

engine and did not violate the factor required for the valid fair use dealing of the copyright. The court, in its judgement, sided with Google but agreed that the initial collection of the data set used would amount to copyright infringement, but the purpose was within the fair dealing doctrine. Nevertheless, in the case of generative AI, as in the above case class action lawsuit against Stability AI, Midjourney, and Deviant Art, the companies are using the data set to create a new photo by the AI software will it constituent as copyright infringement; as per the reply given by the AI Companies, the algorithm does not use images directly but rather adds a layer of obstacle and train neural networks to decode and identify the image with comparison to the text associated with it create new images with the on the basis of the earlier study[9].

Court has not reached a judgement, and litigation is still going on. A possible way out of this is to show that the programmer has no intention of economic gain. This could tilt the case in their favour.

The question of whether the training for generative AI is infringement or fair use is still open to interpretation as no laws or precedents exist for the question across various countries.

International Perspective

There is no common perspective on AI and copyright across the world. It is divided into two perspectives, i.e. No Copyright to work created by AI followed by USA or Copyright to the person who was prompted to derive the work by AI followed by India, Ireland, UK etc. Both of these methods have pros and cons, and considering AI is the gateway to all future endeavours, it is important that there should exist a common perspective on the same, which can be done through various government agencies coming together with the World Intellectual Property Organization and creating a singular standpoint of the same[10].

Conclusion and Future Prospect

Finally, cooperation with artificial intelligence and copyright brings potential opportunities and concerns. Machine learning transforms the creative industries by improving content generation, delivery, and consumption. However, it puts significant concerns regarding the infringement of copyright and ownership rights.

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[9]Stephen Wolf, Fair Use: Training Generative AI, CREATIVE COMMON, (July 16 2023), https://creativecommons.org/2023/02/17/fair-use-training-generative-ai/.
[10]Andrez Guadamuz, Artificial Intelligence and Copyright, World intellectual property organization (July 15 2023), https://www.wipo.int/wipo_magazine/en/2017/05/article_0003.html.

One of the primary goals for the future is to find a balance between AI-generated content and the protection of copyright. As artificial intelligence algorithms become more complex, the issue will be to create frameworks that assure adequate intellectual property attribution and safety. Developing AI systems that adhere to copyright laws and give means to attribute to the original producers of works produced by AI is part of this. Another essential objective is to set clear criteria for AI-generated works' copyright status. There is uncertainty over whether AI-generated things may be protected and who owns them. Future efforts should concentrate on developing legislation that tackles these issues, assuring the protection of both producers and consumers of AI-generated material. To manoeuvre through the complicated terrain of AI and copyright, education and awareness programmes will be essential. It is critical to provide artists, consumers, and legal experts with the skills and resources to comprehend and handle copyright challenges in AI. The ultimate objective is to create a setting where copyright and AI may coexist peacefully, encouraging innovation while defending artists' rights. We can fully utilize AI while preserving the integrity and worth of original works of art by embracing ethical AI practices and developing strong legal frameworks.