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AI-GENERATED WORKS AND COPYRIGHT

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ABSTRACT

The artificial intelligence technologies bring several legal complexities along with the 'work' that they create. The complexity here arises on both the input and output sides. The output side controversy relates to who is the author of the work generated and who owns it, determining whether it is necessary to fix responsibility for any result that may be achieved or triggered by such work. Several stakeholders are there who can be entrusted with the title of author, but no strong claim is made as no significant human contribution is found in the case of work generated through machine learning. The input side controversy is bigger as it relates to the data that AI trains on. The data used by AI is not consumed by it with due permission from any original creator, and it is argued that AI results are nothing but a collage of most of the works AI has consumed, thus infringing the rights of several authors. The world of intellectual property rights awaits a clear and stronger law with respect to AI-generated works.

Keywords: *Artificial Intelligence, Author, Data, Intellectual Property Rights, Technology.*

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1. INTRODUCTION

The term "artificial intelligence" was coined by John McCarthy in 1956[1]. Artificial intelligence (hereinafter referred to as AI) is defined as "the ability of machines to do things that people would say require intelligence"[2]. This technology is new, and laws need to adapt to these developments. The world today is witnessing a digital revolution, and innovative technologies such as crypto, NFT, metaverse, AI, and others are making the world witness initial yet decisive steps towards a digitised globe. Artificial intelligence has been around since the early 1950s, but it initially achieved less success as its creations were far from works generated through actual human intelligence. But now it has been given a push by deep learning models, i.e., generative AI, a form of machine learning that takes raw data already available and learns to generate statistically probable outputs when prompted. For example, it can learn all the information on a website about different literary works and then create a new written work based on what it has learned through the different samples provided to it. The AI-generated works come up with several challenges when we try to fit them into the framework of copyright legislation. These have been discussed further in this article.

2. WHO IS THE AUTHOR OF AI GENERATED WORK AND WHO OWNS IT?

There is a big debate about how AI-generated content is treated under Indian copyright law. AI has not been explicitly accepted as the author of its work under Indian copyright law; however, according to Section 17 of the Copyright Act, the author of a work is its initial copyright owner[3], and Section 2(d)(vi) provides that, in relation to any literary, dramatic, musical, or artistic work that is computer-generated, the person who causes the work to be created is the author.[4] The aforementioned provisions lead us to the contention that if we treat an AI-generated work as computer-generated, then the person causing it to be created shall be the author. This is not that

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[1] Fredy Sánchez Merino, *Artificial Intelligence and a New Cornerstone for Authorship*, WORLD TRADE ORGANIZATION (Dec. 08, 2023, 4:30 PM),
https://www.wto.org/english/tratop_e/trips_e/colloquium_papers_e/2018/chapter_3_2018_e.pdf
[2] PHILIP C. JACKSON, INTRODUCTION TO ARTIFICIAL INTELLIGENCE (Dover Publications Inc. 1985)
[3] Copyright Act, 1957, § 17, No. 14, Acts of Parliament, 1957 (India)
[4] Copyright Act, 1957, § 2(d)(vi), No. 14, Acts of Parliament, 1957 (India)

Volume I Issue III
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straight, as Section 2(d)(vi) was added in 1994, when a computer was actually just a device performing what was commanded to it by the user, and only the idea or learning of the person using such a computer was used. AI now uses its own learning to create certain results that were not even thought of by the person giving the command.

For example, a person can give a command to any AI software to write an article of around 1500 words on any topic, and the software gets it done. In such a case, the person giving the command to generate such work does not actually put in significant effort to cause the work to be generated. In such a scenario, the point arises that the person who is behind the creation of such an AI tool shall be given the position of 'person' who caused the work to be created, but the element of human input or creativity of the human mind in a specific work can't be found through this approach as well, because the article mentioned in the example above will neither contain the effort of the user of the AI tool nor contain any effort by the creator of the tool. The only effort made by the creator was to create the tool and assist it in learning, but no effort was made for work created by such AI software after several years of its creation as a result of automated machine learning. It is now very clear that, just like a human creator, AI software uses its learning and experience to create some work; why not give copyright to the software itself? It is an argument worth considering, but a counter question should be asked: "Whether giving protection to a machine fulfils any of the objectives of copyright legislation in India or any other part of the world"? The answer is no. The objective of copyright law is to protect and promote creativity and originality, which is ensured by granting exclusive rights to creators for their literary, artistic, musical, and other creative works. AI tools do not need any motivation to create; they are built for it, and they don't want any kind of recognition or monetary benefit to keep creating.

In simpler terms, moral and economic rights enshrined under the Indian Copyright Act are of no use to AI. Naruto v. David Slater[5] is an interesting case decided in the USA that deals with somewhat similar issues. A selfie taken by a macaque was in dispute in this case as the owner of the camera was a photographer who left his camera behind while on a photography expedition in Indonesia and a monkey clicked its photo by itself. The photographer claimed copyright over

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[5] Naruto v. David Slater, 888 F. 3d 418, 420 (U.S. Ct. App. For the 9th Cir. 2018)

Volume I Issue III
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such a photo as he made efforts for that photo by travelling to Indonesia and befriending a group of shy macaques and leaving that camera behind, whereas PETA, arguing on behalf of the monkey, demanded copyright for that macaque as the picture was clicked by him only. The court held that animals cannot legally hold copyrights based on the reasoning that a non-human creator (not being a legal person) cannot hold copyright. Going by this approach, it is clear that AI is also a non-human creator, and it also isn't a legal person, so AI isn't a fit party for a grant of authorship. Another solution that comes to mind is to not give protection to AI-generated work, and there shall be no authorship on works by AI[6]. This gives rise to the problem of accountability as to that work. In simpler terms, AI isn't flawless and can create offensive or obscene content, and someone needs to be held accountable for the same. In a noteworthy incident, an AI-based app called 'Raghav' was given authorship by a copyright office in India, but later on it was cancelled and it was allowed to be accepted as a co-author. This paves the way towards AI-specific regulations regarding copyright, but it is a fact that the problem is actually not addressed very well so far, and ownership and authorship issues are dealt with with the help of policies and terms of different platforms. For example, OpenAI states the following in its terms of use regarding ownership of content: "As between you and OpenAI, and to the extent permitted by applicable law, you (a) retain your ownership rights in input and (b) own the output. We hereby assign to you all our right, title, and interest, if any, in and to Output". This simply means that the platform owns the work initially and transfers it to the user, whose prompts led to the generation of contents.

3. IS AI COPYING OTHER'S WORK?

Machine learning basically operates in a simple, explainable manner. It eats up all the data on which it is supposed to train and produces a work that contains elements of all the relevant data it grasps. This process could possibly be illegal; for example, a code created for creating new software can be copied from a code already copyrighted or patented for the development of

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[6] Virendra Ahuja, *Artificial Intelligence and Copyright Issues and Challenges*, INDIAN L. INST. L. REV. 270, 273 (2018)

Volume I Issue III
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similar software[7], and this may cause a huge loss to already existing software on the market. Many creators, like artists and authors, contend that AI uses their work to train itself or take out elements of their work to form a large collage containing the works of several humans that creates a work that seems original but actually isn't. Originality is one of the major factors used to examine the availability of copyright protection for a work. Section 13 of the Indian Copyright Act states that there is copyright protection for "original literary, dramatic, musical, and artistic works."[8] The definition of originality is left open for the courts to determine on a case-by-case basis[9]. The courts have laid down several tests to determine originality in a work, and they vary from analysing the bare minimum labour to finding out elements of creativity. In terms of AI, originality is challenged on the basis that the work it creates is a mixture of data it is fed and nothing else. One argument in favour of machine learning is that it is the same process through which the human mind learns and creates, and thus AI's work should be original, whereas the other side argues that the human mind does more than just create a collage of what it consumes. The dispute between Getty Images and Stability AI is one example of a problem arising out of copyright infringement due to AI[10]. The dispute is regarding the use of Getty images to train stability AI. Getty Images accused Stability AI of infringing copyright on more than 12 million photographs, their associated captions, and metadata in building and offering Stable Diffusion and DreamStudio. Getty is accusing them of suffering losses due to the competition created by Stability's images, which are generated by training on Getty Images itself. On the other hand, Stability argues that the purpose was to just train the AI, which is different from the purpose of stock images; thus, it has not caused any monetary loss to Getty Images. The question of originality is again here, and now the lawsuit is transferred to a UK court, whose decision is much-awaited as it is looked upon as a possible solution to the legal problem relating to originality. The decision in this case is going to determine the future of AI and the legal framework regulating the work generated through AI.

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[7] Srikanth Jandhyala, Jinwoo Kim & Arpita Bhattacharyya, Copyrights, *Professional Perspective – IP Issues With AI Code Generators*, BLOOMBERG LAW (Dec. 10, 2023, 5:40 PM),
https://www.bloomberglaw.com/external/document/X4H9CFB4000000/copyrights-professional-perspective-ip-issues-with-ai-code-gener.

[8] Copyright Act, 1957, § 13, No. 14, Acts of Parliament, 1957 (India)

[9] Andres Guadamuz, *Artificial intelligence and copyright*, WIPO MAGAZINE (Dec. 12, 2023, 7:00 PM), https://www.wipo.int/wipo_magazine/en/2017/05/article_0003.html.

[10] Anushka Sail, *Chat GPT and Intellectual Property Rights*, SSRN ELEC. J. (2023)

4. CONCLUSION

Artificial intelligence has its own benefits and risks that we are all aware of, but protecting the moral and economic rights of the creator of a work is something that shall not be compromised, and any technology shall not be allowed to infringe on any right that any creator has. A balance is needed to be established in order to ensure that new innovations continue to serve humans and make our lives easier without resorting to anything illegal. The courts and legislators have a responsibility here to frame such rules and regulations to protect and promote creativity as well as scientific innovation.

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