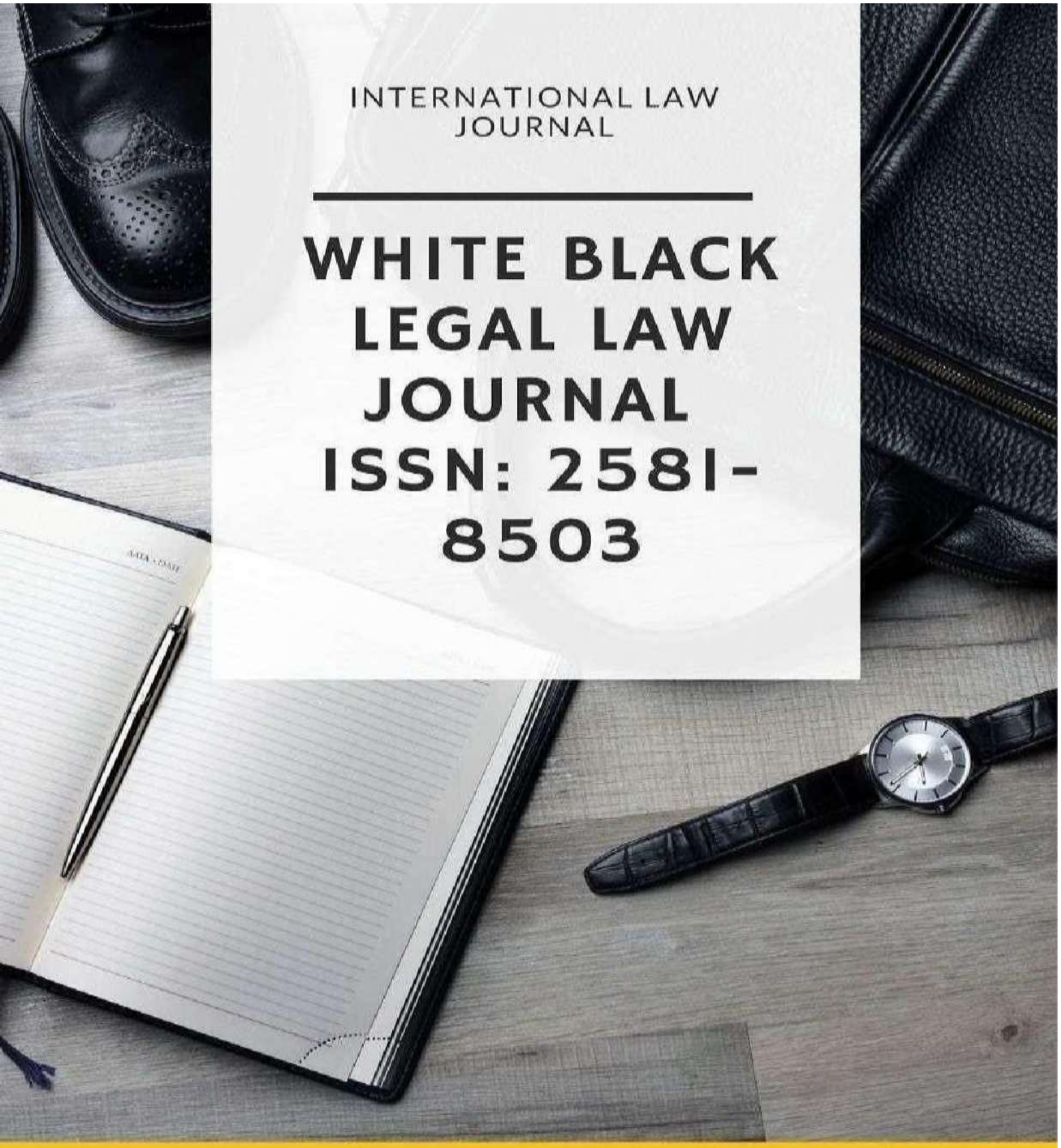

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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AI, CREATIVITY AND COPYRIGHT: COMPARATIVE COPYRIGHT PERSPECTIVES ACROSS GLOBAL JURISDICTIONS.

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1. INTRODUCTION

From speculative science fiction to real-world applications, AI used in creative industries raises hard issues regarding creativity, authorship, and copyright. For the most part, these old intellectual property systems, as they were meant to serve as protection of human innovations, are under strain today due to AI's production of literature, art, music, and much more. This shows examples in the case of a Sony-developed machine named the Flow Machine, that developed a Beatles-inspired tune with 2016 taking its cues from over 13,000 songs[1] and completing an entire track without extensive human intervention in composition or writing. Another good example representing how AI can come out independently with creative music includes Taryn Southern's[2] recently completed album, which was also created using Amper Music[3] among other AI tools. These developments bring very important questions of who owns the copyrights of works produced by an AI: the AI system itself, the user who supplied the input, or the AI creator?

With the involvement of AI in artistic production at unprecedented depths, it places new challenges to the legal systems of the world. The traditional copyright structure needs to be attuned to solve issues about complex authorship, originality, and ownership when matters relate to AI-generated works. What is more, in most of the world save in the European Union, specific provisions need to be added to the legal architecture that relates to such content. For example, while copyright gives human authors a bundle of moral and economic rights

[1] (2016, December 12). 2016: The year AI got creative. New Atlas. Retrieved November 10, 2024, from https://newatlas.com/ai-art-film-writing-review/46891/
[2] (2018, February 19). Taryn Southern's new album is produced entirely by AI. Digital Trends. Retrieved November 10, 2024, from https://www.digitaltrends.com/music/artificial-intelligence-taryn-southern-album-interview/
[3] (n.d.). Amper:MUSIC FOR YOUR DEFINING MOMENT. Welcome AI. Retrieved November 10, 2024, from https://welcome.ai/solution/amper

regarding, among other things, the right to claim authorship and prevent any distortion or mutilation of their work, it is far from clear whether these rights can be extended even to creations generated by AI. It has caused much controversy among scholars, policy-makers, and business communities about whether AI should be considered an author or whether the human collaborators should lay claims of ownership over the AI-generated works. Over time, governments and other regulatory authorities have woken up to the reality that something needs to be done. The EC has confirmed understanding that AI is omnipresent, and it has urged for reconsideration of IP laws so that they might be fit for purpose for managing independent structures. More recently, in a report of February 2021, the European Parliament's Committee on Legal Affairs[4] pointed out that new criteria were needed to qualify what can be meant by 'own intellectual creation' in relation to works created by AI. Such a call to change appears to respond to the need as of now to recognize that present legislation both European and international — is unlikely to be adequate to address the questions raised by content generated by means of artificial intelligence.

Besides the European countries, attempts have been made by other Jurisdiction like United Kingdom, India, and New Zealand on reform of their copyright law with reference to copyright works wherein elements of computer-generated images are involved with negligible human interference. These countries have made efforts to introduce certain legal certainty into the issue, but they also have enormous loopholes in legislation for AI creations completely autonomous. Still, many other countries, the US and China among them, have yet to deal with the problem of AI-created content and the question of authorship is still an open one.

This ambiguity in copyright law does have a large financial effect. If works generated with AI are considered free of copyright, that is, it is free to be re-used by other people, then the journalism, video games, and music companies which invest greatly in this kind of material may feel the pinch. Considering financial risks, such lack of safety may deter investments in such AI-driven systems. These systems may, however, remain highly valued due to greater efficiency even if they remain without copyright.

[4] European Parliament, Committee on Legal Affairs. (2017, January 27). Report of the Committee on Legal Affairs with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL)). European Union. Retrieved from https://www.europarl.europa.eu/doceo/document/A-8-2017-0005_EN.html.

RESEARCH OBJECTIVE

I intend to evaluate the evolving copyright frameworks for AI-generated works, with a focus on originality, authorship, and ownership in key jurisdictions such as the European Union, the United States, and the United Kingdom. The research will address the current vagueness surrounding originality and authorship in AI-generated works, which lacks case law, by investigating how various jurisdictions address these concepts and proposing guidelines for determining originality in AI-generated content.Moreover, it will examine the specific copyright protection standards required in each of these jurisdictions, identifying gaps and inconsistencies in how they treat AI-generated works. The study will also analyze the effects on traditional creative sectors such as music, literature and art of content produced by AI and examine how these sectors can best be integrated with fair copyright policies. The study will also examine the impact of reducing copyright risks by informing creators to make model outputs more generic and less creative on the resulting artistic quality, diversity, and innovation in their content.

The paper will furthermore address copyright related ethical and societal challenges resulting from the possibility of AI generated works, such as questions about humans as creators, authors; and if there is a necessity in providing a new legal framework. Finally, the study will also assess the economic implications of AI-generated works on conventional creative sectors providing guidance on how traditional creative industries might adapt to and use advances in AI creativity. Through a comparative analysis of these key issues, this research aims to propose recommendations and suggestion for harmonizing laws related to copyright protection across global jurisdictions to address the significant challenges posed by AI-generated works while fostering innovation and protecting human creativity.

RESEARCH PROBLEM

1. Can AI generated art be protective under current copyright framework and in what ways do existing copyright laws address the ownership rights of AI-generated art.
2. The core question revolves around how do different countries approach the recognition of AI as an author of creative works, and what are the legal implications of these approaches?

In order to have a complete answer to the research question, the following question will also need answering:

1. What can be termed as ai generated art?
2. Can copyright law are worthy enough to give protection to AI Generated content?

RESEARCH METHODOLOGY

The primary method of the research is doctrinal which examine existing legal frameworks, statutes, case laws and other treaties related to artificial intelligence and Copyrights in different jurisdictions. Since it is only analysing the range and scope existing copyright law in the particular countries, it is of great importance to examine any court and legal instruments interpretations of various jurisdictions on their own can provide. It evaluates the literature in order to identify the gaps, uncertainties, and weaknesses that exist within the legal regimes. It seeks to establish the possible direction of development of copyright law in order to efficiently address the issues related to the content produced by artificial intelligence.

The qualitative research approach used in this study aims at investigating the deeper ethical, social, and legal aspects of creativity produced by artificial intelligence. It is obvious that it happens through a qualitative approach as opposed to the quantitative methods providing a shallower view on the problem. This type of research delves into stakeholder's concerns – those of creators, businesses, or regulators – and shows how such AI-related developments impact the creative industries. The qualitative method addresses the multifaceted challenges of reconciling copyright systems with the emerging role of artificial intelligence in content creation.

The comparative approach, examines and compares copyright law in the United States, the United Kingdom, the European Union, etc. with a view to establishing how the world treats work with respect to artificial intelligence copyright in each of these countries. In doing so the approach uncovers their best and bad practices. Conditionally exclusive analysis affords the reader with starting points on new developments and prospective unification movements while illustrating the progressive stance towards the insufficiency of contemporary status quo copyright legal approaches towards creativity in the present-day picture that is driven by Artificial Intelligence.

2. UNDERSTANDING AI-GENERATED CREATIONS

The question stated, “What can be termed as ai generated art?” will get answered under this heading in which the distinction has been made clear regarding two different types of art created using AI i.e., AI- Generated creations and AI-Aided creations. Before going in depth of the analysis of the two, first defines what is AI Generated Creations.

2.1. Definition and Classification

2.1.1. Technical Definition of AI-Generated Art and Creations

AI-generated art and creations refer to works that are crafted with the aid of artificial intelligence technologies. These creations span various domains including visual arts, music, literature, and design, showcasing AI's versatility in the creative field.

AI systems utilize advanced algorithms to analyze vast datasets, often comprising thousands or even millions of pieces of existing artworks. By examining these datasets, the AI learns and internalizes various artistic styles, patterns, and structures.

This process enables the AI to generate new, original content that mirrors or builds upon the learned data. For instance, by analyzing the brushstrokes in thousands of paintings, an AI can generate new visual art that captures the essence of these techniques. One prominent technique employed in AI-generated art is Generative dversarial Networks (GANs). GANs consist of two neural networks: the generator and the discriminator. The generator creates new images, while the discriminator evaluates them against real images. Over time, this adversarial process results in the creation of highly realistic and innovative artworks. Other machine learning models can also be used, each bringing different capabilities and styles to the art creation process.

The artworks produced by these AI systems often challenge our conventional views on creativity and authorship. Traditionally, creativity has been seen as a uniquely human trait, involving conscious thought, emotion, and inspiration. However, AI-generated art, especially when it is indistinguishable from human-created works, prompts us to rethink these notions. Who is the true author of an AI-generated artwork—the AI, the programmer who developed the algorithms, or the user who initiated the process?

AI-generated creations are not limited to visual arts. In music, AI can compose original pieces by analyzing patterns in existing music. In literature, AI can generate

stories, poems, or articles based on learned linguistic styles. In design, AI can create innovative layouts, product designs, and more. Each of these applications illustrates the broad potential of AI to contribute to and transform various creative fields

2.1.2. Spectrum of AI Involvement in Creation

AI's role in art creation can vary widely:

- **Minimal Involvement**: Here, AI acts as a **tool** to assist human creators. Artists might use AI to automate repetitive tasks or generate initial ideas, freeing them to focus on the more intricate aspects of their work.[5]
- **Moderate Involvement**: In this middle ground, AI systems serve as **collaborators**. Human artists engage with AI-generated suggestions and variations, blending human intuition with machine-generated insights to create unique artworks.
- **Extensive Involvement**: At the extreme end is **fully autonomous creation**, where AI systems independently generate artworks without human input[6]. Nowadays, AI programs are more than just tools; they now determine many of the decisions that go into the creative process without the need for human input.[7] This raises questions about originality and authorship, as the creative process is driven entirely by algorithms.

2.1.3. Distinction Between AI-Aided and Fully Autonomous AI-Generated Creation

- **AI-Aided Creation** AI-aided creation involves collaboration between human artists and AI technologies. Humans retain control of the creative process while using AI to enhance their work. For example, an artist might use AI tools to generate multiple design options or musical compositions based on their input. The final product is a blend of human creativity and machine assistance, with human oversight ensuring artistic integrity.
- **Fully Autonomous AI-Generated Creation** Fully autonomous AI-generated creation happens when algorithms generate original works independently of human intervention. This challenges traditional notions of authorship and copyright, raising questions about who should be credited as the creator—the programmer,

[5] Perry, M., & Margoni, T. (2010). From music tracks to Google Maps: Who owns computer-generated works? Computer Law & Security Review, 26(6), 621-632.
[6] Dworkin, G., & Taylor, R. D. (1989). Blackstone's guide to the Copyright, Designs and Patent Act 1988 (p. 185). Blackstone Press Ltd.
[7] WIPO (2017, September 17). Artificial Intelligence And Copyright. World Intellectual Property Organisation. Retrieved November 12, 2024, from https://www.wipo.int/web/wipo-magazine/articles/artificial-intelligence-and-copyright-40141

the user, or the machine itself. As these AI systems become more advanced, they produce complex works that challenge our understanding of creativity and ownership in art.

2.2.TYPES OF AI GENERATED CREATIONS

2.2.1. Visual Art and Graphics

AI-generated visual art can be considered, in essence, as creating images, paintings, and graphics through algorithms. These systems often operate on procedures such as GANs for creating new arts that could either be, generally speaking, works of artists or completely new imagination pieces.

For instance, the AI application DeepArt uses the methods of renowned artists like Van Gogh[8] or Picasso in order to change photographs into works of art. In this regard, how users upload their photos is an illustration of how AI can fuse technology with the mainstream forms of artistic expressions.

2.2.2. Composition of Music

AI has made huge improvements in the field of composing music, allowing for totally original soundtracks and songs. Many platforms use algorithms of machine learning to interpret musical patterns and create original compositions in different genres.

For example, one song that has been composed by the AI of Sony CSL Research Laboratory through its system named Flow Machines is the one called "Daddy's Car"[9], in which after scanning through a very large database of Beatles songs, the AI would design a melody just like those of the Beatles. Indeed, this type of output has been designed in this kind of music, where it proves that pre-existence music can be learned so that new music can be created to be appreciated.

2.2.3. Literary Developments

AI is also touching the world of literature. It is producing content that is in text form and can be poetry and stories or even complete novels, as machines understand and even create text that mimics human-like writing, through NLP models.

For instance, OpenAI's GPT-3 has already succeeded in producing poems and short stories that are emotionally deep with cogent narrative patterns. It can, for example, write a poem

[8] (2023, December 20). Exploring Copyright Boundaries: The Impact of Van Gogh-Inspired AI Art. Sherman And Howard. Retrieved November 13, 2024, from https://www.shermanhoward.com/insights/exploring-copyright-boundaries-the-impact-of-van-gogh-inspired-ai-art#:~:text=The%20Copyright%20Office%20rejected%20Sahni%27s%20copyright%20claim%20for,elements%20of%20authorship%2C%E2%80%9D%20the%20work%20is%20not%20copyrightable.

[9] (2023, August 17). Top 15 AI Generated Songs in 2023. Jonas Cleveland. Retrieved November 14, 2024, from https://jonascleveland.com/ai-generated-songs/

based on a prompt provided by a user, showing its capacity to mimic literary themes and styles while creating original work.

2.3.Technical Process of AI Art Generation

2.3.1. Machine Learning

Machine Learning Algorithms in Art Creation At the core of AI art generation are various machine learning algorithms that allow systems to create novel artistic works. Some of them are:

- Generative Adversarial Networks (GANs): GANs pit two neural networks against each other - a generator that creates new art, and a discriminator that tries to identify if the art is real or computer-generated. Through this adversarial training process, the generator learns to produce increasingly convincing and original artwork.
- Variational Autoencoders (VAEs): VAEs are generative models that learn a compressed latent representation of the training data, which can then be used to generate new, similar-looking images or other artistic outputs.
- Reinforcement Learning: Some AI art systems use reinforcement learning, where the algorithms are rewarded for generating outputs that match certain desired qualities or aesthetic properties, allowing them to iteratively improve their artistic skills.
- Transformer Models: Large language models like GPT-3 have also been used to generate text-based creative works like poetry and narratives, by learning patterns in textual data.

2.3.2. Training Data Considerations

The quality and breadth of the training data used to develop these AI systems have a significant impact on the resulting artistic outputs. Key considerations include:

- Dataset Composition: The diversity of the training dataset, in terms of artistic styles, subjects, and creative domains, shapes the versatility and originality of the AI's artistic abilities.
- Data Preprocessing: How the training data is cleaned, filtered, and pre-processed can affect the coherence and consistency of the AI-generated art.
- Metadata and Context: Incorporating metadata about the training artworks, such as artist information, time period, or artistic movements, can imbue the AI's creations with more contextual awareness.
- Ethical Considerations: There are growing concerns about potential biases and copyright issues within the training data used for AI art generation.

2.3.3. Level of Human Intervention

The degree of human involvement in the AI art creation process can vary significantly:

- AI-Assisted Art: In these cases, the human artist uses AI tools and algorithms as assistive technologies to enhance their own creative process, similar to how digital art software is utilized.
- Collaborative AI-Human Creativity: Here, the human and AI system engage in a iterative, back-and-forth creative process, with each influencing the other's artistic decisions.
- Autonomous AI Art Generation: At the other end of the spectrum, there are AI systems that can independently conceive and produce complete artistic works with little to no direct human guidance or input.

3. CURRENT COPYRIGHT FRAMEWORK ANALYSIS

The advent of AI has been awaited and expected for a long time. Still, its effects were not expected in AI-generated works and the complexities it holds as intellectual property. The current copyright framework was designed to protect the rights of humans for the works created by them. This framework now faces significant challenges and requires a thorough examination of its principles and applications. Here, we will analyze the traditional copyright principles, and the difficulties encountered in trying to apply these principles to AI-generated works.

To understand the concept of copyright protection and the traditional principles that are applied when giving protection to those works. Copyright is the type of right that protects the **original works of authorship** as soon as an author **fixes** the work in tangible form. Under copyright law, we deal with a wide array of works, including paintings, illustrations, photographs, musical compositions, sound recordings, computer programs, poems, books, blog posts, movies, architectural works, plays and much more.

3.1. Traditional Copyright Protection Requirements

3.1.1. Originality

At the very heart of it, copyright involves originality. Typically, till now, a work has been said to be original when it is created by a human author with some degree of creativity. The word "original" generally refers to something that is new, different, and the first of its kind. It can also refer to the original source material from which copies are made. Various dictionaries have defined the word ‘original’ and that all summarizes up to the following characteristics –

1. It is new, i.e. it is being created, happening or coming into existence for the very first time;
2. It is totally different from anything that has existed before it;
3. It constitutes the origin, source, first instance or earliest form of the work from which subsequent copies or reproductions can be made;
4. It is appealing and interesting in an unusual way.[10]

Based on the definitions provided, any work modified, recreated, copied, or translated from an existing work is not considered original and, therefore, cannot be protected by copyright law. The works created by AI are somewhat in the grey as they are only made after processing a lot of information through machine learning and still, they might not be a copy of anything. This complicates the traditional requirement to fill in the gap for the modern era creativity.

3.1.2. Fixed Work

Fixation of a work created by someone is a crucial requirement for copyright protection and is central to copyright law. It ensures that a work has been embodied in a medium sufficient for its protection. A work is considered "fixed" when it's captured in a tangible, stable, and concrete form that can be perceived, reproduced, or communicated for longer than a moment. Essentially, it needs to be preserved to allow it to exist beyond its initial creation.[11] An AI-generated work needs to be fixed by a human, as is not autonomous. It can't make decisions on its own.

3.1.3. Creativity and Input of Human Authorship

The concept of "minimal creativity" in copyright law-that is, a work needs to show some measure of originality and personal expression in order to be protected-is central. It means that a creator's personal contributions have to be identifiable in a work of art, literature, or music. Traditionally, such works qualify by the choices made with regard to medium, composition, and style. The U.S. Copyright Office has insisted that works produced solely by AI lack the necessary human authorship. A judicial decision furthered this determination by holding that the creation of art by AI was not subject to copyright because it lacked human creativity or intent.[12] This decision represents the principle that copyright is, at its very essence, a creature of human authorship-a 'bedrock requirement' of copyright law-

[10] Azoro, C. J. S., & Agulefo, Q. O. (2021). "Original" under the law of copyright is distinct from the ordinary meaning of "original": A discourse. International Journal of Law, 29-36.7.
[11] U.S. Copyright Office (n.d.). What is Copyright? Copyright.gov. Retrieved November 14, 2024, from https://www.copyright.gov/what-is-copyright/
[12] *Thaler v. Perlmutter*, Civil Action No. 22-1564 (BAH) (D.D.C. Aug. 18, 2023).

providing certainty regarding the preservation of traditional authorship.

Challenges raised by AI-generated content go beyond authorship per se to the nature of creativity itself. Existing guidelines propose that, even though AI can be an auxiliary to the creative process, any work produced with the assistance of AI still needs to contain 'sufficient human authorship' to merit copyright protection. This raises the very important question of what actually could be considered adequate human input; for instance, a user who only made some prompt and did little or no engagement by the creative mind: Would the end result of an artwork actually be original? The outcome of the work generated by AI cannot be predictable, so it doesn't have direct control given by a human operator. The unpredictability of AI-generated works makes copyright law face such unique challenges. Sometimes it's difficult to even determine levels of human authorship and creativity in some of these works.

3.1.4. Economic and Moral Rights

Copyright law encompasses both economic and moral rights, which serve to protect the interests of creators in different ways. Economic rights grant authors the ability to control the commercial use of their works, including reproduction, distribution, public performance, and the creation of derivative works. These rights are essential for authors to monetize their creations and ensure they can benefit financially from their labor. For instance, the right of reproduction allows creators to authorize or prohibit the making of copies of their works, while the distribution right enables them to control how their works are made available to the public through sale, rental, or lending. This framework not only incentivizes creativity but also provides legal recourse against unauthorized use, thus safeguarding the economic interests of copyright holders.

In contrast, moral rights focus on protecting the personal connection between an author and their work. These rights include the right to attribution, ensuring that creators are recognized for their contributions, and the right to integrity, which allows them to object to derogatory treatment of their works that could harm their reputation. The complexities surrounding these rights become particularly pronounced in the context of AI-generated art, where multiple parties—such as AI developers and users—may contribute to the creation process. Determining who holds these rights can be challenging; for example, if an AI generates an artwork based on a user's prompt, questions arise regarding attribution and whether the user can claim moral rights over a piece that lacks direct human authorship. As copyright law evolves to address these challenges, it must reconcile traditional concepts of authorship and creativity with the realities of collaborative creation involving AI

technologies.

4. CHALLENGES IN APPLYING TRADITIONAL FRAMEWORK TO AI WORK

4.1.Authorship Determination

Probably the most contentious issue in AI-generated art is authorship determination. Traditionally, copyright law stipulates that only human-created works can be copyrighted; this is based on the principle that authorship is essentially a function of human creativity and intent. This, therefore, presents a problem when trying to evaluate works produced by artificial intelligence, as it produces output based on algorithms and machine learning rather than human input. More and more the output is no longer human-controlled operators; therefore, this also leads to ambiguity in which individual should be seen as an author.

The U.S. Copyright Office refused an application to register a work designed by an AI called "DABUS," and said that copyright protection involves human authors. This verdict only further emphasizes the current judicial approach that AI cannot obtain authorship rights. The question then arises: if an individual provides prompts or selects parameters for an AI to generate art, does that constitute sufficient authorship? Courts have yet to provide clear guidance on this matter, leaving creators and users of AI systems in a state of uncertainty regarding their rights and recognition.

4.2.Originality Assessment

The most important challenge to the assessment of originality arises where old copyright principles are applied to AI-generating art. Copyright law demands it to be original and a reflection of some degree of creativity; however, the nature of AI-generated content makes the requirement complicated. Most AI systems draw their works from large amounts of datasets, which already include copyrighted materials, and this raises questions on whether it can be termed original.

A problem with the assessment of what traditionally is termed copyright is trying to measure originality under the new standard of creativity by examining whether the expression and intellectual content of work done are novel or not, because when an AI develops art from learned patterns on pre-existing works, there cannot be an assessment of them. If an AI-generated artwork closely resembles works already existing, or relies too heavily on its training data with minimal alteration and without significant human input, it does not fulfill the originality requirement of copyright. In this regard, the law provides a grey area where courts

will have to try and find what defines originality in an age when machines are also capable of producing creative output.

4.3.Creative Input Evaluation

Creative input evaluation is essential for determining whether sufficient human involvement exists in the creation of AI-generated art to warrant copyright protection. The extent of human input can vary widely; some users may provide detailed prompts and guidance, while others may simply issue basic commands with little thought about the artistic outcome. This variability complicates assessments of whether a work demonstrates minimal creativity—an essential criterion for copyright eligibility.

In those circumstances where users are interacting with AI tools, the courts would need to determine whether the contribution of such a user amount to a significant contribution in terms of authorship or creative input. Where the user merely inputs basic commands and no creative input is given, there would need to be a determination of whether that kind of interaction can be classified as meaningful creative input having regard to established copyright principles. This makes the task of establishing what, in fact, meaningful human engagement in the creative process looks like when using AI systems a challenge. With changing legal precedents, it will be necessary to tackle such complexities to ensure how human contributions are to be measured against AI-generated outputs.

4.4.Rights Allocation

Rights allocation concerning AI-generated art presents significant complexities due to the collaborative nature of creation involving both humans and machines. Traditional copyright frameworks assign economic and moral rights primarily to human authors, allowing them control over how their works are used commercially and ensuring recognition for their contributions. However, when multiple parties contribute to an artwork—such as developers who create the AI system and users who provide prompts—the question of who holds these rights becomes increasingly ambiguous.

An AI generates a piece of art based on user input, should the user retain economic rights over that work? Alternatively, do developers of the AI system hold rights due to their role in creating the underlying technology? Furthermore, moral rights related to attribution and integrity complicate matters even more; if multiple parties contributed to a work's creation, determining who should receive credit can become contentious. The future of litigation on these issues will rest on the outcome of these cases, such as those before courts in Stability AI. The development of any technology requires constant discussion in how to extend copyright law enough to deal

with these newly emerging challenges while attempting to protect creators and innovation.

Challenges raised by AI-generated art are very strong and demonstrate severe inadequacies of the traditional intellectual property framework that was developed according to human creation. The determination of authorship, originality assessment, evaluation of creative input, and rights allocation are instances that reflect how copyrights laws fail to deal with complexities emerging from modern technology. As it currently stands, the human authorship requirement creates an ambiguity as far as copyright in AI-generated works is concerned, placing creators and users in a questionable legal space.

Yet against this background, it has been increasingly clear that traditional intellectual property law is woefully inadequate to address the issues of AI in its present form. The confusion relating to authorship and distribution of rights points towards the need for legal revision according to the practical application of AI in creative tasks. Otherwise, innovation would likely be stifled and all contributors to AI-created works would not be appropriately covered by rights.

5. COMPARATIVE ANALYSIS OF INTERNATIONAL APPROACHES

USA

Since 1965, the United States has had a controversy regarding whether computer-generated works (CGWs) receive copyright protection. Questions arising early in the development of CGWs concerning authorship and protection led the U.S. Register of Copyrights to request congressional guidance. In 1974, the U.S. Congress established the Commission on Technological Uses of Copyrighted Works (CONTU) to study these matters in greater detail. In 1978, CONTU report concluded existing laws were enough for CGWs, and no legislative change was necessary, however it, at the same time, recognized that increased concerns were being raised such that computers may someday produce creative work on their own. CONTU held that these concerns involved more the notion of AI-assisted rather than wholly autonomous work and cited examples such as computers simulating musical compositions.

The U.S. Copyright Office, an advisory body to Congress on copyright matters, administers copyright laws through the Compendium of U.S. Copyright Office Practices, an administrative manual for copyright determinations. The Compendium is not legally authoritative but does help elucidate the Office's copyright registration policies, especially where judicial guidance is sparse. Section 306 of the Compendium underscores that only human-created works qualify for copyright protection. This principle eliminates the possibility of copyright for works

entirely created by machines or by mechanical processes that lack human creative input. The works lacking a minimum quantum of human authorship will thus enter the public domain. This policy represents the presumed requirement of human authorship in U.S. copyright law, although such a requirement is nowhere to be found in the statute.[13]

Authorship Standard of Originality and Human

The U.S. Copyright Act in itself does not demand man-made authorship for eligible copyrights. Precedents through some court decisions and by the copyright office confirm that copyright works cannot be originated by artificial means or machines. Some leading examples are Feist Publications, Inc. v. Rural Telephone Service Co., Inc. (1991, which sets the threshold for what is considered original. In Feist the U.S. The Supreme Court held that copyrightable works should reflect "a modicum of creativity," overturning the doctrine of "sweat of the brow." This was a doctrine, which granted copyright based solely on labor and hard work. The court realized that, even though the originality standard is low, copyright is limited to at least something that reflects some degree of creativity. It further stated that copyright extends only to elements that reflect more than a minimal amount of creativity.

Historical examples such as The Trade-Mark Cases (1879) and Burrow-Giles Lithographic Co. v. Sarony (1884) establish the human factor associated with authorship. In each, the Supreme Court construed a copyrightable work to be "fruits of intellectual labor," which essentially tied them to human ideas and imagination. *Burrow-Giles* further defined an author to be a person who has started and finished an original or literary work, essentially underlining the fact that human element is part and parcel of authorship. But still, Congress has not ever technically defined human authorship by statute, although U.S. copyright law very indirectly insinuates that human ingenuity is the original and creative wellspring.

Naruto v. Slater: The Courts' Stance on Non-Human Authorship

This understanding of the U.S. court system on the rights of non-human authorship has recently become clearer by more recent cases, among which is Naruto v. Slater (2018). A macaque monkey there took several "selfies" with a camera belonging to British photographer David Slater, who then claimed copyright for these images. However, PETA, the international animal

[13]U.S. Copyright Office (n.d.). What is Copyright? Copyright.gov. Retrieved November 14, 2024, from https://www.copyright.gov/what-is-copyright/

rights organization, sued on behalf of Naruto arguing that the monkey was credited as the author. The District Court concluded the case ruling that the Copyright Act does not vest the right of authorship in animals, and the Compendium of the U.S. Copyright Office explicitly excludes works made by animals, plants, or natural phenomena from copyright. The Naruto case confirms this current perspective of the idea that US copyright authorship is strictly reserved for human creators.

AI-Generated Creations and the Mechanical Process Exemption

According to the U.S. Copyright Office's Compendium, there is a category of works that are not protected by copyright: works created by machines or mechanical processes acting in a random or automatic fashion, without any human thought or effort. This provision might mean that AI-generated works do not qualify for copyright protection if they are created through an autonomous process without any human creative input. This, however, poses problems of interpretation because, in AI-related innovations, even in the contemporary one, works may be produced nonpredictive. Simulating creativity, this somehow may not correspond with the old benchmarks of "mechanical" processes. Even where human effort and intellectual labor can be found in human decisions related to the development of AI, the question of whether such works should be protected under copyright immediately becomes complicated.

Human Input and Copyright Eligibility for AI-Generated Works

The Copyright Office holds that those works not involving human efforts or authorship are uncopyrightable. In fact, this means that in the case of AI-generated creativities which cannot be attributable to a human creator immediately, such works automatically revert to the public domain, but it is still undefined what degree of human interaction is needed to make AI-generated works copyrightable. If a human has contributed enough creative input or made identifiable creative decisions, then the output that the AI generates could possibly qualify for copyright. However, the more advanced and independent the AI is from human interaction, the harder the question becomes to determine. Currently, no statutory requirements are in place in the United States to help a party determine whether a human contributed enough creative input to satisfy the requirements of copyright protection.

According to the CONTU 1978 report, copyright protection for computer-generated works depends on originality. It contended that a work should be eligible for copyright if it achieves

even minimal originality through computer processes. This assertion is in line with the current view of the U.S. Copyright Office, that authorship and creativity must come from human involvement. However, the very high degree of autonomy in AI products has also created controversy on this score as the issue of human creativity level arises whenever works are produced by AI. The scholarly opinion is divided over the minimum amount of human contribution required for copyrightability, but courts in the United States have always construed authorship as an attribute that is exclusively owned by a human being and have oftentimes talked of "human genius" or "intellect" as being constituent.

Current Limitations and Future Prospects for AI-Generated Works in Copyright Law

Therefore, U.S. copyright law does not extend its protection to works that are solely AI generated and lack human authorship. Presumption of human authorship, enhanced by case law and the Compendium guidelines, eliminates the potential copyright protection stemming from works created solely by non-human entities or processes. Naruto and the other foundational cases, such as Feist and Burrow-Giles, underscore that copyright protection requires at least some component of human intellect or creative contribution.

With the advancement of AI technology, however, various experts inquire whether such standards can be adjusted to acknowledge AI contributions, especially as AI systems evolve further to demand minimal human direction in generating highly creative works. This is despite current law that privileges a conservative view of authorship. Meanwhile, some scholars argue that copyright frameworks need to be reassessed to cope with autonomous AI creations.

UK

Under copyright law in the United Kingdom, computer-generated works fall into a special category with respect to the Copyright, Designs, and Patents Act 1988, being the only jurisdiction to expressly legislate for such a recognition. The CDPA defines a CGW as any work "generated by a computer in circumstances such that there is no human author of the work." Here, the UK recognizes the serious intellectual labor, creativity, and technical expertise that these works are comprised of especially because of the advanced AI systems in which they are born. The UK has attempted through the CDPA to provide copyright protection to certain classes of CGWs while trying to establish a legal framework for determining authorship,

originality, and ownership in works created by or with the assistance of AI.

Legal Framework and Authorship of CGWs in the UK

The approach of the UK to CGWs is provided by section 9(3) CDPA, which gives a standard for determining authorship when there is no traditional human creator for the work. The statute further specifies that the "author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken." For a CGW to have copyright, it must find a place within one of the categories of works granted protection under UK law as literary, dramatic, musical, or artistic works. It must also meet the criteria of originality, and there should be an identifiable person who took part in the "necessary arrangements" that brought about the work.

This system of categories of copyrightable works under the CDPA is a "closed list" system. This simply means that only works fitting into specified categories are capable of receiving copyright protection. The requirement thus limits the scope of protection and allows for CGWs only when patently falling into known forms of art or creativity. In general, for CGWs, the copyright holder would be the person who provided the intellectual input, skill, or labor required to design the software or AI system that creates the work. For example, the CDPA provides that a copyright in a CGW subsists for only 50 years from the end of the year in which the work was created. This is unlike the life-plus-70-years standard used for human-created works.

The Originality Requirement and the “Sweat of the Brow” Standard

A work must be "original" to have copyright in the UK. Although the CDPA itself does not define originality, it is through cases that this concept has developed and what it has meant has been defined over time: traditionally through the "sweat of the brow" test. This doctrine presumes a work should have resulted from the skill, labour or judgment of its author even though it had no "creative flair.". Traditionally, the UK's copyright law rested on the principle of investment of effort as being sufficient to prove originality. This can be derived from cases like Walter v Lane and Express Newspapers plc v News where courts have held that mere basic skill and judgment in the arrangement of information could well be sufficient to establish originality. The UK is thus relatively lenient with regard to originality and historically less focused on creativity, so even a functional compilation of data or facts qualifies for copyright.

To that effect, it is increasingly being challenged by EU law, especially through the European Court of Justice's Infopaq ruling that introduced "own intellectual creation" with a focus on a requirement to be creative rather than a task of mere exertion of effort. The implication of the Infopaq decision is therefore that originality will only be achieved when there is an expression of individual intellectual creation. Although the UK incorporated the Infopaq test during its membership of the EU, its practical effect on cases such as SAS Institute v World Programming remains unknown. With this, the UK is at an easier point where it can define what exactly originality standards are regarding CGWs, though still at the mercy of the precedent from Infopaq as this is how copyright is looked at in the UK; between works that meet this minimum threshold of creativity and those merely exercising skill or labor.

Determining the Author in CGWs: Who Made the Necessary Arrangements?

Identifying who the "person by whom the arrangements necessary for the creation of the work are undertaken" is has been one of the contentious issues critical under section 9(3) of the CDPA. For AI-generated works, this clause means that the person behind the design, development, or arrangement of the AI or computer system is the author. This interpretation is relatively obvious with traditional software because it follows the creative and technical input normally provided by a developer or designer to produce the work. For example, in Nova Productions v Mazooma Games, it held that the input from the computer game player was insufficiently creative to make any case for authorship because the developer's contribution through his technical knowhow in the creation of the work remained paramount.

Advanced AI systems, using machine learning or deep learning algorithms, bring out all the complexities of authorship more vividly. Such models operate with an increasing amount of autonomy, continuously learning from data and refining outputs, sometimes independent of initial programming. These characteristics are problematic for the assumption made in the above, according to which the input given by the developer would by itself be enough to guarantee that the "necessary arrangements" are met because these AI systems may develop patterns of behavior that exceed humanly conceived original programs. With more autonomous AI generated works, it becomes difficult again to attribute the work back to the developer. Some scholars postulate that the courts need to stretch the "necessary arrangements" clause to define indirect contributors or even users who only provide creative stimuli for the AI output

produced, and no legal norm has yet been established definitively.

AI-Generated Creations and Copyright Eligibility

It follows, therefore, that, given the changing world today, a related question is how all the protection of copyright of the work generated by AI might relate. UK law yet faces the problems arising from those works that require much human input. Though s9(3) serves a base through the acknowledgment of people who "make necessary arrangements," it is, for purposes of those complicated AI works generated, not very obvious regarding an "author" - not to mention those quite confused AI-generated works extended out of what we heretofore knew and known as traditional programming. Scholarly debate has turned to whether copyright exists at all for AI-generates because one might consider an AI system a creative agent unto itself, able to create independent of any human input. Some scholars propose that the developer should be granted copyright as the originator of the AI but might not account for AI systems that dynamically change and improve with no human input.

Legal scholars like Dickenson argue that the most effective approach for courts should be to attribute authorship to developers under a generous construction of section 9(3), recognizing developers as part of the work's process, through their intellectual and technical labor. Another view is that the CDPA emphasis on entrepreneurial rather than purely creative authorship does permit copyright to extend in some circumstances to works created by AI, where developers and technical staff are treated as authors because they can enable the process of computer generation. For instance, Clark and Smyth hold that section 9(3) places the entrepreneurial activity at the very heart of authorship and extends copyright to the "technical staff who collectively or alone enabled the computer to generate the work.".

Implications for the Future of Copyright in AI-Generated Works

Perhaps even more importantly, this new landscape of AI technology opens up a much broader question of how sustainable prevailing UK copyright frameworks are. Section 9(3) CDPA provides a base for protecting CGW but is itself based upon relatively simple computational process and does not relate to more complex and autonomous outputs that modern AI systems create. As such, with AI systems increasingly complex and requiring ever-decreasing human intervention, the pressure on UK copyright law could build to reform or, at the very least, produce new legal standards that may better reflect the nature of AI authorship and ownership.

The UK approach to dealing with CGWs, basing its approach on the "arrangements necessary" within the developer's context, would suggest that copyright protection will indeed extend towards certain AI-generated works; however, the criteria governing authorship and originality in such cases remain moot. Future court decisions may clarify whether copyright protections apply for fully autonomous AI-generated works and who may claim to be the author under UK law. UK copyright policy remains a careful but changing approach to assimilating works generated by AI into its copyright system while remaining mindful of such traditional concepts of originality, authorship, and labour in the era of the sophisticated AI.

EU

Originality has been firmly established by the European Court of Justice as a central criterion under EU law for copyright protection of literary and artistic works, irrespective of their mode of creation. Originality is said to exist if the work reflects the personality of the author through creative freedom exercised in choices that are not totally dictated by technical or functional considerations. The interpretation does, in fact, mean that originality is a requirement in copyright eligibility, especially when considering the works affected by or created by artificial intelligence.

Originality and AI-Generated Works: Key Cases

The concept of originality in the light of AI-generated works has now been defined in several decisions of the ECJ. In Football Dataco Ltd v Yahoo! UK Ltd, the court held that an intellectual creation could qualify when such a work allows an author the freedom and creative scope in which to exercise free choices to lead to an expression of an author's personality. For if a work's features have been preordained in and through technical functions, its criterion of originality remains unsatisfied because technical requirements obstruct the kind of free creative play that captures and reflects the author's particular expressions.

To further elaborate on this principle, the case of Cofemel v G-Star pointed out that creativity cannot be applied if a subject's perception is purely driven by the requirements for its technical or functional functionality. In other words, this simply means that something should not strictly follow what is practiced in the industry or otherwise restrain a subject's creativeness. According to the court, originality cannot be served without creativity freedom. In Brompton Bicycle Ltd v Chedech, the case was held that the ECJ reconfirmed the principle that works coming only

from technical or regulatory constraint without creative freedom cannot be regarded as original works.

Implications for AI-Generated and AI-Assisted Works

Under such judicial emphasis on originality and creative freedom, cases are now able to represent the limited scope of protection through copyright that purely AI-generated works lacking human inputs are afforded. Since there is no contribution of any creative imagination to work coming from the fully independent systems of an AI machine, it tends to deprive such a work's existence in satisfying the standard test under EU law on originality. Situations in which human involvement can be seen in guiding or assisting the AI process led to works that are likely to meet the originality requirement. AI-assisted works, where human creativity is directly influencing the AI's production, therefore remain eligible for copyright protection. Here, the "human touch" is crucial because it introduces a unique and creative element that satisfies the requirement of originality, just as copyright's underlying rationale is to incentivize creative contributions by human authors.

Evolving Definitions of “Authorship” and Legal Debates

The rise of AI in creative processes raises some questions from legal scholars toward the traditional definition of "authorship" under EU copyright law. Under current law, the author of a computer-generated work is defined as "the person by whom the arrangements necessary for the creation of the work are undertaken." However, this definition does not necessarily reflect the modern complexities of AI-generated creations where the notion of a single human author is not always applicable.

Others, however argue for a more expansive model-one that recognizes the basically collaborative nature of AI-supported creativity and would confer to the contributors who assist technically or otherwise with a bigger input a co-authorship status. The appeal is in the promise of the copyright framework being both more inclusive and equitable, granting legal protection to collective effort of AI-driven creations so better harmonized with the facts of emergent creative and technological facts. This would encourage more innovation in AI while maintaining rights to human creators within a legally adaptive structure.

INDIA

Copyright law during the advent of artificial intelligence, found itself at a crossroads-the need to act with urgency to safeguard creativity. As improved technologies of artificial intelligence continue to produce material that only requires minimal human effort, traditional notions of originality, authorship, and intellectual property rights become obscured. At the heart of it is now the critical role of copyright, that's a legal structure, for protecting human creativity. The question in India has only now begun to come close to the copyright frameworks as Indian copyright frameworks have not been fully equipped for the complexity that AI innovation poses in general.

The Question of Authorship and Ownership in AI-Generated Works

Traditionally, authorship is related to human agency, an essential aspect of copyright law. But when the AI autonomously generates content, the issue becomes tricky for the actual "author." Under Indian law, copyright does not consider AI as a juridical entity; it makes it tough to ascribe proprietorship. Indian Copyright Act at present denies authorship rights to a human creator and puts AI developers and users in legal limbo. Such vagueness raises doubts regarding who owns the rights, be it the AI creator, the developer, or the user controlling the AI: The UK and a few other jurisdictions acknowledge rights in computer-generated works, but that is yet to be properly developed and applied in India.

Originality and Copyright Eligibility

Thus, this can be considered the base which upholds copyright. To create a work generated via AI, originality stands out as a matter of debate. Indian courts determine this using the "modicum of creativity test to establish originality". To emphasize the human mind as being able to exercise judgment, the Indian courts determine creativity via a modicum. Again, as AI creates more through data, there comes an overlap with prior-created works. Such dependency raises questions on whether the AI-generated content can actually cross the threshold of originality, which is both the requirement of Indian law as well as international conventions, like the Berne Convention. Cases such as Feist Publications v. Rural Telephone in the U.S. show that investment in data or labor does not support a claim to copyright if the content is not original. So, without human intervention, it's not known whether the creations of AI can really qualify as "original".

Liability for Copyright Infringement in AI-Generated Content

Another concern in this rise of AI content generation is liability on copyright infringement. Since AI creates content close to the already existing one or style, sometimes it would unknowingly infringe on copyrights. Especially where AI training data consists of copyrighted materials that have not been licensed, such cases become more prominent, as accountability becomes an issue. This is still a debatable issue in India since AI does not have legal personhood and cannot be held liable directly. Therefore, the liability may be passed down to developers, users, or companies that deploy such systems.

Legislative and Policy Considerations for AI-Created Works

In the context of AI, the present copyright framework of India stands pressed to reform itself, facing the challenges thrown at it. The Parliamentary Standing Committee Report of 2021 recommended a new category of rights for AI creations, possibly drawing from the experiences of other jurisdictions, like the EU and the U.K., that explored the concept of "legal personality" for AI. On the other hand, as mentioned earlier, allowing for AI to be vested with legal personhood is well contrary to the extant statutory regime in India since a good amount of them centres around the human notion of creativeness and authorship. Absent legislative rectification, Indian courts have the burden of proceeding case-wise, although this should prove merely incremental in adding clarification.

The Future of Copyright in India's AI-Driven Economy

AI is revolutionizing industries like journalism, art, and entertainment by enabling the automation and even generation of creative content. This may limit investments in AI due to copyright uncertainties, as copyright protection is originally intended to encourage human creativity, but the emergence of AI calls for an adjustment in copyright protection. Therefore, at times, AI-generated works may not qualify for copyright, which leads to freely reproducible works, lowering the incentives of developers and investors. Copyright laws in India need to be updated with the view to protecting the creators and industries that are investing in AI. That way, there will be innovation while at the same time protecting creative rights in a rapidly digitalizing landscape.

India is at the crossroads to rethink copyright frameworks to consider the influence of AI in the creative economy. The challenge of AI-generated works must be addressed through updated

policies and clear legal standards that balance the rights of creators, developers, and the public.

RECOMMENDATIONS

- Therefore, today's outcome does not align with the traditional notions of intellectual property that serve to protect human creativity and ingenuity. Indeed, any creative work produced by an AI system arises through algorithmic means that reflect neither human skill nor effort nor originality usually classed under IP law. Consequently, it cannot simply be fitted into the extant copyright and IP legislative regime, which rests heavily on human authorship. Rather, there ought to be a separate legislative approach to this phenomenon.
- It is recommended that the legislature consider developing a separate legal category to address AI-generated creations. This new category would establish a framework distinct from IP law, recognizing the lack of human intellectual effort and the autonomous nature of AI-generated content. Such a framework could focus on incentivizing innovation responsibly while addressing ownership, accountability, and liability specific to AI-generated works without conflating them with human intellectual property.
- Creating a dedicated legal structure would also relieve the judiciary from oscillating between traditional IP laws and the novel challenges posed by AI. Without this legislative clarity, courts may continue to struggle with inconsistent interpretations and lack of legal precedent. Establishing new regulations would bring coherence and predictability to the governance of AI-generated works, fostering a balanced environment for both AI development and the protection of human intellectual creations.

Hence, through this approach, legislative bodies can ensure that AI-generated works are managed in a way that reflects their unique nature, without diluting the principles of intellectual property law or undermining the rights and protections due to human creators.

CONCLUSION

The nature of AI-generated works challenges the traditional understanding of intellectual property. Human-created works are different from the creations of computers, as the latter arise from complex algorithms and machine processes which do not belong to human creativity, originality, or intellectual engagement often required for protection under intellectual property

laws. Because AI has no autonomy and does not have rights or title to its creations, AI cannot be granted the role of author or owner over them. Similarly, though the human could design or be guiding the AI system, the result produced is not a direct expression of the human genius and cannot be ascribed full authorship or title to the human operator.

Hence, neither the AI nor the human can validly claim rights of ownership or authorship under the traditional IP framework. This incongruence leads to a belief that AI-generated works should not be covered under the existing IP laws as they were not produced based on the individual creativity or intellectual input for which these laws seek to protect. In classifying AI-generated outputs as intellectual property, there is a risk of the very purpose of IP law, which is to provide incentive and protection for human creative efforts, being undermined.

This framework addresses ownership issues and accountability, and who enjoys usage rights of its creations. In the absence of this legislative intervention, a litany of contradictory applications in the courts with resultant disparate rulings and an all-ongoing murkiness over the law becomes almost inevitable. This differentiates legal category of the creation of AI from inventions but would provide better support towards innovations while respecting the original purpose behind intellectual property law intact in its entirety and the outcome as well will have appropriate clear guidelines on the base products that are founded in the AI.