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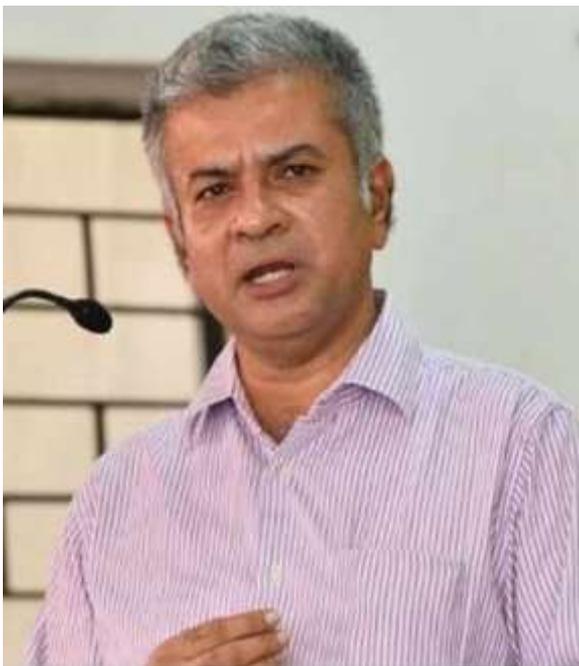
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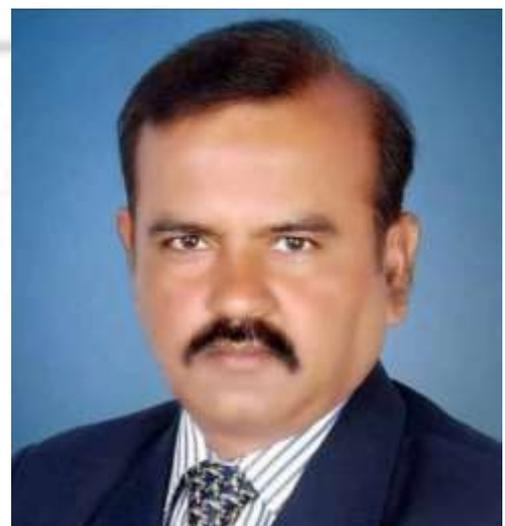
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With this thought, we hereby present to you

# **THE IMPACT OF ARTIFICIAL INTELLIGENCE ON INTELLECTUAL PROPERTY LAWS: BALANCING INNOVATION AND PROTECTION**

AUTHORED BY - LYTITA NIHARIKA A.

## **Abstract**

The rise of artificial intelligence (AI) has triggered a seismic shift in various sectors, promoting a reassessment of established legal frameworks particularly in the realm of intellectual property law. As AI systems become increasingly sophisticated, capable of generating novel works of art, designing inventions and even automating complex tasks, they raise profound questions about the very nature of intellectual property and its application in a rapidly evolving technological landscape. Beyond the legal implications, the ethical considerations surrounding AI and IP are paramount. This paper addresses concerns regarding the potential for AI to be used for IP infringement, the impact of AI on creative industries and the broader societal implications of AI-generated content. It emphasises the importance of striking a balance between promoting innovation and protecting the rights of creators and inventors in an increasingly AI-driven world.

**Key Words: Artificial intelligence, intellectual property law, innovation, rights, fair dealing**

## **Introduction**

The term “intellectual property” (IP) refers to works of literature, art, inventions, designs, and symbols that are legally protected. In essence, it is the expression of your thoughts and the ownership of your products. The special powers of AI are posing a threat to the established foundations of intellectual property law, which are copyright, patents, and trademarks. The idea of authorship, which is typically ascribed to creativity of the human mind, is called into question in copyright law when AI systems show that they are capable of producing original works of literature, art and music. This sparks a discussion about the ethical and legal ramifications of AI-generated content and poses important problems regarding the applicability of copyright protection to such works. The foundation of intellectual property

law is labour theory and utilitarianism. The law serves as an incentive and safeguards their exclusive rights to these works, allowing them to manage their use and earn revenue from them. In addition to protecting their fundamental right to ownership, this legal protection acknowledges their creative and intellectual contributions to society. Intellectual property law reflects the inherent rights perspective and Lockean labour theory, which holds that people have an inherent right to the fruits of their effort. A designer combines their concepts, resources and intellectual work to produce a unique design that is either aesthetically pleasing or has some utility. According to John Locke, they have a right to possess the product as a result of their labour. Copyright and design patents give designers legal rights that allow them to keep control of their innovations and creations. This protects their intellectual work and acknowledges their inalienable right to the fruits of their creativity.

AI has evolved from a sci-fi concept to a crucial component of business strategy in recent years because of the tremendous advancements in AI systems and the technology. AI may increase efficiency and enhanced decision-making skills due to which companies across a range of industries are becoming more and more willing to integrate artificial intelligence into their operations. One of the most important segments of the AI market is generative AI, or GenAI. Using vast and varied data sets, GenAI systems are trained to identify patterns and correlations in data, enabling them to create new material that may appear to be human-generated. The general public may now readily develop new material that would have previously needed a lot of labour and this credit goes to GenAI systems like ChatGPT, which are now freely available to the public at cheap or no cost. AI systems are unquestionably here to stay and their use will radically change how people and businesses operate in the years that are to come. However, the creation and the application of AI technologies have also proven quite contentious, particularly in the area of intellectual property, where a number of well-known court battles involving AI are currently underway.<sup>1</sup> Numerous nations worldwide have struggled and still struggle with a number of important concerns, such as:

- Are IP rules able to protect content produced by an AI system?
- Who is the owner of the intellectual property rights to a work produced by an AI system?
- Does utilising a GenAI system include any danger of intellectual property infringement?
- Are there any exceptions for fair dealing or fair use?

## **The Idea-Expression Dichotomy, Originality, Sweat of the Brow and the Modicum of Creativity**

An eligibility of a work for protection is determined by a number of fundamental criteria that form the basis of copyright law. These guidelines are essential for discussing how artificial intelligence will affect intellectual property laws:

- 1. Idea-Expression Dichotomy:** Courts have maintained for a long time that although general topics, facts and methods are still open for public use, their presentation and organisation may be protected. This duality is challenged by AI-generated art, which frequently repurposes or remixes pre-existing materials without creating genuinely original expressions. This brings about the question of whether anything produced by AI is an original idea, a collection of pre-existing expressions, or a new expression that can be protected.

In the case of *Baker v. Selden* (101 U.S. 99, 1880)<sup>2</sup> the U.S. Supreme Court established that copyright protects only the expression of an idea, not the idea itself. Selden had written a book on bookkeeping methods, but the Court ruled that the system described in the book was not copyrightable—only the specific way it was expressed was protected.

*Nichols v. Universal Pictures Corp.* (45 F.2d 119, 2d Cir. 1930)<sup>3</sup> – Judge Learned Hand stressed that while specific utterances are protected, overarching concepts or ideas are not. The case was a claim that a movie had plagiarised the themes of a play.

- 2. Originality:** A crucial element of copyright protection is originality, which usually requires a human author to use their own imagination and judgement. AI, whose outputs often come from massive databases and may be statistically unique but lack human creativity, makes this criterion more challenging, and courts may need to reconsider what originality means when AI-generated works mimic human-like creativity.

*University of London Press Ltd. v. University Tutorial Press Ltd.* (1916) 2 Ch 601<sup>4</sup>– The court concluded that even examination papers might be protected under copyright law provided they met the originality requirement, meaning they were the product of intellectual endeavour.

- 3. Sweat of the Brow Doctrine:** According to this theory, which is accepted in some jurisdictions, a substantial amount of time or effort put into gathering data or

producing a work may be sufficient justification for protection. But courts around the world, including the United States, have mostly abandoned this idea in favour of demanding ingenuity rather than hard work. The labour-intensive process of gathering data and training models for AI creates new discussions:

does the effort required to train an AI system justify intellectual property rights over its outputs, or does each individual piece of work need to exhibit measurable human creativity?

*Feist Publications, Inc. v. Rural Telephone Service Co.* 499 U.S. 340 (1991)<sup>5</sup> – This court also ruled that factual compilations must exhibit innovation rather than merely labour, invalidating the “sweat of the brow” approach in the United States.

- 4. Modicum of Creativity:** Courts have stressed that in order for a work to be eligible for copyright protection, it must possess a certain amount of creativity. The problem with AI’s capacity to produce works with ostensibly creative components is figuring out whether this creativity comes from human input, AI’s own processes, or a combination of the two. Because AI-generated works lack human authorship, courts have been reluctant to assign copyright, making this issue a focal point of contemporary legal discussions.

*Feist Publications, Inc. v. Rural Telephone Service Co.* 499 U.S. 340 (1991) – Even very basic creative decisions could be eligible for copyright protection, as the ruling stated that only a “modicum of creativity” is required.

In *Eastern Book Company v. D.B. Modak* [(2008) 1 SCC 1]<sup>6</sup>, the Supreme Court of India discussed the copyright laws originality requirement. The copyrightability of editorial comments and headnotes created for court rulings was at issue in this case. The **Doctrine of Sweat of the Brow**, which laid foundation of copyright protection on hard work and effort alone, was rejected by the Court. Following the U.S. Supreme Court’s decision in *Feist Publications v. Rural Telephone Service Co. (1991)*<sup>7</sup>, it instead adopted the criteria of **Modicum of Creativity**. According to the ruling, a work must demonstrate some degree of independent creativity in addition to effort or skill in order to be protected by copyright. This decision raises concerns about whether AI outputs satisfy the necessary level of inventiveness for copyright protection, making it especially pertinent to talks regarding AI-generated work.

## **AI, IP Protection and the Usage of Output Generated by AI**

IP laws give IP owners specific powers to exclude others from their creative or innovative works. Patent and copyright holders, for instance, have the ability to prevent unlawful use of their inventions and, in a similar vein, unauthorised duplication of their works. These rights allow intellectual property owners to be acknowledged and profit from their works<sup>8</sup> providing them with an incentive to invest their time, effort and the resources into their intellectual creations. This has historically been one of the main arguments in favour of IP legislation. However, this reasoning does not apply to AI systems which do not require an incentive to create.<sup>9</sup> The question of whether intellectual property laws should apply to AI system innovations in the same way that they do to human-made works is thus legitimate. IP law primarily focusses on two areas: patent and copyright laws, which are the ones most affected by the AI revolution.

An AI-generated concept or work may be legally owned by the owner of the AI system, the system developer who authored the code, the AI system's trainer, the user or operator, or a combination of these. It is also possible to transfer IP ownership through contractual stipulations; for instance, OpenAI's terms of service include in particular, the user is granted intellectual property rights to any content created via ChatGPT. "*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.*"<sup>10</sup> There are inherent infringement concerns with the process of creating and using output generated by AI systems. When someone creates a work that is identical to or strikingly similar to a work that is protected by copyright, it is typically seen as evidence of copying under copyright law. An AI system may replicate a large percentage of the data sources or even be identical to them when it is only able to use a small number of them to generate content, such as when asked to respond to a highly precise question.

### **Fair Dealing<sup>11</sup>**

Like an exemption to copyright laws, the concept of fair use or fair dealing allows the use, duplication, or reproduction of an author's work in certain situations. This suggests that using an author's work in compliance with the rules outlined in the fair use or fair dealing provision would not be regarded as copyright infringement. It is impossible to determine a formula for how much of a copyrighted work can be utilised without permission.

In the case of *University of Oxford and Ors. v. Rameshwari Photocopy Services and Ors* (2016)<sup>12</sup>, the concept of “fair dealing” under Section 52<sup>13</sup> of the Copyright Act was discussed. The court in this case held that “*The basic purpose of Section 52 is to protect the freedom of expression under Article 19(1) of the Constitution of India so that research, private study, criticism or review or reporting of current events could be protected.*” The court also highlighted that “*the fairness in the use can be determined on the touchstone of ‘extent justified by the purpose’.* In other words, the utilization of the copyrighted work would be a fair use to the extent justified for purpose of education.”<sup>14</sup>

The Kerala High Court in the case of *Civic Chandran and Ors. v. C. Ammini Amma and Ors.* (1996)<sup>15</sup> provided certain factors that should be considered in order to decide whether the replication is a copyright infringement, specifically:

1. *The quantum and value of the matter taken in relation to the comments or criticism;*
2. *The purpose for which it is taken;*
3. *And the likelihood of competition between the two works*

### **United States**<sup>16</sup>

Recently, the New York Times filed a lawsuit against Microsoft and OpenAI, claiming copyright infringement because the companies used Times articles without permission to train their large language models (LLMs).

However, the current stance of Times contrasts with its position in the 1997 case of *New York Times v. Tasini*.<sup>17</sup> Times objected to the inclusion of independent authors in Tasini’s digital archives who demanded recompense for their labour. The Times put its own financial interests ahead of the writers’, even suggesting that a ruling in the freelancers’ favour might hamper the advancement of technology. The Times argues that the unapproved use of its content in this case, however, diminishes the value of journalistic labour. Additionally, the company is concerned about the potential for LLMs to produce almost identical copies of its articles and circumvent its paywall.<sup>18</sup> Times argues that it is not fair use to use its content to train LLMs since it undermines its business model and reduces the value of its content. Microsoft and OpenAI, on the other hand, can argue that using the articles is innovative since it creates new, original works. They can also argue that the amount of Times content used is rather little when compared to the massive datasets required to train LLMs. The latest models<sup>19</sup> of GPT are trained on trillions of words<sup>20</sup> — a dataset so big that it would be “the equivalent of

a Microsoft Word document that is over 3.7 billion pages long. At the root of the Times's complaint is that this dataset contains a "mass of Times copyrighted content."

## **India**

The current legal dispute between ANI Media Pvt. Ltd. and OpenAI Inc. has been a major topic of discussion on the ethical and legal limitations imposed on AI training. On Tuesday, November 19, 2024, the Delhi High Court summoned OpenAI, the firm that operates ChatGPT, in a case filed by news agency Asian News International (ANI) over the use of its news information "without any license or permission" by the sophisticated AI-powered chatbot to service its consumers. In its recent complaint, ANI claimed that OpenAI had unlawfully used its content to train the chatbot.<sup>21</sup>

It accused OpenAI of unlawfully storing its content in order to train the Large Language Model (LLM) to generate results that "extensively copy or closely summarise the Plaintiff's (ANI) Works". "This obviously amounts to a copyright infringement in the Plaintiff's Works" ANI said in their plea. This is the first time OpenAI has been sued for copyright violations by an Indian news organisation. Furthermore, ANI's suit claims that even after OpenAI claimed to have disabled ANI's website on September 11, 2024, ChatGPT continues to use ANI content that has been placed on its subscribers' websites. In response, OpenAI informed the court that as of October 2024, it no longer uses the website [aninews.in](http://aninews.in) in its training data in accordance with its opt-out policy. Furthermore, ANI has been given permission to request that any additional websites or sources be added to the blocklist so that they will not be utilised for training.<sup>22</sup>

Large volumes of data must be copied and stored in order for generative AI to produce better results. Supporters contend that since the data is only being used for training and not for general circulation, this is fair use. However, critics point out that because their expressive works are being utilised for free and without permission, even this limited use is a trespass against content creators.

Some of the issues the court may consider in this matter:<sup>23</sup>

- Does copyright infringement occur when datasets are simply stored for training purposes, even if they are not shared word-to-word?

- Do AI models breach copyright by making these protected datasets available to users?
- Given that the AI models themselves do not access the protected information when producing new outputs, is training datasets a “transformative use”?
- Does accessing the full work to extract databreach copyright, and are “facts” and “information” taken from copyrighted works protected?

## **Conclusion**

As AI advances, striking a balance between promoting innovation and protecting copyright holders’ rights is crucial. In the case of OpenAI, assessing instances of copyright infringement and fair dealing is a challenging and intricate task. Indian courts will need to use the relevant legal principles and carefully consider the unique facts of each case in order to reach a fair and just decision. As GenAI develops and the standards set forth in *Civic Chandran and Ors. v. C. Ammini Amma and Ors.* may be applied and reviewed in the decision-making process, more issues of this kind will unavoidably arise. Not just in India but also globally, this would set a precedent. With the development of AI and machine intelligence, the legal landscape surrounding copyright and fair dealing is likely to continue evolving.

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1 <https://www.nortonrosefulbright.com/en/knowledge/publications/c6d47e6f/the-interaction-between-intellectual-property-laws-and-ai-opportunities-and-challenges>

2 Baker v. Selden (101 U.S. 99, 1880)

3 Nichols v. Universal Pictures Corp. (45 F.2d 119, 2d Cir. 1930)

4 University of London Press Ltd. v. University Tutorial Press Ltd. (1916) 2 Ch 601

5 Feist Publications, Inc. v. Rural Telephone Service Co. 499 U.S. 340 (1991)

6 Eastern Book Company v. D.B. Modak [(2008) 1 SCC 1]

7 Supra at 5

8 <https://www.wipo.int/about-ip/en/>

9 <https://news.bloomberglaw.com/us-law-week/ai-generated-inventions-need-human-ingenuity-and-patents>

10 <https://openai.com/policies/terms-of-use/>

11 <https://hollaassociates.in/fair-use-and-fair-dealing-in-copyright-law/>

12 University of Oxford and Ors. vs. Rameshwari Photocopy Services and Ors MANU/DE/2497/2016

13 <https://www.copyright.gov.in/Documents/Copyrightrules1957.pdf>

14 Kartik Chawla, Oxford University v. Rameshwari Photocopy Services – Reshaping the Copyright Discourse, *The Indian Journal of Law and Technology*, Vol. 13, 2017, Pg 66

15 Civic Chandran and Ors. vs. C. Ammini Amma and Ors. MANU/KE/0675/1996

16 <https://hollaassociates.in/fair-use-and-fair-dealing-in-copyright-law/>

17 <https://www.law.cornell.edu/supct/pdf/00-201P.ZO>

18 <https://harvardlawreview.org/blog/2024/04/nyt-v-openai-the-times-about-face/>

19 <https://platform.openai.com/docs/models#models-overview>

20 [https://nytco-assets.nytimes.com/2023/12/NYT\\_Complaint\\_Dec2023.pdf](https://nytco-assets.nytimes.com/2023/12/NYT_Complaint_Dec2023.pdf)

21 <https://www.foxmandal.in/News/ai-on-trial-ani-media-vs-openai/#:~:text=If%20courts%20decide%20that%20training,to%20obtain%20licenses%20or%20enter>

22 <https://www.thehindu.com/news/national/delhi-hc-issues-summons-to-openai-on-ai-copyright-violation-plea-against-chatgpt/article68885741.ece>

23 Supra at 21