



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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THE COPYRIGHT COMPLICATION WITH GENERATIVE ARTIFICIAL INTELLIGENCE

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ABSTRACT

Generative AI, a rapidly advancing field in the realm of artificial intelligence, has been the subject of debate in recent times. According to the World Intellectual Property Organisation (WIPO), Generative AI refers to any machine learning model capable of dynamically generating output after it has been trained¹. The market for generative AI is in an explosive phase, with the global market reaching \$37.89 billion in 2025, with a projected reach of \$1,005 billion in 2034.² However, as this technology continues to evolve, it raises some serious legal, ethical and societal concerns as well as complex copyright issues.

With the growing usage of generative AI for the generation of texts and images, with over 34 million AI images created every day, the question of the copyrightability of AI-generated content becomes more significant. This paper examines the challenges and implications of copyright for the content of generative AI, with a critical analysis of “originality” in AI-generated works and assessing whether the usage of copyrighted material by AI violates copyright, or does it fall under fair usage.

The paper also examines the relevant framework and precedents of countries like the United States of America (USA), the United Kingdom (UK) and Japan and examines the measures adopted by India in this regard with reference to India AI Mission and the Working Paper on Generative AI and Copyright. As a concluding part, the paper provides suggestions to bring harmony between AI innovation and public benefit.

Key Words: Artificial Intelligence, Generative AI, Copyright Infringement, Originality, Regulating Artificial Intelligence.

¹ World Intellectual Property Organisation (WIPO) <http://tind.wipo.int/record/49599?v=pdf>

² <https://www.precedenceresearch.com/generative-ai-market>

INTRODUCTION

Generative Artificial Intelligence (AI) has the potential to transform the world, and that path of transformation has already begun. However, with greater potential comes greater risks, as in many countries, including India, AI operates in an unregulated domain. In the Intellectual Property domain, technology has always posed a challenge. Beginning from the advent of the printing press, copyright was ever developing through legislative amendments and judicial interpretations. Right now, with the birth of the era of AI, it faces another issue as to whether images or output generated by AI is copyrightable and whether the usage of copyrighted works by the AI developers for training their systems infringes the copyrights of the authors.

The seed for AI-generated art was sown in 1973, when a computer artist named Harold Cohen created the first AI-generated image using a programme called AARON, which was designed to produce drawings and images autonomously³. But in recent times, after the advent of generative Pre-Transformer systems like Chat GPT, Gemini, and Perplexity, the generation of images using AI has become cheaper, faster and more efficient. Still, the intellectual property law surrounding them lies in a grey area.

1. What is Artificial Intelligence?

According to the father of Artificial Intelligence, John McCarthy, it is “The science and engineering of making intelligent machines, especially intelligent computer programs”. It was described as the way “to find how to make machines use language, form abstractions and concepts, solve kinds of problems now reserved for humans, and improve themselves. ...For the present purpose, the artificial intelligence problem is taken to be that of making a machine behave in ways that would be called intelligent if a human were so behaving.”⁴.

According to the World Intellectual Property Organisation (WIPO), “Artificial intelligence (AI) is a discipline of computer science that is aimed at developing machines and systems that can carry out tasks considered to require human intelligence, with limited or no human intervention.”⁵

³ <https://www.smithsonianmag.com/innovation/first-ai-generated-art-dates-back-to-1970s-180983700/>

⁴ When Artificial Intelligence Becomes General Enough to Understand Itself. Commentary on Pei Wang’s paper “On Defining Artificial Intelligence, Joscha Bach, Journal of Artificial General Intelligence 11(2) 15-18, 2020

⁵ REVISED ISSUES PAPER ON INTELLECTUAL PROPERTY POLICY AND ARTIFICIAL INTELLIGENCE
https://www.wipo.int/edocs/mdocs/mdocs/en/wipo_ip_ai_2_ge_20/wipo_ip_ai_2_ge_20_1_rev.pdf

In accordance with the paper released by Niti Ayog of India called the National Strategy for Artificial Intelligence, “Artificial Intelligence refers to the ability of machines to perform cognitive tasks like thinking, perceiving, learning, problem solving and decision making⁶.”

2. Generative AI and Copyright: Originality and Fair Use

Many scholars argue that the AI Developers, while training their AI system, use copyrighted works of authors without permission and that it is violative of their rights. However, AI developers state that the usage of works for training AI systems falls under the head of Fair Use and is a transformative use. Different countries have different positions on the issue at hand. The laws of the United States of America (USA), the United Kingdom, the European Union and India are provided as hereunder.

The United States of America (USA)

The USA, under the Copyright Law of the United States, provides copyright protection to original literary, artistic, dramatic, musical, pantomimes and choreographic works, pictorial, graphic, and sculptural works, motion pictures and other audiovisual works, sound recordings and architectural works for works that are fixed in a tangible form⁷.

With regard to fair use, the following limitations are provided on the exclusive right:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work⁸.

The present issue was first in question before the court in the case of *Thomson Reuters Enterprise Centre GmbH v. ROSS Intelligence Inc*, where the court held that ROSS had infringed Thomson Reuters’ copyrights by using Westlaw headnotes in its AI training data. The court observed that Westlaw’s headnotes are copyrightable and the usage of the headnotes

⁶ NITI AAYOG, National Strategy for Artificial Intelligence, <https://www.niti.gov.in/sites/default/files/2023-03/National-Strategy-for-Artificial-Intelligence.pdf>

⁷⁷ US Code Title 17- Copyrights (“17 USC”), available at <https://www.bitlaw.com/source/17usc/102.html>

⁸ See, 107 17 USC

by ROSS was commercial and that its usage was not transformative and did not fall within the definition of fair usage.

The USA also had two landmark class action lawsuits in this regard, namely, *Anrea Bartz & Ors v. Anthropic*⁹ and *Richard Kadrey v. Meta Platforms*¹⁰. In the case of *Anrea Bartz & Ors v. Anthropic*, the central allegation was that the defendant had allegedly copied the entirety of the books and had stored them permanently and used them for training their Large Language Model (LLM), without permission or license from the author. The court in this case held that the books that were lawfully obtained and used for training LLM constituted as fair use, and the use was transformative and observed that since the LLM did not compete with or replace the books, the usage of books for training LLMs was permitted under the law. However, the court held that this only applied when the source for training AI was lawfully obtained.

In the case of *Richard Kadrey v. Meta Platforms*, the court held that training an AI system on sources both lawfully obtained and pirated qualifies as “fair use” and Meta’s usage of the data was transformative as the AI analysed the language and content of the books and produced its output instead of verbatim copying the content provided in the materials.

One of the important things that was not present in the case of ROSS Intelligence, which is present in this case, is the market dilution element. The court in the precedent case had observed that the AI system meant to compete with Westlaw; however, in this case, the court observed that there was insufficient evidence to conclude any market dilution caused by Meta AI, and hence, the case was dismissed.

The United Kingdom (UK)

In the UK, the laws related to copyrights are governed under the Copyright, Designs and Patents Act, 1988 (CDPA), which provides for the protection of copyright in original literary, dramatic, musical or artistic works, sound recordings, films, and the typographical arrangement of published editions¹¹. The Act also provides an exception to making copies of a work by a

⁹ *Andrea Bartz, Charles Graeber, and Kirk Wallace Johnson v. Anthropic PBC*, No. C-2405417 WHA. available at <https://docs.justia.com/cases/federal/district-courts/california/candce/3:2024cv05417/434709/231>,

¹⁰ *Richard Kadrey v. Meta Platforms, Inc.*, Case No. 23-cv-03417-VC, available at <https://law.justia.com/cases/federal/district-courts/california/candce/3:2023cv03417/415175/598/>

¹¹ Copyright, Designs and Patents Act, 1988, Section 1, accessed at <https://www.legislation.gov.uk/ukpga/1988/48/contents>

person who has lawful access used for computational analysis and accompanied by a sufficient acknowledgement.¹²

In 2021, the UK government introduced the National AI Strategy, which provides for a decade-long strategy for developing AI Research and Development (R&D) Capacity and provides for the inculcation of AI into the healthcare and defence systems of the country. The Strategy provides for three main pillars:

1. Investing in AI for long-term needs
2. Ensuring equity and equality of benefits of AI to all sectors
3. Effective governing of AI.

The strategy aims to build a capable and diverse AI workforce and implement AI in various sectors of the country, promoting innovation in AI technology to achieve high economic growth and increased productivity rates. It aims to make the UK globally competitive in the field of AI, to foster the growth of AI, and to efficiently and responsibly govern AI and mitigate any moral risks related to it and aims to achieve it through public support¹³.

The government also launched consultations on the issue of the usage of copyrighted material for the training of AI systems. The Secretary of State, Peter Kyle, said that they shall strive to strike a balance between promoting the ecosystem of AI and protecting the rights of authors over their works. He proposed the use of licensing as a means for authors to obtain appropriate remuneration for usage of their works, and proposed to lay frameworks for authors to be able to strike licensing deals with AI developers¹⁴.

The UK Government also promulgated the Data (Use and Access) Act, 2025 (DUAA) which required the Secretary of the state to publish a paper on the economic impact of Copyright and AI in the UK and analyse its impact on both the copyright owners and persons who develop and use AI systems and provided technical measures to control the use of copyright works to develop AI systems. It also required the state to make proposals on the disclosure of the usage

¹² Section 29A of CDPA Act

¹³National AI Strategy <https://www.gov.uk/government/publications/national-ai-strategy/national-ai-strategy-html-version?utm>

¹⁴See https://www.gov.uk/government/news/uk-consults-on-proposals-to-give-creative-industries-and-ai-developers-clarity-over-copyright-laws?utm_medium=email&utm_campaign=govuk-notifications-topic&utm_source=a96c8ea2-c315-4647-8d0d-53648f61321b&utm_content=immediately

of copyright works by AI developers and the introduction of a licensing system for providing remuneration to the authors¹⁵.

The European Union

The European Union (EU) had enacted a directive in 2019 called the Copyright in the Digital Single Market (CDSM), which provides regulations regarding Text and Data Mining (TDM). Article 2 defines TDM, which means “any automated analytical technique aimed at analysing text and data in digital form in order to generate information which includes but is not limited to patterns, trends and correlations”. In other words, it is the process by which the AI systems analyse a high amount of material or data and their patterns, language and relationships produce outputs. This is the process that is used to train the AI systems, which then produces the output as required by the prompt provided.

Articles 3 and 4 provide for the exceptions to copyright, permitting the use of protected works to be used for text and data mining. Article 3 allows reproduction and extractions to be made by research and cultural organisations for scientific research and text and data mining to which they have lawful access, and storage of the copies obtained as above. Article 4 provides for reproductions and extractions of lawfully accessible works, and such data may be retained only for the purpose of TDM.

However, it is pertinent to note that Article 4 also states that this only applies to articles that are accessible to the public or the AI company and does not permit the use of works that are expressly reserved by the author or the owner, thus providing the option to the authors to object to the usage of their works for TDM¹⁶.

In addition to the above, the EU also passed the EU AI Act in 2024, which reinforced the mechanisms provided under the CDSM Act regarding the usage of works that are lawfully accessible for TDM and the opt-out mechanism for the authors. In addition to the above, it also requires the AI developers to prepare and publish a report on the training data that is used and retained by the company and encourages the AI Developers and authors to enter into a licensing

¹⁵Data (Use and Access) Act, 2025 <https://www.legislation.gov.uk/ukpga/2025/18/section/136> (Sections 135 and 136)

¹⁶ European Union Directive on Copyright in the Digital Single Market <https://eur-lex.europa.eu/eli/dir/2019/790/oj/eng>

agreement for the usage of copyrighted works for TDM¹⁷.

India

In India, copyright is protected under the Indian Copyright Act, 1957. Section 13 provides copyright protection to original literary, artistic, dramatic, musical works, sound recordings and cinematography. The Supreme Court, in the case of *Eastern Book Co vs. D.B. Modak*¹⁸, overruled the previously followed Sweat of the Brow Doctrine and introduced the Doctrine of “Modicum of Creativity”, whereby it held that there must be some kind of creative work involving skill and judgement to be made by the author for it to be considered to be an original literary work as provided under Section 13 of the Copyright Act.

Another requirement is the definition of an “author” under the Act. The Act designates the “person” responsible for creating the work as the author, but it does not specifically define "person." Referring to the General Clauses Act, 1897¹⁹, which defines a 'person' as "any company or association or body of individuals, whether incorporated or not," does not provide a conclusive answer.

According to the provisions of the Copyright Act in India, copyright protection is granted to human authors. Section 17 of the Act states that "no person" is entitled to copyright except as provided by the law²⁰.

In India, a much-needed clarity seemed to be finally arriving through the Parliamentary Standing Committee Report No. 161, titled “Review of the Intellectual Property Rights Regime in India.” The report states that the reassessment of present laws is crucial in the wake of a new era of emerging trends in AI and aims at providing a holistic view by promoting R&D activities and encouraging IP financing, as well as protecting the traditional rights of authors on their works. The report provided that, instead of integration of AI into existing provisions, a separate category or provision should be created for the protection of AI-related works.

On December 8 of 2025, the Government of India released a Working Paper titled “Generative

¹⁷ European Union AI Act <https://artificialintelligenceact.eu/>

¹⁸ AIR 2008 SUPREME COURT 809

¹⁹ General Clauses Act Section 2(42)
https://www.indiacode.nic.in/bitstream/123456789/15374/1/the_general_clauses_act%2C_1897.pdf

²⁰ See <https://www.copyright.gov.in/Documents/Copyrightrules1957.pdf>

AI and Copyright”, representing the future laws and regulations proposed in the issue of Copyright and AI. One of the major framework introduced through the Working Paper is the “One Nation One License” law whereby creators cannot prevent AI from using their works and data if it was legally accessible or in the public domain and it introduced a mandatory Blanket License whereby the AI Developers can train the AI on copyrightable work without the permission of the author and in return, the authors would receive a portion of the revenue brought in by the AI.

It also introduced a body known as the Copyright Royalties Collective for AI training (CRCAT), which functions similarly to copyrights society. It acts as an intermediary where the AI companies shall pay the CRCAT to get access to millions of works, and the authors who have registered under it get a share of the royalties determined through the AI Training Data Disclosure Formed which is to be compulsorily submitted by the AI developers to CRCAT.

However, there are also a few controversial provisions that were proposed. One of them being that the models that had previously trained their AI using copyrighted works, such as Chat GPT or Gemini, would have to pay for their retroactive usage of copyrighted works, which was, unsurprisingly, opposed by the companies. Also, the revenue sharing process introduced by the paper presents a unique model which is not followed by any other nation, and it may pose a problem when the Indian Government demands a part of the AI company’s Global Revenue for using Indian data²¹.

4. Copyright Protection for AI-generated work

Artificial Intelligence has undeniably transformed creativity and content generation, and specifically with the advent of laws that permit training data mining, the present AI systems are trained on millions of books and data and are capable of generating content and create pictures within minutes. This is when the second challenge to the copyright arena is brought forward. Is the content generated by AI protected under copyright laws?

On a broader outlook, the majority of the countries do not recognise AI as an “inventor” under Patent laws, but are made with the assistance of AI. However, countries such as the United

²¹ Working Paper on Generative AI and Copyright
<https://www.dpiit.gov.in/static/uploads/2025/12/ff266bbeed10c48e3479c941484f3525.pdf>

States provide patent protection for inventions that are AI-assisted. However, the human inventor must make a significant contribution towards the generation of the invention. The only country that recognises AI as an inventor is South Africa, where an AI system called DABUS (which stands for “device for the autonomous bootstrapping of unified sentence”) was granted patent rights²².

In 2019, the Shenzhen Nanshan District Court was called upon to determine a case where an article that was published was written with the assistance of AI and was published by the plaintiffs and the same was reproduced by the defendant without the plaintiff’s consent or permission. The plaintiff in this case indirectly sought copyright for the content generated by AI, and the court ruled that the output purely generated by AI is not copyrightable. However, if “intellectual activity” existed in the output due to the transformation of the data by selection and arrangement of data, then that qualifies as a copyrightable work²³.

In contrast, in India, there was a brief period where AI works were copyrightable. In 2021, Mrs Sahini, who is the proprietor of an AI painting app called “RAGHAV”, obtained copyright protection for an AI-generated painting titled “Suryast”, where Sahini was the first author and the AI was the co-author. However, within a year, the Copyright Office issued a withdrawal notice seeking clarification on the legal status of the AI named Raghav. The notice provides that, as per Section 2(d) of the Copyright Act, the author of the work shall be a human. Sahini had contested that the Patent Office lacked authority to revoke a granted license, and this continues to be an ongoing case²⁴.

Thus, in the present scenario, AI content is not considered to be copyrightable. The output that is produced by AI does not fall under fair dealing as it is used for commercial exploitation, and also is just an output from already existing original work and may not meet the threshold for being transformative as required by the laws.

²² [Ryan Abbott](#) , [Rita Matulionyte](#), [Paul Nolan](#), A brief analysis of DABUS, Artificial Intelligence, and the future of Patent Law, Journal of the Intellectual and Industrial Property Society of Australia and New Zealand, (125), 10–16.

²³ Yatin Kathuria, GENERATIVE AI AND COPYRIGHT CHALLENGES IN THE CREATIVE LANDSCAPE: SUGGESTING POSSIBLE REFORMS IN IP LAW, SUPREMO AMICUS, ISSN 2456-9704

²⁴ Bagath Manish, Indian Perspective of Intellectual Property for AI-Created Works, Trends in Intellectual Property Research 2025

5. Suggestions

With regard to granting copyright protection to AI-generated works, India must enact a comprehensive law to address the grey area. There must be a clear distinction between purely AI works and AI-assisted works, which involve “substantial human effort” and provide copyright protection to the latter. Also, given that AI-generated works do not fall under any traditional doctrines, limited protection shall be given to AI works where no moral rights are given to the author to prevent commercial exploitation of AI-generated works.

In relation to the dispute concerning copyright infringement arising from the use of author’s works without permission for training AI systems, the working paper provided for a One Nation One License for the harmonisation of promoting and fostering AI ecosystem as well as protection of the economic and moral rights of the author by providing the AI developers the data need for TDM and the authors whose works are being used to train the AI, are provided adequate remuneration.

However, it does not provide for an opt-out mechanism as provided by the laws in the European Union, whereby the authors can opt out of their work being used by AI for training and mining data. Thus, instead of a mandatory blanket license, a hybrid licensing mechanism with an opt-out clause would be ideal.

Also, the AI companies should be mandated to submit a report on what data has been used for training their AI systems and in case of retention of data, submit a report with a declaration stating that the data retained was only used for training and data mining.

CONCLUSION

The rapid advance of generative artificial intelligence has fundamentally altered the manner in which content is produced and distributed, and in turn, this has caused a major disruption in the realm of copyrights, where the traditional doctrines no longer apply. However, since the invention of the printing press, the copyright law has been evolving, through judicial interpretations and legislative enactments going from Sweat of the Brow Doctrine to Modicum of Creativity and the introduction of right for Producers, Phonograms and Broadcast Producers. The United States, through judicial interpretations, had evolved from the position of usage of original works of authors for training AI systems as violative of copyrights of the authors to

stating that any works obtained both lawfully or pirated for training AI systems fall within the definition of fair use as they are transformative as long as they do not cause market dilution or disruption to the author.

The UK, on the other hand, sought for harmonization between AI and copyrights of authors and had proposed and enacted various legislative enactments for the purpose of regulating as well as promoting developments in AI technology by introducing a licensing mechanism where AI companies enter into licensing agreements with the authors for usage of their works for remuneration.

The European Union had made a very comprehensive and extensive law in this regard, with provisions providing exceptions to copyrighted works for training and data mining, but also restricts it to lawfully obtained works, which is in contrast to the USA, and it also provides for an opt-out mechanism whereby the authors can deny their works being used to train AI systems as well as imposes burden on the AI developers to publish a report on the training data used and retained and encourages the AI Developers and authors to enter into a licensing agreement for the usage of copyrighted works for TDM.

India, on the other hand, operates with a legal vacuum in the present issue. Only in 2025 did it propose a working paper to regulate the AI domain, and it identified the great potential of AI and proposed having a harmonized law for promoting developments in AI, but also protecting the rights of authors over their works. It provides for a One Nation One License policy, which provides for a mandatory blanket license on all the works lawfully accessible. It also introduced the Copyright Royalties Collective for AI training, which operates similarly to the Copyright Society, which can be used as an intermediary where the AI developers obtain data for training their AI systems and the authors are compensated for it.

Concerning the issue of copyright of AI output, India once again operates in a legal vacuum where a copyright that was previously issued to a picture created by AI called Suryast was rescinded by the copyright office through a notice stating that authors of a work can only be a human and not AI and thus, till today, it still operates as a grey area.