



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.

WWW.WHITEBLACKLEGAL.CO.IN

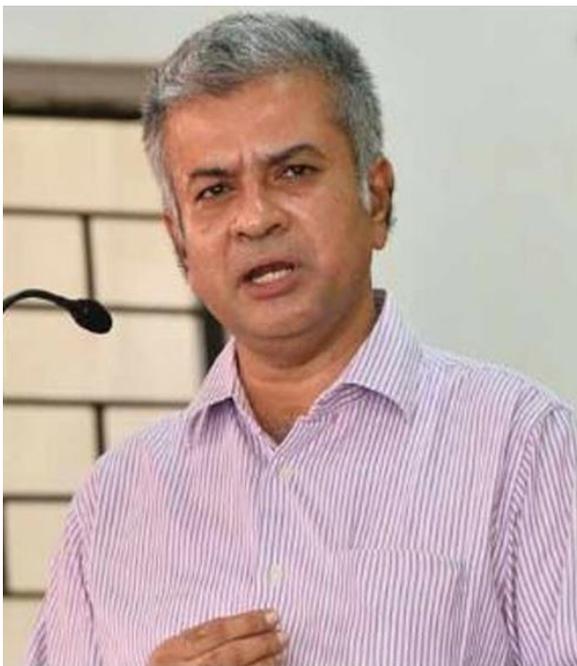
DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional diploma in Public Procurement from the World Bank.

diploma in Public

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

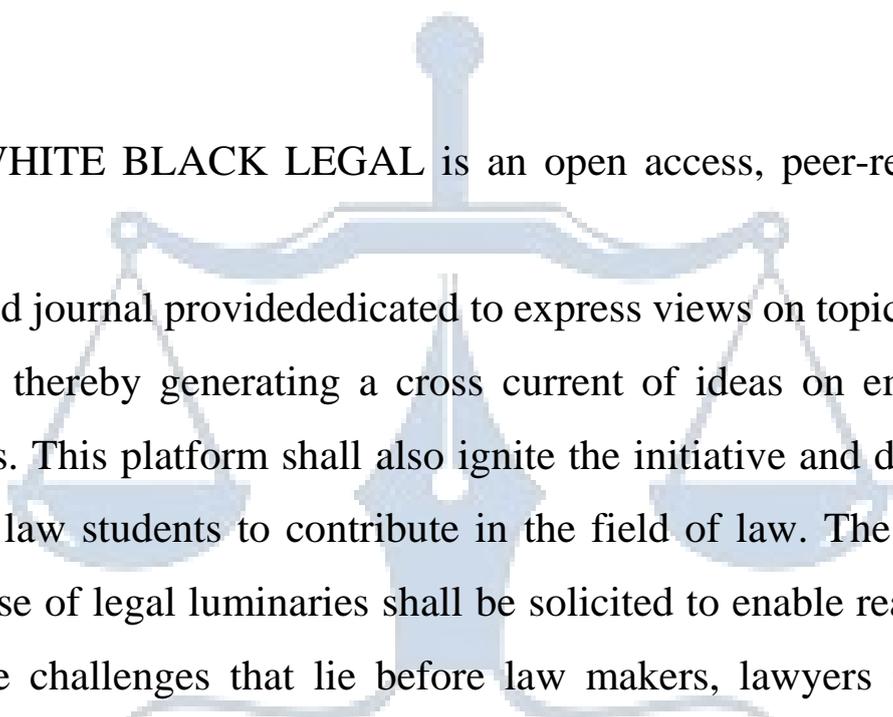


Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US



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

AI CREATIONS: NAVIGATING OWNERSHIP AND AUTHORSHIP

AUTHORED BY - ISIRI RAJANEESH

Abstract

It would be no exaggeration to assert that the advent of Artificial Intelligence (AI) has ushered in both creative possibilities and legal complexities, with several computer programs generating intricate artworks that blur the line between machine and human creation. The legal system grapples with unprecedented challenges as it struggles to keep pace with AI's rapid evolution. Central to this conundrum is the question of ownership and authorship in the realm of AI generated creations. The current legal framework is not well equipped to resolve the complex issues arising from AI's creative output, with the ambiguity surrounding the creator of AI produced work raising fundamental questions that copyright laws were not designed to address. Traditional copyright laws, tailored to consider originality as an expression of the human mind's identity, finds itself at odds with the non-human origin of AI generated works. As AI continues to advance rapidly, understanding and adapting legal frameworks become imperative so as to ensure fair attribution and protection in the flourishing landscape of AI generated artistic endeavors.

AI and Copyright: The Intertangle

AI has reached a stage where it can generate original content, challenging traditional notions of creativity as an exclusively human trait. The swift advancement of sophisticated AI systems has prompted concerns about Intellectual Property Rights (IPR) and their applicability to machine-generated content. The debate surrounding AI and IPR centers on whether copyrights and inventions produced by AI should be treated on par with those created by humans. There are contrasting perspectives on the impact of AI on humanity and IPR. Some see AI's entry into the realm of IPR as a positive force, propelling human progress through unprecedented innovations. On the flip side, there are apprehensions that allowing AI to surpass human intellect in the IPR domain could have unintended consequences, possibly posing a threat to human existence. The European Parliament's draft report on Robotics underscores the necessity

of establishing criteria to categorize AI-generated works as 'own intellectual creation'.¹ The international legal community grapples with the question of the validity of AI-generated copyrights. A notable case involved a San Francisco Court denying copyright validity to a selfie taken by a monkey, sparking debates about AI-granted copyrights and inventions². Some legal practitioners and copyright houses reject claims of copyrights generated through AI, complicating the determination of ownership for AI-generated works. The absence of human intervention in AI-generated copyrights and patents presents challenges in identifying the true owner. Questions arise about whether both the machine and the human creator should share rights and how these rights should be exercised. Furthermore, if an AI produces an invention already owned by someone else, determining liability for damages becomes a complex issue, as machines cannot be held accountable. The historical application of copyright protection to works involving human assistance raises the question of whether AI-created works, independent of human imagination, can be safeguarded by copyright.

Copyright, a crucial component of intellectual property rights, grants legal rights to the original author for the exclusive use and distribution of their work. Copyright protection requires that the work be tangible and original, aligning with the possessive individualism economic theory of Locke. While copyright traditionally covers literary and artistic works, the emergence of AI in literary works necessitates a closer examination of copyright in the context of AI-generated content. To assess the validity of IP generated through AI, a detailed analysis of the national and international legal framework, along with landmark precedents, is essential. Landmark cases like *Burrow Gilles Lithographic Co. v. Sarony*³, *Bleistein v. Donaldson Lithographing Co.*⁴, and *Alfred Bell & Co. v. Catalda Fine Arts, Inc.*⁵, offer valuable insights into the evolving legal landscape. In *Burrow Gilles Lithographic Co. v. Sarony*, the Court examined the eligibility of machine-generated images/photographs for copyright protection, emphasizing the separation of mechanical and artistic work and limiting protection for solely mechanically generated works. *Bleistein v. Donaldson Lithographing Co.* reinforced the necessity of human imagination for copyright protection, highlighting human personality's singularity as a prerequisite. *Alfred Bell & Co. v. Catalda Fine Arts, Inc.* adopted a more lenient stance,

¹ Gyandeep Chaudhary, *Artificial Intelligence: Copyright and Authorship/Ownership Dilemma?*, 13 IJLJ 212, 1 (2022), <https://ir.nbu.ac.in/bitstream/123456789/4773/1/Artificial%20intelligence%20-%20copyright%20and%20authorship%20ownership%20dilemma.pdf>

² Id.

³ *Burrow Gilles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884)

⁴ *Bleistein v. Donaldson Lithographing*, 188 U.S. 239 (1903)

⁵ *Alfred Bell & Co. v. Catalda Fine Arts*, 191 F.2d 99 (2d Cir. 1951)

reducing the criteria for originality and allowing unintended or incidental variations to be claimed as original, providing relief for those asserting copyrights for AI-created works⁶. While these cases offer insights, the lack of a definitive position on AI-generated works leaves prospective right holders uncertain about the protection granted to AI systems. The ongoing debate requires comprehensive legal solutions to address the complexities arising from AI's impact on intellectual property.

AI-Generated Copyright under Indian Law

Copyright, as a legal safeguard for human intellectual creations, is granted protection under Indian copyright law. According to Section 14, copyright provides exclusive rights to the author for acts related to their work, such as reproduction, publication, adaptation, and translation. Section 17 establishes the author as the initial copyright owner, but in cases of contracted work, the employer becomes the owner. In the case of *Rupendra Kashyap v. Jiwan Publishing House Pvt. Ltd.*⁷, the Court held that for examination question papers, only a natural person could claim copyright, emphasizing that a legal entity cannot be granted authorship. The Copyright Office's Practice and Procedure Manual (2018) reinforces this by requiring only natural person information during copyright applications⁸. Courts have consistently held that the first owner of copyright is the author, emphasizing the importance of authorship elements in the selection, coordination, and arrangement of materials in protecting a compilation. Thereupon, copyright pertaining to AI – created work raises the following potential issues:

- (i) When considering AI-created work, a significant concern is the reliance on existing information, potentially leading to infringement of copyright holders. AI's inability to produce original material may pose challenges in recognizing it as an independent entity eligible for copyright protection.
- (ii) Examining copyright, under Section 13(2) of the Indian Copyright Act, specifies that the creation must be original for literary, artistic, dramatic, and musical works. Courts determine originality based on parameters such as the inherent link between expression and idea, the author's applied expertise and effort, the presence of a

⁶ Gyandeep Chaudhary, Artificial Intelligence: Copyright and Authorship/Ownership Dilemma?, 13 IJLJ 212, 1 (2022), <https://ir.nbu.ac.in/bitstream/123456789/4773/1/Artificial%20intelligence%20-%20copyright%20and%20authorship%20ownership%20dilemma.pdf>

⁷ *Rupendra Kashyap v. Jiwan Publishing House Pvt. Ltd.*, 1994 (28) DRJ 286

⁸ Gyandeep Chaudhary, Artificial Intelligence: Copyright and Authorship/Ownership Dilemma?, 13 IJLJ 212, 1 (2022), <https://ir.nbu.ac.in/bitstream/123456789/4773/1/Artificial%20intelligence%20-%20copyright%20and%20authorship%20ownership%20dilemma.pdf>

modicum of creativity, and the involvement of the author's judgment and skills. Whether AI can create original work remains debatable. While the Copyright Act recognizes compilations, the question arises if AI-created work qualifies as a compilation with the necessary skill and judgment.

- (iii) When AI is acknowledged as the owner and author, the issue of liability for infringement arises. Section 51 of the Copyright Act states that copyright infringement occurs when any person, without a license, performs exclusive acts conferred upon the copyright owner. Determining liability for AI becomes complex due to its undefined legal status, potentially creating challenges in establishing a proper framework for AI's actions⁹.

Obstacles Associated with AI as Copyright Holder

- (i) Section 17 allows for copyright transfer in employer-employee relationships. However, recognizing AI as a separate entity complicates establishing an employer-employee relationship, making it challenging to grant ownership to an employer. AI lacks the capacity to execute or authorize ownership.
- (ii) Section 57 grants moral rights to authors, including the right to paternity and integrity. Recognizing AI as an author renders these rights superfluous, as AI cannot assess damage to dignity or reputation. Moral rights, inherently tied to human emotions, become inappropriate for AI systems.
- (iii) Authors are entitled to claim royalties under Indian copyright laws. Determining AI royalty poses challenges in deciding who determines it, how it is paid, and whether AI, devoid of human reasoning, can reasonably determine the royalty amount.
- (iv) Imposing accountability for AI work, especially in cases where the content is derogatory or contrary to public morale, becomes challenging. Current legal frameworks lack specific provisions to effectively address intellectual property generated by AI in India

The longstanding debate over authorship and ownership of creative works faces a new challenge with the rise of AI. While traditional copyright laws centered on human creators, the surge in AI-generated content poses a conundrum. Courts have established that copyright requires a modicum of human creativity, and the Ninth Circuit Decision reinforced that a

⁹ Id.

human should be involved in the creative process. However, as AI systems autonomously produce works, determining ownership becomes unclear. The Copyright Act, 1957, defines an author as the one who causes the work to be created, raising questions about AI creations. The European Commission is exploring legal personality for AI, proposing a potential shift in copyright laws. The concept of 'Work Made for Hire' (WMFH) doctrine could offer a solution, considering the employer as the author. This doctrine, typically applied to human employees, may need adaptation for AI-generated works. Issues arise, such as whether AI-created works are copyrightable, and if so, whether the employer can possess copyright through WMFH¹⁰. Questions also linger about AI's autonomy and competence beyond its designated employment. The current legal framework may need adjustments to accommodate AI creations independently produced without human intervention. Rethinking the terms "employer" and "employee" in the WMFH doctrine could provide a way to classify AI as an employee, addressing the evolving landscape of AI-generated content¹¹.

Conclusion

In the realm of AI-generated works, defining ownership and authorship remains a complex challenge. As technology evolves, legal frameworks must adapt to address the nuanced interplay between human input and machine creativity. Balancing innovation with ethical considerations is crucial to ensure fair recognition and protection for all contributors in this dynamic landscape. Determining the level of human interaction required for copyright eligibility is a crucial component of this challenge. Should credit be given to the user who entered data, the programmer who created the AI, or the AI itself (as a tool or autonomous agent)? As generative AI systems become more self-sufficient and able to create art with little assistance from humans, this subject becomes more pressing than ever. Because they are founded on antiquated ideas of human authorship, current intellectual property rules frequently find it difficult to handle these complications, forcing authors, companies, and governmental organizations to navigate unfamiliar territory.

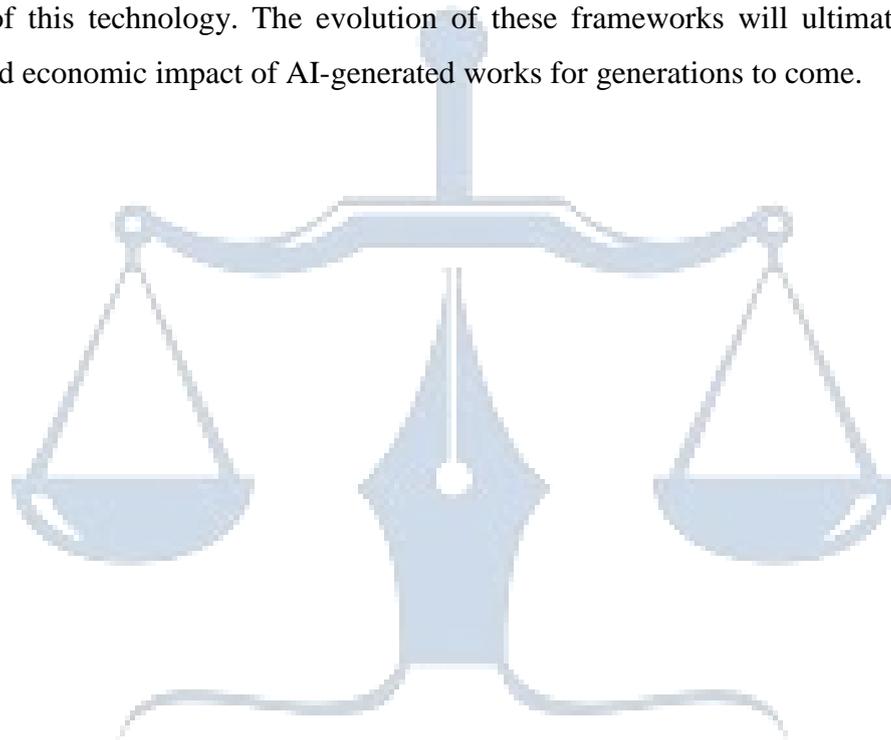
A further layer of difficulty is introduced by concerns about responsibility and accountability. Finding the responsible parties in situations when AI-generated content violates preexisting copyrights, disseminates false information, or causes injury is still controversial. These issues

¹⁰ Id. At 236

¹¹ Legal Services India, http://www.legalserviceindia.com/articles/copy_owner.htm (last visited Feb. 5,2024)

show that in order to regulate the application of AI in creative industries, new legislation as well as moral standards are required.

In the future, adopting solutions that promote innovation while defending individual rights will require cooperation between legislators, engineers, artists, and legal professionals. Clear attribution protocols and transparency in AI systems can reduce conflict and foster confidence. AI integration into creative fields can thrive by finding a balance between societal ideals and technological growth, enabling both audiences and creators to investigate the revolutionary potential of this technology. The evolution of these frameworks will ultimately shape the cultural and economic impact of AI-generated works for generations to come.



WHITE BLACK
LEGAL