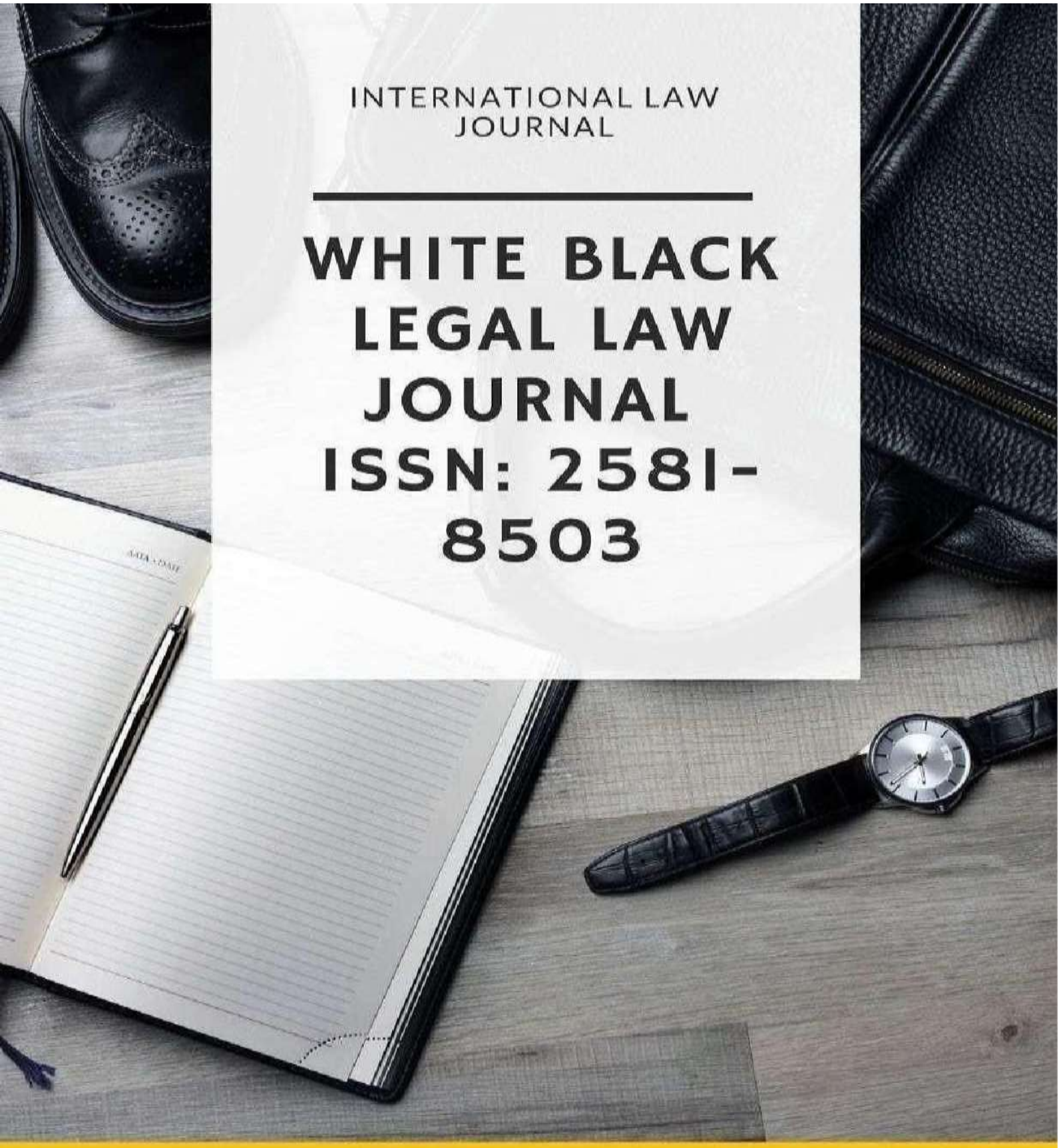

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire 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.

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COPYRIGHT ISSUES IN THE AGE OF ARTIFICAL INTELLIGENCE (AI)

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This paper deals about the issues pertaining to copyright in the age of Artificial Intelligence. In India, the introduction of artificial intelligence (AI) has brought about revolutionary shifts in a number of industries, including technology, media, and entertainment. But this quick development in technology has also led to complicated copyright problems that put current legal systems to the test.

Artificial Intelligence (AI) is rapidly becoming the cornerstone of technological advancements worldwide, and India is no exception to this transformative wave. The introduction of AI in India has a wide range of effects, including both positive and negative ones, as well as chances for social progress and economic expansion as well as difficulties with employment and moral dilemmas. The field of copyrights is not an exception. AI plays an important role in creation and innovation of intellectual properties. AI assists the innovators in creation and composition of music, songs, art, novels, drawings etc. However, there needs to be a clear demarcation between the AI generated works and the one created by human with AI assistance.

AI has brought up significant obstacles and issues pertaining to intellectual property rights, particularly those related to copyright. This article's focus is on how the AI helps in the creation of works such as music, art, songs etc. The article also discusses affects the rights of copyright owners due to AI chatbots such as ChatGPT, Google Gemini, Bing Chat, CleverBot etc. Additionally, authorship and "deep fakes" in the piece of work generated by the AI on its own will be covered in the paper.

The paper also discusses the talks taking place at the WIPO in this regard as well.

INTRODUCTION

AI has applications in many different fields, industries, and aspects of daily life. It is among the most revolutionary technologies of our time, influencing our interactions with technology, the workforce, and even the outside world. AI is crucial to the creation of customized experiences. AI has completely changed how people are presented with goods and services, from personalized content to suggestions. The creative business has been significantly and steadily impacted by AI, which is changing the way material is produced, shared, and consumed. AI is changing many aspects of entertainment, such as video games, music, movies, and more, from fostering creativity to streamlining corporate processes. AI programs, such as OpenAI's GPT series, can compose drafts, come up with concepts for stories, and even assist with dialogue. These resources can help writers overcome creative obstacles and generate ideas. AI is capable of analysing existing literature or scripts to make recommendations for character development, story twists, and other things.

Based on certain inputs, AI can produce complete storylines or outlines. AI is used, for instance, by programs like Plotagon and ScriptBook to evaluate scripts and forecast their commercial viability. More sophisticated and realistic animations and optical effects are being made possible by AI technologies. For instance, AI can provide lifelike facial expressions, deepfake technology (for actors' faces), and motion capture enhancements, which facilitate the creation of intricate animation and visual sequences.

AI is transforming the music business, from customisation to composition. AI-powered applications such as Amper Music and AIVA (Artificial Intelligence Virtual Artist) are able to produce creative music in variety of genres. Media producers and musicians can utilize these technologies to compose soundtracks, background music, and even full-length songs. By automatically creating sound effects, mixing tracks, or mastering songs, artificial intelligence (AI) systems can assist with sound design and cut down on the amount of time spent on manual

tasks. AI is used by streaming services like Apple Music and Spotify to create customized playlists based on user listening preferences. To suggest music that fits a user's tastes, mood, or time of day, these platforms examine enormous volumes of data.

"Unlike humans or animals who think with the help of a brain located inside their bodies – which itself exists in an environment – a machine produces calculations and predictions without being able to give them any meaning. The question of whether a machine can substitute humans is, in fact, absurd. It is living beings that create meaning, not computation. Many AI researchers are convinced that the difference between living intelligence and artificial intelligence is quantitative, whereas it is qualitative."[1]

The terms artificial intelligence (AI) and deepfakes are closely related because deepfakes are computer-generated, hyper-realistic content, usually audio, video, or photographs, produced with AI and machine learning technology. A number of ethical, legal, and sociological issues are brought up by the usage of AI in deepfakes.

Intellectual property rights may be violated by producing a deepfake that imitates a copyrighted character or trademark (for example, by exploiting an actor's likeness without their consent). In the entertainment sector, where actors' voices and pictures are heavily protected, this is especially pertinent. A number of intricate legal questions are brought up by the relationship between deepfakes and copyright. Copyright is crucial in identifying who owns the rights to the content being manipulated or used in deepfakes and whether producing or disseminating deepfakes violates those rights because deepfakes entail manipulating media (such as audio, video, and images) to generate realistic but fake depictions of events or individuals.Right of publicity laws can also protect an individual's resemblance or character, such as an actor's face, voice, or name, even while copyright protects the expression of ideas (such a performance or photograph). Although these rules differ from one state to another, they usually forbid unauthorized use of an individual's identity for business purposes.

As AI technologies advance and are applied in creative domains including literature, music, art, and more, copyright and AI concerns are becoming more significant. This Paper discusses

[1] Benasayag, Miguel. (2018, June 25). *Humans, not machines, create meaning*. The UNESCO Courier; en.unesco.org. https://en.unesco.org/courier/2018-3/humans-not-machines-create-meaning

about how AI has the ability to produce works that might otherwise be covered by copyright, it also presents issues with ownership, authorship, and infringement.

ARTIFICIAL INTELLIGENCE

The birth of Modern AI took place Alan Turing's Paper "Computing Machinery and Intelligence" which introduced Turing test discussing the question "whether machines can think?"[2] The machine must be able to convincingly mimic human speech in order to pass the Turing Test, not necessarily be right or logical in its answers. The machine must deceive the judge into thinking it is human in order to pass the test, which is essentially about trickery.

As of now, the term "Artificial Intelligence has no legal definition. However, one of the luminaries of artificial intelligence, John McCarthy, provided the following general definition of the word in 1955 as "the goal of AI is to develop machines that behave as though they were intelligent."[3] Important advancements in business and technology are being driven more and more by artificial intelligence (AI), from innovative production, health care diagnosis, and driverless cars. With the potential to be revolutionary, artificial intelligence (AI) is growing from the theoretical realm to the global marketplace thanks to a wealth of digital data and rapidly increasing computational processing power. By identifying patterns among billions of seemingly unrelated data points, AI can improve weather forecasting, increase crop yields, improve cancer detection, predict epidemics, and increase productivity in industry. "The rise of the machines is here, but they do not come as conquerors, they come as creators. A short novel written by a Japanese computer program in 2016 reached the second round of a national literary prize. And the Google-owned artificial intelligence company Deep Mind has created software that can generate music by listening to recordings. Other projects have seen computers write poems, edit photographs and even compose music."[4]

AI is a strategic enabler for addressing India's urgent socioeconomic problems, not just a tool for innovation. "The Cabinet has approved an allocation of over Rs 10,300 crore for the IndiaAI

[2] Oppy, Graham and David Dowe, "The Turing Test", *The Stanford Encyclopedia of Philosophy* (Winter 2021 Edition), Edward N. Zalta (ed.), URL = https://plato.stanford.edu/archives/win2021/entries/turing-test/
[3] Ertel, Wolfgang, "Introduction to Artificial Intelligence" Third edition, pg.1, Springer International Publishing 2017 *Available At*: https://cdn.chools.in/DIG_LIB/E-Book/Introduction%20to%20AI_.pdf
[4] Guadamuz, Andres, "Artificial intelligence and copyright", WIPO Magazine, October 2017, *Available At:* https://www.wipo.int/web/wipo-magazine/articles/artificial-intelligence-and-copyright-40141

Mission today, marking a significant step towards bolstering India's AI ecosystem. This substantial financial infusion, slated over the next five years, is poised to catalyse various components of the IndiaAI Mission, including pivotal initiatives like the IndiaAI Compute Capacity, IndiaAI Innovation Centre (IAIC), IndiaAI Datasets Platform, IndiaAI Application Development Initiative, IndiaAI FutureSkills, IndiaAI Startup Financing, and Safe & Trusted AI."[5]

The simulation of human cognitive processes by robots is known as artificial intelligence (AI). By integrating cognitive computing—the simulation of human mental processes—into IT systems, it automates procedures and attempts to mimic human intelligence. Finding trends, gaining fresh insights, deriving meanings from unprocessed data, generating predictions, and interacting with humans, machines, and the physical world are all possible with AI. Understanding, thinking, troubleshooting, perceptions instruction, and planned programming, and process automation are all part of artificial intelligence. Robotics, algorithmic learning, machine perceptions, and scientific engineering are the fundamental components of artificial intelligence. "NIC established the Centre of Excellence in Artificial Intelligence in 2019 to explore more opportunities for AI applications in governance. It is focused on Model building in the fields of Image & Video Analytics, Speech Synthesis & Recognition, and Natural Language Processing."[6] In the global competition for supremacy in artificial intelligence (AI), India is adopting a unique strategy. India's strategy centres on AI autonomy through the creation of domestic AI solutions that are directly related to its development objectives, whereas the US and China prioritise AI for economic domination and national security. India aims to achieve global prominence as an AI Leader with the help of a three pillar strategy i.e. (i) "Democratizing AI through open innovation" (ii) "Public-sector-led development applications" (iii) "Global leadership in AI for sustainable development."[7] AI is transforming how we appreciate, conserve, and advance art and cultural legacy in India's cultural and creative industries with previously unheard-of creativity and cognitive capacity. Artificial intelligence algorithms are producing writing, art, music, designs, and other forms of artistic expression.

[5] Chandrasekhar, Rajeev, Union Minister, "IndiaAI Financial Outlay to Benefit Kerala with its Immense Potential in AI Innovation & Startups", Ministry of Electronics and IT, Published on 07 MAR 2024, *Available At: https://pib.gov.in/PressReleasePage.aspx?PRID=2012375*

[6] National Informatics Centre, "Centre of Excellence for Artificial Intelligence", *Available At:* https://www.nic.in/centre-of-excellence-for-artificial-intelligence/

[7] Elbashi, Mohamed; Desikachari, Kishore Balaji, "India's path to AI autonomy", *Published on:* 13th March, 2025, *Available At:* https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/indias-path-to-ai-autonomy/

Poetry, literary works, music, and the visual arts have all seen successful AI trials. AI is being utilised to create figurines, paintings, and even three-dimensional artworks. "There are AI companies like AIVA, Loudly and Ditto Music that are composing both modern music and Hindustani classical music."[8]

By providing artists, designers, filmmakers, singers, and creators from a variety of fields with new tools, insights, and capabilities, artificial intelligence (AI) technologies have completely transformed creative processes. Artificial intelligence (AI) systems can analyze large datasets, provide tailored recommendations, and even produce literature, music, and art on their own thanks to machine learning algorithms, natural language processing, and computer vision techniques. Using AI can result in two sorts of creative output: "AI-generated" work and "AI-assisted" work. The works created by AI without human assistance are "AI generated works" whereas "outputs that are generated with material human intervention and/or direction."[9] Such compositions have undergone significant human alteration that the finished product is considered to be human authorship.

III. COPYRIGHT AND ARTIFICIAL INTELLIGENCE

In previous decades, computers were mostly seen as instruments that people used to accomplish their creative or literary goals. Like painters using canvases and brushes, human artists typically had a hands-on role in producing such creations. These days, computers can create amazing works of literature and art with little to no human creative input. The most prevalent kind of works are those produced in conjunction with computers. In their everyday lives, people use computers to help them create their works. Word processors are used by writers to proofread their work. Filmmakers use computers to edit and apply effects to their video material. Visual artists use image-processing tools to improve their images. Computers are merely assistants in each of these situations.

In the current times, enormous creative works can be composed with next to no investment in a very short period of time. By providing artists, designers, filmmakers, singers, and creators from a variety of fields with new tools, insights, and capabilities, artificial intelligence (AI) technologies have completely transformed creative processes. Artificial intelligence (AI)

[8] Mandal, Antara, "AI In Cultural And Creative Sectors In India", *Published on:* 24th January 2024, *Available at:* https://www.jusscriptumlaw.com/post/ai-in-cultural-and-creative-sectors-in-india
[9] WIPO-Secretariat, Revised issues paper on IP Policy and AI, WIPO/IP/AI/2/GE/20/1 REV *dated 21 May 2020*, para. 12

systems can analyse large datasets, provide tailored recommendations, and even produce literature, music, and art on their own thanks to machine learning algorithms, natural language processing, and computer vision techniques. As AI develops further, its impact on the creative industries is become more significant, changing conventional workflows, upending accepted conventions, and igniting novel kinds of human-machine cooperation.

"Copyright" is defined as the owner's exclusive right to perform or permit the performance of any act (such as reproducing, publishing, adapting, and translating a work, among other things) in relation to that work under section 14 of the Copyright Act 1957. Furthermore, according to section 17 of the Act, the creator of the work is the original owner of the copyright; but, if the work is produced for payment and at the employer's request, the employer is the owner of the work in such case.

In Rupendra Kashyap Vs. Jiwan Publishing House Pvt. Ltd.1, the Honourable Court ruled that, when it comes to exam question papers, the author is the person who has put together the questions; this person is a natural person, a human being, and not an artificial person; Central Board of Secondary Education is not a natural person and can only assert copyright in the examination papers if it can demonstrate that it has hired individuals expressly to prepare compilations, or question papers, with a contract that grants Central Board of Secondary Education copyright. The rationale behind the condition that the creator must be a natural person rests on the observations of courts assessing copyright in different jurisdictions.

The person who compiles these materials is a human being, not an artificial one. It is possible to consider the prerequisite of using "skill and judgement" in uniqueness to have been fulfilled through the virtue of “programming and parameter on which such AI actually compiles and creates the work”[10] However, in case of AI-generated work, there can’t be any author since there is no human intervention. But human intervention occurs in AI-assisted projects. Hence, an author exists, the one who created the work or caused the work to be created. Thus, such person who has direct or indirect intervention in the creation of a work can claim to be the author of the same.

[10] Meril Mathew Joy and Lucy Rana, “India: Artificial Intelligence And Copyright – The Authorship”, *Mondaq*, December18, 2019, *available at:* https://www.mondaq.com/india/copyright/876800/artificial-intelligence-andcopyright-the-authorship

Since, the authorship can be granted to a natural person or a human being, the input of creativity has to be derived from a natural person. Instances of creative works in which no human effort or assistance to, in such cases authorship attribution is ambiguous. Every nation in the world has struggled with the question of copyright in these situations. The same applies to authorship. if an AI produces a piece alongside human being's participation, an individual who gave the AI the creative input is entitled to the ownership of the work; when a piece is produced by an AI with no human intervention, The owner of the copyright of the AI program, or the AI's copyright owner, may assert ownership.

The author is encouraged to use his abilities, labor, and judgment to create more imaginative works by the copyright protection. The Author under the Indian copyright law is a natural person and not a machine. However, if in future the AI-generated work is covered in the ambit of the definition of "author", then human and machines will be placed on the same pedestal in terms of creativity. The purpose of copyright law is to give due credit and protection to the authors of creative works and to encourage them to enhance their creative skills. Human creativity is likely to be killed in the course of time if machine innovation is valued more highly than human ingenuity or if both are placed on an equal footing.

Depending on the situation, AI-generated work raises a number of ethical, practical, and legal concerns. There are concerns over rights of access and infringement, ambiguity surrounding ownership of AI-generated creations, and "questions about unlicensed content in training data and whether users should be able to prompt these tools with direct reference other creators' copyrighted and trademarked works by name without their permission."[11] Further, toxic language maybe used by AI and the content used might not be credible or biased. Such language or content may create obscenity leading to defamation of some people, creating culture differences inciting ferocity amongst them. Also, Indian law attributes authorship to authors who have a personality which AI systems don't have, "they could imprint on what they produce, and authorship is beyond limits for AI."[12] Given that the AI hasn't been acknowledged

[11] Gil Appel, Juliana Neelbauer and David A. Schweidel, " Generative AI has an Intellectual Property Problem", Harvard Business Review, April 7th, 2023, https://hbr.org/2023/04/generative-ai-has-an-intellectual-property-problem?utm_medium=paidsearch&utm_source=google&utm_campaign=intlcontent_bussoc&utm_term=Non-Brand&tpcc=intlcontent_bussoc&gad_source=1&gbraid=0AAAAAD9b3uRwM4jwkbodJPyHB-wf_beM0&gclid=CjwKCAjwwe2_BhBEEiwAM1I7sfS8u1gmZtEymrOLsNaZtFgoNmq4npQdK8DJd4ofZTsQ0Yo5IIdMkBoCBoIQAvD_BwE

[12] Brent Moran, *Brigitte Vézina*, ""Artificial Intelligence and Creativity: Why We're against Copyright Protection

as a person, it will be challenging to determine its legal and criminal accountability in such a situation. Such creations may be removed at most, or in the worst situations, AI software may be prohibited, but before then, it could be too late. That work could have caused irreversible harm.

Although the word "original work" is not defined in the Act, the Court often considers the following factors when determining originality:

1. Doctrine of Merger - If there is an inherent connection between the expression and the thought.
2. The Doctrine of Sweat of the Brow - Whether the author put effort and talent into creating the piece.
3. The Doctrine of Modicum of Creativity - Does the piece exhibit a minimum level of creativity?
4. Brow Sweat/Skill and Judgement Exam - Whether the work had talent and judgment or was made with only effort and skill.

For a "work" to be qualified for copyright, it must have originality. It might be said that the condition of using "skill and judgment" in uniqueness has been met, if the test of *originality has been satisfied.* However, it is still up for debate, though, whether AI is capable of producing creative content. Literary works are recognized as compilations under the Copyright Act of 1957. Since AI relies on pre-existing knowledge and programming exposure, the work may be considered a compilation and thus be protected by copyright. Other viewpoints, however, contend that the work produced in this way is merely a collection devoid of judgment and skill.

"It is noteworthy that the copyright laws of many countries also provide moral rights to the author, though this is not an obligation under the TRIPs Agreement"[13] The author typically has two moral rights: the rights to integrity and paternity, respectively. The former ensures the creator's entitlement to be recognized as the creator of their work and to be associated with it. In contrast the latter permits the creator to file a lawsuit for damages in the event that the work is amended or misrepresented in a way that damages their reputation or honor. The enforcement of such rights would also prove to be challenging, given AI's incapacity to identify

for AI-Generated Output" *Creative Commons*, August 10, 2020, https://creativecommons.org/2020/08/10/no-copyright-protection-for-ai-generated-output/

[13] Trade Related Aspects of IPR, Article9

infringements that harm its standing. In the case of Amar Nath v. UOI[14], the Delhi HC observed, Laws in the real world are designed to safeguard the right to fair compensation. Life, however, transcends the material. It is also temporal. A lot of people think that the soul exists. The author's moral rights constitute the essence of his writing. The writer is entitled to use his moral rights to uphold, defend, and care for his works. Moreover, Moral rights are associated with human author's sentiments and feelings. AI is not intended to be granted these rights by law.''

Moreover, under Copyright Act, the term of copyright is life plus sixty years after the death of the person. Since, the AI does no natural life like a human being; it doesn't die because it is immortal whereas the humans have a life which is both mortal and fatal. "The work is generated by a computer in circumstances such that there is no human author of the work"[15]

If AI generated works are conferred copyrights then the term of such copyrights would be a disputable question.

Furthermore, because AI is unable to claim or calculate royalties under current rules, the Act's required demand that authors accept payments becomes complicated. Furthermore, because AI is incapable of moral judgement, it is extremely difficult to hold it responsible for offensive content. Therefore, even though acknowledging AI as a creator could expand the scope of copyright law, many practical and legal obstacles need to be removed to guarantee its application.

Further, a lawsuit has been filed against Chat GPT and OpenAI by ANI (Asian News Agency). This is the first-ever lawsuit filed against AI-authored content usage. It is alleged that OpenAI has made unauthorized use of ANI's copyrighted content. The content was used to train the LLM (Large Language Model) and ChatGPT. The case highlights the conflict between IPR and AI using data available in public domains.

The problem of AI and copyright has three prospective solutions. Firstly, attribution of copyrights to AI generated works. Secondly, no such attribution and the third, countries could legislate sui-generis statute for AI generated works. Declaring that all AI-generated works that

[14] 2005 (30) PTC 253 (Del).
[15] Pamela Samuelson, "Allocation Of Ownership Rights In Computer-Generated Works" *University of Pittsburgh Law Review* 1185 (1986).

are publicly accessible are ineligible for any form of copyright protection is one of the possible choices available to legislators. Given the inadequacy of the nation's current legislation in resolving these issues, a unique law that addresses the legal issues raised by the development of AI is the best course of action. One of the inaugural pieces of legislation governing the use of AI in the Union is the AI Act, which is now awaiting approval in the EU.

This is an international issue, and the US and EU policies such as "Text and Data Mining (TDM) exceptions or fair use"16 could provide some assistance in this regard. Text and data mining is the automated utilization of user-accessible data sets or information to identify patterns and generate actionable outcomes. Especially in specific legally defined circumstances does this type of usage qualify as an exception to copyright infringement. The authors of those works may also decide to opt out of this system in certain circumstances, in which case the exception will be passively accepted. In the US, the "fair use" doctrine allows someone to use copyrighted content without requesting the author's consent. A number of criteria, including the type of copyrighted work, the intended use, its impact on the copyrighted work, and the size of the piece used, are taken into consideration when determining whether a work is eligible for an exception under the same. These beliefs are not mutually exclusive.

CONCLUSION

AI will become a more important component in every aspect of Our everyday existence. Its usage must be regulated by legislation. But this development has brought to light the flaws in the existing legal systems, particularly with regard to copyright law. The Indian Copyright Act does not address the unique challenges of AI, even while it provides limited protection for works created by the technology. The essential need for copyright protection is called into question when AI is involved. AI will remain to be a very significant factor. The international community has been compelled to consider and come up with a workable solution for all nations due to the copyright law concerns around ownership and authorship of works produced by AI.

[16] Ankita Jagnani, "*Intellectual Property and AI generated works*", NLR Blog by NLIU Law Review 14th November 2024, *Available at*: https://nliulawreview.nliu.ac.in/blog/intellectual-property-ai-generated-works-is-india-ready/#:~:text=Furthermore%2C%20moral%20rights%20granted%20to,discern%20infringements%20affecting%20its%20reputation.

No law is infallible to deal with this problem, and each rule has its own shortcomings. Giving AI-driven works non-human authorship will have serious repercussions. It is also a bad idea to make AI-generated works publicly available since this will deter AI programmers and firms from making more investments in the field. Is a piece truly creative if it is created only using AI? As courts navigate the complexities of AI-Driven content, the answer to this topic is still up for debate. The nation can negotiate the nexus between AI and copyright law by investigating these problems and putting forward well-considered remedies.