

## IN BRIEF

### COPYRIGHT OWNERSHIP OF AI-GENERATED MATERIAL UNDER INDIAN LAW



#### Introduction

“Creativity is seeing what others see and thinking what no one else ever thought”. – Albert Einstein

Human beings have the innate ability to think and create original works. To protect these original creative ideas and works, various intellectual property rights have been legislated and implemented.

With the advent and implementation, however, of artificial intelligence (AI) in various sectors, critical questions have been raised, including in relation to the traditional notion of copyright. Considering that various applications and software are available to generate creative works such as art, music, literature, etc., we are faced with the question of who is the “author/ creator” of such works. In India, like in many other jurisdictions, the issue is complex and currently evolving, as existing laws were designed with “human beings” being the authors/ creators.

#### Copyright Law in India

In India, copyright is governed by the Copyright Act, 1957 (Act), which protects the rights of creators over their original works. Section 2(d)(vi) of the Act defines an author to include, “in relation to any literary, dramatic, musical or artistic work

that is computer generated, the person who causes the work to be created”. Therefore, under Indian law, even if the original work is computer generated, the ownership rests with the ‘person’ who caused the work to be created.

#### AI and Copyright Ownership

The Act was not framed keeping in mind AI and the related technologies. As a result, the current legal framework does not grant copyright protection to works created solely by AI.

Yet another issue arises when definitively determining who (or what) would be eligible to own the copyright to an AI generated work. Would it be the creator of the AI software, who created the framework for the work to be generated? Would it be the AI itself? Or would it be the human who had input the appropriate prompt that resulted in the final work?

If one were to apply the rationale of the *Eastern Book Company v. D.B. Modak*<sup>1</sup> case, it would be difficult to reconcile the unique circumstances of AI-generated work with the Canadian test laid down in *CCH Canadian Ltd. v. Law Society of Upper Canada*<sup>2</sup>, as adopted by the Indian courts in *D.B. Modak*, wherein it was held that while creativity is not *sine qua non* in a work being covered by copyright, the work must be the product of an author’s exercise of skill and judgment, and such exercise must not be so trivial that it could be characterized as merely mechanical. Whether usage of AI could be characterized as purely mechanical or not remains to be definitively settled.

In the absence of any legal provisions for AI-generated works, the Courts will soon be called upon to decide such issues more regularly.

#### Cases of AI Copyright Issues in India

##### RAGHAV

In 2020, the Copyright office in India rejected an application filed by Mr. Ankit Sahni, the creator of an AI based painting application, ‘Raghav’, since the AI system was listed as the sole author of the generated 2-D artwork *Suryast*. The artwork *Suryast* was generated by the AI tool using a combination of an original photograph taken by Mr. Sahni along with an image of Vincent Van Gogh’s ‘The Starry Night’ as the ‘style input’ which could be controlled by the person using the AI tool. Another application (Diary No. 13646/2020-CO/A; RoC no. A-135120/2020), however, which was filed in the name of Mr. Sahani with the AI system, Raghav, as the co-author, was registered by the Copyright Office in November 2020. The Copyright Office has

<sup>1</sup> AIR 2008 SC 809.

<sup>2</sup> [2004] 1 SCR 339.

subsequently, however, issued a notice for withdrawal of the registration, *inter alia*, that it had mistakenly granted the registration and the legal status of the AI system Raghav, is not clear. While the official website of the Copyright Office in India still reflects the application as registered, no conclusive decision has, however, been reached by the Copyright Office or Courts since.

Interestingly, in parallel proceedings in the United States of America, an identical application for copyright registration was filed by Mr. Sahani, wherein he listed two authors, himself as the author of the “photograph, 2-D artwork” and the AI tool also the author of the “2-D artwork”. This application was refused by the US Copyright Office on June 29<sup>th</sup>, 2022, *inter alia*, that the artwork lacked the “*human authorship necessary to support copyright claim*”. Thereafter, Mr. Sahani filed a request for reconsideration of copyright registration in July 2023, which has also been refused by the US Copyright Office on December 11<sup>th</sup>, 2023 (SR # 1-11016599571; Correspondence ID: 1-5PR2XKJ), *inter alia*, that the artwork is “*not the product of human authorship*”.

### ChatGPT

More recently, the Hon’ble High Court of Delhi on November 19, 2023, in a copyright suit filed by Asian News International (ANI), issued a summons to OpenAI Inc., (Open AI) the founder of ChatGPT and has appointed an *amicus curiae* to assist the Court in the matter. In this case, ANI has alleged that Open AI used its copyright material without permission to train its chatbot and produce content.

It is pertinent to note that generative AI is generally trained on datasets that consist of the work of existing human authors, and this can spark concerns of plagiarism and copyright infringement, especially when the output created by the AI is similar to the dataset it was trained on, and even more so if said output competes with the works of the original authors whose creative work formed part of the dataset. Therefore, the decision of the Court in the above case may potentially have a broader implication on copyright laws using AI technology.

### **International Context**

Globally, some countries, such as the United States and the United Kingdom, have also struggled with this issue. In the U.S., for example, the Copyright Office has stated that works created by AI, without human involvement are not eligible for copyright protection. This stance aligns with the general principle that copyright requires human authorship. India, while adhering to a similar perspective, has not yet had a judicial pronouncement that definitively addresses the issue.

In an interesting development, however, the United States Copyright Office had granted a copyright protection to a graphic novel, Zarya of the Dawn (Registration # VAu001480196), created with the help of MidJourney, a generative AI. Having first granted copyright registration to the work in its entirety, the United States Copyright Office has since retracted the same<sup>3</sup>, *inter alia*, that if all information was available, it would have narrowed the claim to exclude material that was generated by the AI technology. Hence, the United State Copyright Office, has replaced the previous registration with a registration only covering the author’s contribution to the works, i.e., the “*text*” and the “*selection, coordination, and arrangement of the Work’s written and visual elements,*” and held that the artwork

generated by MidJourney, not being a product of human authorship and “*cannot be determined that it [the visual element/ images] contains enough original human authorship to sustain a claim to copyright.*”

### **Possible Legal Reforms**

Given the increasing prevalence of AI in creative fields, there are requests for reforming copyright laws to explicitly address the ownership of AI-generated content. One possibility is to recognize a category of “AI-assisted” works, where the AI is a tool, and the human user retains ownership due to sufficient input in converting AI generated material into a final work. Alternatively, some have suggested introducing a new form of protection for AI-generated works, where ownership could reside with the person or entity that owns the AI system.

### **Conclusion**

Currently, under Indian law, the copyright in AI-generated works depends on a case-to-case basis and would likely be claimed by the human creator using the AI, provided the person has played a role in directing or controlling the creative process. As AI technology continues to evolve, it is expected that the Indian legal system will adapt to address the unique challenges posed by AI-generated content, potentially through legislative amendments or judicial interpretation.

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<sup>3</sup> Formal Statement issued by the United States Copyright Office, available at: <https://www.copyright.gov/docs/zarya-of-the-dawn.pdf>