

AI - GENERATED WORKS AND COPYRIGHT - WHO OWNS THE CREATIVITY? A CRITICAL ANALYSIS

by

Sushmita Swaraj

Amity Law School,
Amity University, Patna

ABSTRACT

Artificial intelligence (ai) has transformed the creative landscape by generating literary works, painting, music, software code, and others form of artistic expression with minimal or no direct human intervention. These various new development challenges the traditional principles of copyright law, which is basically based on the assumption the creativity originates from a human author. As ai systems increasingly participate in the creative process, these questions lies at the heart of the evolving global and distinctly Indian, legal debate on ai-generated works and the future authorship, ownership, and accountability in the age of artificial intelligence. This paper synthesizes whether ai-generated works should receive copyright protection and if so then who should be recognized as the legal owner. Legally the study analyses the copyright act, 1957, international copyright instruments such as the WIPO copyright treaty, the trips agreement, the berne convention, and compares legal approaches adopted in India the United States, the United Kingdom, the European union, and China. It further evaluates landmark judicial decisions that have shaped the debate on originality and authorship in relation to emerging technologies.

The paper argues that existing copyright laws are inadequate to address the unique challenges posed by autonomous ai systems. While jurisdiction differ in their treatment of ai- generated works, there remains no universally accepted legal framework governing ownership and protection. The study recommends legislative reforms that preserve incentives for innovation while maintaining the fundamental principle that copyright exists to encourage human creativity. It concludes that carefully balanced legal reforms are essential to ensure certainty, fairness, and sustainable development in the evolving digital economy.

Keywords:

Artificial intelligence, copyright, authorship, originality, digital creativity.

Introduction

Artificial intelligence (ai) has become one of the most important technological developments of the modern world. We are living in an era of tech driven world. In this tech driven world, artificial intelligence plays a vital role. Nowadays, ai is not just a tool or computer programme that is dependent on human commands and inventions. Now ai are capable of performing tasks which normally require human intelligence, such as learning, reasoning, analysing information, understanding language, making decisions and solving problems. This dynamic and revolutionary version of ai is now used in various fields. Creators have started using ai to produce and generate excellent and unique work in the entertainment fields like movies, paintings, journalism, music, gaming etc. By using this revolutionized version of ai technology, creators have started exploiting the same. However, the increasing use of ai in creative activities has created several questions for intellectual property rights (IPR, particularly copyright law.¹ Copyright law traditionally protects original literary, musical, dramatic, and artistic works created by human beings that is the protection is only provided to humans. The act is completely silent about protecting against the infringement by intelligence, robots, or any work created without human interference.² The central question is therefore: who owns a work created by artificial intelligence? Should the copyright belong to the person who entered the prompt? Should it belong to the programmer who developed the ai system? Should it belong to the company that owns the ai technology? Can the ai should be treated itself as the author? Or should the work receive no copyright protection and remain available in the public domain? These questions are important because copyright law is based upon the concept authorship, originality, creativity, and ownership. When the work is created entirely by human being, these concepts are easy to apply. However, the creative process, the distinction between human creativity and machine generated expression becomes difficult to identify.³

¹ Copyright Act 1957, s 2(d)(vi).

² The Copyright Act, No. 14 of 1957, § 2(d)(vi) (India)

³ Id. §§ 13, 2(d). See also *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340, 345-51 (1991)

Authorship As The Organizing Principle Of Copyright Law

Copyright has never demanded novelty in the sense patent law requires; it demands only that a work be original in the sense of originating from its author and reflecting a modest degree of creativity.⁴ This standard, articulated most clearly by the United States supreme court in the *Feist Publications v. Rural*

telephone service, ties originality inseparably to the concept of an author. Historically, the identity of author was rarely contested. Disputes centred on whether a given human's contribution was creative enough to qualify, not on whether a human was involved at all. Photography provides an instructive precedent: in *Burrow-Giles Lithographic Co. v. Sarony*, the supreme court upheld copyright in a photograph specifically because the photographer made deliberate choices about pose, lighting, and composition, choices that gave the mechanical output of a camera a human creative imprint.⁵⁶

This history matters because defenders of protection for ai-generated works often invoke it by analogy: a camera, too, is a machine that does the technical work of capturing an image, yet copyright has never denied protection on that basis alone. Critics of that analogy respond that a camera merely records a scene that a photographer has already arranged, whereas a generative model performs the arranging itself, filling in colours, forms, and structures, that no human specifically directed. The strength of this distinction, and where exactly it breaks down as ai tools become more responsive to iterative human direction, sits at the heart of disagreements examined in the remainder of this paper.

United States: Human Authorship Requirements

The United States follow a human authorship approach to copyright protection. Under the U.S.

Copyright act, “copyright subsists in original work of authorship,” and the concept of authorship has been interpreted as requiring a human creator.⁶ This principle has become particularly significant with the development of generative artificial intelligence, which is

⁴ *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340, 345-46 (1991)

⁵ *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 58-60 (1884)

⁶ U.S.C. § 102(a) (2018)

capable of producing text, images, music, and other creative material with limited human intervention.

The leading authority on this issue is *thaler v. Perlmutter*. In that case, Stephen thaler sought copyright registration for an artwork generated by an artificial intelligence system known as the “creativity machine.” He identified the ai system, rather than a human being, as the author of the work. The United States court of appeals for the district of Columbia circuit upheld the refusal to register the work and confirmed that the copyright act requires human authorship.⁷ The decision therefore establishes that an ai system cannot independently be recognised as the legal author of a copyright- protected work.

The U.S approach consequently places the emphasis on the human contribution rather than on the mere presence or absence of ai. The central inquiry is whether the work contains sufficient original expression attributable to a human author. This approach attempts to apply established copyright principles to emerging ai technologies without treating artificial intelligence itself as a legal person or ⁸copyright author.

Thus, U.S. Copyright law presently recognizes a fundamental distinction; ai cannot itself be the author, but human creators may obtain copyright protection for sufficiently creative contributions made with assistance of ai. This distinction is particularly important in determining ownership, registration, infringement, and the scope of protection for ai-assisted creative works.⁸

More Permissive Approaches: China, The United Kingdom And India

Not every jurisdiction has drawn the line where the United States has. The Beijing internet court’s 2023 decision in *Li Yunkai v. Liu Yuanchun* marked a significant departure. The plaintiff had generated an image using the stable diffusion model by writing detailed prompts, selecting and arranging visual elements, adjusting parameters, and iteratively refining the output across multiple rounds. When the image was used without permission by another party, the plaintiff sued for copyright infringement. The court held that the image qualified as a copyrightable work of fine art and that the plaintiff, as the person who exercised aesthetic judgement and intellectual investment in prompting and refining the image, was its author. The court’s reasoning centered not on who or what physically rendered the pixels, but on

⁷ *Thaler v. Perlmutter*, 130 F.4th 1039, 1043-48 (D.C. Cir. 2025)

⁸ U.S.C. §§ 102(a), 103; *Thaler v. Perlmutter*, 130 F.4th 1039, 1043-48 (D.C. Cir. 2025)

whether a human's personalized choices and arrangement were reflected in the final result, a standard that, notably, does not require the human to have manually drawn or painted any part of the image.⁹

The United Kingdom offers a third model entirely. Section 9(3) of the copyright, designs and patents act 1988 provides that where a literary, dramatic, musical, or artistic work is computer generated in circumstances where there is no human author, the author is deemed to be the person who undertook the arrangements necessary for the work's creation.¹⁰ This provision, drafted decades before modern generative ai existed, allows for copyright protection even where no human made the specific creative choices reflected in the output, so long as a human set the process in the motion. The provision has long been criticized as doctrinally awkward, since it grants an authorship-like status to someone who may not have made any expressive choices at all, and courts have rarely had occasion to apply it with precision.¹⁰ Reflecting this unease, the UK government's march 2026 report on copyright and ai concluded that section 9(3) should likely be repealed, noting that the provision has no equivalent in any other major jurisdiction's copyright law and has generated more doctrinal confusion than practical benefit, even as the government held off on more sweeping ai copyright reforms pending further evidence.

For India, these approaches are particularly relevant because section 2(d)(vi) of the copyright act, 1957 similarly provides Thatm, in relation to a computer-generated literary, dramatic, or artistic work, the "author" means the person who causes the work to be created. The Chinese and the UK approaches therefore provide useful comparative models for interpreting human involvement, creative control and ownership of ai-generated works in the Indian context.¹¹

The Hard Middle: Hybrid Human-Ai Works

The clearest cases, a fully autonomous ai output on one end and a work that merely uses ai for minor technical assistance on the other, are not where most real disputes arise. The harder cases involve extensive back-and-forth between a human creator and an ai tool: a novelist who uses a language model to draft passages that are then substantially rewritten, a musician

⁹ *Li Yunkai v. Liu Yuanchun*, Beijing Internet Court, Jing 0491 Min Chu No. 11279 (2023) ¹⁰ Copyright, Designs and Patents Act 1988, c. 48, § 9(3) (UK)

¹⁰ Id. § 178 (UK)

¹¹ Department for Science, Innovation and Technology & Department for Culture, Media and Sport, *Report on Copyright and Artificial Intelligence* (Mar. 2026)

who generates dozens of logo variation and heavily modifies the one that best fits a brand. In each case, the finished work is neither purely human nor purely machine-made, and existing doctrine offers only a blunt tool for sorting the two apart.

The United States copyright office's case-by-case approach attempts to handle this by asking whether the human's contribution is itself independently creative and traceable within the final work, protecting only that portion.¹² This is workable in theory but often difficult in practice, since it may be impossible to cleanly separate which pixels, words, or notes originated from human editing versus the ai's initial output once the two are thoroughly intermingled. China's more holistic standard, by contrast, looks at the overall creative process, including prompting and iterative selection, without demanding that the human's contribution be isolable from the machine's.¹³ Neither approach fully resolves the practical evidentiary problem: proving, after the fact, how much creative judgement a human actually exercised during a generative session that may have involved dozens of discarded outputs and undocumented adjustments.

Ownership Disputes Beyond Authorship

Even where authorship is established, a second layer of dispute concerns who owns the resulting rights. Commercial ai platforms typically address this through terms of service, and these terms vary widely. Some platforms assign all rights in generated output to the paying user, positioning themselves as a tool provider with no ownership claim. Others retain a broad license to reuse outputs for model training or other purposes, which can create tension for businesses that want exclusive control over ai-assisted branding or creative assets. Because copyright ownership by default follows authorship, and because many jurisdictions have not settled who, if anyone, is the author of ai-assisted output, contractual terms have become the primary practical mechanism governing ownership, filling a vacuum left by unsettled statutory law.

¹² The Copyright Act, No. 14 of 1957, § 2(d)(vi) (India)

¹³ U.S. Copyright Office, *Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence*, 88 Fed. Reg. 16,190, 16,191-93 (Mar. 16, 2023)

A further ownership complication arises from the training data used to build generative models in the first place. Litigation such as the Getty images dispute with stability ai and numerous lawsuits brought by authors, visual artists, and news organizations against major ai developers have raised the question of whether a model trained on a copyrighted works without permission can lawfully be used to generate commercial output at all, independent of who owns the copyright in that output.¹⁴

This training data question is analytically distinct from the authorship question this paper focuses on, but the two practically intertwined: a business that secures clear ownership of an ai-material, illustrating that resolving authorship alone does not fully settle a creator's legal position.

Critical Assessment And A Proposed Framework

The comparative pictures reveals that jurisdiction are not merely applying the same principles to reach different technical conclusion; they are working from different underlying theories of what copyright is for. The united states' human authorship requirement reflects a labour-and-personality theory of copyright, in which protection is a reward for and extension of an individual's own intellectual and creative effort.¹⁵ China's more permissive stance, at least as applied in *li v. Liu*, reflects a more utilitarian, incentive based theory that asks whether protecting the work will encourage valuable creative and economic activity, regardless of the precise mechanics of how the expression was produced. The united kingdom's section 9(3), now likely headed for repeal, represents an early and increasingly uncomfortable attempt to extend protection even further, to arrangements where no human exercised meaningful creative judgement over the final expression at all.¹⁶

A purely binary human-or-not standard, of the kind the United States currently applies at the margins, risks both overprotection and under protection. It risks under protecting genuine creative labour when a human's extensive prompting, curation, and refinement is dismissed because the pixels or words were technically generated by a model. It risks overprotecting

¹⁴ *Li Yunkai v. Liu Yuanchun*, Beijing Internet Court, Jing 0491 Min Chu No. 11279 (2023)

¹⁵ See, e.g., Agreement on Trade-Related Aspects of Intellectual Property Rights art. 9(2), Apr. 15, 1994,

Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 401

¹⁶ *Thaler v. Perlmutter*, 130 F.4th 1039, 1043-48 (D.C. Cir. 2025)

when a token, cursory prompt is dressed up as substantial creative control actually exercised, looking at factors such as the specificity and creative content of prompts, the extent of iterative refinement and selection among alternatives, and the degree of subsequent human editing, rather than asking a binary question that the technology no longer answers cleanly. Such standard would need clearer evidentiary guidance than currently exists, including possibly requiring applicants to document their prompting and editing process, but it would better reflect how creative work involving ai actually unfolds in practice, but it would reduce the current risk that similar creative processes receive starkly different legal treatment simply because they occur in different countries.

Conclusion

The question of who owns ai- generated creativity does not have a single correct answer waiting to be discovered within existing copyright doctrine; it is a policy choice that different legal system is making differently, based on different views of what copyright law exists to protect. The United States has chosen to hold the line on human authorship, accepting that ai-generated content will remain unprotected and freely copyable as a result. China has chosen a more permissive standard that extends protection to substantial human direction of ai tool, even without granular human control over the final expression. The united kingdom's experiment with authorless computer-generated works appears to be ending, a signal that even jurisdiction willing to stretch copyright's boundaries have found the stretch difficult to sustain. As generative ai becomes further embedded in ordinary creative and commercial practice, the pressure on all these framework will only grow, and a workable path forward likely lies not in rigid binary rules but in graduated standards that take seriously both the reality of human-ai collaboration and copyright law's enduring commitment to rewarding to genuine creative judgment, wherever exactly that judgment is found to reside.

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17 USC (united nation copyright)- particularly provisions concerning authorship and copyright protection.

Comparative approaches in India, UK, US, EU and China.

Copyright ownership of prompt-generated content.



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