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Authorship in the Age of Algorithms: Rethinking Copyright for AI-Generated Works

*¹Dr. Twinkle Hemant Desai

*¹Assistant Professor, Department of Law, Veer Narmad South Gujarat University, Surat, Gujarat, India.

Abstract

The swift evolution of artificial intelligence (AI) has begun to unsettle the conventional notions of authorship, originality, and ownership within copyright law. Modern systems like ChatGPT, DALL·E, and Midjourney are now capable of producing literary, artistic, and musical works with very limited human input. Yet, India's Copyright Act of 1957—crafted for an era centred on human creativity—offers little clarity on the legal status of such AI-generated works. Although Section 2(d)(vi) refers to “computer-generated works,” it provides no interpretative framework to address situations where AI operates with a degree of autonomy.

This paper examines whether AI can qualify as an “author” under Indian copyright law and considers comparative approaches adopted in jurisdictions such as the United Kingdom, the United States, and the European Union. It also explores theoretical and policy questions surrounding AI-driven creativity and advances possible reform options tailored to India's legal and technological context. Using doctrinal and comparative research methods, the study recommends refining statutory definitions, recognizing shared authorship between humans and AI, and exploring a separate, *sui generis* protection for fully autonomous creations. Aligning Indian copyright law with international trends will help ensure that it continues to foster creativity, maintain human accountability, and support innovation in the age of artificial intelligence.

Keywords: Artificial Intelligence, AI-Generated Works, Authorship, Copyright Law, Intellectual Property.

1. Introduction

The integration of Artificial Intelligence (AI) into creative processes marks a pivotal shift in human innovation and artistic expression. Tools like ChatGPT, DALL·E, and Midjourney can now produce works resembling human creations, blurring the line between human and machine authorship and raising legal and ethical challenges in intellectual property law. Under India's *Copyright Act, 1957*, authorship remains human-centric, with Section 2(d)(vi) attributing “computer-generated works” to “the person who causes the work to be created.” However, modern AI systems operate autonomously, making creative choices with minimal human input, complicating the identification of authorship, ownership, and originality.

Across the world, legal systems have adopted varied responses to the question of AI authorship. In the United States, the Copyright Office continues to uphold the principle that only works created by humans are eligible for copyright protection. This stance was reaffirmed in *Thaler v. Perlmuter*^[1], where the court refused registration for an image produced entirely by an AI system without human input. The United Kingdom takes a somewhat different approach: under the Copyright, Designs and Patents Act, 1988, authorship of a computer-generated work is assigned to “the person by whom the arrangements necessary for the creation of the work are

undertaken.”^[2] Meanwhile, the European Union, through initiatives such as the AI Act and related policy deliberations, is examining ways to embed accountability and transparency in relation to AI-generated content, although the precise issue of authorship remains unresolved.^[3]

In India, discourse on AI-generated works remains nascent, with no judicial or policy clarity on their copyright eligibility, leaving creators and regulators uncertain. As AI increasingly shapes art, education, and industry, this ambiguity risks hindering innovation and fair attribution. This paper argues that algorithmic creativity demands a re-evaluation of authorship under Indian copyright law. By comparing frameworks in the UK, US, and EU, it proposes reforms such as clarifying Section 2(d)(vi), introducing *sui generis* protection, and recognizing human-AI co-authorship to balance innovation with the protection of human creative rights.

2. Research Objectives

- To examine whether AI can qualify as an “author” under the Indian Copyright Act, 1957.
- To analyze comparative legal approaches to AI-generated works in the UK, USA, and EU.
- To assess the compatibility of international instruments (WIPO, Berne Convention) with AI authorship.

iv). To propose legal or policy reforms for India that accommodate AI-generated creativity while safeguarding human creators' rights.

3. Research Methodology

This study adopts a doctrinal and comparative legal approach to explore the challenges posed by AI-generated creativity under copyright law. It examines primary sources, including the *Indian Copyright Act, 1957*, the *UK Copyright, Designs and Patents Act, 1988*, the *U.S. Copyright Act*, key judgments such as *Thaler v. Perlmutter* and *Eastern Book Company v. D.B. Modak*, and WIPO documents. Supported by scholarly and policy literature on AI and intellectual property, the research compares the UK, U.S., and EU positions on non-human authorship. It proposes reforms such as clarifying Section 2(d)(vi), creating *sui generis* rights, and recognizing human-AI co-authorship.

4. Conceptual Foundations of Copyright & Authorship

Copyright law is based on the belief that creative works arise from human intellect and imagination. Authorship, both a legal and moral construct, recognizes individual creativity by granting economic rights of exploitation and moral rights of attribution and integrity. This framework reflects two key theories: John Locke's natural rights or labour theory, which links ownership to creative effort^[4], and the utilitarian view, which treats copyright as an incentive for artistic and intellectual advancement^[5]. Within this human-centred system, originality is fundamental. Indian jurisprudence, particularly in *Eastern Book Company v. D.B. Modak*^[6], adopts the "modicum of creativity" test, consistent with the global principle that copyright protects expression, not ideas or facts. However, AI-generated content challenges these foundations. Autonomous AI systems create without consciousness or moral intent, using self-learning algorithms to make probabilistic choices, often beyond human control. This raises difficult questions about originality, authorship, and ownership in the age of machine creativity.

Globally, scholars have offered different models to address this dilemma. Some endorse a *functional theory of authorship*^[7], assigning rights to the individual or entity most responsible for initiating or guiding the creative process. Others advocate a *sui generis* system^[8] tailored specifically for AI-generated works, while a third approach supports *human-AI co-authorship*^[9], recognizing meaningful human input in prompting, curating, or refining outputs.

Ultimately, the traditional concept of authorship—long anchored in human creativity—is being redefined in the age of intelligent machines. For India, which aims to be a leader in digital innovation, addressing these conceptual and legal challenges is crucial to ensure that copyright law remains both principled and adaptive in the algorithmic era.

5. AI-Generated Works: Challenges and Global Perspectives

The rise of generative artificial intelligence (AI) has disrupted conventional ideas of creativity, authorship, and ownership in copyright law. Global legal systems differ on whether AI-generated works deserve protection and who qualifies as their author, resulting in a fragmented framework that reflects divergent views on creativity, technology, and economic balance.

ii). **United States: Human Authorship as a Non-Negotiable Standard:** The United States maintains a strict human-authorship doctrine, rooted in constitutional

and jurisprudential traditions that link copyright protection to human intellect and creativity. The U.S. Copyright Office requires "human authorship" as a condition for registration^[10]. This principle was reaffirmed in *Thaler v. Perlmutter* (see Footnote 1), where Dr. Stephen Thaler sought to register an image autonomously generated by his AI system, *The Creativity Machine*. The court upheld the Office's rejection, emphasizing that the Copyright Act of 1976 envisions only human creators and that copyright "has never stretched to non-human authorship." Earlier rulings, such as *Zarya of the Dawn*^[11], reached similar conclusions, granting protection only to human-created portions of works assisted by AI and stressing the need for "substantial human involvement." This stance reflects a policy commitment to preserving copyright as a human-centred construct. However, critics argue that such rigidity may hinder innovation, leaving AI-generated works unprotected and vulnerable to misuse.

ii). **United Kingdom: Pragmatic Attribution to Human Controllers:** The United Kingdom adopts a pragmatic, technology-neutral approach to AI authorship. Section 9(3) of the *Copyright, Designs and Patents Act* (1988) states that for computer-generated works, "the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken." This assigns authorship to the person exercising creative control—typically the programmer, operator, or commissioner—without engaging in the philosophical debate over AI's creative capacity. However, ambiguity persists in defining who made the "arrangements necessary," given multiple human contributors in AI development. Despite this, the UK model offers a flexible framework balancing human facilitation and technological creativity.

iii). **European Union: Policy Deliberation without Legal Recognition:** The European Union (EU) has not formally recognized AI as an author but has taken a proactive role in establishing a governance framework through the *Artificial Intelligence Act*^[12] and ongoing deliberations within the European Parliament and the European Copyright Society. EU copyright law, grounded in the *InfoSoc Directive*^[13] and the *Copyright in the Digital Single Market Directive*^[14], defines originality as "the author's own intellectual creation,"^[15] thereby requiring a human contributor.

At the same time, the EU acknowledges AI's expanding influence in creative sectors. Policy guidance emphasizes the need to balance incentives for innovation with the protection of human rights and cultural diversity^[16]. Scholars have suggested the introduction of a *sui generis* neighbouring right for AI-generated works—analogous to database rights—to provide limited protection without granting machines the status of human authors. Notably, the DABUS litigation on AI inventorship in patent law has shaped EU discussions by highlighting both the potential and the limitations of attributing legal personhood or rights to autonomous systems^[17].

iv). **WIPO and International Discourse:** At the international level, the World Intellectual Property Organization (WIPO) has facilitated extensive consultations on AI and intellectual property. Its *Issues Paper on Intellectual Property Policy and Artificial Intelligence* recognizes that while AI challenges traditional IP boundaries, member states remain divided

on whether AI should hold legal authorship [18]. WIPO has emphasized the need for consistency with the Berne Convention [19], which presumes human authorship and moral rights. Accordingly, international law currently leaves it to national legislatures to define authorship within their domestic frameworks.

WIPO's consultations highlight three emerging global models:

- a) **Human-Exclusive Model:** Limiting authorship to humans (U.S. approach).
- b) **Attribution Model:** Assigning authorship to the human who controls or initiates creation (U.K. approach).
- c) **Sui Generis Model:** Recognizing AI-generated works under a distinct protection regime (proposed in EU discussions and by scholars).

v). Comparative Observations and Emerging Challenges

No legal system currently recognizes AI as an author, as originality traditionally requires human intent and consciousness. Since AI lacks personality and moral agency, moral rights tied to personal expression cannot apply. Yet, denying protection entirely risks discouraging innovation and obscuring ownership and liability. Issues arise when AI reproduces copyrighted material, raising questions about whether responsibility lies with the developer, user, or deploying entity. Globally, jurisdictions are adopting hybrid models that attribute rights to humans directing the creative process while offering limited protection for autonomous outputs. For India, embracing such approaches is vital to building a balanced, future-ready copyright framework.

6. The Indian Legal Framework and its Limitations

India's *Copyright Act, 1957* [20] is rooted in a traditional, human-centric notion of creativity and authorship. Framed before the digital revolution, it assumes that all creative works stem from human intellect and expression. Although amendments in 1994 and 2012 addressed digital reproduction, broadcasting, and technological protection, the Act remains silent on AI-generated works. This gap is evident in Section 2(d)(vi), which defines the author of a "computer-generated work" as "the person who causes the work to be created" [21]—a provision conceived when computers operated solely as tools under human control, not as autonomous systems capable of independent creative decisions.

i). **Statutory Context and Interpretation:** Section 2(d)(vi) of the *Copyright Act, 1957* was framed when computers acted merely as passive tools under human command, assuming human agency at every creative stage. In generative AI, however, this premise fails—while humans may provide prompts, AI autonomously determines content, style, and structure using trained datasets. Interpreting "the person who causes the work to be created" could point to the programmer, the deploying entity, or the user, yet none embodies traditional authorship based on conscious creativity. With no judicial precedent directly addressing AI-generated works, India's copyright law remains uncertain on authorship and ownership in autonomous AI creation.

ii). **Judicial Precedents and Doctrinal Parallels:** In *Eastern Book Company v. D.B. Modak* (see Footnote 6), the Supreme Court held that originality under Indian law requires a "modicum of creativity," rejecting the mechanical "sweat of the brow" test and presuming human intellectual input. Similarly, in *Tech Plus Media*

Pvt. Ltd. v. Jyoti Janda [22], the Delhi High Court affirmed that copyright protects only human-created expressions. Internationally, the Berne Convention also presupposes human authorship [23]. Thus, despite Section 2(d)(vi), India's jurisprudence and treaty obligations restrict protection to human-authored works.

- iii). **Administrative Silence and Policy Gaps:** Unlike the United States or the United Kingdom, India lacks policy guidance on AI-generated works. The Copyright Office has issued no clarifications, leaving examiners to assess authorship case by case, creating inconsistency and legal uncertainty. Although frameworks like the *National Strategy for Artificial Intelligence* (2018) and the *Digital Personal Data Protection Act* (2023) promote innovation, they overlook IP ownership, revealing a disconnect between India's innovation policies and its copyright regime.
- iv). **Critical Assessment:** India's current copyright law is ill-equipped for the challenges of algorithmic creativity. Although Section 2(d)(vi) mentions "computer-generated works," it lacks clarity to address autonomous AI systems. Adopting the UK's model—attributing authorship to the human arranging creation—requires judicial or legislative guidance. Without reform, India risks lagging globally and deepening legal uncertainty. A forward-looking policy must balance three goals: safeguarding human authorship, fostering AI innovation, and ensuring accountability in digital content—principles guiding the reform proposals in the next section.

7. Recommendations – Towards a Future Framework

As India seeks to establish itself as a leader in the global digital economy, its copyright framework must adapt to the emerging realities of AI-driven creativity. The challenge extends beyond determining ownership of AI-generated works to ensuring that the law continues to incentivize innovation, protect human moral rights, and uphold public confidence in creative output. The proposals that follow offer potential pathways for developing a balanced and forward-looking copyright regime.

i). Clarifying Section 2(d)(vi): Redefining the Scope of "Computer-Generated Works"

The most immediate reform would involve clarifying Section 2(d)(vi) of the *Copyright Act, 1957*. The existing language—"the person who causes the work to be created"—is insufficiently precise for contemporary AI systems, which often operate with minimal human oversight. A legislative amendment could explicitly distinguish between computer-assisted works and those autonomously generated by AI. One possible revision might provide that, for AI-generated works, "the author shall be the natural or legal person who exercises substantial control over the creative process or the final selection of the output." This approach would align Indian law with the United Kingdom's attribution model while emphasizing a tangible element of human judgment [24]. Such clarification would ensure that copyright protection is granted only when human input meaningfully shapes the work, thereby preserving the principle of human authorship while accommodating modern technological realities.

ii). Introducing a Sui Generis Right for Fully Autonomous AI Outputs

In cases where AI operates entirely autonomously, without meaningful human creative input, traditional copyright

doctrines may prove inapplicable. To address this gap, India could explore the creation of a *sui generis* right for AI-generated works. Unlike conventional copyright, this right would not grant full economic or moral entitlements associated with human authorship but would offer limited, time-bound protection to incentivize innovation and investment in AI technologies.

Under such a framework, the right could:

- Be assigned to the entity that legally operates or deploys the AI system;
- Last for a restricted period, such as five to ten years; and
- Exclude moral rights, reflecting the AI's lack of personality or conscious intent^[25].

Modelled on the European Union's database rights regime, this approach would balance the need to reward technological innovation while avoiding the moral and conceptual challenges of recognizing AI itself as an author^[26].

iii). Recognizing Human-AI Co-Authorship

In many creative endeavours, human and AI contributions are closely intertwined. Writers, designers, and musicians often interact with AI tools by providing prompts, refining outputs, or curating results. In such scenarios, it is appropriate to recognize *human-AI co-authorship*, where the human contribution satisfies the originality requirement and the AI functions as an assistive instrument.

Indian law could establish clear criteria for co-authorship, including:

- A demonstrable creative contribution by the human participant;
- Evidence of human supervision, selection, or modification of AI-generated outputs; and
- Transparent disclosure of AI involvement in the creative process.

This model would be consistent with WIPO's guidance on AI and intellectual property, promoting frameworks of shared responsibility that simultaneously encourage innovation and ensure accountability^[27].

iv). Administrative and Institutional Reforms

Legislative reforms should be complemented by clear administrative guidance from the Indian Copyright Office. Measures could include:

- Issuing a public notice or circular that clarifies registration requirements for works involving AI;
- Implementing standardized disclosure forms requiring applicants to specify the extent of AI involvement; and
- Providing specialized training for copyright examiners to ensure consistent evaluation of AI-generated works^[28].

Additionally, establishing an inter-disciplinary committee—including representatives from the Ministry of Commerce and Industry, NITI Aayog, and academic experts—could oversee ongoing policy development at the intersection of AI and intellectual property^[29]. Such a body would help align copyright administration with India's *National Strategy for Artificial Intelligence*^[30] and broader objectives for a digital-first economy.

v). Ethical and Economic Considerations

Legal reform must also consider the ethical and socio-economic implications of AI-generated works. AI systems trained on large datasets may incorporate copyrighted,

culturally sensitive, or otherwise protected material. Accordingly, any recognition of AI-generated content should be paired with robust transparency and accountability standards regarding training data and algorithmic provenance. From an economic perspective, granting protection to AI-assisted creativity could spur growth in India's digital art, entertainment, and educational technology sectors. At the same time, overly broad protection risks enabling monopolization by major technology firms. A balanced approach—providing limited, conditional rights—would foster innovation while maintaining competition and safeguarding public access to creative resources.

vi). The Way Forward

The discussion on AI authorship reflects a deeper societal effort to delineate the boundaries between human creativity and machine capability. For India, a *pragmatic hybrid model*—incorporating clarified statutory provisions, limited *sui generis* rights, and well-defined human-AI co-authorship—offers the most balanced approach. This framework would align domestic law with international developments, provide legal certainty for creators and innovators, and reinforce the core principle that creativity, even when assisted by technology, fundamentally embodies human imagination and responsibility.

8. Conclusion

The rise of artificial intelligence challenges the long-held belief that creativity is exclusively human. India's *Copyright Act, 1957*, conceived in a pre-AI era, lacks clarity on authorship and ownership of AI-generated works. Though Section 2(d)(vi) mentions computer-generated creations, it overlooks autonomous AI systems. This paper advocates incremental reform—clarifying that authorship requires human input, creating *sui generis* right for autonomous outputs, and recognizing human-AI co-authorship. Supporting measures like registration guidelines and data transparency would ensure consistency. Aligning with global practices, India can protect human creators, foster responsible AI innovation, and keep creativity both technologically advanced and inherently human.

Footnotes

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