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THE ROLE OF COPYRIGHT LAW IN PROTECTING CREATIVE WORKS OF ART

Sakshi Shreya[*]

I. ABSTRACT

Copyright law plays a fundamental role in protecting artistic works by granting creators enforceable rights and preventing unauthorised exploitation of their intellectual creations. In India, the Copyright Act, 1957 protects paintings, drawings, photographs, sculptures, works of architecture and works of artistic craftsmanship, and recognises both the economic and the moral interests of authors. The research problem addressed in this paper is that, although statutory protection for visual art is extensive, its enforcement against online and artificial intelligence (AI)-driven exploitation remains inadequate. Low-cost digital copying, the removal of attribution on social-media platforms, the scraping of artworks to train generative AI models and the uncertain authorship of machine-generated images have widened the gap between the rights the statute confers and the remedies an individual artist can realistically obtain. Adopting a doctrinal and analytical method, the paper examines the relevant provisions of the Copyright Act, 1957 and the Copyright Rules, 2013, the leading decisions of the Supreme Court and the High Courts, India's obligations under the Berne Convention, the TRIPS Agreement and the WIPO Copyright Treaty, and recent policy developments. It finds, first, that the substantive rules on originality, ownership, economic rights and moral rights are broadly adequate, but are qualified by the copyright–design boundary in section 15 and by conflicting decisions on the destruction of works; secondly, that the intermediary-liability regime and the anti-circumvention provisions offer only limited practical relief to individual artists; and thirdly, that the law on AI training and AI authorship remains unsettled after the Delhi High Court's interim ruling in ANI v OpenAI and the Copyright Office's refusal to recognise an AI system as an author. The paper concludes that the existing framework

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is adequate in principle but insufficient in enforcement, and proposes targeted statutory and institutional reforms.

II. KEYWORDS

Copyright; Artistic Works; Moral Rights; Digital Art; Artificial Intelligence

III. INTRODUCTION AND RESEARCH PROBLEM

Art is one of the most important forms of human creativity and cultural expression. Paintings, sculptures, photographs, illustrations, designs, architectural works and other artistic creations communicate ideas, emotions, experiences and cultural values. Behind every original artistic work lies the creator's intellectual effort, skill, labour and imagination.

The economic and cultural value of artistic works makes them susceptible to unauthorised copying and exploitation. A painting may be reproduced without permission, a photograph may be downloaded and commercially used, a graphic design may be copied by another business, or digital artwork may be uploaded to social-media platforms without the artist's consent.

Copyright law addresses these concerns by providing creators with legally enforceable rights over their original works. It seeks to ensure that creators are able to control the use of their creations and obtain appropriate economic benefits from them.

In India, copyright protection is primarily governed by the Copyright Act, 1957,[1] as amended, together with the Copyright Rules, 2013.[2] The Indian copyright regime also reflects India's international obligations under instruments such as the Berne Convention

[1] Copyright Act 1957.
[2] Copyright Rules 2013.

for the Protection of Literary and Artistic Works[3] and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).[4]

The objective of copyright law, however, is not merely to protect private economic interests. It also seeks to encourage creativity, promote cultural development and maintain a balance between the interests of authors, users and society.

The research problem addressed in this paper is that statutory protection for artistic works exists, but its enforcement against online and AI-driven exploitation of visual art is inadequate. The rights conferred by the Copyright Act, 1957 were designed for a market of physical copies and identifiable infringers, whereas a contemporary artist confronts anonymous reposting, stripped attribution and the large-scale use of images to train generative AI systems. This enforcement gap, rather than any absence of substantive rights, is the central concern of the study.

Existing Indian literature on copyright in artistic works has tended to examine originality, moral rights or the copyright–design interface in isolation, and much of it predates India's accession to the WIPO internet treaties in 2018, the Supreme Court's 2025 decision on section 15 of the Act and the 2026 developments on AI training and authorship. Few studies assess these strands together from the standpoint of the individual visual artist. This paper seeks to address that gap.

The paper proceeds as follows. Parts 2 to 4 set out the research objectives, research questions and methodology. Part 5 contains the research and analysis, covering the subject matter of protection, originality, ownership, economic and moral rights, infringement, the digital, social-media and AI contexts, the international framework, remedies, the leading judicial decisions and the statutory exceptions. Part 6 offers a

[3] Berne Convention for the Protection of Literary and Artistic Works (adopted 9 September 1886, revised at Paris 24 July 1971) 1161 UNTS 3.
[4] Agreement on Trade-Related Aspects of Intellectual Property Rights (Marrakesh Agreement Establishing the World Trade Organization, Annex 1C) (adopted 15 April 1994, entered into force 1 January 1995) 1869 UNTS 299.

critical analysis, Part 7 sets out recommendations mapped to the research objectives, and Part 8 concludes.

A. Research Objectives

The principal objectives of this research are:

1. To examine the concept and nature of copyright protection for artistic works.
2. To study the statutory protection available to artists under Indian copyright law.
3. To analyse the economic and moral rights of creators.
4. To examine the concept of copyright infringement in relation to artistic works.
5. To study the remedies available to copyright owners.
6. To analyse the challenges posed by digital technology and social media.
7. To examine emerging issues relating to artificial intelligence and artistic works.
8. To evaluate whether the existing legal framework adequately protects modern creative works.
9. To suggest measures for strengthening copyright protection while maintaining a fair balance with public interest.

B. Research Questions

This research seeks to answer the following questions:

1. What is the role of copyright law in protecting artistic works?
2. What rights does an artist acquire under Indian copyright law?
3. How does the law protect an artist against unauthorised reproduction and exploitation?
4. What remedies are available when an artistic work is infringed?

5. How effective are moral rights in protecting the personality and reputation of an artist?
6. What challenges have emerged from the internet, social media and digital technology?
7. How should copyright law respond to artwork created or assisted by artificial intelligence?
8. Does the existing copyright framework adequately balance creators' rights with public interest?

C. Research Methodology

The present research adopts a doctrinal and analytical research methodology. The study draws upon primary sources, namely statutes, subordinate legislation, judicial decisions and international instruments, and upon secondary sources. The sources consulted include:

1. Statutes and legislative materials;
2. Judicial decisions of the Supreme Court and High Courts;
3. International conventions and agreements;
4. Books and scholarly writings on intellectual property law;
5. Law journals and academic articles;
6. Government and institutional publications; and
7. Relevant electronic and digital resources.

The research analyses statutory provisions and judicial principles governing copyright protection and applies them to contemporary challenges affecting artistic works.

IV. RESEARCH AND ANALYSIS

A. Meaning and Nature of Copyright

Copyright is a branch of intellectual property law that protects original literary, dramatic, musical and artistic works, as well as cinematograph films and sound recordings.[5] Copyright does not protect an abstract idea, concept or theme. It protects the original expression of that idea in a material form.[6]

For example, the general idea of painting a landscape cannot be monopolised by one artist. However, an artist's particular original painting of a landscape receives copyright protection.

Copyright is therefore concerned with protecting creative expression while leaving ideas, facts and general concepts available for public use.

B. Artistic Works under Indian Copyright Law

The Copyright Act, 1957 specifically recognises 'artistic work' as a protected category. Section 2(c) defines an artistic work as:[7]

1. a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;
2. a work of architecture; and
3. any other work of artistic craftsmanship.

The words 'whether or not any such work possesses artistic quality' mean that a painting, drawing or photograph is protected irrespective of its aesthetic merit. A 'work of

[5] Copyright Act 1957, s 13(1).
[6] *R G Anand v Delux Films* (1978) 4 SCC 118.
[7] Copyright Act 1957, s 2(c).

architecture' means any building or structure having an artistic character or design, or any model for such a building or structure.[8]

The protection is significant because modern artistic creativity extends far beyond traditional paintings and sculptures. Contemporary artists frequently create digital illustrations, graphic designs and visual compositions, which qualify as paintings, drawings or photographs once expressed in a material form. Their protection, however, remains subject to the requirement of originality and to the boundary between copyright and design law discussed below.

C. The Copyright–Design Boundary under Section 15

Much applied and commercial art lies at the boundary between copyright and design law. Section 15(1) of the Copyright Act provides that copyright shall not subsist in any design registered under the Designs Act, 2000.[9] Under section 15(2), copyright in a design capable of registration but not so registered ceases as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright or, with his licence, by any other person.[10] In *Microfibres Inc v Girdhar & Co*, the Delhi High Court held that the plaintiff's artistic designs, once applied industrially to upholstery fabric, were designs within the Designs Act and fell outside copyright; the decision was affirmed by a Division Bench in 2009.[11]

In *Cryogas Equipment Pvt Ltd v Inox India Ltd*, the Supreme Court laid down a two-step test. The court must first determine whether the work is a purely artistic work protected under the Copyright Act or a design derived from such a work and industrially applied to an article. If it is the latter, the court must apply a functional utility test to identify the

[8] Copyright Act 1957, s 2(b).
[9] Copyright Act 1957, s 15(1); Designs Act 2000.
[10] Copyright Act 1957, s 15(2).
[11] *Microfibres Inc v Girdhar & Co* 128 (2006) DLT 238; 2006 (32) PTC 157 (Del).

dominant purpose of the work and decide whether it qualifies for protection under the Designs Act.[12]

Holding that these questions raised triable issues, the Court dismissed the appeal and left them to be determined at trial. For an illustrator whose drawing is licensed for printing on textiles, packaging or merchandise, the practical consequence is that an unregistered design may lose copyright protection once production exceeds fifty articles.

D. Originality and Copyright Protection

Originality is a fundamental requirement of copyright protection.[13] Originality does not mean that the work must be unprecedented in human history; it means that the work must originate from the author and involve the exercise of skill and judgment. In *Eastern Book Company v D B Modak*, a case concerning copy-edited law reports, which are literary works and compilations, the Supreme Court rejected both the 'sweat of the brow' approach, under which mere labour suffices, and a standard demanding novelty or non-obviousness.

Drawing on the Supreme Court of Canada's decision in *CCH Canadian Ltd v Law Society of Upper Canada*, it held that a work is original if it is independently created by the author and involves skill and judgment with a minimal degree of creativity.[14]

Applied to artistic works, this test is readily satisfied by a photographer's choice of composition, lighting and timing, by an illustrator's selection and arrangement of elements in a derivative image, or by the layering and colour decisions in a digital composition. It is not satisfied by a mechanical or slavish reproduction of an existing image.

In *Rajesh Masrani v Tahiliani Design Pvt Ltd*, the Delhi High Court held that a designer's original drawings and print designs were artistic works involving creativity, labour and

[12] *Cryogas Equipment Pvt Ltd v Inox India Ltd* 2025 INSC 483; 2025 SCC OnLine SC 780.
[13] Copyright Act 1957, s 13(1)(a).
[14] *Eastern Book Company v D B Modak* (2008) 1 SCC 1; *CCH Canadian Ltd v Law Society of Upper Canada* 2004 SCC 13, [2004] 1 SCR 339.

skill, even if they were not novel.[15] The principle is particularly relevant to artistic works because two artists may independently create works concerning the same subject. Copyright does not prevent independent creation merely because the resulting works share a common theme.

E. Rights of an Artist

Copyright grants a bundle of exclusive rights to the copyright owner. In relation to artistic works, section 14(c) confers the exclusive right to do, or to authorise the doing of, the following acts:[16]

1. To reproduce the work in any material form, including storing it in any medium by electronic or other means, depicting a two-dimensional work in three dimensions and depicting a three-dimensional work in two dimensions;
2. To communicate the work to the public;
3. To issue copies of the work to the public, not being copies already in circulation;
4. To include the work in any cinematograph film;
5. To make any adaptation of the work; and
6. To do, in relation to an adaptation of the work, any of the acts specified above.

The inclusion of electronic storage within 'reproduction' is of particular importance for digital art, since saving or uploading an image to a server is itself an act of reproduction. These rights enable an artist to control the commercial exploitation of the work. For example, unauthorised reproduction of an original photograph in a commercial advertisement will infringe the photographer's copyright unless a statutory exception applies.

[15] *Rajesh Masrani v Tahiliani Design Pvt Ltd* AIR 2009 Del 44; 2009 (39) PTC 21 (Del) (DB).
[16] Copyright Act 1957, s 14(c).

F. Authorship, First Ownership and Term of Protection

Who may exercise and enforce these rights depends upon the rules on authorship and first ownership. The author of an artistic work other than a photograph is the artist; the author of a photograph is the person taking it; and the author of a computer-generated artistic work is the person who causes the work to be created.[17] The author is ordinarily the first owner of copyright, but section 17 creates two exceptions of particular importance to artists.

Under section 17(b), where a photograph is taken, a painting or portrait drawn, or an engraving made, for valuable consideration at the instance of any person, that person is the first owner in the absence of any agreement to the contrary.[18] Under section 17(c), where a work is made in the course of the author's employment under a contract of service or apprenticeship, the employer is the first owner, again subject to contrary agreement.[19]

Thus, a painter who executes a commissioned portrait for a fee will not own the copyright in it unless the commission agreement reserves it to her, and an illustrator employed by a publishing house will not own the illustrations she creates in the course of her employment. A written agreement to the contrary is therefore the artist's principal safeguard, since first ownership determines who may license the work and who may sue for its infringement.

Copyright in an artistic work, including a photograph, subsists for the lifetime of the author and sixty years from the beginning of the calendar year following the year in which the author dies.[20] The Copyright (Amendment) Act, 2012 omitted section 25, which

[17] Copyright Act 1957, s 2(d)(iii), (iv) and (vi).
[18] Copyright Act 1957, s 17(b).
[19] Copyright Act 1957, s 17(c).
[20] Copyright Act 1957, s 22.

had limited the term for photographs to sixty years from publication, thereby placing photographers on the same footing as other artists.[21]

G. Economic Rights

Economic rights allow the copyright owner to derive financial benefit from the work. An artist may:

1. Sell the copyright;
2. License particular uses;
3. Permit reproduction;
4. Authorise publication;
5. License digital distribution;
6. Permit merchandising; or
7. Otherwise commercially exploit the work.

Licensing is particularly important in the modern creative economy. A creator may retain ownership while permitting another person or company to use the work for a specified period, territory or purpose. Copyright therefore functions not only as a protective mechanism but also as an economic asset.

The Act also confers a right specific to visual artists. Section 53A, inserted by the Copyright (Amendment) Act, 1994, provides that on the resale of an original copy of a painting, sculpture or drawing, or of the original manuscript of a literary, dramatic or musical work, for a price exceeding ten thousand rupees, the author or his legal heirs have a right to share in the resale price for so long as copyright subsists.[22] The share is to be fixed by the Commercial Court, may not exceed ten per cent of the resale price, and disputes concerning it are decided by that court.[23] The provision has, however, remained

[21] Copyright (Amendment) Act 2012.
[22] Copyright Act 1957, s 53A(1).
[23] Copyright Act 1957, s 53A(2)–(3), as amended by the Tribunals Reforms Act 2021.

largely inoperative, since no share appears to have been fixed and there is no mechanism for tracking resales by galleries and auction houses. If made operational, it would allow artists to share in the appreciation of their works on the secondary market.

H. Moral Rights of Artists

Copyright law recognises that an artistic work may have a close relationship with the personality and reputation of its creator. Section 57 of the Copyright Act, 1957 confers special rights on the author, commonly described as moral rights.[24] These rights exist independently of the author's copyright and even after its assignment, wholly or partially, so that an artist who sells the copyright in a work retains them.[25] They principally include:

1. **Right of Paternity:** The author has the right to claim authorship of the work. Thus, a person cannot represent another artist's work as his or her own.
2. **Right of Integrity:** The author has the right to restrain, or claim damages in respect of, any distortion, mutilation, modification or other act in relation to the work if it would be prejudicial to the author's honour or reputation.[26]

Before the Copyright (Amendment) Act, 2012, the right of integrity extended only to acts done before the expiry of the term of copyright; the amendment removed that limit.[27] Under section 57(2), the rights other than the right to claim authorship may be exercised by the author's legal representatives, while the Explanation provides that failure to display a work, or to display it to the satisfaction of the author, is not an infringement of these rights.[28] In *Mannu Bhandari v Kala Vikas Pictures Pvt Ltd*, the Delhi High Court confirmed that these rights survive assignment and restrained alterations in the film adaptation of a novel that distorted the author's work.[29]

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[24] Copyright Act 1957, s 57.
[25] Copyright Act 1957, s 57(1).
[26] Copyright Act 1957, s 57(1)(b).
[27] Copyright (Amendment) Act 2012; cf Copyright Act 1957, s 57(1)(b) (as originally enacted).
[28] Copyright Act 1957, s 57(2) and Explanation to s 57(1).
[29] *Mannu Bhandari v Kala Vikas Pictures Pvt Ltd* AIR 1987 Del 13.

As a measure of effectiveness, however, section 57 is limited. The integrity right requires proof of prejudice to honour or reputation, a threshold that a lesser-known artist may find difficult to establish. The case law is sparse and, as shown in Part 5.19, divided on whether the destruction of a work is covered. Most importantly, enforcement depends on civil litigation, which individual artists can rarely afford, and there is no administrative or collective mechanism for asserting moral rights against anonymous online users who strip attribution from or alter images. Moral rights are therefore robust in principle but weak in practice.

I. Copyright Infringement

Section 51 identifies the acts that constitute infringement. Copyright is infringed when a person, without a licence from the owner or the Registrar of Copyrights, or in contravention of the conditions of a licence, does anything the exclusive right to do which is conferred upon the owner, or permits for profit any place to be used for the communication of the work to the public where such communication is an infringement.[30] Copyright is also infringed by a person who makes for sale or hire, sells, lets for hire, distributes, exhibits in public by way of trade or imports into India infringing copies of the work, which is commonly described as secondary infringement.[31] In relation to artistic works, infringement may include:

1. Unauthorised reproduction of a painting;
2. Copying a photograph;
3. Reproducing a graphic design;
4. Commercially using an artist's illustration;
5. Unauthorised adaptation of an artistic work;
6. Selling unauthorised copies; or

[30] Copyright Act 1957, s 51(a).
[31] Copyright Act 1957, s 51(b).

7. Communicating protected works to the public in circumstances prohibited by law.

The question of infringement must always be examined with reference to the statutory rights, the facts of the particular case and the applicable exceptions.

J. Substantial Similarity and Copying

Not every similarity between two artistic works constitutes copyright infringement. Artists may independently use:

1. Similar colours;
2. Common subjects;
3. Conventional artistic techniques;
4. Historical themes; or
5. Commonly used visual elements.

The important question is whether the defendant has copied protectable expression rather than merely a common idea or concept. In *R G Anand v Delux Films*, the Supreme Court held that one of the surest and safest tests is whether the reader, spectator or viewer, having seen both works, is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original. Where the same theme is presented differently, so that the later work is substantially a new work, there is no infringement.[32]

Applied to visual art, a second painter who reinterprets the same temple at dusk from a different vantage point and with a different palette does not infringe. By contrast, a photograph that recomposes the same subject so as to replicate the original's distinctive arrangement, lighting and framing may leave the viewer with an unmistakable impression of copying. In *Rajesh Masrani*, the Delhi High Court compared the parties'

[32] *R G Anand* (n 6).

designs, found that the defendant had substantially reproduced the plaintiff's artistic works, and upheld an interim injunction.[33] Courts therefore examine the nature of the works, the degree of similarity, access to the original work and other relevant circumstances.

K. Copyright and Photographic Works

Photography provides an important example of modern artistic copyright. A photograph may reflect choices concerning:

1. Composition;
2. Lighting;
3. Timing;
4. Perspective;
5. Subject positioning;
6. Technical execution; and
7. Creative presentation.

Unauthorised use of photographs is particularly common on websites, social-media accounts, advertisements and commercial platforms. Copyright protection allows photographers to take action against unauthorised reproduction, subject to statutory limitations and exceptions.

L. Copyright and Digital Art

Digital technology has transformed artistic creation. Artists today may create works using:

1. Graphic tablets;
2. Digital painting software;

[33] *Rajesh Masrani* (n 15).

3. 3D modelling tools;
4. Animation software;
5. Computer-generated imagery;
6. Online design platforms; and
7. Other digital technologies.

Digital artwork can be copied and disseminated at extremely low cost. Consequently, the economic value of copyright protection has increased substantially. The legal challenge is not merely identifying copying but also addressing unauthorised online dissemination, digital licensing, attribution and the identity of infringers. The authorship of computer-generated artwork under section 2(d)(vi) is considered in Part 5.14.2.

- **Technological Protection Measures and Rights Management Information**

The Copyright (Amendment) Act, 2012 introduced two provisions that directly support digital artists. Section 65A makes it an offence to circumvent an effective technological measure applied for the purpose of protecting any of the rights conferred by the Act, with the intention of infringing such rights.[34] Section 65B penalises any person who knowingly removes or alters rights management information without authority, or distributes, broadcasts or communicates copies of a work knowing that such information has been removed or altered.[35]

Each offence is punishable with imprisonment of up to two years and a fine. Rights management information includes the title of the work, the name of the author and the terms and conditions of use.[36] Section 65B may therefore be invoked where embedded metadata is stripped from a digital image, or where an artist's watermark or signature

[34] Copyright Act 1957, s 65A(1).
[35] Copyright Act 1957, s 65B.
[36] Copyright Act 1957, s 2(xa).

identifying the author is cropped out, before the image is reposted. These provisions anticipated India's accession to the WIPO Copyright Treaty in 2018.

Their limits must, however, be noted. Section 65A applies only where circumvention is undertaken with the intention of infringing, and section 65A(2) permits circumvention for purposes not expressly prohibited by the Act and for specified purposes such as encryption research, lawful investigation, security testing, the protection of privacy and national security.[37] Technological measures thus supplement, but do not replace, conventional enforcement.

M. Copyright and Social Media

Social-media platforms have created both opportunities and risks for artists. Artists can reach global audiences without traditional intermediaries. At the same time, their work can be downloaded, reposted, modified or commercially exploited without authorisation. Common problems include:

1. Removal of artist attribution;
2. Unauthorised reposting;
3. Commercial use without permission;
4. Creation of derivative works;
5. Unauthorised merchandise;
6. Misrepresentation of authorship; and
7. Large-scale online copying.

Artists therefore need to understand licensing terms and maintain evidence establishing authorship and the date of creation.

[37] Copyright Act 1957, s 65A(2).

- **Intermediary Liability and Notice-and-Takedown**

The legal core of online enforcement is the liability of the platform on which an infringing image is hosted. Section 52(1)(c) of the Copyright Act exempts the transient or incidental storage of a work for the purpose of providing electronic links, access or integration, unless the person responsible is aware or has reasonable grounds for believing that the storage is of an infringing copy.[38] Under the proviso, on receiving a written complaint from the copyright owner, the person responsible must refrain from facilitating access for twenty-one days or until it receives an order from a competent court; if no such order is received within that period, access may be restored.[39] Rule 75 of the Copyright Rules, 2013 prescribes the particulars of the complaint, including a description of the work, proof of ownership, the location of the infringing copy and an undertaking to file a suit within twenty-one days, and requires access to be disabled within thirty-six hours.[40] In parallel, section 79 of the Information Technology Act, 2000 grants intermediaries a conditional safe harbour.[41]

In *Myspace Inc v Super Cassettes Industries Ltd*, a Division Bench of the Delhi High Court held that the two regimes must be read harmoniously; that the knowledge required to fix an intermediary with liability is actual knowledge, not general awareness or suspicion; that the rights holder must give specific notice identifying the infringing content, and not merely a list of its works; and that the intermediary is under no general obligation to monitor its service for infringement.[42]

For an individual artist, the consequences are significant. A notice must identify each infringing post precisely; the twenty-one-day window obliges the artist to file a suit promptly if the material is not to be restored; and removed images are frequently re-

[38] Copyright Act 1957, s 52(1)(c).
[39] Copyright Act 1957, s 52(1)(c), proviso.
[40] Copyright Rules 2013, r 75.
[41] Information Technology Act 2000, s 79.
[42] *Myspace Inc v Super Cassettes Industries Ltd* 2016 SCC OnLine Del 6382 (DB) (FAO(OS) 540/2011, decided 23 December 2016).

uploaded by other accounts, requiring fresh notices each time. The regime therefore favours rights holders with the resources to monitor platforms and to litigate, which most visual artists lack.

N. Copyright and Artificial Intelligence

Artificial intelligence presents one of the most significant contemporary challenges for copyright law. AI systems can generate images based on prompts and can also process large amounts of existing visual material. This raises difficult questions concerning:

1. Ownership of AI-generated artwork;
2. Originality;
3. Authorship;
4. Training of AI systems using copyrighted material;
5. Unauthorised scraping of artwork;
6. Imitation of artistic styles;
7. Infringement through generated outputs; and
8. The role of human creativity.

- **Training of AI Systems and Infringing Outputs**

Whether training an AI model on copyrighted works infringes copyright is no longer a purely hypothetical question in India. In *ANI Media Pvt Ltd v Open AI Opco LLC*, the news agency ANI sought an interim injunction, alleging that OpenAI had used its articles to train ChatGPT and that the model's outputs reproduced them. By an order dated 24 July 2026, Amit Bansal J refused the injunction.[43]

The Court held, prima facie, that storing works to train a large language model falls within fair dealing for 'private or personal use, including research' under section 52(1)(a)(i); that commercial use does not take a use outside that clause, since the word

[43] *ANI Media Pvt Ltd v Open AI Opco LLC* CS(COMM) 1028/2024 (Del, 24 July 2026).

'non-commercial' appears elsewhere in section 52 but not there; and that the use was fair, having regard to its limited purpose, the absence of market substitution and the public interest in the development of AI.

On outputs, the Court found the responses relied upon not to be substantially similar to ANI's articles, and held that memorisation and verbatim retrieval had not been shown at the interim stage, leaving those questions open for trial. The order is interim and prima facie, the suit remains pending, and ANI's appeal is pending before a Division Bench, which issued notice on 15 September 2026.[44]

Separately, on 8 December 2025 the Department for Promotion of Industry and Internal Trade (DPIIT) published a working paper titled 'One Nation, One Licence, One Payment: Balancing AI Innovation and Copyright'. It proposes a mandatory blanket licence permitting AI developers to train on all lawfully accessed works, coupled with a statutory right to remuneration administered by a central collecting body, the Copyright Royalties Collective for AI Training.[45] The paper is a policy proposal issued for public comment and has no legal force; the Copyright Act itself has not been amended.

For visual artists, the combined effect is unfavourable. If the reasoning in *ANI* is confirmed, the scraping of publicly available artworks for training may be treated as fair dealing, leaving artists with neither a right to consent nor a right to payment. The DPIIT proposal, while promising remuneration, would remove the artist's ability to refuse such use. In either case, an artist's remedy would be confined to outputs that reproduce a substantial part of a particular work, since an artistic style as such is not protected by copyright.

- **Authorship of AI-Assisted and AI-Generated Works**

[44] 'ANI Takes AI Training Fight to Appeal: Delhi High Court Issues Notice to OpenAI, Declines Interim Direction on Scraping Undertaking for Now' (*LawChakra*, September 2026) <https://lawchakra.in/high-court/delhi-high-court-ani-openai-appeal-notice-fair-dealing-chatgpt/> accessed 8 November 2026.
[45] Department for Promotion of Industry and Internal Trade, *Working Paper on Generative AI and Copyright, Part 1: One Nation, One Licence, One Payment: Balancing AI Innovation and Copyright* (Ministry of Commerce and Industry, 8 December 2025).

Indian law already contains a rule on computer-generated works: the author of a computer-generated artistic work is 'the person who causes the work to be created'.[46] The practice of the Copyright Office has, however, been inconsistent. In November 2020 it registered the artwork 'Suryast', naming Ankit Sahni and the AI tool RAGHAV as co-authors; it subsequently issued a notice proposing withdrawal of the registration, but reports indicate that the registration has not been formally cancelled.[47] By an order dated 31 August 2026, the Registrar of Copyrights rejected an application naming the AI system DABUS as the author of the artwork 'A Recent Entrance to Paradise', holding that an AI system is neither a natural nor a juristic person and can be neither an author nor an owner. The Registrar treated the applicant, Dr Stephen Thaler, as the person who caused the work to be created and left it open to him to file a fresh application.[48] The order did not decide whether AI-generated works as a class are protectable, and no challenge to it before the Delhi High Court has been reported.

A distinction should be drawn between AI-assisted works, in which a human artist exercises creative control through selection, arrangement, editing or iterative prompting, and autonomous output, in which the human contribution is limited to a bare instruction. The former satisfies the skill-and-judgment standard in *Eastern Book Company* and should be protected, with the human artist as author and, subject to section 17, as first owner.

The latter sits uneasily with that standard, yet section 2(d)(vi) attributes its authorship to the person who causes it to be created, who may be the user or the deployer of the tool. This paper submits that legislative clarification is needed: Parliament should specify the minimum human contribution required for a computer-generated work to attract

[46] Copyright Act 1957, s 2(d)(vi).
[47] 'Ankit Sahni's AI "Co-authored" Artwork Denied Registration by US, Continues to be Registered in India' (*SpicyIP*, December 2023) <https://spicyip.com/2023/12/ankit-sahnis-ai-co-authored-artwork-denied-registration-by-us-continues-to-be-registered-in-india.html> accessed 8 November 2026.
[48] Registrar of Copyrights, Order in Diary No 9356/2022-CO/A (Stephen L Thaler), 31 August 2026; 'Copyright Office Says AI System DABUS Can't Be Copyright "Author" under Indian Law' (*LiveLaw*, 2026) <https://www.livelawbiz.com/copyright/copyright-office-rejects-bid-to-register-ai-system-dabus-as-author-of-artwork-548065> accessed 8 November 2026.

protection and identify who is the 'person who causes' it, rather than leaving the matter to registration practice.

O. International Framework

Copyright protection is not confined to national boundaries. The Berne Convention, as revised at Paris in 1971, establishes the principles of national treatment and protection without formalities.[49] The TRIPS Agreement incorporates the substantive provisions of the Berne Convention, other than those on moral rights, and establishes minimum standards of protection and enforcement among World Trade Organization members.[50] Within India, effect is given to these obligations by section 40 of the Copyright Act and the International Copyright Order, 1999, which extend protection to works first published in, or by nationals of, convention countries as if they were Indian works.[51] On 25 September 2018, India acceded to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, both of which entered into force for India on 25 December 2018; the 2012 amendments on technological protection measures and rights management information had already aligned Indian law with them.[52]

International copyright principles are particularly important for artists whose works are distributed globally through the internet. An artist in India may have work viewed, reproduced or commercially exploited in other jurisdictions. Enforcement against a foreign platform depends upon national treatment in the country of infringement and, in Indian proceedings, upon the jurisdiction of Indian courts under section 62, as discussed under 'Global Enforcement' in Part 5.21. International copyright mechanisms therefore contribute to the protection of creative works beyond national borders.

[49] Berne Convention (n 3) art 5(1)–(2).
[50] TRIPS (n 4) arts 9(1), 41.
[51] Copyright Act 1957, s 40; International Copyright Order 1999.
[52] WIPO Copyright Treaty (adopted 20 December 1996, entered into force 6 March 2002) 2186 UNTS 121; WIPO Performances and Phonograms Treaty (adopted 20 December 1996, entered into force 20 May 2002) 2186 UNTS 203.

P. Copyright Registration in India

Copyright protection arises automatically when the statutory requirements for protection are satisfied; registration is optional and is not a precondition to protection or to a suit for infringement. [53] Nevertheless, registration is valuable from an evidentiary and administrative perspective, since the Register of Copyrights is prima facie evidence of the particulars entered in it.[54] An artist may also maintain:

1. Original files;
2. Dated drafts;
3. Metadata;
4. Contracts;
5. Invoices;
6. Correspondence;
7. Publication records; and
8. Registration documentation.

Such evidence can become important in disputes concerning authorship, ownership and infringement.

Q. Assignment and Licensing

Copyright may be commercially exploited through assignment or licensing.

1. Assignment

An assignment involves the transfer of specified rights in a copyright from one person to another, subject to sections 18 and 19 of the Copyright Act.[55] An assignment is valid only if it is in writing signed by the assignor or a duly authorised agent, and it must identify

[53] Copyright Act 1957, s 45; *Rajesh Masrani* (n 15).
[54] Copyright Act 1957, s 48.
[55] Copyright Act 1957, ss 18–19.

the work, the rights assigned, their duration and territorial extent, and the royalty and any other consideration payable.[56]

Where the assignee does not exercise the rights within one year, the assignment is deemed to lapse unless it provides otherwise; where the period is not stated, it is deemed to be five years; and where the territory is not specified, it is presumed to extend within India.[57] The Copyright (Amendment) Act, 2012 added that an assignment contrary to the terms of a copyright society of which the author is a member is void, and that an assignment for a cinematograph film or sound recording does not affect the author's right to an equal share of royalties for other uses of the work.[58]

For artists, these default terms cut both ways. A brief assignment that omits duration and territory will be confined to five years and to India, which may lead to disputes with a client who expected wider rights, while the absence of a royalty clause may leave the artist with nothing beyond the initial fee. Conversely, an artist who expressly assigns rights 'worldwide' and 'in perpetuity' for a lump sum forgoes any share in the later value of the work. Careful drafting is therefore essential.

2. Licensing

A licence, which must likewise be in writing, authorises another person to use the copyrighted work without transferring ownership.[59] A carefully drafted licence should address:

9. Duration;
10. Geographical territory;
11. Permitted uses;
12. Exclusivity;

[56] Copyright Act 1957, s 19(1)–(3).
[57] Copyright Act 1957, s 19(4)–(6).
[58] Copyright Act 1957, s 19(8)–(10).
[59] Copyright Act 1957, s 30.

13. Payment or royalty;

14. Attribution;

15. Modification rights;

16. Sublicensing; and

17. Termination.

For professional artists, clear contractual arrangements can significantly reduce future disputes.

R. Remedies for Copyright Infringement

The Copyright Act provides civil, criminal and border remedies against infringement.

1. Civil Remedies

Under section 55, the owner of copyright is entitled to all remedies by way of injunction, damages, accounts and otherwise as are conferred by law for the infringement of a right.[60] Civil remedies therefore include:

18. Injunction;

19. Damages;

20. Account of profits; and

21. Other appropriate relief.

An injunction can be particularly important where continued use of the artistic work may cause ongoing economic or reputational harm. Where the defendant proves that he was not aware, and had no reasonable ground for believing, that copyright subsisted in the work, the plaintiff is confined to an injunction and a decree for the profits made by the defendant.[61] Of special value to individual artists is section 62(2), which permits a suit to be instituted in the district court within whose jurisdiction the plaintiff actually and

[60] Copyright Act 1957, s 55(1).
[61] Copyright Act 1957, s 55(1), proviso.

voluntarily resides, carries on business or personally works for gain, so that an artist need not sue where the infringer is located.[62]

2. Criminal Remedies

Under section 63, knowing infringement, or abetment of it, is punishable with imprisonment of not less than six months, which may extend to three years, and a fine of not less than fifty thousand rupees, which may extend to two lakh rupees. Where the infringement has not been made for gain in the course of trade or business, the court may, for adequate and special reasons, impose a sentence of imprisonment of less than six months or a fine of less than fifty thousand rupees.[63] Offences under sections 65A and 65B, discussed in Part 5.12.1, are punishable separately.[64]

3. Border Measures

Under section 53, the owner of copyright may give notice in writing to the Commissioner of Customs, or an authorised officer, requesting that infringing copies of the work be treated as prohibited goods, and the customs authorities may detain such goods when they are imported into India.[65] The procedure is governed by the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.[66] Detention is time-limited, and the owner must obtain an order from a competent court to prevent release. These measures are useful against imported counterfeit prints and merchandise, but they offer no protection against online infringement.

The structure of these remedies reveals a statutory mismatch. Online copying of a digital artwork costs almost nothing and may be repeated by many anonymous users, whereas each civil suit or criminal complaint requires evidence, legal representation and time. The

[62] Copyright Act 1957, s 62(2).
[63] Copyright Act 1957, s 63 and proviso.
[64] Copyright Act 1957, ss 65A, 65B.
[65] Copyright Act 1957, s 53.
[66] Intellectual Property Rights (Imported Goods) Enforcement Rules 2007.

remedies were designed for a commercial infringer dealing in physical copies, not for diffuse online reuse. This mismatch informs the recommendations in Part 7.

S. Important Indian Judicial Decisions

1. **R G Anand v Delux Films:** The Supreme Court emphasised the distinction between an idea and its expression. Copyright does not protect an idea, theme or subject as such; protection is directed toward the expression of the idea.[67] The principle is highly relevant to artistic works because artists frequently work on common themes.
2. **Eastern Book Company v D B Modak:** The Supreme Court rejected the 'sweat of the brow' doctrine and adopted a test of skill and judgment with a minimal degree of creativity, as discussed in Part 5.4.[68]
3. **Amar Nath Sehgal v Union of India:** The Delhi High Court's decision is particularly significant in relation to moral rights.[69] The plaintiff had created a large bronze mural for Vigyan Bhawan, New Delhi, which the Government removed in 1979 and consigned to a storeroom, where it was damaged. Reading section 57 in the light of Article 6bis of the Berne Convention, the Court treated destruction of a work as the extreme form of mutilation, ordered the remnants of the mural to be returned to the artist, and awarded him damages. The decision recognises the artist's enduring connection with the integrity of the work and remains an important reference point for visual artists.
4. **Raj Rewal v Union of India:** A different approach was taken in *Raj Rewal*, where the architect of the Hall of Nations at Pragati Maidan, New Delhi, invoked section 57 after the complex was demolished in 2017. Dismissing the suit, Endlaw J held that section 57 does not entitle an author to prevent the total

[67] *R G Anand* (n 6).
[68] *Eastern Book Company* (n 14).
[69] *Amar Nath Sehgal v Union of India* 117 (2005) DLT 717 (Del); 2005 (30) PTC 253 (Del).

demolition of a work: a work that no longer exists cannot be seen, and so cannot be distorted, mutilated or modified in a manner prejudicial to the author's reputation; and the author's statutory right cannot override the owner's right to deal with its land and buildings. The Court nevertheless observed that the authorities ought to have informed the architect in advance of the demolition.[70] The two decisions, both of single judges of the same High Court, therefore pull in opposite directions, and no Division Bench or Supreme Court ruling resolving the conflict has been found. It is submitted that the *Sehgal* approach is better reasoned for movable works of art. Section 57 protects the author's honour and reputation, and the deliberate destruction of a unique painting or sculpture can injure both; Article 6bis of the Berne Convention, which section 57 implements, is directed to that interest. The concern in *Raj Rewal* for the owner's property is, however, weighty in the case of buildings, where a perpetual veto on demolition would be impractical. A rule that permits the owner to destroy a work only after giving the author notice and an opportunity to recover or document it would reconcile the two positions.

5. **Decisions on Originality and the Copyright–Design Boundary:** The decision in *Rajesh Masrani*, discussed in Parts 5.4 and 5.10, applies the originality and substantial-reproduction tests to artistic works, while *Microfibres* and *Cryogas*, discussed in Part 5.3, determine whether applied art is protected under copyright at all.[71]

T. Limitations and Exceptions

Copyright is not an absolute monopoly. Section 52 of the Copyright Act specifies acts that do not constitute infringement, in order to balance private copyright interests with broader public interests such as:[72]

[70] *Raj Rewal v Union of India* CS(COMM) 3/2018 (Del, 28 May 2019).
[71] *Rajesh Masrani* (n 15); *Microfibres* (n 11); *Cryogas* (n 12).
[72] Copyright Act 1957, s 52.

1. Education;
2. Research;
3. Criticism;
4. Review;
5. Reporting of current events; and
6. Other legally recognised purposes.

For visual artists, the most important exception is fair dealing under section 52(1)(a), which permits fair dealing with any work, other than a computer programme, for private or personal use, including research; for criticism or review, whether of that work or of any other work; and for the reporting of current events and current affairs.[73] Since the Act does not define 'fair dealing', courts consider factors such as the purpose of the use, the quantity and value of the matter taken in relation to the whole, and whether the use is likely to compete with the original.[74] The provision has acquired new significance after the *ANI* order, which read 'private or personal use, including research' to cover the commercial training of an AI model.[75]

Section 52(1)(s) and (t) further permit the making or publishing of a painting, drawing, engraving or photograph of a work of architecture, and of a sculpture or work of artistic craftsmanship permanently situated in a public place or in premises to which the public has access.[76] Thus, a photographer may photograph a public statue or building and publish the image. By contrast, reposting a complete digital artwork as a meme, or using it as unlicensed reference material for a commercial product, will rarely qualify as fair dealing, because the whole work is taken and the use may compete with the artist's own

[73] Copyright Act 1957, s 52(1)(a).
[74] *Civic Chandran v Ammini Amma* (1996) 16 PTC 670 (Ker).
[75] *ANI* (n 43).
[76] Copyright Act 1957, s 52(1)(s), (t).

market. A reduced reproduction accompanying a critical review of the artist's exhibition would more readily qualify.

U. Challenges in Protecting Artistic Works

Despite statutory protection, artists face several practical difficulties:

1. **Online Piracy:** Digital copies can be created and distributed almost instantly.
2. **Difficulty in Identifying Infringers:** Online infringement may involve anonymous accounts, foreign websites or multiple intermediaries.
3. **Cost of Litigation:** Legal proceedings may be expensive for individual artists, particularly emerging creators.
4. **Lack of Awareness:** Many artists are unaware of copyright ownership, licensing and enforcement mechanisms.
5. **AI and Automated Copying:** Artificial intelligence creates new questions concerning training data, authorship and unauthorised imitation.
6. **Global Enforcement:** An infringer may operate in another jurisdiction, making enforcement more complicated.

V. CRITICAL ANALYSIS

Copyright law has succeeded in establishing an important legal framework for protecting artistic creativity. However, technological development has significantly changed the environment in which artistic works are created, distributed and consumed. The traditional model of copyright contemplated physical copies, publishers, galleries and identifiable commercial distributors. The modern artist operates in an environment where a work can be uploaded globally within seconds and copied indefinitely.

This creates a fundamental enforcement gap: the legal right may exist, but practical enforcement can be difficult. At the same time, excessive copyright enforcement can negatively affect education, creativity and cultural exchange. Artists themselves build

upon existing cultural traditions and artistic influences. Therefore, copyright law must not prevent legitimate creative development.

The future of copyright protection should consequently focus on achieving an appropriate equilibrium between creator protection, technological innovation, public access and cultural development.

VI. SUGGESTIONS AND RECOMMENDATIONS

The gaps identified in Parts 5 and 6 call for the following specific measures. Each proposal states its legal basis, the research objective (RO) it addresses and the principal objection to it.

1. **Statutory clarification on AI training (RO 7 and 9):** Section 52 should be amended to state expressly whether, and on what conditions, copyrighted works may be used to train AI systems. A text-and-data-mining exception subject to a machine-readable opt-out, combined with a remuneration right administered through copyright societies, would engage with the DPIIT proposal while preserving the artist's ability to refuse. The principal objection is that an opt-out may disadvantage Indian developers and is difficult to verify.
2. **Authorship of computer-generated works (RO 7):** Section 2(d)(vi) should be amended to specify the minimum human creative contribution required for protection and to identify the 'person who causes' a computer-generated work to be created. Copyright Office guidelines could supplement the provision, meeting the objection that a fixed statutory test may be outpaced by technology.
3. **Harmonised rule on destruction of works (RO 3 and 8):** A proviso should be added to section 57 permitting the owner of an artistic work to destroy it only after giving the author reasonable notice and an opportunity to recover or document it. Confining the rule to notice, rather than a veto, answers the

objection that it would unduly restrict property rights, particularly in buildings.

4. **A workable resale right (RO 3):** The section 53A share should be fixed, for example as a graduated percentage within the statutory ceiling of ten per cent, and galleries and auction houses should be required by rules to report qualifying resales to a copyright society. The objection that this would impose administrative costs and drive sales to informal markets can be met by a reasonable price threshold.

5. **Faster takedown for individual artists (RO 6):** Rule 75 of the Copyright Rules, 2013 should provide a standard electronic notice form and an obligation on platforms to prevent the re-upload of identical files already removed under a valid notice. To respect the principle in *Myspace* that intermediaries have no general monitoring duty, the obligation should be limited to hash-matched copies of specifically notified works.

6. **Accessible dispute resolution (RO 5 and 9):** A summary procedure or online mediation scheme, administered through copyright societies or the commercial courts, should be available for low-value claims by individual artists. Such a scheme may require amendment of the procedural law governing commercial disputes.

7. **Practice measures for artists (RO 1 and 2):** Artists should be made aware of the ownership rules in section 17, should use written agreements specifying the terms required by section 19, should apply technological protection measures and rights management information protected by sections 65A and 65B, and should maintain dated originals, drafts, metadata and records demonstrating creation and ownership.

8. **International cooperation (RO 6):** Cross-border enforcement against foreign platforms should be strengthened through cooperation under the WIPO

internet treaties and through bilateral arrangements on the recognition of takedown orders.

VII. CONCLUSION

Copyright law constitutes one of the principal legal mechanisms for protecting creative works of art. The conclusions of this paper on the research questions (RQ) may be stated briefly.

First, copyright protects artistic works by conferring exclusive rights in their expression, irrespective of artistic quality, subject to originality and to the boundary with design law in section 15 (RQ 1).

Secondly, an artist acquires the rights in section 14(c), the resale right in section 53A and the moral rights in section 57, although first ownership may vest in a commissioner or employer under section 17 (RQ 2).

Thirdly, the law protects artists against unauthorised reproduction through sections 51, 65A and 65B and the notice-and-takedown procedure, but the latter offers individual artists only limited practical relief (RQ 3).

Fourthly, the remedies of injunction, damages and accounts under section 55, criminal sanctions under section 63 and border measures under section 53 are available, but their cost is disproportionate to the scale of online copying (RQ 4).

Fifthly, moral rights are strong in principle, since they survive assignment and are no longer limited to the copyright term, but weak in practice, and the conflict between *Amar Nath Sehgal* and *Raj Rewal* leaves the protection of works against destruction uncertain (RQ 5).

Sixthly, the internet and social media have created an enforcement gap rather than a gap in substantive rights (RQ 6).

Seventhly, the law on AI remains unsettled: the interim order in *ANI* suggests that training may be fair dealing, and the *DABUS* order confirms that an AI system cannot be

an author, but the status of autonomous AI output requires legislative clarification (RQ 7).

Finally, the existing framework balances creators' rights with the public interest adequately in its substantive rules, notably through the exceptions in section 52, but it does not adequately protect modern creative works in practice (RQ 8).

The judicial decisions examined, notably *R G Anand*, *Eastern Book Company*, *Rajesh Masrani*, *Amar Nath Sehgal*, *Raj Rewal* and *Cryogas*, have developed principles on the idea–expression distinction, originality, infringement of artistic works, moral rights and the copyright–design boundary, although the law on the destruction of works remains unsettled.

The future of copyright law must therefore preserve the principle that creativity deserves protection while adapting enforcement mechanisms to technological realities, so that artists can derive economic and reputational benefit from their works and the public retains legitimate access to knowledge and culture. *"May noble thoughts come to us from all directions"* ॥ आ नो भद्राः क्रतवो यन्तु विश्वतः ॥ (Rigveda 1.89.1)

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