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GENERATIVE ARTIFICIAL INTELLIGENCE AND COPYRIGHT OWNERSHIP: A DOCTRINAL ANALYSIS OF AUTHORSHIP, ORIGINALITY, AND THE CRISIS OF CREATIVE ATTRIBUTION

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I. ABSTRACT

The emergence of generative artificial intelligence (AI) systems capable of producing literary works, musical compositions, visual art, and computer code with minimal or no human creative input has precipitated a profound doctrinal crisis within copyright law. The foundational construct of copyright, premised upon the existence of a human author who exercises creative judgment, is structurally ill-equipped to accommodate outputs generated by machine-learning models. This article undertakes a doctrinal analysis of the copyright framework applicable to generative AI outputs under Indian law, with particular reference to the Copyright Act, 1957, and draws critical comparisons with the legal positions in the United States, the European Union, and the United Kingdom. It examines the core doctrines of authorship, originality, and the work-for-hire principle, and assesses their capacity and incapacity to resolve the ownership question. The article concludes that the existing copyright architecture in India demands urgent legislative intervention and proposes a sui generis protection regime for AI-generated works.

II. KEYWORDS

Generative AI, Copyright Authorship, Originality, Indian Copyright Act 1957, Sui Generis.

III. INTRODUCTION

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The history of copyright law is, in essence, a history of technological adaptation. The printing press, the camera, the phonograph, and the internet each compelled legislatures and courts to revisit and reframe the doctrinal architecture of creative protection. The twenty-first century presents its most formidable challenge yet: generative artificial intelligence. Systems such as OpenAI's GPT-4, Google's Gemini, Midjourney, and DALL-E are now capable of generating novels, legal memoranda, symphonic scores, photorealistic images, and functional software code outputs that are, to the ordinary observer, often indistinguishable from those produced by a skilled human professional.[2]

The challenge is not merely technological; it is jurisprudential. Copyright law, as codified in the Berne Convention for the Protection of Literary and Artistic Works (1886), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS, 1994), and domestic statutes such as the Indian Copyright Act, 1957, uniformly presupposes a human author.[3][4] The doctrines of authorship, originality, and moral rights are each calibrated to the exercise of human intellectual and creative judgment. When an AI system produces a novel by processing billions of tokens of training data and generating probabilistic outputs, the question Who *is the author?* cannot be answered by reference to existing doctrine without considerable strain.

This article addresses three doctrinal questions of primary importance. First, can a generative AI system, or its output, qualify for copyright protection under Indian law and cognate international frameworks? Second, if such protection is available, who the developer, the user, or the AI itself is properly regarded as the author or owner? Third, where existing doctrine fails, what legislative reforms are necessary and sufficient to resolve the impasse? The article proceeds in six substantive parts, concluding with a model for legislative reform drawn from comparative and international IP law.[5]

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[2] OpenAI, *GPT-4 Technical Report* (2023); Google DeepMind, *Gemini: A Family of Highly Capable Multimodal Models* (2023).

[3]Agreement on Trade-Related Aspects of Intellectual Property Rights art. 9–14, Apr. 15, 1994, 1869 U.N.T.S. 299 [hereinafter *TRIPS Agreement*].

[4]The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India) [hereinafter *Copyright Act*].

[5]Ryan Abbott, *The Reasonable Robot: Artificial Intelligence and the Law* 1–22 (Cambridge Univ. Press 2020).

A. Research Problem

The research problem at the heart of this article is tripartite. First, can a generative AI system, or its output, qualify for copyright protection under Indian law and cognate international frameworks? Second, if such protection is available, who the developer, the user, or the AI itself is properly regarded as the author or owner? Third, where existing doctrine fails, what legislative reforms are necessary and sufficient to resolve the impasse? These questions carry consequences that extend beyond academic doctrine they determine the commercial value of AI-generated creative industries, the rights of human creators whose works form training data, and the long-term trajectory of India's intellectual property framework in the digital economy.

B. Research Objectives

1. To examine the foundational doctrines of authorship and originality in copyright law, as applicable under the Copyright Act, 1957 and international frameworks, and to evaluate their capacity to accommodate outputs generated by generative AI systems.
2. To analyse the specific provisions of the Indian Copyright Act, 1957 — with particular focus on Sections 2(d)(vi), 13, and 57 — that are most directly implicated by the generative AI challenge, identifying their interpretive limits and structural deficiencies.
3. To conduct a comparative analysis of the legal frameworks governing AI-generated works in the United States, the United Kingdom, the European Union, and China, identifying transferable solutions and cautionary lessons for Indian law.
4. To critically evaluate the primary doctrinal fault lines in the AI-copyright debate, including the instrumentality problem, the training data and derivative works problem, and the moral rights lacuna.

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5. To propose some concrete, internationally compatible legislative reform framework a sui generis protection regime for AI-generated works under Indian law, specifying its key elements and mechanisms.

C. Research Questions

1. Can a generative AI system, or its output, qualify for copyright protection under Indian law and cognate international frameworks?
2. If such protection is available, who among the developer, the user, or any other stakeholder is properly regarded as the author or owner of AI-generated works?
3. Where existing copyright doctrine proves inadequate, what legislative reforms are necessary and sufficient to address the challenges posed by generative AI?

D. Research Methodology

This study adopts a doctrinal legal research methodology, relying on the systematic analysis of statutory provisions, judicial decisions, and established principles of copyright law. The research is primarily library-based and non-empirical in nature, focusing on the interpretation of the Copyright Act, 1957, and relevant international instruments.

In addition, the article employs a comparative legal approach, examining the treatment of AI-generated works in the United States, the United Kingdom, the European Union, and China. These jurisdictions have been selected due to their developed copyright jurisprudence and their emerging engagement with generative AI regulation, offering both instructive models and cautionary perspectives for Indian law.

The study draws upon primary sources, including legislation, case law, and policy documents, as well as secondary sources such as academic literature, institutional reports, and commentaries, to critically evaluate the doctrinal challenges posed by generative AI and to formulate appropriate legislative responses.

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IV. THE DOCTRINAL LANDSCAPE: AUTHORSHIP AND ORIGINALITY

1. **The Centrality of the Human Author:** Copyright protection is constitutionally and doctrinally anchored to the notion of a human creator. In Burrow-Giles Lithographic Co. v. Sarony (1884), the United States Supreme Court defined an author as 'he to whom anything owes its origin; originator; maker.'[6] The Berne Convention similarly proceeds from the assumption that works have human authors, as evidenced by its provisions on moral rights rights that are, by definition, inseparable from the personality of a natural person.[7] In India, the Supreme Court in Eastern Book Company v. D.B. Modak (2008) articulated a skill-and-judgment standard for originality, requiring that the author exercise sufficient skill, labour, and judgment to render the work original.[8] Critically, the Court's reasoning presupposes a human cognitive agent. The question that generative AI poses is whether the 'skill and judgment' of the programmer who wrote the model's training algorithm, or of the user who constructed the prompt, is sufficiently proximate to the final output to vest copyright.

2. **The Doctrine of Originality:** Originality is the threshold condition for copyright protection. Across jurisdictions, two principal standards have emerged. The 'sweat of the brow' doctrine historically protected works that were the product of labour and effort, irrespective of creative spark. The higher creativity standard, adopted by the United States Supreme Court in Feist Publications, Inc. v. Rural Telephone Service Co. (1991), requires a modicum of creativity beyond mere industry.[9] The Indian Copyright Act, 1957 does not expressly define 'original.' However, the Eastern Book Company decision effectively displaced the pure sweat-of-the-brow

[6]Burrow-Giles Lithographic Co. v. Sarony, 111 U.S. 53, 57–58 (1884).
[7]*Berne Convention*, supra note 1, arts. 6bis, 14ter.
[8]Eastern Book Co. v. D.B. Modak, (2008) 1 SCC 1, ¶¶ 36–42 (India).
[9]Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 345 (1991).

standard and imported a creativity requirement.[10] This is significant for generative AI while a model's output may represent the product of enormous computational labour, it is generated through statistical pattern-matching rather than the exercise of creative choice in any philosophically meaningful sense.[11] The model does not 'intend' to create; it predicts the next token based on probability distributions derived from training data. The doctrinal consequence is acute if originality requires the exercise of human creative judgment, AI-generated outputs may be categorically ineligible for copyright protection, regardless of their aesthetic quality or commercial value.

3. **The Authorship–Ownership Distinction:** Even where a work is capable of protection, copyright doctrine distinguishes between authorship and ownership. Authorship denotes the individual who gave creative expression to the work. Ownership may vest in a different party most notably through the employer-employee relationship (work-for-hire) or by contractual assignment.[12] This distinction becomes operationally significant in the AI context: even if a human developer or user cannot be characterised as the 'author' of an AI-generated output, it may be possible to vest ownership if not authorship in them through legislative fiction or contractual mechanism.

V. THE INDIAN STATUTORY FRAMEWORK

1. **The Copyright Act, 1957: Foundational Provisions:** The Copyright Act, 1957 (the Act) is the primary legislation governing copyright in India. Section 13 of the Act specifies the classes of works entitled to protection, including original literary, dramatic, musical, and artistic works, as well as cinematographic films and sound recordings.[13] Section 2(d) defines 'author' with specificity for different categories

[10] *Eastern Book Co.*, (2008) 1 SCC 1, ¶ 38.
[11] Andres Guadamuz, Do Androids Dream of Electric Copyright? Comparative Analysis of Originality in Artificial Intelligence Generated Works, 2017 Intell. Prop. Q. 169, 172–75.
[12] Jane C. Ginsburg & Luke Ali Budiardjo, Authors and Machines, 34 Berkeley Tech. L.J. 343, 349–55 (2019).
[13] *Copyright Act*, supra note 3, § 13.

of works: for computer-generated works, the author is the 'person who causes the work to be created.[14] This final category is of decisive importance. Section 2(d)(vi) was modelled on Section 9(3) of the Copyright Designs and Patents Act, 1988 (UK),[15] enacted in recognition of the increasing role of computers in creative production. However, it was drafted at a time when computer-generated referred to outputs deterministically produced by software operating on human-defined rules not the probabilistic, emergent outputs of large language models trained on vast datasets. The gap between legislative intent and technological reality could not be wider.

2. **The 'Person Who Causes Work to Be Created':** The phrase 'person who causes the work to be created' in Section 2(d)(vi) is the interpretive crux of the Indian framework. Three candidates may plausibly be identified as causative people in the context of generative AI: the developer who designed and trained the model; the organisation that deployed the model; and the user who provided the prompt.[16] Each claim has doctrinal merit and deficiency. The developer's causal contribution is most remote in time from the specific output; the model, once trained and deployed, generates output without the developer's continued involvement. The deploying organisation's contribution is infrastructural rather than creative. The user's prompt, while the most proximate human input to the output, may range from highly specific and creative to bare and generic raising the question of whether a one-sentence prompt can constitute sufficient causal contribution to vest ownership. No Indian court has authoritatively resolved this question, and the Copyright Office's practice of permitting registration of AI-assisted works where 'substantial human creative contribution' is demonstrated leaves the boundaries undefined.[17]

[14]*Copyright Act*, supra note 3, § 2(d)(vi).
[15]Copyright, Designs and Patents Act 1988, c. 48, § 9(3) (UK).
[16]See generally Shyamkrishna Balganesh, The Equity of Copyright, 106 Cornell L. Rev. 1197, 1204–09 (2020).
[17]Copyright Office of India, Annual Report 2022–23, at 18.

3. **Moral Rights and AI: An Irresolvable Tension:** Section 57 of the Act confers on authors the inalienable moral rights of attribution and integrity the right to be identified as the author and the right to object to distortions or modifications of the work.[18] These rights survive the transfer of economic rights and endure for the author's lifetime. The recognition of an AI as an author, even were it legally possible, would render these provisions incoherent: an AI system has no reputational interest in protecting and no personality to which moral rights can attach. The resolvability of this tension suggests that AI-generated works may require a category of protection entirely separate from traditional copyright.

VI. INTERNATIONAL JURISPRUDENCE AND COMPARATIVE LAW

1. **United States: The Copyright Office's Categorical Position:** The United States Copyright Office (USCO) has adopted the clearest and most developed position among major jurisdictions. In its March 2023 policy statement published in the Federal Register (88 Fed. Reg. 16,190), the USCO affirmed that copyright protection extends only to works of human authorship and refused to register works created autonomously by AI. This position has since been elaborated in its formal reports, including Copyright and Artificial Intelligence: Part 1 – Digital Replicas (2024) and, most significantly, Part 2 – Copyrightability (January 2025). In Part 2, the USCO clarified that AI-generated outputs may qualify for copyright protection only where a human author has contributed sufficient creative expression, such as by selecting, arranging, or modifying AI-generated material in a manner that reflects human authorship. Conversely, the mere provision of prompts, without more, is insufficient to establish authorship. This distinction between human creative control and automated generation bears directly on the instrumentality debate and underscores the limits of existing copyright doctrine in addressing generative AI.19 The position was reinforced in Thaler v.

[18] *Copyright Act*, supra note 3, § 57(1).
[19] U.S. Copyright Office, *Copyright and Artificial Intelligence: Part 1 – Digital Replicas* (2024); U.S. Copyright Office, *Copyright and Artificial Intelligence: Part 2 – Copyrightability* (January 2025); U.S. Copyright Office,

Perlmutter, where the District Court's refusal to register a visual artwork created entirely by the Creativity Machine AI system was subsequently affirmed by the United States Court of Appeals for the D.C. Circuit (130 F.4th 1039 (D.C. Cir. 2025)). The appellate court confirmed that human authorship is a prerequisite for copyright protection, grounded in both the constitutional term 'Authors' and the consistent historical interpretation of the Copyright Act. The decision, now affirmed at the appellate level, carries substantial persuasive value for Indian courts, given the shared common law heritage and the doctrinal parallels between the two frameworks.

2. **United Kingdom: Section 9(3) and Its Limitations:** The United Kingdom's approach under Section 9(3) of the CDPA is, in theory, the most accommodating of AI-generated works, vesting authorship in 'the person who undertakes the necessary arrangements for the creation of the work.'20 However, the provision was designed for earlier, rule-based computational creativity and has been criticised as inadequate for generative AI. The UK Intellectual Property Office, following a 2021–22 consultation, decided to retain the existing framework without amendment a position widely criticised by academics and industry stakeholders as a failure to grapple with the doctrinal novelty of generative AI.21

3. **European Union: The AI Act and IP Implications:** The European Union has adopted a horizontal regulatory approach to AI through the EU AI Act (2024), which imposes transparency obligations on providers of general-purpose AI models, including obligations to disclose training data and comply with copyright law.22 The Act interacts with the existing EU copyright acquis in particular,

"Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence," 88 Fed. Reg. 16,190 (March 16, 2023), https://copyright.gov/ai.

[20]*CDPA*, supra note 14, § 9(3).

[21]UK Intellectual Property Office, Artificial Intelligence and Intellectual Property: Copyright and Patents — Government Response to Consultation 5–9 (2022), https://www.gov.uk/ipo.

[22]Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence [hereinafter *EU AI Act*], 2024 O.J. (L 1689).

Directive 2019/790 on Copyright in the Digital Single Market which contains specific text and data mining (TDM) provisions with significant implications for the legality of training generative AI models on copyrighted works.23 The EU approach is thus bifurcated: it addresses the input problem through the TDM framework, but leaves the output (ownership) question largely unresolved.

4. **China: A Legislative Experiment:** China presents a significant judicial response to AI-generated works. The Beijing Internet Court, in Li v. Liu (Li Yunkai v. Liu Yuanchun), decided on November 27, 2023 ((2023) Jing 0491 Min Chu No. 11279), held that an AI-generated image created using Stable Diffusion was entitled to copyright protection and that the individual who exercised creative control through prompts was the rightful author under Chinese Copyright Law. However, the decision has been criticised for its undertheorizing of the authorship question.

VII. DOCTRINAL FAULT LINES AND CRITICAL ANALYSIS

A. The Instrumentality Problem

A recurring argument in the AI-copyright debate is that a generative AI is merely a sophisticated instrument analogous to a camera, a word processor, or a paintbrush and that the human who wields it is therefore the author.[24] This analogy is seductive but ultimately inadequate. Critical disanalogy is one of creative agencies: a camera does not select its subject, frame its shot, or determine its aesthetic. A large language model, by contrast, makes billions of probabilistic 'decisions' in producing an output decision not directed by the user in any granular sense.[25] The user who types 'write me a sonnet about autumn' has not exercised creative control over the meter, the imagery, the diction, or the structure of the resulting poem. The instrumentality argument, if accepted uncritically,

[23]Directive 2019/790, of the European Parliament and of the Council of 17 April 2019 on Copyright in the Digital Single Market arts. 3–4, 2019 O.J. (L 130) 92.
[24]Abbott, *supra* note 4, at 47–52.
[25]Ginsburg & Budiardjo, *supra* note 11, at 360–65.

would vest copyright in the drafter of a one-sentence prompt for a work of considerable creative complexity, a result that strains the concept of authorship beyond recognition.

B. The Training Data Problem and Derivative Works

A second doctrinal fault line concerns the relationship between generative AI outputs and the copyrighted training data on which models are trained. If a model is trained in copyrighted literary works or visual art without licence, the outputs it generates may be argued to be infringing derivative works. This theory was advanced in Andersen v. Stability AI Ltd. and Authors Guild v. OpenAI, Inc.[26], the latter filed on September 19, 2023, in the Southern District of New York.[27]

In the Indian context, the Copyright Act does not contain a TDM exception comparable to that in EU law. Section 52 of the Act enumerates fair dealing exceptions, but none expressly contemplates the reproduction of copyrighted works for the purpose of training a machine learning model.[28] This creates the paradox that the most commercially valuable AI systems may be generating outputs that are both unprotectable (as original works) and potentially infringing (as derivatives of training data) a position that is as commercially unsatisfactory as it is doctrinally unstable.[29]

C. The Moral Rights Lacuna

The moral rights framework under Section 57 of the Copyright Act is fundamentally irreconcilable with AI authorship.[30] More practically, the absence of a human author to assert moral rights creates a vacuum that may be exploited: AI-generated works may be freely mutilated, distorted, or falsely attributed without any right-holder having legal standing to object. The capacity to generate deepfakes, to produce AI-generated works and attribute them to living human authors without consent, or to distort an AI-generated

[26] Authors Guild v. OpenAI, Inc., No. 1:23-cv-08292-SHS (S.D.N.Y. filed Nov. 21, 2023).
[27] Andersen v. Stability AI Ltd., No. 3:23-cv-00201-WHO (N.D. Cal. filed Jan. 13, 2023).
[28] *Copyright Act*, supra note 3, § 52.
[29] Guadamuz, *supra* note 10, at 179–82.
[30] *Copyright Act*, supra note 3, § 57(1); see also Amar Nath Sehgal v. Union of India, 117 (2005) DLT 717 (Delhi H.C.).

work in a manner that damages the reputation of its ostensible human creator all arise in this vacuum.

VIII. LEGISLATIVE REFORM: TOWARD A SUI GENERIS REGIME

A. The Inadequacy of Incremental Interpretation

The foregoing analysis demonstrates that the existing Indian copyright framework cannot adequately resolve the ownership question for generative AI outputs through interpretation alone. The provision in Section 2(d)(vi) designed for a qualitatively different form of computational creativity cannot bear the doctrinal weight placed upon it by generative AI. Legislative intervention is not merely advisable; it is necessary.

B. Elements of a Sui Generis Framework

This article proposes that India enact a sui generis protection regime for AI-generated works, modelled in part on the database right established by EU Directive 96/9/EC,[31] but calibrated to the specific characteristics of generative AI. The proposed framework would incorporate the following elements.

1. First, a definitional distinction between 'AI-assisted works' (where a human exercises substantial creative control) and 'AI-generated works' (where the AI autonomously produces the output with minimal human creative input). AI-assisted works would remain within the copyright framework; AI-generated works would be governed by the sui generis regime.
2. Second, a term of protection for AI-generated works shorter than the standard copyright term proposed at fifteen years from the date of publication reflects the reduced level of creative contribution and the commercial rather than personal character of AI-generated production.
3. Third, vesting of the sui generis right in the person or entity that made the necessary arrangements for the creation of the work adopting the Section

[31]Council Directive 96/9/EC of 11 March 1996 on the Legal Protection of Databases, 1996 O.J. (L 77) 20.

2(d)(vi) test subject to the condition that the arrangements involved a non-trivial investment of resources in the design, training, or deployment of the AI system.

4. Fourth, a mandatory transparency register maintained by the Copyright Office, in which AI-generated works must be disclosed and their AI provenance recorded, enabling courts and users to identify the nature of the work.
5. Fifth, an explicit TDM exception permitting the use of lawfully accessed copyrighted works for the purpose of training AI models, subject to opt-out rights for rights-holders in commercially sensitive categories and the payment of equitable remuneration administered by a collecting society.

C. Compatibility with TRIPS and the Berne Convention

A legislative innovation of this kind raises questions of international compatibility. TRIPS Article 9 incorporates Berne Convention obligations but does not preclude the creation of sui generis rights not contemplated by Berne, provided they do not conflict with Berne's minimum standards.[32] India's proposed regime would need to be notified and justified before the TRIPS Council, but there is no apparent bar to its adoption under existing international obligations. The National IPR Policy 2016 calls for modernisation of IP laws to accommodate emerging technologies providing a domestic policy anchor for such reform.[33]

IX. CONCLUSION

Generative artificial intelligence represents the most profound disruption to copyright doctrine since the invention of the printing press. The foundational categories of authorship, originality, and moral rights each calibrated to the exercise of human creative

[32] *TRIPS Agreement*, supra note 2, art. 9(1).
[33] Ministry of Commerce & Industry, National IPR Policy 2016, Dep't for Promotion of Industry & Internal Trade, Gov't of India 8–10 (2016).

judgment are structurally inadequate to accommodate works produced by AI systems that operate through probabilistic computation rather than purposive creativity.

Indian law, through Section 2(d)(vi) of the Copyright Act, 1957, contains the seeds of a solution in its recognition of 'computer-generated works.' However, this provision is insufficient for the generative AI context, and no judicial interpretation can stretch it to cover the doctrinal distance that generative AI has created. The comparative analysis reveals that no major jurisdiction has yet found a fully satisfactory legislative solution.

India has an opportunity and, this article argues, an obligation to lead. A sui generis protection regime, calculated to the commercial reality of AI-generated works while preserving the integrity of the copyright framework for human authors, is both doctrinally coherent and internationally feasible. The question is not whether legislative reform is necessary, but whether India will act before the vacuum is filled by judicial improvisation, commercial contract, or the default rule of the public domain. The law must not lag indefinitely behind technology.

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