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RETHINKING AUTHORSHIP: A DOCTRINAL ANALYSIS OF COPYRIGHT PROTECTION FOR ARTIFICIAL INTELLIGENCE-GENERATED WORKS

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I. ABSTRACT

*Generative artificial intelligence challenges a foundational assumption of copyright law: that protectable expression is attributable to a human author who exercises creative judgment. This article examines how copyright law should treat works generated or materially assisted by AI, with particular attention to authorship, originality, ownership, and the threshold of human creative contribution. Using a comparative doctrinal method, it analyses statutory provisions, judicial decisions, administrative practice, and ongoing reform initiatives in the United States, United Kingdom, European Union, and India. The analysis considers, inter alia, *Thaler v. Perlmutter* and U.S. Copyright Office guidance; section 9(3) of the Copyright, Designs and Patents Act 1988 and the United Kingdom's reform debate; the Court of Justice of the European Union's "author's own intellectual creation" jurisprudence and the transparency framework under Article 53 of the EU AI Act; and India's section 2(d) of the Copyright Act, 1957 together with the RAGHAV/Suryast registration episode. The comparison reveals substantial convergence around the need for identifiable human creative input, notwithstanding significant differences in legal technique and the continued existence of statutory provisions for computer-generated works in the United Kingdom and India. The principal unresolved question is not whether human contribution matters, but how much creative control, selection, arrangement, modification, or other expressive intervention is sufficient to support authorship in AI-assisted works. The article argues that neither categorical exclusion nor unrestricted protection adequately addresses this intermediate zone. It therefore proposes a disclosure-based rebuttable presumption under which claimants identify the nature and extent of AI*

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involvement and demonstrate indicia of meaningful human creative control. This framework would preserve human-centred originality while improving transparency, administrability, and doctrinal coherence across increasingly AI-mediated creative practices.

II. KEYWORDS

AI-generated works; human authorship; computer-generated works; originality; copyright reform.

III. INTRODUCTION

A. The Problem: AI and the Authorship Bottleneck

Copyright law was built on an idea that people didn't really think about much. The idea is that every creative work that can be protected has a being behind it. Those human uses judgment, taste and creativity. This idea is so deep in how copyright works. In the way we talk about "authorship," in the rules that connect a work to the person who made it and in the way the law tries to encourage people to work by giving them rights. That for most of the time copyright has been around no one needed to say it out loud.

It was something the system took for granted. Generative artificial intelligence has changed that. Now there are systems that can make text, pictures, music and code that look like what people make. These systems have caused a lot of people to apply for copyright to sue and to make decisions in places. All of this has forced courts and lawmakers to answer a question that copyright was never meant to handle: can something made with little or no human creativity be called "authored " and if so who is the author?

The question is not merely academic. Generative AI is increasingly used across content-producing sectors, including advertising, journalism, design, music and software. The copyright status of AI-generated output therefore affects whether such material can be licensed, commercially exploited or protected against unauthorised copying. If autonomous AI-generated content falls outside copyright protection, an expanding category of commercially significant material may enter the public domain upon creation.

Conversely, an unduly low threshold for protection could dilute established originality requirements and extend exclusive rights to outputs that lack the human creative agency copyright law has traditionally sought to protect and incentivise. Courts, copyright offices and lawmakers in the United States, United Kingdom, European Union and India have consequently confronted the same underlying problem from different doctrinal starting points and have developed materially different responses.

B. Research Objectives

This study has four principal objectives:

1. First, it examines the legal treatment of authorship, originality and ownership in AI-generated and AI-assisted works in the United States, United Kingdom, European Union and India.
2. Second, it compares the doctrinal mechanisms through which these jurisdictions determine whether human creative contribution is sufficient for copyright protection.
3. Third, it identifies the principal areas of convergence, divergence and continuing uncertainty, particularly concerning the threshold of human involvement in AI-assisted creation.
4. Finally, it evaluates available reform approaches and develops a framework capable of preserving human-centred principles of originality while improving transparency and legal certainty in AI-mediated creative processes.

C. Research Questions

This study addresses four related questions:

1. How do the United States, United Kingdom, European Union and India conceptualise authorship and originality in relation to AI-generated and AI-assisted works?

2. What degree and form of human creative contribution is required for copyright protection in each jurisdiction?
3. To what extent do the four legal systems converge or diverge in addressing computer-generated works and human–AI collaboration?
4. What reform framework can provide greater certainty concerning AI-assisted authorship while preserving the human-centred foundations of copyright law?

D. Research Methodology

This study adopts a doctrinal and comparative legal research methodology.

It examines primary legal materials from the United States, United Kingdom, European Union and India, including constitutional and statutory provisions, regulations, judicial decisions, administrative determinations, legislative materials and official governmental reports.

Secondary legal scholarship and commentary are used principally to contextualise doctrinal developments and policy debates. The comparative analysis evaluates how the four jurisdictions address authorship, originality, ownership and the degree of human creative contribution required in AI-generated and AI-assisted works, before identifying points of convergence, divergence and doctrinal uncertainty. The legal position and reform developments examined in this study are stated on the basis of materials publicly available up to 25 September 2026.

E. Scope and Roadmap

I am writing this paper to examine how these four jurisdictions have approached authorship originality and ownership for works. The paper uses case law and ongoing statutory reform processes as the main evidence.

The United States is seen through the case *Thaler v. Perlmutter*. In that case the D.C. Circuit in March 2025 upheld the human-authorship requirement and the Supreme Court in March 2026 refused to review the case. The paper also looks at the case *Allen v. Perlmutter* that is still pending and at the 2025 report from the U.S. Copyright Office about AI copyrightability.

The United Kingdom is examined through section 9(3) of the Copyright, Designs and Patents Act 1988, which provides that, for a computer-generated literary, dramatic, musical or artistic work, the person by whom the arrangements necessary for its creation are undertaken is treated as the author. Section 178 defines such a work as one generated by computer in circumstances in which there is no human author. The paper also examines the UK Government's 2024-2026 consultation and reporting process concerning the proposed removal of this specific protection.

The European Union is explored by looking at the Court of Justice's judge-made originality doctrine. That doctrine grew step by step through cases *Infomax*, *Painer*, *Cofemel* and later rulings. The paper also notes the transparency duties that the EU AI Act gives to general-purpose AI providers.

India is studied by looking at the *Suryast/RAGHAV* case. In that case the Indian Copyright Office first gave a registration to a work that was shared with an AI system and later tried to withdraw that registration. This shows a lack of clarity in section 2(d) of the Copyright Act, 1957. No court has yet decided on the issue.

The paper moves on to seven parts. Part I sets out the ideas that all four systems share, but in a slightly different way. Those ideas include the human-centered view of authorship and three originality tests: the "sweat of the brow" the "modicum of creativity" test from *Feist* and the EU-derived "author's own creation" rule. AI-generated output must be judged against those rules.

Parts II to V give accounts for each jurisdiction. Part II is about the United States, Part III about the United Kingdom, Part IV about the European Union and Part V about India. Each part follows the laws, cases and reforms that have happened up to 2026. Part VI pulls all four accounts together for a comparison.

The paper finds a similarity: every jurisdiction wants at least a human element for copyright to apply, even in places like the United Kingdom and India where the law on paper seems to allow work with no human author. But Part VI also points out a difference that remains unresolved: none of the four systems has a clear usable test for how much human creativity is needed.

Part VII looks at the policy choices for the future. Options include keeping the human-authorship rule creating a new special right similar to the EU database right and a mixed plan. The mixed plan uses a presumption, for how much contribution counts and it uses the disclosure system that the EU AI Act is already building for other reasons.

The paper ends by saying that the confusion seen in *Thaler*, the section 9(3) repeal debate the Court of Justice of the European Union's originality cases and the *Suryast* withdrawal notice is not just national oddities. It is one sign: the laws that were made for a human creative mind are now being asked to guard a technology that can mimic that mind without any personal or expressive claim that copyright was meant to protect.

IV. UNITED STATES: THALER V. PERLMUTTER AND THE HUMAN-AUTHORSHIP BEDROCK

A. Statutory and Constitutional Framework

The American approach to AI authorship does not start with a law that thinks about artificial intelligence. It begins with text that was written long before the technologies that copyright now covers. Article I, Section 8 Clause 8 of the U.S. Constitution gives Congress the power to grant rights "to Authors and Inventors" for a limited time so that the Progress of Science and useful Arts can be promoted. The word "Authors" does not explain itself. Over two hundred years courts and Congress have filled that gap notably with the Copyright Act of 1976. That Act never defines "author,".

The Supreme Court has repeatedly interpreted the term as the person who turns an idea into a fixed tangible expression. In *Feist Publications, Inc. V. Rural Telephone Service Co.* (1991) The Court held that creation plus a modicum of creativity" is a constitutional requirement for copyright protection.²The Court tied that requirement explicitly to the term "Authors."

² *Feist Publications, Inc v Rural Telephone Service Co* 499 US 340, 345-47 (1991).

This doctrine is now used by courts and the U.S. Copyright Office to exclude non-human claimants: if originality is inseparable from authorship and authorship applies only to persons then a work with no human author cannot be original in the sense the Constitution demands no matter how creative or novel the output may seem.

The Copyright Office's own interpretive practice backs up this reading. In its Compendium of U.S. Copyright Office Practices, the Office says it will refuse to register a claim if it finds that a human being did not create the work. It lists works "produced by a machine or mere mechanical process" that have no input from a human author as a clear example of material that is not copyrightable.³

This administrative position was set up decades before generative AI in response to photocopying, random-number-generated art and other edge cases. Today it is the front line in the AI copyright debate because it is applied, almost automatically to every AI-generated registration application the Office receives. The question that later litigation will test is whether this administrative gloss, on the term "Authors" is correct and if it is, exactly where the line should be drawn between human and machine authorship when a human uses AI as a tool rather than letting the machine do the entire creative act.

B. *Thaler v. Perlmutter*: Facts, USCO Refusal, District Court, D.C. Circuit, and the March 2026 Certiorari Denial

The strongest test of whether a human must be the author of a work for copyright protection didn't come from a big tech company or a commercial AI tool. It came from an intentional challenge. Dr. Stephen Thaler, a computer scientist who has been pushing boundaries in several countries over AI-created works built an AI system called the "Creativity Machine." He used it to generate a two- image titled *A Recent Entrance to Paradise*. Then he went further: he applied for copyright registration naming the Creativity Machine as the author and himself only as the owner claiming the work was made under a work-made-for-hire arrangement.

³ US Copyright Office, *Compendium of US Copyright Office Practices* (3rd edn) ss 306, 313.2.

What made this case different was what Thaler told the Copyright Office. In both the application and later communications, he stated that the artwork had been "autonomously created by intelligence without any creative contribution from a human actor." That statement became crucial. It ruled out any argument that Thaler himself had contributed creatively through prompting, choosing, arranging or editing which would have supported a claim of authorship. The fact that Thaler admitted no human was involved at all closed off legal paths.

The Copyright Office's Review Board denied the application. Their reasoning? Human authorship is required for copyright registration. They pointed to the Compendium rules and to Thaler's admission that no human had played a creative role. Thaler then took the case to the U.S. District Court for the District of Columbia. Both sides moved for summary judgment. Judge Beryl Howell wrote the opinion upholding the denial. She called authorship the "bedrock requirement" of copyright law. She rejected Thaler's arguments based on rights, statutory interpretation and the work-made-for-hire doctrine.

Thaler appealed, and on 18 March 2025 the U.S. Court of Appeals for the District of Columbia Circuit affirmed the denial of registration. The court held, as a matter of statutory construction, that the Copyright Act of 1976 requires an eligible work to be authored in the first instance by a human being. Its reasoning rested primarily on the text, structure and design of the Act. Although the statute does not define 'author', numerous provisions presuppose human attributes, including the capacity to own and transfer property, a human lifespan, family relationships relevant to termination interests, domicile, nationality, intention and the ability to authenticate transfers by signature.

By contrast, the Act generally treats machines and computer programs as tools or instrumentalities rather than authors. The court further relied on the Copyright Office's longstanding administrative interpretation, formally reflected in its 1973 *Compendium*, that copyrightable authorship must originate with a human agent. It also considered the work of the National Commission on New Technological Uses of Copyrighted Works (CONTU), whose deliberations and subsequent Final Report

treated computers as instruments used by human authors rather than as authors in their own right.

These materials reinforced the court's conclusion that human authorship was a settled understanding when Congress enacted the 1976 Act. The court therefore rejected Thaler's broader dictionary-based construction of 'author'. It expressly declined, however, to decide the Copyright Office's separate contention that the Constitution itself independently requires human authorship. The court also declined to consider Thaler's alternative argument that he personally qualified as the author because he created and used the Creativity Machine, holding that the argument had not been properly preserved.

Thaler subsequently sought further review. The D.C. Circuit denied his petition for rehearing en banc on 12 May 2025, and the Supreme Court denied his petition for a writ of certiorari on 2 March 2026.⁴ The denial of certiorari left the D.C. Circuit's judgment undisturbed. The resulting decision establishes within the D.C. Circuit that a machine cannot itself be recognised as the author of a copyrighted work under the Copyright Act of 1976. It does not, however, establish a quantitative threshold for human contribution to works created with AI assistance.

Indeed, the appellate court emphasised that the human-authorship requirement does not categorically preclude copyright protection for works made with AI; the relevant inquiry in such cases concerns whether protectable expression is attributable to a human author. Because Thaler had consistently presented the Creativity Machine as the sole author, the court had no occasion to resolve that broader line-drawing question.

C. *Allen v. Perlmutter* and the Unresolved "Line-Drawing" Problem

The more difficult line-drawing question is presented in *Allen v. Perlmutter*, which challenges the Copyright Office's refusal to register *Théâtre D'opéra Spatial*, an award-winning image created by Jason Allen using the Midjourney text-to-image system.

⁴ *Thaler v Perlmutter* 130 F 4th 1039, 1041, 1045–52 (DC Cir 2025), reh'g en banc denied, No 23-5233 (DC Cir, 12 May 2025), cert denied, No 25-449 (US, 2 March 2026).

Unlike Thaler, Allen does not identify the AI system as the author; he contends that his own creative involvement is sufficient to establish human authorship.

The administrative record states that Allen revised his prompts at least 624 times and subsequently used additional software to modify and upscale the resulting image.⁵ The Copyright Review Board nevertheless concluded that the Midjourney-generated material contained more than a de minimis amount of AI-generated content and therefore had to be disclaimed from the registration claim.

Allen's litigation consequently raises the question whether extensive iterative prompting and post-generation modification can establish sufficient human authorship over the relevant expressive elements of an AI-assisted work. The link between the text prompt and the actual picture the system makes is changed by a process that the person giving the prompt does not control and according to the Office can't really predict or control either.

Allen is significant because it presents the line-drawing issue that *Thaler* did not resolve: what kind and degree of human involvement in an AI-assisted creative process is sufficient to establish authorship of the resulting expression. Copyright law has long accommodated technological tools used in human creation, but generative AI complicates the inquiry because the relationship between a user's instructions and the system's particular expressive output may be less predictable and controllable.

The Copyright Office has therefore focused on whether the human contributor determines protectable expressive elements through activities such as creative selection, arrangement or modification, rather than merely communicating an idea or instruction to the system. Its 2025 report expressly concludes that prompts alone ordinarily do not provide sufficient human control, although human-authored selection, arrangement and modification may be protected.⁶ *Allen* thus squarely

⁵ US Copyright Office Review Board, *Second Request for Reconsideration for Refusal to Register Théâtre D'opéra Spatial* (5 September 2023) 2–3, 8–10.

⁶ US Copyright Office, *Copyright and Artificial Intelligence, Part 2: Copyrightability* (January 2025) 6–7, 22–27.

presents the unresolved application of those principles to an extensively iterative AI-assisted workflow.

D. The U.S. Copyright Office's 2025 Report on AI Copyrightability

Parallel to this litigation the Copyright Office has tried to give the line-drawing guidance that the courts have not yet given. In its January 2025 report on copyright and artificial intelligence. The second in a planned series that looks at how artificial intelligence affects copyright law. The Copyright Office said again that human authorship is needed for protection. The Copyright Office went beyond what Thaler had asked for by trying to draw a map of how AI can help people create.

The main difference the report makes is the one Allen is now testing: giving a prompt to a generative artificial intelligence system and nothing more does not give the human creative control that authorship needs. This is because a prompt is an instruction or an idea, not an expressive choice about the finished work. Current artificial intelligence systems do not turn a prompt into a controllable expressive result like a human author who directly handles a medium.

By contrast the report says that copyright can exist in the human-authored parts of a work that also contains artificial-intelligence-generated material. For example, a human can pick, arrange and change artificial-intelligence outputs into a larger whole or a human can edit and revise a draft that an artificial-intelligence system first wrote. The result is an incomplete protection system. A photograph that a human takes and then uses an artificial-intelligence noise-reduction tool stays fully protectable. A novel where a human makes changes after using an artificial-intelligence system for the first draft is protectable only for the human's expressive parts, not for the unedited artificial-intelligence parts.

An image that comes from giving a prompt to a diffusion model and then taking the first result exactly is, according to the Copyright Office, not protectable at all no matter how many times the prompt was refined or how many attempts were made. Allen firmly disagrees with that stance. The Copyright Office report also said it would not suggest laws to lower the originality standard for artificial intelligence. It argued. Later cases would repeat this idea.

That the human-authorship rule does not really lower the incentive to create new works. The incentives that copyright gives go to creators, who can still use artificial intelligence as a tool without losing protection for their own creative parts. If later evidence shows that there is an incentive problem for works made entirely by artificial intelligence Congress and the Copyright Office can fix it through new laws or rules not by changing the courts' interpretation of old constitutional text. This approach. Basically "wait and see and let courts decide each case one by one". Means that for now the United States has a rule at the ends: works made entirely by autonomous artificial intelligence are not protectable while works made entirely by a human with artificial intelligence only as help are protectable. The middle ground is wide and not yet settled. Allen and the many cases that will follow will have to decide it case by case, for the time being.

V. UNITED KINGDOM: SECTION 9(3) CDPA AND THE ANOMALY OF COMPUTER-GENERATED WORKS

A. Legislative History and Text of Section 9(3)

In the United States the issue of authorship was settled by stating that if no human created a work, then there is no copyright. The United Kingdom took a different path doing so almost forty years before generative AI became a commercial reality. Under section 9(3) of the Copyright, Designs and Patents Act 1988, where a literary, dramatic, musical or artistic work is computer-generated, the author is deemed to be the person by whom the arrangements necessary for the creation of the work are undertaken. Section 178 defines a 'computer-generated' work as one generated by computer in circumstances such that there is no human author of the work.

The provision therefore does not attribute authorship or ownership to the computer itself; rather, it employs a statutory attribution rule that assigns authorship to a person connected with the arrangements for creation. The United Kingdom is not unique in adopting such an approach. Comparable provisions exist in a small group of jurisdictions, including India, Ireland, New Zealand, Hong Kong and South Africa, although their precise statutory formulations and wider copyright frameworks differ.

The pre-legislative background to the United Kingdom's treatment of computer-generated output includes the Whitford Committee's 1977 review of copyright law.⁷ The Committee treated the computer as a sophisticated tool and considered authorship of computer output to lie with the person or persons responsible for devising the instructions and originating the data used to produce the particular result. The legislative debates preceding the Copyright, Designs and Patents Act 1988 subsequently addressed computer-generated works expressly. The resulting statutory regime was designed against a technological background very different from contemporary generative AI, encompassing computer-produced material such as statistical information, weather maps and outputs from expert systems.

Section 9(3) was written to make sure these kinds of works would still receive copyright protection. It was meant to prevent those works from being left unprotected simply because no single human could be said to have chosen each expressive element. At the same time, it kept ownership tied to a real person. The one who arranged for the use of the software. Rather than letting the law treat such works as having no author at all.

Computer-generated works are also subject to a shorter copyright term, although that rule is found not in section 9(3) but in section 12(7) CDPA. Section 12(7) provides that, where a work is computer-generated, copyright expires at the end of the period of 50 years from the end of the calendar year in which the work was made, rather than being calculated by reference to the author's lifetime.⁸ Section 9(3), by contrast, concerns the attribution of authorship to the person by whom the arrangements necessary for the creation of the work were undertaken.

Section 9(3) has been only rarely judicially tested, particularly in relation to modern generative AI, but it has previously been applied to computer-generated works. In *Nova Productions Ltd v Mazooma Games Ltd*, Kitchen J held that, insofar as composite frames generated by a computer game constituted computer-generated artistic works,

⁷ Committee to Consider the Law on Copyright and Designs, *Report of the Committee to Consider the Law on Copyright and Designs* (Cmnd 6732, 1977) paras 514–515.

⁸ Copyright, Designs and Patents Act 1988, ss 9(3), 12(7), 178.

the arrangements necessary for their creation had been undertaken by the programmer, Mr Jones, who had devised the visual elements, rules and logic and written the relevant program.

He was therefore deemed the author under section 9(3); the player, whose input was not artistic and who had not undertaken the necessary arrangements, was not an author. The Court of Appeal subsequently dismissed Nova's appeal, although the appellate dispute principally concerned the scope of copyright protection and infringement rather than undertaking a separate reconsideration of the section 9(3) authorship analysis.

Section 9(3) also arose expressly in *THJ Systems Ltd v Sheridan*, concerning software-generated risk and price charts. The parties advanced competing arguments as to who had undertaken the arrangements necessary for their creation, although by the Court of Appeal stage it was common ground that, if the charts were original, Mr Mitchell was their author. These authorities demonstrate that section 9(3) is not wholly untested, while leaving its application to contemporary generative-AI output substantially unresolved.⁹

B. Post-Brexit Tension with the "Author's Own Intellectual Creation" Standard

Section 9(3) has been upset by a collision of ideas that the Parliament in 1988 could not have expected. The UK courts have brought in a rule from the Court of Justice of the European Union that says a work must be the author's intellectual creation to be original. This rule started with the case *Infopaq International A/S v. Danske Dagblades Forening*. Was made stronger in *Painer v. Standard Verlags* and other cases. The EU rule on originality says a protected work must show the author's creative choices so the work must carry the author's personality.

People often say this means the author must put a stamp on the work. Even though the UK left the EU in 2020 the courts still treat this rule as law under the idea that EU law stays in force. The courts have used it in cases such as the Court of Appeal case

⁹ *Nova Productions Ltd v Mazooma Games Ltd* [2006] EWHC 24 (Ch), [104]- [106], affd [2007] EWCA Civ 219; *THJ Systems Ltd v Sheridan* [2023] EWCA Civ 1354, [9]- [13].

THJ Systems v. Sheridan. That case said that the author's own intellectual creation test, not the skill, labour and judgment test from before the EU controls originality for all kinds of works including works made by computers.

The contradiction that Section 9(3) creates is not about words but about structure. The author's own intellectual creation rule is, by definition a rule about a personality behind a work. It asks whether the work shows creative choices that only a person can make. Section 9(3) by contrast applies to works where there is no author as the law says in section 178. The UK Government's 2025–2026 consultation documents notice this problem.

They say it is unclear how a work that is original but made entirely by a machine can be defined because the originality test itself assumes a creative personality that Section 178 says is missing. In practice Section 9(3) sits in a kind of limbo. It says it gives copyright to computer works with no author but the imported originality test seems to make it impossible for such works to satisfy the test. No UK decision has settled which rule should win. Some experts suggest a reading of Section 9(3). They propose that Section 9(3) should only apply when a human arranges the computer's settings in a way that's itself original and creative enough to meet the author's own intellectual creation test.

This would turn Section 9(3) from a rule about authorless works, into a rule that gives authorship to the person who directs the AI long as that person's directions are original. This idea is still only a theory, not settled law. The latest UK policy discussion suggests that the lawmakers might solve the problem by removing Section 9(3) instead of trying to fix it through court decisions.

C. The 2022–2026 Consultations and the Proposed Removal of Section 9(3)

UK policy on copyright and AI developed through several successive initiatives. In June 2022, following an earlier consultation, the Government announced an intention to introduce a new copyright and database-right exception permitting text and data mining (TDM) for any purpose, including commercial purposes, where the user had lawful access to the material. That broad proposal was subsequently abandoned: by

May 2023 the Government had formally confirmed that it would not proceed with the proposed exception.

A new consultation on copyright and artificial intelligence was launched on 17 December 2024 and closed on 25 February 2025. It considered both the use of copyright works in AI development and the continuing justification for the special protection afforded to computer-generated works under the Copyright, Designs and Patents Act 1988.

At the consultation stage, the Government's preferred training-related option was a new data-mining exception accompanied by a rights-reservation mechanism and transparency requirements. Under that model, copyright owners could reserve their rights through machine-readable means, thereby preventing reliance on the exception and preserving the need for authorisation or licensing. The Government's position subsequently changed. Its report of 18 March 2026 recorded that most consultation respondents rejected the proposed broad exception with an opt-out and expressly stated that this model was no longer the Government's preferred way forward. Rather than immediately legislating for that option, the Government proposed to gather further evidence on the operation of copyright law in AI development, consider alternative approaches, and monitor technological, judicial, international and licensing-market developments.

The Government adopted a more definite position concerning the specific protection for computer-generated works. The consultation had presented three options: retaining the existing regime, reforming it to clarify its scope, or removing the special protection associated with section 9(3). Fewer than half of all consultation respondents answered the computer-generated-works questions, but among the relevant online survey responses, 78% were not in favour of maintaining the existing protection.¹⁰ The most common reform preference was that wholly AI-generated or autonomous outputs should not receive this special copyright protection, while works involving

¹⁰ Department for Science, Innovation and Technology, Department for Culture, Media and Sport and Intellectual Property Office, *Report on Copyright and Artificial Intelligence* (18 March 2026) section I.

sufficient human creativity should continue to qualify under ordinary copyright principles. The March 2026 report consequently proposed removal of the specific computer-generated-works protection.

The March 2026 Government report reconsidered whether the specific protection for computer-generated works under section 9(3) remains justified in light of contemporary generative AI. It did not describe the United Kingdom as unique. Rather, its international comparison stated that most jurisdictions do not provide specific protection for computer-generated works, while a small number including India, New Zealand, Hong Kong and Singapore provide protection similar to that available in the United Kingdom. The report further observed that these statutory regimes, like the UK provision, have been largely untested by the courts. The comparative position should therefore be characterised as uncommon, rather than unique.

Importantly the Government has not made laws yet. As of mid-2026 section 9(3) is still in place. The Government says it will keep talking with people involved including ideas for a specific exception for certain AI uses. These ideas were the popular choice for people in the survey. The Government has not decided when to make a law. So, there is a time of waiting. Section 9(3) is still their people think it will be changed or made smaller. It is still available for people who want to register copyright, for works made by computers.

D. *Getty Images v. Stability AI* as Comparative Context (Training/Infringement, not Authorship)

A doctrinally adjacent development in the United Kingdom is *Getty Images (US) Inc v Stability AI Ltd* [2025] EWHC 2863 (Ch), decided by the High Court on 4 November 2025. The case concerned infringement arising from the development, distribution and operation of Stable Diffusion rather than authorship of AI-generated output. By the time judgment was delivered, however, Getty's case had narrowed substantially.

Getty abandoned its Training and Development Claim after acknowledging that there was no evidence that the training and development of Stable Diffusion had taken place in the United Kingdom; the court therefore did not determine whether overseas

training itself infringed UK copyright. Getty also abandoned its Outputs Claim after the prompts used to generate the pleaded examples had been blocked, substantially achieving the relief sought in relation to those outputs. The principal copyright issue ultimately decided was instead Getty's claim of secondary infringement under sections 22, 23 and 27(3) CDPA.

Getty argued that Stable Diffusion constituted an 'infringing copy' because the making of its model weights involved exposure to reproductions of protected works during training. The High Court rejected that argument, holding that the final model weights neither stored nor reproduced copies of the copyright works and therefore were not themselves infringing copies.¹¹ Getty nevertheless succeeded in part on its trade mark claims concerning watermark-like signs generated by certain historic versions of Stable Diffusion, principally v1.x and v2.x; the findings did not extend to the later SD XL and v1.6 models.

Getty Images v Stability AI should be treated as comparative context rather than as authority on AI authorship. Its significance for this article lies primarily in demonstrating how conventional copyright doctrines encounter distinct questions at different stages of the generative-AI process. The judgment did not decide whether the underlying training of Stable Diffusion infringed copyright, because the Training and Development Claim had been abandoned, and it did not determine the copyrightability or authorship of generated outputs.

It instead addressed the narrower statutory question whether the trained model itself could constitute an 'infringing copy' for the purposes of secondary infringement. That distinction is important: questions concerning training, secondary infringement and output authorship engage different provisions and should not be treated as interchangeable. The case nevertheless illustrates the practical significance of the transnational structure of AI development, because the absence of evidence of UK-based training materially narrowed the claims that remained for determination.

¹¹ *Getty Images (US) Inc v Stability AI Ltd* [2025] EWHC 2863 (Ch), [600]–[601], [747], [757]–[758].

The earlier analogy drawn between the High Court's reasoning and the D.C. Circuit's approach in *Thaler* should therefore be removed, since the two courts were interpreting different statutory questions and the comparison depended upon an inaccurate characterisation of the claims actually decided in *Getty Images*.

VI. EUROPEAN UNION: JUDGE-MADE ORIGINALITY AND THE AI ACT OVERLAY

A. CJEU Jurisprudence: *Infopaq*, *Painer*, *Cofemel*, *Levola Hengelo*,

The EU is different from the US and UK because its copyright law does not have one statute that clearly defines "work" or "author." Instead, the main directives focus on types of content but do not include a general originality rule. This gap was filled by the Court of Justice of the European Union (CJEU) which developed the standard through case law. Now this judge-made rule is the foundation for deciding AI copyright issues across all member states.

The CJEU's harmonised originality doctrine developed principally through *Infopaq International A/S v Danske Dagblades Forening* and subsequent decisions. In *Infopaq*, the Court held that copyright protection may extend to parts of a work where those elements contain an expression of the author's own intellectual creation. In *Painer v Standard VerlagsGmbH*, the Court elaborated that originality exists where the author is able to express creative abilities through free and creative choices, thereby stamping the resulting work with a 'personal touch'.

In the context of portrait photography, such choices may concern matters including the background, pose, lighting, framing, angle of view and selection of the final image. These principles establish a human-centred conception of originality based upon legally attributable creative choices. Their application to autonomous AI-generated material remains an issue of doctrinal analysis rather than one that the CJEU has itself resolved.

The framework was further clarified in *Levola Hengelo BV v Smilde Foods BV* and *Cofemel – Sociedade de Vestuário SA v G-Star Raw CV*. In *Cofemel*, the Court stated that classification as a copyright 'work' requires two cumulative conditions. First, there

must be an original subject matter constituting the author's own intellectual creation; originality is satisfied where the subject matter reflects the author's personality through free and creative choices. Second, the protected subject matter must constitute an expression of that intellectual creation and be identifiable with sufficient precision and objectivity.

The latter requirement derives from *Levola Hengelo*, in which the Court held that the taste of a food product could not qualify as a copyright work because it could not be identified with the necessary precision and objectivity. The second condition concerns the objective identifiability of the protected expression and should therefore not be equated with the separate question whether a generative-AI system produces unpredictable results.¹² *Cofemel*, paras 29–33, expressly describes the conditions as cumulative and attributes the precision-and-objectivity requirement to *Levola*. The recent ruling, from 2026 involved a critical edition of a public-domain text. That case confirmed the same two-part test still applies – even when human editors add layers to old material.

A further qualification follows from *Football Dataco Ltd v Yahoo! UK Ltd*. The Court held that originality is absent where the relevant creation is dictated by technical considerations, rules or constraints that leave no room for creative freedom.¹³ Conversely, originality may arise where the author's selection or arrangement reflects free and creative choices. This principle is potentially significant for AI-assisted works, but the analogy must be applied cautiously.

The relevant inquiry is not merely whether an AI model constrains the production process; it is whether, in the particular work claimed, the human contributor retained and exercised sufficient freedom to make creative choices that are reflected in the protected expression. Where system-imposed constraints effectively determine the

¹² Case C-5/08 *Infopaq International A/S v Danske Dagblades Forening* EU:C:2009:465, [37]–[39]; Case C-145/10 *Painer v Standard VerlagsGmbH* EU:C:2011:798, [87]–[94]; Case C-310/17 *Levola Hengelo BV v Smilde Foods BV* EU:C:2018:899, [33]–[42]; Case C-683/17 *Cofemel – Sociedade de Vestuário SA v G-Star Raw CV* EU:C:2019:721, [29]–[35].

¹³ Case C-604/10 *Football Dataco Ltd v Yahoo! UK Ltd* EU:C: 2012:115, [38]– [39].

relevant expressive elements, the reasoning in *Football Dataco* may weigh against attributing originality to the human contribution.

B. Member State Divergence and the "Significant Human Input" Consensus

Because the CJEU's originality jurisprudence establishes a general standard rather than an AI-specific statutory test, uncertainty remains concerning its application to AI-assisted and AI-generated works at Member State level. A 2024 policy questionnaire conducted under the Hungarian Presidency of the Council recorded a general view among Member States that 'significant' human input would be required for AI-generated material to obtain copyright protection.

European Parliament research has likewise characterised the prevailing European approach as human-centred while recognising continuing uncertainty over the level of human involvement necessary for protection.¹⁴ A prompt, standing alone, may therefore be insufficient where it does not itself determine the protectable expression of the output, whereas human selection, arrangement, modification or other sufficiently creative intervention may support protection where the applicable originality standard is satisfied. Nevertheless, no uniform EU legislative threshold presently quantifies the degree of human contribution required. The resulting position remains dependent on the application of existing CJEU originality principles and relevant national law to the facts of individual cases.

C. The EU AI Act (Regulation (EU) 2024/1689): Article 53 GPAI Copyright-Compliance and Training-Content Obligations, and Their Interface with Authorship

The European Union's regulatory response to generative AI extends beyond substantive copyright doctrine. Under Article 53(1)(c) of Regulation (EU) 2024/1689, providers of general-purpose AI models must put in place a policy to comply with

¹⁴ Council of the European Union, 'Policy Questionnaire on the Relationship between Generative Artificial Intelligence and Copyright and Related Rights – Revised Presidency Summary of the Member States' Contributions' ST 16710/1/24 REV 1 (20 December 2024) 14–17; Nicola Lucchi, *Generative AI and Copyright: Training, Creation, Regulation* (European Parliament, Policy Department for Justice, Civil Liberties and Institutional Affairs, PE 774.095, July 2025) 100–103.

Union law on copyright and related rights and, in particular, identify and comply with rights reservations expressed pursuant to Article 4(3) of Directive (EU) 2019/790, including through state-of-the-art technologies. Article 53(1)(d) separately requires providers to draw up and make publicly available a sufficiently detailed summary of the content used for training the model in accordance with a template supplied by the AI Office.

These provisions do not confer upon individual right holders a statutory right to inspect the complete training dataset or to require the provider to confirm whether a particular protected work was used. Rather, the public-summary requirement is intended to improve transparency and assist parties with legitimate interests, including copyright holders, in exercising and enforcing rights available under Union law. These GPAI obligations operate independently of whether particular AI-generated outputs ultimately qualify for copyright protection.

Article 53 does not confer copyright or any other proprietary status upon an AI model or its output, nor does it determine whether an AI-assisted work satisfies the originality requirements developed in the CJEU's copyright jurisprudence. Those questions remain governed by copyright law. Article 53 instead establishes regulatory obligations concerning GPAI-provider copyright compliance and disclosure of training content. The distinction is important: providers are required to publish a sufficiently detailed summary of training content, not the underlying training data itself.

Nevertheless, the Article 53 framework demonstrates that EU AI regulation can employ standardised disclosure mechanisms alongside substantive copyright rules. Part VII accordingly considers, as a separate reform proposal of this article rather than as an existing requirement of EU law, whether an analogous output-side disclosure mechanism could require a copyright claimant to identify material AI involvement in the creation of a claimed work.

The temporal application of these obligations should also be distinguished carefully. Chapter V obligations for providers of general-purpose AI models, including Article 53, became applicable on 2 August 2025. Providers of GPAI models already placed on

the Union market before that date have until 2 August 2027 to comply. The Commission's enforcement powers in relation to GPAI-provider obligations became applicable on 2 August 2026, including the possibility of fines under the AI Act.¹⁵ These transitional dates mean that Article 53 was legally applicable before the Commission's full GPAI enforcement powers became operational.

D. Pending Reference: *Like Company v. Google Ireland* (C-250/25)

The doctrinal gap between the EUs originality jurisprudence and the practical operation of AI systems is now before the CJEU directly in a preliminary reference in *Like Company v. Google Ireland* (Case C-250/25). The reference asks the Court to determine whether the reproduction of protected content within an AI chatbots response produced following a user's prompt constitutes an act of reproduction attributable to the service provider operating the underlying model as opposed to (or in addition to) the user who submitted the prompt.

This question sits on the infringement side of the copyright inquiry than the authorship side addressed by *Painer* and *Cofemel* but it is closely related to the human-input analysis this paper has traced throughout Sections 5.1 and 5.2 because the answer will necessarily require the Court to characterize the respective causal and legal roles of the AI provider the underlying model and the prompting user in producing a given output. Precisely the tripartite analysis that the authorship inquiry into "who if anyone exercised free and creative choices over this output" also requires.

A ruling attributing reproduction liability to the service provider would tend to reinforce the conceptual picture already implicit in the EU Parliament's 2025 report, of the AI system and its provider as the dominant causal agent in generating specific expressive content with the prompting user's contribution correspondingly diminished. A characterization that if extended by analogy to the authorship question would cut against treating prompt-only engagement as sufficient for a human authorship claim under *Painer*.

¹⁵ Regulation (EU) 2024/1689 laying down harmonised rules on artificial intelligence [2024] OJ L 2024/1689, arts 53(1)(c)–(d), 111(3), 113 and recital 107.

Conversely a ruling emphasizing the user's act of prompting as the operative cause of the reproduction would tend to support a more generous view of prompt-based human contribution. As of this writing the reference remains pending. Its eventual resolution is likely to have doctrinal ripple effects well beyond the narrow reproduction question it formally presents given how closely the causal-attribution analysis it requires tracks the unresolved "significant human input" question this Part has identified as the EU's own version of the line-drawing problem already visible in *Allen v. Perlmutter* and, in the UK's section 9(3) debate.

VII. INDIA: THE RAGHAV/SURYAST EPISODE AND LEGISLATIVE AMBIGUITY

A. Section 2(d) of the Copyright Act, 1957 and India's Own "Computer-Generated Work" Fiction

India's statutory framework for computer-generated works resembles the United Kingdom's approach in attributing authorship to a legally recognised person connected with the creation of the work, but the statutory formulations are materially different. Section 2(d) of the Copyright Act, 1957 defines 'author' separately according to the category of work, while section 2(d)(vi), introduced by the Copyright (Amendment) Act 1994, specifically addresses computer-generated literary, dramatic, musical and artistic works.

Section 2(d) of the Act defines the term "author" in ways depending on what kind of work is being considered. Section 2(d)(iii) says that for a work that is not a photograph the "author" is called "the artist". This wording, taken alone seems to carry the human-centred idea that the U.S. And EU frameworks use, because the word "artist" normally means a human creative person. Section 2(d)(vi) deals directly with computer-generated works. It is very similar to section 9(3) of the UK's CDPA. It says that for any dramatic, musical or artistic work that is computer-generated the author is the "person who causes the work to be created".

Although section 2(d)(vi) performs a function comparable to section 9(3) of the UK CDPA, the provisions should not be treated as identical. The Indian statute attributes

authorship to the ‘person who causes the work to be created’, whereas section 9(3) CDPA refers to the person by whom the arrangements necessary for creation are undertaken. Moreover, unlike section 178 CDPA, the Indian Copyright Act contains no separate statutory definition specifying when a work is ‘computer-generated’. These textual differences leave the Indian provision dependent upon the interpretation of causation and of the statutory term ‘person’.”

The distinction between the Indian causation formula and the UK arrangements formula has also been recognised in Indian scholarship. Section 2(d)(vi) therefore supplies a statutory mechanism for attributing authorship where a literary, dramatic, musical or artistic work is computer-generated. Its interaction with section 2(d)(iii), however, has generated uncertainty in the context of AI-generated artistic works. Section 2(d)(iii) identifies the ‘artist’ as author of an ordinary artistic work, whereas section 2(d)(vi) establishes a more specific attribution rule for a computer-generated artistic work.

The Act does not define the degree or character of causal involvement required before a claimant becomes the ‘person who causes the work to be created’, leaving the application of that phrase to modern generative-AI processes open to interpretation. The Act, like the UK rule does not say what level of involvement in guiding a computer or AI system makes that human the “person who causes the work to be created”. It does not distinguish this from a person who only starts a process whose result is largely decided by the software. The administrative position has since developed beyond the *Suryast* episode. In an order dated 31 August 2026 concerning Stephen Thaler’s application for *A Recent Entrance to Paradise*, the Registrar of Copyrights directly considered section 2(d)(vi) and held that DABUS could not be entered as author because it was neither a natural person nor a juristic person recognised by law.¹⁶

¹⁶ Copyright Act 1957, s 2(d)(iii), (vi); Copyright (Amendment) Act 1994; Registrar of Copyrights, *A Recent Entrance to Paradise*, Diary No 9356/2022-CO/A (31 August 2026).

The Office treated the statutory inquiry as one of identifying the legally recognised person who caused the particular work to be created, rather than the technological system that performed the immediate computational generation. The order does not constitute judicial precedent, but it provides important contemporary administrative guidance on the interpretation of ‘person’ and ‘causes the work to be created’. No Indian court has yet authoritatively resolved the application of section 2(d)(vi) to generative-AI authorship.

B. The *Suryast* Registration, Withdrawal Notice, and Parliamentary Engagement

This episode has become India’s leading authority on AI authorship even though no court has issued a decision. It began with Ankit Sahni, an intellectual property lawyer who owns an AI image-generation tool called RAGHAV (which stands for "Robust Artificially Intelligent Graphics and Art Visualiser"). Was built for him by Raghav Gupta in 2019.

Sahni used RAGHAV to create an artwork called ***Suryast***. He fed the tool with a photograph of a sunset that he had taken. A reference image of Vincent van Gogh’s *The Starry Night*. RAGHAV then applied a style-transfer to render the sunset photo in a Van Gogh-derived style.

Sahni initially filed an application identifying RAGHAV as the sole author of an AI-generated artwork, but the Indian Copyright Office rejected that application. The available published account does not state the Office’s legal reason for that rejection, and it should therefore not be attributed specifically to section 2(d)(iii) without further primary evidence. Sahni subsequently filed an application identifying himself and RAGHAV as co-authors. That application was granted registration in November 2020. He claimed authorship of the photograph and the two-dimensional artwork while RAGHAV was credited for the final artwork produced by the style-transfer.

In November 2020, the Indian Copyright Office registered *Suryast*, with Sahni and RAGHAV reported as co-authors and Sahni as the copyright owner. The registration attracted attention as an unusual administrative recognition of an AI system as a co-author. The Copyright Office’s official E-Register records *Suryast* under Diary No.

13646/2020-CO/A, RoC No. A-135120/2020, dated 2 November 2020, with Ankit Sahni as the applicant.

On 25 November 2021, the Copyright Office issued Sahni a notice described as a withdrawal notice.¹⁷ The notice asked him to inform the Office of the legal status of RAGHAV Artificial Intelligence Painting App and drew his attention to sections 2(d)(iii) and 2(d)(vi) of the Copyright Act, 1957. The notice thereby reopened the authorship issue, but the available account does not establish that it itself finally withdrew or cancelled the registration.

The notice should not be characterised as containing a reasoned determination that RAGHAV was incapable of authorship or that the earlier registration had been granted in error. The published report establishes only that the Office requested clarification of RAGHAV's legal status and referred Sahni to sections 2(d)(iii) and 2(d)(vi). Any argument that the reference to those provisions reflected concern over whether an AI system could qualify as an 'artist' or as the relevant 'person' under section 2(d)(vi) should therefore be presented as an inference from the notice, rather than as a formal conclusion expressed by the Copyright Office.

The registration has not been shown to have been finally cancelled following the withdrawal notice. The Copyright Office's publicly accessible E-Register continues to contain the *Suryast* entry under RoC No. A-135120/2020, and later commentary has continued to report its status as registered. The episode therefore produces an anomalous administrative position: a registration remains of record notwithstanding the subsequent notice questioning the legal status of the AI co-author. The notice should consequently be distinguished from a completed cancellation or rectification of the Register.

The episode also formed part of the broader parliamentary consideration of AI and intellectual property. According to Sahni's contemporary account, the *Suryast*

¹⁷ Copyright Office, Government of India, E-Register, *Suryast*, Diary No 13646/2020-CO/A, RoC No A-135120/2020 (2 November 2020); Sukanya Sarkar, 'Exclusive: Indian Copyright Office issues withdrawal notice to AI co-author' *Managing Intellectual Property* (13 December 2021).

registration formed part of classified submissions made to the Department-related Parliamentary Standing Committee on Commerce concerning protection of AI-created works and AI itself. The Committee's published July 2021 report did not identify *Suryast* by name, but it concluded more generally that existing patent and copyright legislation was not well equipped to address AI-related inventorship, authorship and ownership, and recommended review of those statutes to accommodate emerging AI technologies.

The result is an Indian doctrinal posture. The statute already contains, in section 2(d)(vi) a textual mechanism for computer-generated works a feature that predates the United Kingdom's recent move to consider repealing its analogous provision. The administrative history illustrates continuing uncertainty in the application of section 2(d). The Office registered *Suryast* with RAGHAV reported as a co-author in 2020 and subsequently issued the November 2021 notice seeking clarification of RAGHAV's legal status. Because the available notice does not contain a published reasoned determination resolving the interaction between sections 2(d)(iii) and 2(d)(vi), it should not be treated as authority for the proposition that the 'artist' requirement necessarily overrides the computer-generated-work provision.

Contrast with the U.S. Refusal of the Same Work

The comparative significance of *Suryast* is heightened by Sahni's attempt to register the same AI-assisted artwork in the United States. On 11 December 2023, the U.S. Copyright Office Review Board affirmed the refusal to register the work.¹⁸ The Board treated *SURYAST* as a derivative work based upon Sahni's original photograph and therefore focused on whether the new authorship contributed to the derivative work satisfied the statutory requirements for protection. Sahni had supplied RAGHAV with three principal inputs: his original photograph as the base image, Vincent van Gogh's *The Starry Night* as the style image, and a numerical value determining the strength of the style transfer.

¹⁸ US Copyright Office Review Board, *Second Request for Reconsideration for Refusal to Register SURYAST* (11 December 2023) 6–8.

The Board concluded, however, that Sahni did not determine the resulting work's protectable pictorial expression. RAGHAV, rather than Sahni, determined how the two images would be interpolated and how expressive elements such as placement and colour would appear in the final output. The Board accordingly found that the derivative authorship was not the product of sufficient human creativity. The result is a difference between the two countries about the same work. It was made the way and described the same by the same person.

The work was registered in India, after which the Copyright Office issued a withdrawal notice seeking clarification of RAGHAV's legal status; the registration has continued to appear in the Office's records. By contrast, the U.S. Copyright Office ultimately refused registration of the AI-assisted work. The Indian episode should therefore be described as unresolved rather than as a completed withdrawal or cancellation. That shows the people who made the law aren't sure if it was meant to cover this kind of AI work. Without a court decision the *Suryast* case is not a clear example of Indian law, on AI authorship. It shows a law that was written before the technology existed. It also shows an office that can't solve the problem on its own.

VIII. COMPARATIVE ANALYSIS: CONVERGENCE, DIVERGENCE, AND DOCTRINAL STRESS POINTS

A. The Common Thread: An Emerging Human-Authorship Orientation

When we read the four accounts in Parts II through V a clear pattern appears that is even more surprising when we think about it. That pattern shows up in four courts that have different rules about how laws are made. In the United Kingdom and in India the laws even look like they want to do the opposite. The four jurisdictions reveal an emerging, although not perfectly uniform, orientation toward identifiable human creative involvement. In the United States, *Thaler v Perlmutter* establishes that the Copyright Act requires a human author.

In the United Kingdom, section 9(3) continues to provide a special attribution rule for computer-generated works, although the Government has proposed removing that protection where ordinary human-authorship requirements are not satisfied. The

European Union's originality doctrine remains centred upon an author's own intellectual creation expressed through free and creative choices. India presents a more ambiguous position. Section 2(d)(vi) expressly attributes authorship of a computer-generated work to the person who causes it to be created, while the *Suryast* registration named RAGHAV as a co-author and was subsequently questioned through a withdrawal notice that has not been shown to have resulted in revocation.

The later August 2026 DABUS order indicates an administrative view that an AI system itself cannot qualify as the statutory 'person', but no Indian court has yet finally resolved the broader application of section 2(d)(vi) to generative-AI authorship. India should therefore be characterised as unresolved rather than as having rejected AI co-authorship through the cancellation of *Suryast*. A July 2025 study by Nicola Lucchi, commissioned by the European Parliament's Committee on Legal Affairs (JURI), proposed a human-centred analysis of AI-assisted authorship and discussed the insufficiency of merely technical or limited human intervention. Those propositions are the study author's analysis, not an institutional position adopted by the European Parliament.

The Parliament itself subsequently adopted an own-initiative resolution on 10 March 2026 stating that fully AI-generated content that fails the established criteria for copyright protection should remain ineligible. The reason this pattern is important is that it happened without the words or rules to start from. Despite their different doctrinal mechanisms, the four systems display a substantial movement toward requiring legally cognisable human creative involvement. That convergence is clearest in the United States and in EU originality doctrine, and it is reflected in the United Kingdom's proposed reform of its computer-generated-works regime.

India remains less settled: its statutory text expressly addresses computer-generated works, the *Suryast* registration remains of record notwithstanding the later withdrawal notice, and the 2026 DABUS order supplies an important but non-judicial administrative interpretation. The comparison therefore supports a qualified convergence toward human-centred authorship, rather than a uniform cross-jurisdictional refusal of all non-human involvement. This shows that insisting on an

anchor is not just a weird side effect of one country's legal language. It is a shared, cross-jurisdiction belief.

The belief is that the economic and moral reasons for giving rights in copyright only work when there is a clear human creative agent to protect and to reward. That reason does not work for a system that has no personality no need for an incentive and no way to make the kind of judgment the "free and creative choices" language, in Painer talks about.

B. The Divergent Mechanisms: Statutory Human-Authorship Rules, Statutory Attribution, and Judge-Made Originality Doctrine

Beneath this broad convergence, however, the four jurisdictions rely on materially different doctrinal mechanisms, and those differences affect the manner in which each system may respond to technological change. The United States presently has a clearly articulated judicial human-authorship requirement. In *Thaler v. Perlmutter*, the D.C. Circuit held, as a matter of statutory interpretation, that the Copyright Act of 1976 requires an eligible work to be authored in the first instance by a human being. Importantly, the court expressly found it unnecessary to decide the Copyright Office's separate argument that the Constitution itself independently requires human authorship.

The U.S. position should therefore be described primarily as a statutory holding rather than as a constitutional rule established by *Thaler*. This means that if lawmakers try to give copyright-like protection to work that is made entirely by AI they could run into a constitutional problem under Article I, Section 8. The only way around that would be for Congress to create a kind of protection that is not called "copyright." That new kind of protection is talked about in Part VII. The resulting difference in reform capacity is therefore more qualified than a simple constitutional-versus-statutory distinction suggests.

The United Kingdom and India can amend their express computer-generated-work provisions through ordinary legislation. Congress likewise retains legislative authority to reconsider the statutory treatment of AI-generated works following *Thaler*. What distinguishes the United States is that any attempt to extend copyright

itself to wholly non-human-authored expression could generate a further constitutional dispute concerning the Intellectual Property Clause a dispute that the D.C. Circuit expressly left unresolved.” The D.C. Circuit itself stated repeatedly that adapting copyright law to new technology is principally a matter for Congress.

The United Kingdom and India share an idea: they say that a human who arranges or causes a computer to create work can be called the author. The two countries have very different plans for how that idea will work in the future. The United Kingdom has talked about it openly. The government ran an official consultation that lasted several years. In 2026 the government released a report. The report looked at the interests of people who make work and those who work with AI. It also pointed out the tension between a part of the law called section 9(3) and a standard of originality that the European Court of Justice used, which the United Kingdom courts keep using. The report said that the best solution is to repeal the rule.

The report did not promise a specific date for the change because it wants more input from people who would be affected. India’s administrative history has been less settled. The Copyright Office registered *Suryast* with Sahni and RAGHAV reported as co-authors and subsequently issued a notice seeking clarification of RAGHAV’s legal status by reference to sections 2(d)(iii) and 2(d)(vi). The registration has not been shown to have been revoked. Accordingly, the *Suryast* episode does not establish that the Indian Copyright Office reached a settled conclusion that AI-generated works are necessarily unprotectable.

Rather, it reveals an unresolved tension in the application of section 2(d). The August 2026 DABUS order now provides a more reasoned administrative position against recognising an AI system itself as author, but it does not retrospectively cancel or determine the legal effect of the *Suryast* registration. That is not a guide for anyone who wants to know how a future Indian court or Copyright Office might treat an AI-co-authorship claim.

The European Union uses a method and it is the most flexible of the four places. It works through rules made by judges not through the Constitution or a single old law. The European Court of Justice has a rule that says the author must make a creative

choice. That rule was made for kinds of work like software, photos and fashion not for AI. The rule is described in broad open words like "free and creative choices" and "personal touch."

Because of that judges can apply the rule to kinds of work that come from AI. They just have to look at each case and decide whether the human involved made a creative choice. This flexibility has a downside. Because the rule is open the European Court of Justice has not yet decided on a case that's purely about AI work. The 2026 case involved an editing a public domain text and another case, *Like Company v. Google Ireland* dealt with copying not with authorship. So, the European Union's idea of a "human input" consensus is still only a shared practice among countries and a recommendation from Parliament. It is not a binding rule like the decision in *Thaler*, for the United States.

C. The Shared Unsolved Problem: Quantifying the "Modicum" of Human Contribution

If Section 7.1 explains what brings these four jurisdictions together and Section 7.2 explains what sets them apart in terms of institutions this final section explains the issue that brings them together more. And does so in a way that shows the limits of the doctrinal agreement discussed earlier. Across the four jurisdictions examined, the central unresolved problem is not simply whether human involvement matters, but how the legally sufficient degree of human creative contribution should be identified in AI-assisted works.

None of the systems considered has adopted a generally applicable quantitative threshold capable of resolving the increasingly common situation in which a human user iteratively prompts a generative AI system, selects among multiple outputs, and subsequently edits or combines the resulting material. This mixed human-AI creative process is materially more difficult to assess than either *Thaler's* claim of wholly autonomous machine authorship or a comparatively discrete use of AI in producing a single output.

The U.S. approach, as discussed above, provides a general principle that prompting alone ordinarily does not establish authorship of AI-generated expression, while

protectable human selection, arrangement or modification may qualify where the statutory originality requirement is satisfied. The application of that principle to an extensively iterative AI-assisted workflow is presently being tested in *Allen v. Perlmutter*. Because *Allen* is pending in the U.S. District Court for the District of Colorado, any initial merits ruling would constitute a first-instance assessment, rather than appellate precedent, of whether Allen's prompting, selection and post-generation modifications establish authorship of the expressive elements claimed.

Appellate consideration could follow only if the district court's judgment were appealed to the Tenth Circuit. The case therefore illustrates, rather than presently resolves, the continuing difficulty of applying the human-authorship requirement to mixed human-AI creation. The EU position combines binding originality doctrine with non-binding policy materials. The Hungarian Presidency's December 2024 summary of Member State contributions recorded a general view that copyright protection requires significant human input, while Lucchi's 2025 JURI-commissioned study separately proposed qualitative indicators such as creative prompt refinement, curation, adaptation and combination of AI-generated material.

Neither source establishes a binding quantitative threshold. National courts must therefore continue to apply the CJEU's originality standard to the particular human contribution involved, leaving the boundary between insufficient technical interaction and protectable creative authorship incompletely defined. The UK's way of dealing with this issue is, if anything, even earlier and more uncertain. The 2026 consultation report suggests the possibility of removing section 9(3) of trying to fix it with a better human-input rule.

This effectively puts the question of where to draw the line into the hands of whatever new framework comes out of discussions with the people involved. India's *Suryast* episode illustrates the consequences of an uncertain threshold. The Copyright Office registered the work with RAGHAV reported as a co-author and later issued a withdrawal notice seeking clarification of the AI system's legal status. Because that notice has not been shown to have culminated in revocation of the registration, it should not be described as having undone the original decision. Rather, the

continuing registration and unresolved notice demonstrate the absence, at that stage, of a clearly articulated administrative test governing AI co-authorship.

This problem continues to exist across four systems using three different ways of handling matters. This suggests it is not an accident of any one systems way of writing or the way courts think but a real basic feature of applying a human-centered originality approach to a technology that is defined by putting a random unpredictable process between a person's input and the final expression. A cameras shutter, a synthesizers sound-making algorithm and more advanced procedural-generation software in earlier years all kept a close predictable connection between a person's choices and the final result.

That link was close enough that courts could say the person, not the tool was the "author." Generative AI systems, large diffusion and transformer models intentionally create a much looser and less predictable link between the prompt and the result. That unpredictability is part of what makes the technology creative and valuable. It is this link, not any failure in the U.S. Constitution, the CDPA, the InfoSoc Directive or the Indian Copyright Act that the rules each jurisdiction currently has. Designed for an older type of tools, with a much stronger link. Have struggled to handle. It is this basic feature that any lasting reform plan, discussed in Part VII will need to deal with directly rather than trying to fix by adjusting tests made for a different kind of technology.

IX. TOWARDS A REFORMED DOCTRINAL FRAMEWORK

A. Evaluating the Policy Options

The comparative analysis in Part VI demonstrates substantial movement toward requiring identifiable human creative contribution, while also revealing continuing uncertainty concerning works produced through significant human direction of generative AI systems. Four principal policy approaches may be considered in addressing this intermediate category, each of which entails distinct doctrinal and administrative consequences. The first option is to retain the existing human-authorship framework and permit courts and administrative authorities to develop the applicable threshold incrementally through individual cases.

It keeps the rules about who must be a human author and lets courts decide each case one at a time. This is what *Allen v. Perlmutter* is doing in the United States and the European Court of Justice may do something with cases like *Company v. Google Ireland*. This option is attractive because it only asks judges to use the rules they already know. It does not ask lawmakers to predict every way that AI can help people create. The principal disadvantage is continuing legal and administrative uncertainty.

The *Suryast* episode illustrates that problem: the Indian Copyright Office granted a registration naming an AI system as co-author and subsequently issued a notice questioning the AI system's legal status, without the available record establishing a completed revocation of the registration. Deciding each case one by one is slow compared to how fast AI's growing. A final ruling in the *Allen* case that covers 2022 Midjourney prompts may not apply to AI tools that will exist when the ruling comes out.

The second option is to create a distinct *sui generis* regime for specified categories of AI-generated output rather than attempting to accommodate such material within ordinary copyright doctrine. Such a right could be calibrated to the absence or reduced degree of human creative contribution through a shorter fixed term of protection, rather than the life-plus-seventy-year model applicable to many human-authored works. A separate regime could also limit or exclude moral rights where those rights depend upon personal authorship, attribution or integrity interests.

Its eligibility standard could focus on investment, organisation or responsibility for producing the relevant output rather than on personal creative expression. The EU database right provides only a limited structural analogy for an AI-specific *sui generis* regime. Article 7 of Directive 96/9/EC protects a database maker where there has been substantial qualitative or quantitative investment in the obtaining, verification or presentation of database contents; it does not protect investment merely because

resources were expended in creating the underlying information.¹⁹ The distinction is significant for AI-generated output.

If the Database Directive's existing investment criterion were transplanted unchanged, expenditure on generating the AI output itself would ordinarily fall on the 'creation of materials' side of the distinction identified by the CJEU, rather than constituting qualifying investment in obtaining pre-existing materials. An AI-specific right would therefore require its own legislatively defined subject matter and eligibility criteria rather than simply extending the existing database right to generated content." Article 7 itself confines protection to substantial investment in obtaining, verification or presentation.

In the United States, a *sui generis* regime may offer a different legislative route, but it should not be described as automatically 'avoiding' a constitutional prohibition established by *Feist* or *Thaler*. *Feist* establishes a constitutional minimum of originality for copyright protection, while *Thaler* leaves unresolved whether the Intellectual Property Clause independently requires a human author. A separately designed right might potentially rest on another source of congressional power and employ eligibility criteria different from copyright originality, depending upon its structure and constitutional basis.

Comparable reasoning has appeared in debates over federal protection for non-original databases, where the Copyright Office has distinguished the limits imposed by *Feist* on copyright from Congress's possible reliance on the Commerce Clause for a distinct statutory regime. The principal justification for a *sui generis* right is therefore that it could permit Congress to address economically valuable AI-generated output without first resolving whether such material falls within constitutional copyright authorship; its constitutional validity would nevertheless depend upon the particular legislation enacted.

¹⁹ Directive 96/9/EC on the legal protection of databases [1996] OJ L77/20, art 7(1); Case C-203/02 *British Horseracing Board Ltd v William Hill Organization Ltd* [2004] ECR I-10415, EU:C:2004:695, [31], [38]–[41].

A new lower-threshold right for AI works could lead to people mislabelling their work. They might pretend a human-made work is AI-made to get the protection or claim an AI-made work is human-made to get stronger copyright. This risk has already happened with the EU database right as courts had to work to separate database rights from copyright in cases such as *British Horseracing Board v. William Hill*.

The third option would employ a rebuttable presumption based on identifiable evidence of human creative control. Relevant indicators might include creative selection among outputs, iterative modification directed toward particular expressive results, substantial post-generation editing, or the creative combination and arrangement of AI-generated elements. Such a framework could provide copyright offices and courts with a more structured evidentiary inquiry than an abstract requirement of ‘free and creative choices.’

Its principal limitation is that formal indicators of iteration or editing may be capable of manipulation and may not necessarily demonstrate actual human control over the protectable expression. The fourth option would supplement substantive copyright standards with a disclosure mechanism concerning material AI involvement in the creation of a claimed work. Article 53 of the EU AI Act provides a useful transparency analogy because it imposes copyright-policy and training-content-summary obligations upon providers of general-purpose AI models.

It does not, however, itself establish an output-side copyright-registration disclosure requirement. An analogous copyright mechanism would therefore require separate legal or administrative implementation. With this rule a person who wants to register a copyright for a work that used AI help must reveal as part of the registration how and how much AI was used. This is like the disclosure that AI providers must make about their training data. It focuses on the finished work instead of the training data.

The principal advantage of a structured disclosure model is that it creates an evidentiary record of the respective human and AI contributions at the point of registration. It does not eliminate the need to determine whether the human contribution is sufficiently original; that substantive judgment remains necessary. Nor

should responsibility for that determination be shifted entirely away from the registration authority. Existing U.S. practice demonstrates that the Copyright Office itself may assess disclosed AI use, correspond with applicants, require limitation of the claim, and refuse registration where the claimant seeks protection for non-human-authored material.²⁰ The resulting registration record may then assist licensees, alleged infringers and courts in identifying the scope of the claimed copyright.” The Office’s guidance expressly provides for examiner correspondence where the nature of the human contribution requires clarification.

The principal difficulty is verification. Existing U.S. practice establishes a mechanism for requiring disclosure, corresponding with applicants, narrowing claims and correcting registrations, but it does not provide an independent technical means of verifying every applicant’s account of AI use. *Zarya of the Dawn* demonstrates the consequences of incomplete disclosure, while *Théâtre D’opéra Spatial* demonstrates the evidentiary difficulty that remains even where substantial information about the AI-assisted workflow is provided.

A reformed disclosure system should therefore combine applicant declarations with proportionate documentary evidence where necessary, while avoiding a requirement that registration authorities reconstruct every stage of the creative process. The administrative challenge is thus not the complete absence of a verification mechanism, but the limits of verifying self-reported human–AI contribution at scale.

X. SUGGESTIONS AND RECOMMENDATIONS

On balance, this article recommends a hybrid disclosure-based rebuttable presumption rather than either categorical exclusion of AI-assisted works or the creation of an independent proprietary right for AI-generated output. A claimant seeking copyright protection for an AI-assisted work should disclose material use of

²⁰ US Copyright Office, *Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence* 88 Fed Reg 16190, 16192–93 (16 March 2023); US Copyright Office, *Zarya of the Dawn*, Registration No VAu001480196, Letter to Van Lindberg (21 February 2023) 8–12; US Copyright Office Review Board, *Second Request for Reconsideration for Refusal to Register Théâtre D’opéra Spatial* (5 September 2023) 2–3, 8–10.

generative AI and identify the human contributions relied upon as constituting authorship, including protectable acts of selection, arrangement, modification or other expressive intervention.

A rebuttable presumption of human authorship should arise only where the disclosed evidence demonstrates that the claimant's creative choices are reflected in the protectable expression of the resulting work. The presumption should remain capable of rebuttal where the evidence establishes that the relevant expressive elements were materially determined by the AI system rather than by the claimant. This model would preserve the human-centred requirement of originality while providing copyright offices and courts with a more transparent evidentiary basis for evaluating mixed human-AI creation.

It should therefore be implemented, according to the institutional structure of each jurisdiction, through legislation or authoritative administrative guidance accompanied by standardised and proportionate disclosure requirements. The transparency mechanism in Article 53 of the EU AI Act offers a useful regulatory analogy, although Article 53 itself concerns obligations of general-purpose AI model providers and does not establish an output-side copyright registration requirement.

XI. CONCLUSION

This comparative study demonstrates that the United States, United Kingdom, European Union and India approach AI-generated and AI-assisted works through materially different doctrinal mechanisms, while displaying a substantial orientation toward identifiable human creative involvement. In the United States, *Thaler v Perlmutter* establishes, as a matter of statutory interpretation of the Copyright Act of 1976, that copyrightable works must be authored in the first instance by a human being; the constitutional question remains unresolved.

In the United Kingdom, section 9(3) CDPA continues to attribute authorship of computer-generated works to the person undertaking the arrangements necessary for their creation, although the Government's March 2026 report proposes removing that specific protection. No such repeal had been enacted by the study's cut-off date. In the

European Union, the CJEU's originality jurisprudence requires an author's own intellectual creation expressed through free and creative choices.

That human-centred doctrine provides a strong analytical basis for questioning protection of wholly autonomous AI output, but the CJEU has not yet applied the originality test in a case determining authorship of AI-generated output. India remains comparatively unsettled: section 2(d)(vi) expressly addresses computer-generated works, while the *Suryast/RAGHAV* episode has not resulted in a judicial determination of AI co-authorship. The comparative answer to the central research questions is therefore qualified rather than uniform. Human involvement matters across the four systems, but no generally applicable quantitative threshold determines how much prompting, selection, arrangement, modification or post-generation editing is sufficient.

The legally relevant inquiry is increasingly whether identifiable human creative choices are reflected in the protectable expression of the final work, rather than merely whether a human initiated or repeatedly interacted with the generative process. The jurisdictions converge around that human-centred inquiry but diverge significantly in the legal techniques through which it is implemented. The reform framework advanced in this article consequently combines structured disclosure with a rebuttable presumption of human authorship.

This is the article's own proposal, not a presumption already adopted by the U.S. Copyright Office or European Parliament. A claimant should bear the initial burden of disclosing material AI involvement and identifying the human creative acts relied upon; where those acts demonstrably determine protectable expressive elements, a rebuttable presumption should attach only to that claimed human-authored expression. The model builds on existing U.S. registration practice requiring disclosure and disclaimer of material AI-generated content, while EU mechanisms such as Article 50 output marking may provide complementary provenance evidence.

Article 53's training-content obligations provide a transparency analogy but do not themselves create an output-side copyright disclosure rule. The study is subject to important limitations. It examines only four jurisdictions and states the legal position

on the basis of materials publicly available up to 25 September 2026. Several developments remain pending and may materially affect the analysis: *Allen v Perlmutter* in the District of Colorado; the CJEU preliminary reference in *Like Company v Google Ireland* (C-250/25); Getty Images' appeal concerning secondary infringement in *Getty Images v Stability AI*; and Part II of DPIIT's Indian Working Paper on Generative AI and Copyright, which is intended to address copyrightability and authorship of AI-generated outputs. The conclusions should therefore be understood as a doctrinal assessment of a rapidly developing field rather than as a final account of settled law.

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