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GENERATIVE ARTIFICIAL INTELLIGENCE AND COPYRIGHT LAW: CHALLENGES IN DETERMINING AUTHORSHIP AND OWNERSHIP

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I. ABSTRACT

Generative Artificial Intelligence (Generative AI) has transformed the creation of literary, artistic, musical, dramatic and audiovisual works. Unlike conventional computer-assisted creativity, Generative AI systems independently produce sophisticated outputs after processing vast datasets and responding to human prompts. This development challenges copyright law at its foundation, because traditional regimes are constructed around a human author, originality, ownership and exclusive rights. The central legal question is whether an output generated substantially or entirely by an AI system attracts copyright and, if so, who is to be recognised as its author and owner. The difficulty intensifies where the user supplies only a prompt, where the user undertakes extensive creative selection and modification, or where the system autonomously produces the final expression. The Copyright Act, 1957 contains no dedicated framework for Generative AI, although Section 2(d)(vi) on computer-generated works, Section 13 on subsistence, Section 17 on first ownership and Sections 18 and 19 on assignment supply the governing principles. The order of the Registrar of Copyrights of 31 August 2026 in the DABUS matter holds that an artificial intelligence system, having no legal personality, cannot be the statutory author, although its output may satisfy originality. The United States requires human authorship, the United Kingdom protects computer-generated works by statute, and the European Union regulates providers of general-purpose AI models through copyright and transparency obligations. This paper examines the Indian framework and the relevant comparative developments, the first Indian judicial ruling on model training, and the contemporary controversies concerning authorship, ownership, training data, infringement and accountability. It argues that neither unrestricted copyright for autonomous AI outputs nor the complete exclusion of AI-assisted works is adequate. A

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human-centred but technology-neutral framework, supported by disclosure requirements, provenance mechanisms, licensing systems and legislative clarification, is necessary to balance technological innovation against the legitimate interests of human creators.

II. KEYWORDS

Generative AI; Authorship; Originality; Copyright Act 1957; Section 2(d)(vi).

III. INTRODUCTION AND BACKGROUND OF THE STUDY

Artificial Intelligence has developed from a technology primarily concerned with computation and automated decision-making into a sophisticated creative technology capable of producing text, images, music, software code, designs, videos and other forms of expressive content. Generative Artificial Intelligence represents a significant stage in this technological transformation. Generative AI systems use machine-learning architectures trained upon extensive datasets to generate new content in response to instructions, prompts, examples or other inputs. The outputs may resemble conventional human-created works to such an extent that distinguishing between human-generated and machine-generated expression has become increasingly difficult.

The emergence of Generative AI has created a direct confrontation between technological capabilities and traditional principles of copyright law. Copyright law has historically been designed around the existence of an identifiable author who creates an original work through intellectual or creative effort. The author is generally the starting point for determining ownership, duration, economic rights and, in many jurisdictions, moral rights. Generative AI challenges this structure because the immediate producer of the expressive output may be a machine rather than a human being.

The problem is not simply whether AI-generated material is “creative”. The more fundamental question is whether copyright law can recognise creativity that is not directly attributable to a human mind. Copyright protection generally requires originality, but originality and authorship are conceptually distinct. A work may display novel expression while the legal system nevertheless refuses to recognise the

machine as its author. The recent DABUS controversy illustrates this distinction. On 31 August 2026 the Registrar of Copyrights disposed of Stephen Thaler's application concerning the artistic work *A Recent Entrance to Paradise*.² Although the work was held to satisfy the originality requirement, the AI system DABUS was not accepted as the author because it possesses no legal personality.

The Indian Copyright Act, 1957 contains a particularly interesting provision in Section 2(d)(vi), which defines "author" in relation to a computer-generated literary, dramatic, musical or artistic work as "the person who causes the work to be created".³ This provision was introduced in the context of computer-generated works long before modern Generative AI systems became commercially available. Its language nevertheless provides an important foundation for determining responsibility in AI-assisted creation.

The problem is particularly significant because Generative AI systems themselves are trained using enormous quantities of existing data. Those datasets may contain books, photographs, paintings, newspaper articles, music, computer programs and other copyrighted material. Consequently, copyright questions arise not only at the output stage but also at the training stage. The use of copyrighted works for training can potentially involve reproduction, adaptation, extraction, text-and-data mining and other acts restricted by copyright law.

The international legal environment remains fragmented. The United States Copyright Office has stated that copyright protection may extend to AI-assisted outputs where a human determines sufficient expressive elements, while mere prompting is generally insufficient by itself.⁴ The Court of Appeals for the District of Columbia Circuit confirmed in *Thaler v Perlmutter* that the Copyright Act requires every work to be authored in the first instance by a human being, and the Supreme Court denied certiorari on 2 March 2026.⁵ The United Kingdom has a statutory

² Stephen L Thaler, Application for registration of 'A Recent Entrance to Paradise' (Diary No 9356/2022-CO/A) (Registrar of Copyrights, 31 August 2026).

³ Copyright Act 1957, s 2(d)(vi).

⁴ US Copyright Office, Copyright and Artificial Intelligence, Part 2: Copyrightability (January 2025).

⁵ *Thaler v Perlmutter*, 130 F 4th 1039 (DC Cir 2025), aff'g 687 F Supp 3d 140 (DDC 2023); cert denied, No 25-449 (US, 2 March 2026).

provision dealing with computer-generated works and attributes authorship to the person by whom the arrangements necessary for the creation of the work are undertaken.⁶ The European Union has adopted a more regulatory approach, requiring providers of general-purpose AI models to maintain copyright policies and to publish sufficiently detailed summaries of training content.⁷

The significance of the problem has increased because AI-generated material is already being used commercially in publishing, advertising, entertainment, education, software development, journalism, design and research. Businesses need certainty regarding ownership, while human creators require protection against uncompensated use of their works and displacement of creative labour.

The present study therefore examines whether existing copyright principles can adequately respond to Generative AI or whether legislative reform is necessary. It particularly focuses upon the distinction between authorship and ownership and argues that the law should recognise meaningful human creative contribution while refusing to confer independent legal authorship upon autonomous AI systems unless legislatures expressly decide otherwise.

A. Objectives of the Study

1. To examine the applicability of existing copyright principles to works generated or assisted by Generative Artificial Intelligence.
2. To analyse the legal concepts of authorship, originality and ownership in relation to AI-generated works.
3. To undertake a comparative analysis of the Indian, United States, United Kingdom and European Union approaches to AI-assisted and AI-generated creative works.
4. To evaluate the recent Indian administrative and judicial developments and to formulate policy recommendations for legislative reform.

⁶ Copyright, Designs and Patents Act 1988 (UK), ss 9(3) and 178.

⁷ Regulation (EU) 2024/1689 (Artificial Intelligence Act), art 53(1)(c) and (d).

B. Research Questions

1. Who is the author of a Generative AI output under Section 2(d)(vi) of the Copyright Act, 1957?
2. Can an output produce without direct human expression satisfy the originality requirement under Section 13 of that Act?
3. Does the use of copyrighted works for training an AI model fall within the fair dealing exception under Section 52(1)(a)?
4. What legislative reforms does Indian copyright law require in order to address Generative AI?

C. Research Methodology

The study is doctrinal. It proceeds through a close reading of primary sources, namely the Copyright Act, 1957, the Information Technology Act, 2000 and the rules made under it, the Digital Personal Data Protection Act, 2023, the order of the Registrar of Copyrights of 31 August 2026 in the DABUS matter, the judgment of the Delhi High Court in *ANI Media Pvt Ltd v Open AI OpCo LLC*, and the comparative statutes, decisions and administrative determinations of the United States, the United Kingdom and the European Union. The secondary sources comprise the Working Paper of the Department for Promotion of Industry and Internal Trade on Generative AI and Copyright, the reports of the United States Copyright Office, the report of the United Kingdom Government of March 2026, and peer-reviewed periodical literature.

These three jurisdictions are selected as comparators because each represents a distinct regulatory response. The United States insists upon human authorship through registration practice and judicial decision; the United Kingdom confers authorship by statute upon the person who makes the arrangements necessary for a computer-generated work; and the European Union addresses the input side through text-and-data-mining exceptions and transparency obligations imposed upon providers of general-purpose AI models. The study is confined to doctrinal analysis and does not undertake empirical or survey research.

IV. EXISTING LEGAL FRAMEWORK

A. Copyright Act, 1957 And AI-Generated Works

The principal legislation governing copyright in India is the Copyright Act, 1957. Section 13 identifies the categories of works in which copyright subsists, including original literary, dramatic, musical and artistic works, cinematograph films and sound recordings.⁸

Generative AI can potentially produce outputs falling within several of these categories. For example, an AI-generated article may fall within the literary-work category, an AI-generated illustration may constitute an artistic work, and an AI-generated song may involve musical and literary components.

However, classification of the output does not automatically resolve the question of copyright ownership. The crucial issue is whether the output satisfies the statutory requirements of originality and whether there is a legally recognised author.

B. Meaning of “Author” under Section 2(d)

The definition of “author” under Section 2(d) is particularly significant in determining ownership of AI-generated works.⁹ The provision identifies different persons as authors depending upon the nature of the work. In relation to literary or dramatic works, the author is generally the person who creates the work; in relation to musical works, the composer is recognised; and in relation to artistic works, the artist is generally the author.

Importantly, Section 2(d)(vi) provides that in relation to a computer-generated literary, dramatic, musical or artistic work, the person who causes the work to be created is treated as the author.

This provision is particularly relevant to generative AI. It potentially provides a statutory basis for attributing authorship where a human uses a computer system to generate a work. Nevertheless, the provision was introduced in the context of

⁸ Copyright Act 1957, s 13.

⁹ Copyright Act 1957, s 2(d).

computer-generated works at a time when modern generative AI systems did not exist. Therefore, questions arise concerning whether the person merely entering a prompt should automatically be considered the person who “causes” the work to be created. The distinction between using AI as a tool and AI independently generating content therefore becomes central to determining authorship.

C. Originality Requirement under Section 13

Copyright protection under Section 13 requires the work to possess originality. Indian copyright law does not require absolute novelty in the patent-law sense. Instead, copyright protects the author's original expression.

The Supreme Court in *Eastern Book Company v D.B. Modak*¹⁰ adopted a standard requiring the exercise of skill and judgment beyond mere mechanical effort. The decision is important for AI-generated works because it highlights the connection between copyright protection and human intellectual contribution.

Where an AI system generates an output solely through automated processing, determining whether the output contains sufficient human intellectual contribution becomes difficult. Conversely, where a user provides detailed prompts, selects among multiple outputs, substantially edits the output and creatively arranges the final work, a stronger argument may exist for recognising human authorship.

Thus, the degree of human creative involvement may become an important factor in determining whether copyright protection can arise.

D. Human Creativity And AI-Assisted Creation

Indian copyright legislation does not expressly establish a comprehensive test for distinguishing AI-assisted works from AI-generated works. An AI-assisted work occurs where AI functions primarily as a tool used by a human creator. For example, a writer may use an AI system to brainstorm ideas but independently write and edit the final article. Similarly, an artist may use AI to generate preliminary concepts and then substantially modify them. In such circumstances, the human creator's

¹⁰ *Eastern Book Co v DB Modak* (2008) 1 SCC 1.

contribution may satisfy the originality requirement. By contrast, where a user merely enters a short prompt and accepts an AI-generated output without meaningful creative intervention, establishing human authorship becomes more complicated. Accordingly, Indian copyright law may need to distinguish between:

1. human-created works assisted by artificial intelligence;
2. human-AI collaborative works;
3. AI-generated works involving minimal human intervention; and
4. fully autonomous AI-generated outputs.

Each category may require a different legal analysis.

E. Section 17 and First Ownership of Copyright

Section 17 of the Copyright Act, 1957 establishes the general principle concerning the first owner of copyright.¹¹ Subject to the provisos to that section, the author is ordinarily the first owner. The provision creates a direct connection between authorship and ownership, so that in an AI context the question “Who owns the copyright?” cannot be answered independently of the question “Who is the author?” If the human user is legally recognised as the author under Section 2(d), Section 17 operates to confer initial ownership upon that person, subject to contractual and statutory exceptions.

The provisos matter most to the commercial users with which this study is concerned. Proviso (b) vests first ownership in the person who, for valuable consideration, commissions a photograph, painting, portrait, engraving or cinematograph film. Proviso (c) vests first ownership in the employer where a work is made in the course of the author’s employment under a contract of service or apprenticeship. Where an employee or a commissioned person generates a work with the assistance of an AI system, the employer or the commissioning party may therefore take first ownership, but only once a human author has been identified. Section 17 allocates ownership; it does not supply authorship where the statute recognises none.

¹¹ Copyright Act 1957, s 17.

Sections 18 and 19 complete the chain of title.¹² Section 18 permits the owner of copyright in an existing work to assign the copyright, and Section 19 requires that the assignment be in writing signed by the assignor or by a duly authorised agent, and that it identify the work, the rights assigned, the duration and the territorial extent. An artificial intelligence system can neither execute a writing nor appoint an agent, and it therefore cannot assign anything. The Registrar of Copyrights relied upon precisely this difficulty, holding that a claim identifying the AI system as the author while claiming ownership for the applicant could not be reconciled with Sections 17 to 19, because an entity without legal personality can neither hold copyright nor transmit it.¹³

The contractual terms of AI platforms, examined in Section V.11, interact with this statutory position but cannot displace it. Platform terms that purport to assign the rights in an output to the user operate only between the parties to the contract. Where no human author can be identified, there is no copyright for the platform to assign, and the user acquires a contractual permission to use the output rather than a proprietary right in it.

If the AI system itself cannot qualify as an author under Indian law, an independently generated work may therefore create uncertainty regarding whether copyright exists at all, rather than merely creating a dispute concerning ownership.

F. Copyright and Computer-Generated Works

Section 2(d)(vi) is particularly significant because it expressly contemplates computer-generated works.¹⁴ The provision demonstrates that Indian copyright law was designed to accommodate technological developments to some extent.

However, traditional computer-generated works generally involved human programmers or users who controlled the process through predetermined instructions. Modern Generative AI systems operate differently, and can generate

¹² Copyright Act 1957, ss 18 and 19.

¹³ Thaler (Diary No 9356/2022-CO/A) (n 2) (Registrar of Copyrights, 31 August 2026), holding that the work satisfied the originality threshold under s 13, that DABUS could not be entered as author under s 2(d)(vi), and that the applicant was the person who caused the work to be created.

¹⁴ Copyright Act 1957, s 2(d)(vi).

content that was not specifically predetermined by the user. Consequently, the statutory phrase “person who causes the work to be created” may require judicial interpretation in the context of Generative AI. A court may potentially consider the following factors:

1. the nature and complexity of the prompt;
2. the creative objective of the user;
3. the extent of control exercised by the user;
4. the selection made between different AI outputs;
5. post-generation editing;
6. the arrangement and modification of the output; and
7. the overall human intellectual contribution.

These factors could assist in determining whether a person has contributed sufficiently to the creation of the work.

G. Moral Rights Under Section 57

Section 57 provides authors with special rights, commonly described as moral rights, including the right to claim authorship and the right to restrain or claim damages in respect of certain distortions or modifications prejudicial to the author’s honour or reputation.¹⁵ The application of moral rights becomes complicated in AI-generated works. If a human is treated as the author of an AI-assisted work, that person may invoke moral rights. However, if an AI system produces the content autonomously, the question of whose personal reputation or creative identity is protected becomes difficult. AI therefore challenges the traditional assumption that authorship is necessarily associated with human personality and creative identity.

H. Infringement Under Sections 51 and 52

Generative AI also creates significant questions concerning copyright infringement. Section 51 identifies the circumstances in which copyright is infringed, and Section 52 provides certain exceptions, including fair dealing in specified circumstances.¹⁶

¹⁵ Copyright Act 1957, s 57.

¹⁶ Copyright Act 1957, ss 51 and 52.

Generative AI models may be trained using enormous datasets containing books, photographs, artworks, music, articles and other copyrighted material. This creates two distinct legal questions.

The first is whether copyrighted works may lawfully be collected, copied or processed for training AI models. The second is whether the output generated by an AI system reproduces protected expression from an existing copyrighted work. The statutory exceptions were developed before contemporary large-scale generative training became widespread, and whether particular training activities fall within them depends upon the facts and upon judicial interpretation.

I. Input and Output Infringement

The copyright implications of generative AI can be divided into input-side and output-side issues. On the input side, developers may use copyrighted works in datasets used to train AI models. The legal question concerns whether such copying constitutes infringement or is protected by an applicable exception.

On the output side, an AI-generated work may potentially reproduce substantial elements of an existing copyrighted work. If protected expression is reproduced without authorisation, the output may raise conventional infringement issues. The legal analysis should therefore distinguish between training-stage copying, model development, user prompts, and generated outputs rather than treating AI as one uniform copyright issue.

J. Information Technology Act, 2000

The Information Technology Act, 2000 provides India's principal statutory framework for electronic records, computer systems and certain technology-related activities.¹⁷ Although it is not a comprehensive AI law, it remains relevant to questions involving electronic systems, intermediary liability and digital activity, and the rules made

¹⁷ Information Technology Act 2000, s 79.

under it now impose labelling and provenance obligations in respect of synthetically generated information.¹⁸

However, copyright ownership and infringement remain governed primarily by the Copyright Act. The IT Act should therefore complement rather than replace copyright principles when analysing Generative AI.

K. Contractual Framework and Terms of AI Platforms

Another important aspect of AI-generated content is the contractual relationship between users and AI service providers. AI platforms may establish terms concerning ownership, permitted use, commercial exploitation and responsibility for generated content. These contractual terms can influence the relationship between the user and service provider, but they cannot automatically override mandatory provisions of Indian copyright law.

For commercial users, therefore, it is important to examine the following matters:

1. ownership provisions;
2. licence conditions;
3. commercial-use permissions;
4. indemnification clauses;
5. confidentiality provisions;
6. restrictions on automated use; and
7. responsibility for infringement claims.

Contractual arrangements may become increasingly important until specific statutory provisions governing Generative AI are developed.

L. Data Protection and AI-Generated Content

Although copyright and data protection are distinct areas, they can intersect in AI development. The Digital Personal Data Protection Act, 2023, together with the Rules

¹⁸ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2026 (India), GSR 120(E), notified 10 February 2026, rr 2(1)(wa) and 3(3).

notified under it, establishes India's framework for processing digital personal data.¹⁹ Where AI systems are trained or operated using personal information contained in copyrighted or publicly available material, both intellectual property and data-protection considerations may arise. The legal assessment must therefore distinguish copyright ownership from privacy and data-processing rights. The existence of copyright in a work does not itself determine whether personal data contained within that work may lawfully be processed.

M. Liability of AI Developers, Users and Platforms

Generative AI creates a multi-level liability structure involving:

1. AI developers who design and train the system;
2. AI service providers who make the system available;
3. users who generate and publish content; and
4. distributors or commercial entities that exploit the output.

Indian copyright law focuses primarily on acts of infringement rather than creating a comprehensive AI-specific liability regime. Determining responsibility may therefore require an examination of who performed the infringing act, who exercised control over the relevant activity, whether authorisation occurred, and whether statutory exceptions or other legal protections apply.

V. JUDICIAL INTERPRETATION AND EMERGING LEGAL QUESTIONS

Indian copyright jurisprudence on Generative AI is no longer confined to general principle. In *ANI Media Pvt Ltd v Open AI OpCo LLC* the Delhi High Court delivered, on 24 July 2026, the first substantive Indian judicial ruling on the training of large language models.²⁰ Bansal J rejected the objection to territorial jurisdiction

¹⁹ Digital Personal Data Protection Act 2023 (India); Digital Personal Data Protection Rules 2025 (India), notified 14 November 2025.

²⁰ *ANI Media Pvt Ltd v Open AI OpCo LLC*, CS(COMM) 1028/2024 and IA 45300/2024 (Delhi HC, 24 July 2026) (Bansal J), Neutral Citation 2026:DHC:5900.

notwithstanding that the defendant's models were trained and hosted outside India, and refused the interim injunction sought by the news agency.

On the training claim, the Court accepted that the storage of the plaintiff's literary works during training engaged the reproduction right under Section 14, but held, *prima facie*, that the storage fell within the fair dealing exception in Section 52(1)(a)(i).²¹ The Court applied a two-stage analysis. The purpose test asks whether the dealing is for one of the enumerated purposes, and the Court read "private or personal use, including research" as extending to the internal, non-expressive use of a work to train a model. It observed that this sub-clause, unlike others in Section 52, carries no express non-commercial limitation, so that the commercial character of the defendant did not by itself defeat the defence. The fairness test then applies a multi-factor assessment, drawn from the fair-use factors that Indian courts have previously absorbed into Section 52(1)(a), under which the Court found no demonstrated market substitution.

On the output claim, the Court held that the responses relied upon were not substantially similar to the plaintiff's works. The articles produced in evidence post-dated the relevant training cut-off and could not therefore have been memorised, and the disputed responses were, in the Court's assessment, generated through retrieval-augmented generation rather than reproduced from memorised training data.²²

These findings are expressly *prima facie* and confined to the interim application, and the suit remains pending. The ruling nevertheless sits uneasily with the Working Paper of the Department for Promotion of Industry and Internal Trade, which proceeds from the premise that training requires authorisation and proposes a mandatory licensing regime administered by a centralised collecting body.²³ Whether India resolves the input-side question through judicial construction of Section 52 or

²¹ Copyright Act 1957, s 52(1)(a)(i).

²² ANI Media Pvt Ltd v Open AI OpCo LLC (n 20) (Delhi HC, 24 July 2026).

²³ Department for Promotion of Industry and Internal Trade, Working Paper on Generative Artificial Intelligence and Copyright (Part I): 'One Nation, One License, One Payment: Balancing AI Innovation and Copyright' (Government of India, 8 December 2025).

through the statutory licence that the Working Paper envisages therefore remains open.

Future litigation may require courts to determine whether a prompt constitutes sufficient creative contribution, whether AI-generated expression is original, and who bears responsibility when an AI output infringes third-party rights. The established jurisprudence on the idea-expression dichotomy²⁴ and on originality retains its relevance to that inquiry.

VI. NEED FOR A SPECIFIC GENERATIVE AI COPYRIGHT FRAMEWORK

The existing Indian framework provides several useful statutory foundations, particularly Sections 2(d)(vi), 13, 17, 51, 52 and 57 of the Copyright Act. Nevertheless, these provisions were not designed for contemporary foundation models and Generative AI systems. A future framework could address:

1. the legal recognition of AI-assisted and AI-generated works;
2. standards for determining human authorship;
3. the disclosure of substantial AI involvement;
4. the ownership of AI-generated outputs;
5. the copyright implications of training datasets;
6. the licensing of copyrighted training material;
7. responsibility for infringing outputs;
8. transparency and record-keeping requirements;
9. protection against unauthorised reproduction; and
10. mechanisms for resolving AI-related copyright disputes.

Such regulation should balance technological innovation with the legitimate interests of authors, artists, publishers, software developers and other copyright holders.

The most significant unresolved issue is the relationship between human creativity and machine-generated expression. Section 2(d)(vi), which recognises the person who

²⁴ RG Anand v Delux Films (1978) 4 SCC 118.

causes a computer-generated work to be created as the author, may provide an important starting point, but modern GenAI systems raise questions that could not have been fully anticipated when the provision was enacted.

VII. CONTEMPORARY ISSUES AND PROBLEMS

One of the most important contemporary problems concerns the determination of authorship of AI-generated works. Copyright legislation in many jurisdictions is historically constructed around the concept of a natural person who exercises creative judgment in producing a work. Generative AI, however, may independently generate substantial portions of a work after receiving a relatively simple prompt.

This creates uncertainty regarding whether the user who provides the prompt, the developer of the AI system, the owner of the platform, or the AI system itself should be regarded as the author. In the Indian context, the Copyright Act, 1957 recognises the concept of an author and contains specific provisions concerning computer-generated works. However, the application of these provisions to modern Generative AI systems raises difficult interpretative questions because contemporary AI can operate with a degree of unpredictability and autonomy that differs considerably from traditional computer-generated works.

The question of whether an artificial intelligence system can itself be recognised as an author represents another major legal challenge. Current copyright frameworks generally connect authorship with human creativity, legal personality, and responsibility. An AI system does not possess legal personality in the ordinary sense and cannot exercise legal rights or assume legal obligations independently. If AI were recognised as an author, questions would arise regarding ownership, duration of copyright, transfer of rights, infringement liability, and enforcement.

Conversely, denying authorship to AI-generated outputs may result in certain works falling outside copyright protection where sufficient human creativity cannot be established. This could create a category of commercially valuable materials that are freely available for public use, while simultaneously creating uncertainty for businesses investing in AI-assisted creative production.

The concept of originality is also undergoing significant pressure because of Generative AI. Copyright protection generally requires a work to possess sufficient originality, although the precise standard varies between jurisdictions. Generative AI systems are trained on enormous collections of existing texts, photographs, artworks, music, software code, and other materials.

Consequently, the output generated by an AI system may reflect patterns, structures, styles, or elements derived from its training data. Determining whether such output is genuinely original or substantially derived from existing copyrighted works can be extremely difficult. The mere fact that an AI-generated work is technically new does not necessarily establish legal originality. Courts and lawmakers may therefore need to distinguish between independent generation, transformation, imitation, and reproduction.

A particularly significant contemporary issue is the use of copyrighted works as training data. Generative AI models require massive datasets for training, and such datasets may contain copyrighted books, articles, photographs, paintings, films, music, computer programs and other protected works. The central legal question is whether copying such materials during the training process constitutes copyright infringement or falls within an exception such as fair dealing, fair use, text and data mining, or another statutory limitation.

Different jurisdictions have adopted or proposed different approaches, and in India the Department for Promotion of Industry and Internal Trade has proposed a hybrid model under which lawfully accessed material would be available for training against payment of royalties collected by a designated body.²⁵ The uncertainty is especially important because training may involve making multiple digital copies of copyrighted works, while the resulting model may subsequently generate material that competes with the original creators.

Another major problem concerns the absence of transparency regarding training datasets. AI developers may not always disclose the precise works used to train their

²⁵ DPIIT, Working Paper on Generative Artificial Intelligence and Copyright (n 23).

models, which creates difficulties for copyright owners who wish to determine whether their works have been incorporated into a training dataset. The European Union has responded by requiring providers of general-purpose AI models to publish a sufficiently detailed summary of the content used for training.²⁶

Without adequate transparency, creators may find it difficult to prove that their copyrighted material was used, and this evidentiary problem is particularly serious where the training dataset contains millions or billions of individual works. Copyright litigation normally requires evidence of copying or substantial similarity, but the technical architecture of machine-learning systems can make it difficult to establish how a particular copyrighted work contributed to a particular output.

The emergence of AI-generated images, music, literature and audiovisual content has also created uncertainty regarding the degree of human involvement required for copyright protection. A person may provide a detailed prompt, select particular parameters, repeatedly modify the instructions, reject unsuitable outputs, and combine AI-generated material with human-created elements.

In such circumstances, the final work may involve both human creativity and machine-generated content. The legal challenge is to determine when human involvement is sufficiently substantial to establish authorship. A simple instruction such as “create a landscape painting” may involve minimal creative contribution, whereas a highly detailed sequence of instructions combined with extensive human selection and editing may demonstrate substantial creative control.²⁷ Copyright law must therefore address a spectrum rather than treating all AI-assisted works as identical.

The distinction between AI-assisted and AI-generated works is consequently becoming increasingly important. In AI-assisted creation, artificial intelligence may function primarily as a tool, while the human remains responsible for the creative

²⁶ Regulation (EU) 2024/1689 (Artificial Intelligence Act), art 53(1)(d), which requires providers of general-purpose AI models to publish a sufficiently detailed summary of the content used for training.

²⁷ US Copyright Office, Copyrightability (n 4).

expression. For example, an author may use AI to correct grammar, suggest ideas, generate preliminary drafts, or improve an existing photograph. In contrast, in a substantially AI-generated work, the machine may produce the central expressive content with limited human intervention. The difficulty lies in establishing a legally workable threshold between these categories. If the threshold is too low, almost every AI-generated work could receive copyright protection; if it is too high, genuine human-AI collaborations may lose protection despite significant human creative effort.

The problem of infringement is equally complex. AI-generated outputs may sometimes reproduce protected characters, images, phrases, musical compositions, artistic styles, or software code. Determining whether an output constitutes copyright infringement requires consideration of substantial similarity, reproduction, adaptation, and other relevant legal principles. AI systems can also produce outputs that are similar to existing works without directly reproducing them. This creates uncertainty concerning the boundary between lawful inspiration and unlawful copying. The scale of automated content generation further increases the potential volume of copyright disputes because an AI system can generate thousands or millions of outputs rapidly.

Style imitation presents another emerging problem. Generative AI can produce works that closely resemble the distinctive style of a living artist, photographer, writer, musician, or filmmaker. Copyright law traditionally protects particular expressions rather than abstract artistic styles, but modern AI makes the distinction increasingly difficult. A system may imitate stylistic characteristics without reproducing a particular copyrighted work. This raises questions regarding whether existing copyright principles are sufficient or whether other areas of law, such as passing off, unfair competition, publicity rights, moral rights, or contractual protection, should provide additional remedies. The legal treatment of style imitation remains an evolving area and requires careful distinction between copyright infringement and broader concerns regarding economic and reputational interests.

Another significant issue is the allocation of ownership in commercially valuable AI-generated content. Businesses increasingly use Generative AI for advertising, software development, publishing, entertainment, design, and research. If the legal status of AI-generated material is uncertain, businesses may face difficulties determining whether they possess enforceable intellectual property rights over the outputs they commercialise. Contractual agreements between AI platforms and users may attempt to allocate rights, but contractual ownership cannot necessarily create copyright protection where statutory requirements are not satisfied. Therefore, businesses must distinguish between contractual rights to use an AI output and legally enforceable copyright ownership.

Moral rights also raise important questions in the context of Generative AI. Traditional copyright systems may protect an author's right of attribution and integrity. Where a work is substantially generated by AI, however, identifying the appropriate human author for attribution becomes difficult. Similarly, if an AI-generated work is modified in a manner that harms the reputation associated with a particular creator, questions may arise concerning the applicability of moral rights. These problems become particularly complex where human creative contributions are combined with AI-generated material and the final work cannot easily be separated into human and machine components.

The use of Generative AI in software development creates additional copyright problems. AI coding tools can generate programming code based on natural-language instructions. Since software code is generally protected by copyright, questions arise concerning whether AI-generated code reproduces portions of training data or open-source software. If an AI-generated program incorporates code subject to an open-source licence, compliance with licence conditions may become difficult. Developers may unknowingly incorporate copyrighted or licensed code into commercial software. This creates potential risks concerning attribution, redistribution obligations, licence compatibility, and infringement.

The question of liability is another unresolved issue. If an AI-generated output infringes copyright, responsibility could involve the user who generated the output,

the developer of the AI model, the platform provider, or another intermediary. The appropriate allocation of responsibility depends on factors such as knowledge, control, foreseeability, contractual terms and the degree of human intervention.

A legal framework that places excessive liability on users may discourage legitimate AI-assisted creativity, while a framework that provides excessive protection to AI developers may leave copyright owners without effective remedies. Establishing a balanced liability structure is therefore a major contemporary problem, and one that the present framework does not resolve: Indian copyright law identifies the acts that constitute infringement but does not allocate responsibility among the developer who trains the model, the platform that makes it available and the user who generates and publishes the output, and the safe harbour available to intermediaries was not designed for systems that themselves generate the impugned content.²⁸

VIII. JUDICIAL DEVELOPMENTS: COMPARATIVE CASE ANALYSIS

The following decisions and administrative determinations frame the comparative analysis undertaken in this study. For each matter the facts, the holding and the relevance to the questions of authorship, originality and training are stated.

1. **Feist Publications, Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991), United States**

Facts: Rural Telephone Service published a telephone directory containing names, addresses and telephone numbers. Feist Publications copied substantial portions of the directory for its own publication, and Rural Telephone Service claimed copyright infringement.²⁹

Holding: The Supreme Court held that originality requires independent creation together with at least a minimal degree of creativity, and rejected the “sweat of the brow” doctrine. The alphabetical arrangement of factual listings lacked the requisite creativity and was not protected.

²⁸ Information Technology Act 2000, s 79.

²⁹ Feist Publications Inc v Rural Telephone Service Co, 499 US 340 (1991).

Relevance: The decision supplies the originality threshold against which AI outputs must be measured. Labour and expense devoted to generating an output cannot substitute for the creative choice that originality demands.

2. Burrow-Giles Lithographic Co. v. Sarony, 111 U.S. 53 (1884), United States

Facts: The photographer Napoleon Sarony created a photographic portrait of Oscar Wilde. Burrow-Giles reproduced the photograph without permission and argued that a photograph was not copyrightable because it was produced by a mechanical process.³⁰

Holding: The Supreme Court held that the photograph was a writing of an author because it gave visible form to the photographer's original mental conception through the posing of the subject, the arrangement of costume, drapery and lighting, and the selection of the composition.

Relevance: A work produced through a machine remains protectable where human intellectual conception directs the machine. The case supports the protection of AI-assisted works, but it also marks the limit of that protection, because the governing conception must be human.

3. Naruto v. Slater, 888 F.3d 418 (9th Cir. 2018), United States

Facts: A macaque took photographs using a camera belonging to the photographer David Slater. People for the Ethical Treatment of Animals brought proceedings seeking to assert copyright on behalf of the animal.³¹

Holding: The Court of Appeals for the Ninth Circuit held that the Copyright Act does not authorise animals to file suit, and that the animal consequently lacked statutory standing.

Relevance: The decision confirms that the capacity to hold and enforce copyright is confined to persons recognised by law. The same reasoning underlies the refusal of the Indian Registrar of Copyrights to enter an AI system as author.

³⁰ Burrow-Giles Lithographic Co v Sarony, 111 US 53 (1884).

³¹ Naruto v Slater, 888 F 3d 418 (9th Cir 2018).

4. Thaler v. Perlmutter, 130 F.4th 1039 (D.C. Cir. 2025), United States

Facts: Stephen Thaler created the artwork *A Recent Entrance to Paradise* using his AI system, which he named the Creativity Machine, and sought copyright registration identifying the system as the creator. The United States Copyright Office refused registration for want of human authorship.³²

Holding: The Court of Appeals for the District of Columbia Circuit affirmed on 18 March 2025, holding that the Copyright Act requires every work to be authored in the first instance by a human being. The judgment of the District Court of 2023 stands as procedural history only, and the denial of certiorari on 2 March 2026 carries no precedential value of its own. The appellate decision is accordingly the operative authority.

Relevance: Thaler filed the same artwork in the United States naming the Creativity Machine and in India naming DABUS. The two outcomes diverge instructively: the American courts treated the absence of a human author as fatal to protection, whereas the Indian Registrar accepted that the work satisfied originality and refused only the entry of the machine as author.

5. Thaler v. Hirshfeld, 558 F. Supp. 3d 238 (E.D. Va. 2021), aff'd sub nom. Thaler v. Vidal, 43 F.4th 1207 (Fed. Cir. 2022), United States

Facts: Thaler filed two patent applications naming DABUS as the inventor. The United States Patent and Trademark Office refused the applications for failure to identify a valid inventor, and Thaler challenged the refusal.³³

Holding: The District Court held that an “inventor” under the Patent Act must be an “individual”, and that the ordinary meaning of that term is a natural person. The Court of Appeals for the Federal Circuit affirmed, holding that the Patent Act requires inventors to be natural persons, that is, human beings.

³² Thaler v Perlmutter (n 5).

³³ Thaler v Hirshfeld, 558 F Supp 3d 238 (ED Va 2021), aff'd sub nom Thaler v Vidal, 43 F 4th 1207 (Fed Cir 2022).

Relevance: Although the dispute arose under patent law, it establishes the same personhood limitation across the intellectual property regime and demonstrates that the obstacle to machine authorship is one of legal capacity rather than of creative merit.

6. Re: Zarya of the Dawn (Registration # VAu001480196), U.S. Copyright Office, 21 February 2023, United States

Facts: Kristina Kashtanova created a graphic novel titled *Zarya of the Dawn*, writing the text and generating the images with Midjourney. Registration was initially granted, and the Office subsequently examined the extent of the AI involvement after the use of Midjourney became publicly known.³⁴

Holding: The determination was issued by letter of the Copyright Office and not by its Review Board, which hears appeals from second refusals. The Office cancelled the original registration and issued a narrower registration covering the text and the selection, coordination and arrangement of the images, but excluding the images themselves. Its reasoning was that Kashtanova did not exercise sufficient control over Midjourney's output, whose specific content she could not predict, to be regarded as its author.

Relevance: The determination locates a concrete work upon the spectrum of human involvement discussed in Section V.4. Human selection and arrangement can sustain a compilation claim even where the generated elements themselves remain unprotected.

7. ANI Media Pvt Ltd v. Open AI OpCo LLC, CS(COMM) 1028/2024 (Delhi High Court, 24 July 2026), India

Facts: A news agency alleged that its copyrighted news content had been used without licence to train the large language models underlying ChatGPT, and sought an interim injunction.³⁵

³⁴ US Copyright Office, Re: Zarya of the Dawn (Registration # VAu001480196) (21 February 2023).

³⁵ ANI Media Pvt Ltd v Open AI OpCo LLC (n 20).

Holding: The Court assumed territorial jurisdiction, held that the storage of the works during training engaged the reproduction right, and held *prima facie* that the storage was protected by the fair dealing exception in Section 52(1)(a)(i). It further held that the outputs relied upon were not substantially similar to the plaintiff's works and had been generated through retrieval rather than from memorised training data. The injunction was refused and the suit remains pending.

Relevance: This is the first Indian judicial engagement with the input-side question and the principal counterweight to the licensing model proposed by the Department for Promotion of Industry and Internal Trade.

8. Application of Stephen L. Thaler for registration of A Recent Entrance to Paradise (Diary No. 9356/2022-CO/A), Registrar of Copyrights, 31 August 2026, India

Facts: Thaler applied to register the artwork, naming DABUS as the author and himself as the owner, and declined the opportunity to amend the application so as to name himself as author.³⁶

Holding: The Registrar held that the work satisfied the limited threshold of originality under Section 13, that DABUS is neither a natural nor a juristic person and therefore cannot be entered as author under Section 2(d)(vi), and that the applicant was the person who caused the work to be created. The combination of AI authorship with human ownership could not be reconciled with Sections 17 to 19, and the application was rejected in the form in which it stood.

Relevance: The order is the first Indian determination to separate originality from legal authorship, and it supplies the doctrinal foundation for the distinction maintained throughout this study.

IX. RECOMMENDATIONS AND SUGGESTIONS

The rapid growth of Generative Artificial Intelligence requires copyright law to evolve without undermining either human creativity or technological innovation. First,

³⁶ Thaler, Application for registration of 'A Recent Entrance to Paradise' (n 2).

legislation should clearly define the legal status of AI-generated and AI-assisted works. A distinction should be established between works created entirely by AI with minimal human involvement and works in which AI functions as a tool under meaningful human creative control. Copyright protection should primarily remain connected to demonstrable human creativity, while appropriate rules should address the ownership and use of AI-assisted works.

Second, there is a need for greater transparency regarding the datasets used to train Generative AI systems. AI developers should maintain appropriate records of training materials and, subject to legitimate privacy and security considerations, provide sufficient information to enable copyright owners to determine whether their works have been used. A transparent licensing mechanism could also be developed whereby creators may permit the use of their copyrighted works for AI training in return for agreed compensation.

Third, copyright legislation should clarify whether existing exceptions such as fair dealing, fair use, and text-and-data-mining provisions apply to AI training. A specific statutory framework for AI training could reduce uncertainty and provide predictable standards for creators, technology companies, researchers, and users. Such provisions should carefully balance innovation with the economic interests of copyright holders.

Fourth, AI developers should introduce effective safeguards against the generation of substantially infringing material. Content provenance, watermarking, metadata and record-keeping mechanisms can assist in identifying AI-generated content and establishing its source. Users should also be informed when significant portions of content have been generated by an artificial intelligence system.

The obligation to disclose should rest in the first instance upon the developer or platform that supplies the generative tool, and thereafter upon the person who publishes or commercially exploits the output. Disclosure should take the form of a clear and prominent label accompanied by durable provenance metadata, applied to synthetically generated audio, visual and audiovisual material as the subordinate rules already require, and extended by legislation to substantially AI-generated text

offered for publication, which those rules do not presently reach.³⁷ Works in which artificial intelligence has been used only in a minor assistive capacity, such as grammatical correction or formatting, should be excluded from the obligation.

Fifth, legislation should allocate liability among developers, platforms and users on a principled basis, so that responsibility follows knowledge, control and the capacity to prevent harm. A developer who trains a model upon unlicensed material and makes no provision for output filtering should bear primary responsibility for infringing outputs. A platform should attract liability where it fails to act upon credible notice or disables available safeguards.

A user should be liable where the infringing character of the output is attributable to the user's instructions, or where the user commercially exploits the output with knowledge of its source. A safe harbour conditional upon compliance with disclosure, provenance and record-keeping obligations would give developers and platforms a predictable basis on which to operate while preserving an effective remedy for copyright owners.

X. CONCLUSION

The Indian legal framework governing Generative AI and copyright presently consists of existing copyright principles applied to new technological circumstances. The Copyright Act, 1957, and in particular Sections 2(d)(vi), 13, 17, 51, 52 and 57, supplies the principal statutory foundation for questions of authorship, originality, ownership and infringement. The most significant unresolved issue is the relationship between human creativity and machine-generated expression, and Section 2(d)(vi) provides an important starting point without answering the questions that modern systems raise.

The development of Generative AI accordingly demonstrates the need for copyright law to remain technologically adaptable while preserving its fundamental objectives of encouraging creativity, protecting legitimate authorship and balancing private rights against public access to knowledge and innovation. India will ultimately require clearer legislative or judicial standards addressing AI-generated works,

³⁷ IT (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2026 (n 18).

training data, human authorship and liability, and until such a framework develops the interpretation of existing copyright principles will remain central to determining the legal status of Generative AI outputs.

Generative Artificial Intelligence has fundamentally challenged traditional concepts of authorship, originality, ownership and copyright protection. While human creativity remains central to copyright protection, determining the extent of human contribution in AI-assisted works remains difficult. Clear legislative provisions, greater transparency in AI training practices, appropriate licensing mechanisms and effective enforcement measures are therefore necessary. Copyright law must strike a balance between protecting creators and encouraging technological innovation, and a flexible, human-centred legal framework will be essential for addressing future developments in Generative AI.

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