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INTELLECTUAL PROPERTY AND GENERATIVE AI: WHO OWNS THE MACHINE-CREATED WORK?

AUTHORED BY - ANKIT KUMAR SINGH

1. Introduction

The advent of generative artificial intelligence (AI)—including models like OpenAI's GPT-4, Google's Gemini, and image generators like DALL·E and Midjourney—has revolutionized the production of content. From writing poetry and legal documents to generating music, illustrations, and code, AI systems now participate in creative and intellectual processes traditionally attributed only to humans. This technological leap raises complex legal questions: Can machine-generated content be protected under intellectual property (IP) law? If so, who owns it—the human prompt-giver, the AI developer, or the machine itself?

This essay critically explores the current legal landscape of IP law in relation to machine-generated works, analyzes how different jurisdictions interpret authorship and ownership in AI contexts, and discusses policy recommendations in light of emerging legal and ethical challenges.

2. Intellectual Property Basics: The Human-Centric Paradigm

2.1 Core Principles

Intellectual Property (IP) law is premised on the notion of human creativity. It seeks to incentivize innovation and expression by granting legal rights to the creator or inventor of a work. Historically, this system has operated on the understanding that only natural persons—humans—possess the mental faculties necessary for authorship, inventiveness, and originality.

Most jurisdictions explicitly or implicitly maintain this assumption, embedding it in legislation, treaties, and case law. This human-centric model is visible in multiple domains of IP law:

A. Copyright Law

i. International Framework (Berne Convention)

The Berne Convention for the Protection of Literary and Artistic Works, adopted in 1886 and administered by the World Intellectual Property Organization (WIPO), is the foundational international treaty on copyright. It establishes minimum standards of protection and

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recognizes the rights of "authors" of "literary and artistic works." However, it does not define "author" or "work" in a way that includes non-human agents.[1]

The assumption is clear: authorship is a human attribute. This interpretation is consistently upheld by member states, making it difficult for AI-generated content to fall under its protective scope unless a human creator can be identified.

ii. Indian Copyright Law

India's Copyright Act, 1957, modeled on the British legal tradition, similarly focuses on human authorship. Under Section 2(d), the "author" is defined with respect to the type of work:

- For literary or dramatic works: the writer.
- For musical works: the composer.
- For artistic works: the artist.
- For photographs: the person taking the photograph.

Nowhere does the Act contemplate the possibility of non-human authors. Even for computer-generated works, the law is silent, leading to ambiguity when applied to AI-generated content. Indian courts have also consistently interpreted originality to require a modicum of creativity, skill, and labor—all traits associated with human agency.[2]

B. United Kingdom: Computer-Generated Works

The United Kingdom, while grounded in the human-centric IP paradigm, has taken a notably pragmatic approach. The Copyright, Designs and Patents Act 1988 (CDPA) recognizes the reality of machine-generated creativity. Section 9(3) of the CDPA provides:

"In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken."[3]

This provision, though drafted before the advent of modern generative AI, is one of the few that explicitly addresses non-human creative processes. It attributes authorship not to the computer or AI system, but to the human who sets up and instructs the machine—i.e., the programmer, operator, or prompter.

[1]Berne Convention for the Protection of Literary and Artistic Works (adopted 9 September 1886, entered into force 5 December 1887) art 2(1).
[2] Copyright Act 1957 (India), s 2(d); see *Eastern Book Company v D.B. Modak* (2008) 1 SCC 1.
[3] Copyright, Designs and Patents Act 1988 (UK), s 9(3).

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Even so, the work remains subsidiary to human input. The human must have exercised some creative control or decision-making capacity, whether in the initial prompt, the selection of the output, or the curation of training data. Courts in the UK have not yet clarified the precise threshold for this "arrangement," especially in relation to autonomous AI.

C. United States: Rejection of Non-Human Authorship

The U.S. copyright regime, governed by the Copyright Act of 1976 and enforced by the U.S. Copyright Office, remains firmly human-focused. In a series of policy documents and case rulings, the U.S. has emphasized that only human authors can hold copyrights.

This was reinforced in the Zarya of the Dawn case (2023), where the Copyright Office granted protection only to the text portions of a graphic novel written by a human, but denied protection to the AI-generated images produced using Midjourney.[4]

Similarly, in the famous Monkey Selfie Case (*Naruto v. Slater*), the court rejected the idea that a non-human primate could hold copyright.[5] This decision, while not about AI, has been invoked by courts and scholars to argue that authorship inherently requires human agency and legal personhood.

D. The Philosophical and Legal Challenge from AI

The emergence of generative AI challenges all of the above frameworks. AI systems are now capable of:

- Writing entire books or legal documents.
- Generating photorealistic artwork and original music.
- Designing complex computer code.

In many cases, the human user provides only a minimal prompt (e.g., "write a poem in the style of Keats" or "generate an image of a tiger playing chess in the moonlight"). The creative decision-making—the selection of words, rhythm, tone, or visual elements—is performed autonomously by the model.

This blurs the line between authorship and tool usage. Is the human truly the author, or merely the initiator of a process they do not fully control? Should the developer of the AI system—

[4] *Zarya of the Dawn* (US Copyright Office Review Board, March 2023).
[5] *Naruto v Slater* (2016) 888 F.3d 418 (9th Cir).

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who created the model architecture and trained it on vast data—claim some share of authorship?

These questions are not easily resolved within existing frameworks. Without human originality, most AI outputs would fail traditional copyright tests. Yet the outputs often appear creative, leading to tension between form (the legal requirement of human input) and function (the observable creativity of AI).

2.2 Implications for Ownership and Control

Under current doctrine, the lack of authorship by AI means:

- No copyright subsists in fully autonomous machine-generated works.
- Such works may fall into the public domain unless a human author can be identified.
- Contractual ownership clauses, like those in OpenAI's Terms of Use, often allocate ownership to the user—but this allocation has no statutory basis in many countries.

This gap poses practical challenges:

- Businesses using AI to generate content face uncertainty about their legal rights.
- Artists and writers fear losing control over their IP, especially if AI is trained on copyrighted data without consent.
- Governments and lawmakers are under pressure to modernize IP statutes to address this evolving frontier.

3. What is Generative AI?

Generative Artificial Intelligence (Generative AI or GenAI) refers to a class of machine learning systems capable of creating new, original content—including text, images, music, video, or even code—by learning patterns from massive datasets. These systems differ fundamentally from earlier rule-based or discriminative models, as they do not merely recognize or classify information; instead, they can generate content that mimics human creativity.

3.1 The Underlying Technology

Generative AI is built on several key machine learning architectures, the most notable of which include:

A. Large Language Models (LLMs)

LLMs such as GPT-4, developed by OpenAI, are trained on large corpora of text data to predict the next word in a sequence. Through billions of parameters, they learn grammar, context, style,

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and even domain-specific information. The result is highly coherent and contextually relevant text that can be used for:

- Essays, legal documents, poems, and stories.
- Email drafting and summarization.
- Conversational AI (e.g., ChatGPT).

B. Generative Adversarial Networks (GANs)

Introduced by Ian Goodfellow in 2014, GANs consist of two neural networks: a generator (which creates data) and a discriminator (which evaluates it). The adversarial training process allows the generator to improve continuously, producing hyper-realistic images, videos, or audio. GANs power tools like:

- DALL·E: AI image generation from text prompts.
- ThisPersonDoesNotExist.com: Faces of people who do not exist.
- Deepfake applications: Video/audio manipulation.

C. Multimodal and Cross-Modal Models

Modern models like Sora (by OpenAI) integrate multiple modalities (text, video, image) to generate complex outputs. For instance:

- Text-to-video generation based on prompts.
- Combining visual and audio elements into coherent narratives.
- Example: “Generate a cinematic shot of a panda surfing a wave at sunset” produces a high-quality, AI-generated video clip.

D. Music and Sound Generation Models

AI models such as Jukebox by OpenAI create original music compositions, complete with lyrics and instrumentals, based on training on massive music datasets. These models can:

- Recreate styles of famous musicians.
- Generate new genres.
- Mix and master audio tracks autonomously.

3.2 Nature of Output: Originality or Mimicry?

The outputs of generative AI are not direct copies of data from the training corpus. Instead, the models operate through probabilistic synthesis:

- They analyze patterns across billions of data points.
- They use algorithms to predict and generate novel combinations of language, image pixels, sound waves, etc.

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- This process can produce entirely new outputs that have never existed before—yet often appear derivative, raising questions about originality and infringement.

From a legal standpoint, this distinction is crucial. If AI merely replicates existing works, it could infringe copyright. But if it generates sufficiently original content, it may qualify for protection—provided authorship and originality requirements are met.

3.3 Role of Human Input: Prompting, Curation, and Creativity

Generative AI typically operates in response to prompts—text commands or inputs provided by users. The quality, specificity, and intention of these prompts determine the nature of the output.

- Minimal Input: A simple prompt like "write a haiku about autumn" may result in a fully-formed poem without further user involvement.
- Extensive Input: A prompt engineer or artist may spend hours refining the wording, adjusting model settings (temperature, tokens, style), and editing the results.

This variation raises critical questions in IP law:

- How much human involvement is necessary for the result to be considered human-authored?
- Does selecting among multiple outputs or curating content constitute creativity?
- Can the prompt itself be considered an authored work?

Some argue that prompt engineering should be treated as a creative act, akin to photography—where the tool (camera or AI) is directed by a human who chooses composition, timing, and framing. Others caution against overstating the human contribution, especially when the model does most of the heavy lifting.

3.4 Ethical and Legal Dimensions of Generative AI

As generative AI becomes more widespread, it has sparked legal, ethical, and policy debates concerning:

A. Ownership and Attribution

- If a machine generates content, can the output be copyrighted?
- If yes, who owns the copyright—the user, the model creator, or the platform provider?

Most jurisdictions currently do not recognize non-human authorship, which complicates ownership claims over fully autonomous AI creations.

B. Data Provenance and Copyright Infringement

Generative models are trained on massive datasets scraped from the internet, including

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copyrighted works (books, music, photographs, code). The use of this data without consent has led to:

- Lawsuits by artists, authors, and media companies against AI developers (e.g., Getty Images v. Stability AI[6]).
- Demands for transparency and licensing frameworks for training datasets.
- Calls for opt-in or opt-out mechanisms for creators.

C. Harmful Outputs and Liability

Generative AI can be used to create:

- Deepfakes for misinformation or revenge porn.
- Fake news articles or conspiracy narratives.
- Malicious code or phishing emails.

This raises questions about platform responsibility, user liability, and content moderation. Legal systems are still catching up with how to address accountability for such outputs.

3.5 Generative AI in IP-Centric Sectors

Sectors like publishing, advertising, design, music, and software development are rapidly integrating generative AI tools. This results in:

- Faster content production.
- Cost reduction in creative labor.
- Blurred lines between human and machine creativity.

However, this also threatens:

- Traditional creators' rights.
- Royalty models and credit systems.
- Creative employment and attribution ethics.

Policy reform must navigate these tensions between technological innovation and creator protection.

4. Global Approaches to AI-Generated Works

As generative AI systems proliferate across the world, legal systems are confronting the fundamental question of whether AI-generated outputs can be protected under intellectual property law, especially copyright. The global consensus remains that copyright subsists only in human-authored works, although some jurisdictions are evolving to recognize human-AI

[6]Getty Images (US), Inc. v. Stability AI Inc., Complaint, US District Court for the District of Delaware, 2023.

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collaboration or computer-generated works with human attribution. Below is a comparative overview of key jurisdictions:

4.1 United States

In the United States, copyright law is governed by the Copyright Act of 1976, and the U.S. Copyright Office (USCO) administers registrations. The prevailing legal position, reaffirmed multiple times by courts and the USCO, is that only human authors can hold copyright. AI-generated works, created without meaningful human input, are not eligible for protection.

Key Developments:

- Zarya of the Dawn Case (2023):
  The USCO denied full copyright protection to the graphic novel *Zarya of the Dawn*, which used Midjourney to generate images. While the text and selection of images by the human author (Kristina Kashtanova) were protected, the AI-generated images were not. The Office held that the images lacked the requisite human authorship.[7]
- Human-AI Collaborative Works:
  If a human significantly curates, modifies, or arranges AI-generated material, then only the human-authored elements may qualify for protection. This position aligns with longstanding precedent from cases such as Feist Publications, Inc. v. Rural Telephone Service Co., which emphasized that originality and minimal creativity are necessary for copyright to subsist.[8]

4.2 European Union and the United Kingdom

European Union

The EU legal framework is grounded in:

- The InfoSoc Directive (2001/29/EC), which harmonizes copyright across member states.
- The Berne Convention, which emphasizes human authorship.
- The Charter of Fundamental Rights of the European Union, which protects creators' moral and economic rights.

Like the U.S., the EU does not recognize non-human authorship. However, the EU AI Act (2024)—the world's first horizontal legislation regulating artificial intelligence—introduces

[7]Zarya of the Dawn, U.S. Copyright Office Registration Review Board, March 2023 https://www.copyright.gov/rulings/zarya-of-the-dawn.pdf.
8Feist Publications, Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991).

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requirements of transparency, attribution, and risk classification for AI systems. While not part of copyright law, the AI Act obliges developers and deployers to:

- Disclose that content is AI-generated.
- Ensure traceability of training datasets and model parameters.

This framework creates accountability mechanisms for AI-generated works, without granting them copyright protection.

United Kingdom

Post-Brexit, the UK has retained its own interpretation of copyright law under the Copyright, Designs and Patents Act 1988 (CDPA).

- Section 9(3) of the CDPA 1988 provides:

"In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken."

This provision, introduced before modern AI models existed, offers a unique approach:

- It assigns authorship to the human who controlled or initiated the creation process.
- Courts have not yet elaborated on the extent of human input required.

This means that in the UK, the prompter, programmer, or controller of an AI system might be granted authorship, provided there was sufficient intellectual effort involved.

4.3 India

India's copyright regime is governed by the Copyright Act, 1957, which is silent on AI-generated works and retains a strong human-authorship foundation.

Key Provisions:

- Section 2(d) defines "author" in human terms:
    - Literary works: the writer.
    - Musical works: the composer.
    - Artistic works: the artist.
    - Cinematographic films: the producer.

There is no legal provision for machine authorship or AI attribution.

Case Law:

- Rameshwari Photocopy Services v Oxford University Press (2016):

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The Delhi High Court emphasized the importance of originality and human expression in copyrightable works. Though not an AI case, the judgment reaffirmed that copyright rewards human skill, labor, and creativity.[9]

- No Current Rulings on AI Works:

  Indian courts and the Copyright Office of India have not yet clarified whether:

  - AI-generated works can be registered.
  - AI-assisted works qualify under existing definitions of authorship.

As a result, machine-generated works in India likely fall outside the ambit of copyright protection, unless significant human involvement can be demonstrated.

5. Key Legal Questions on AI-Created Content

5.1 Can AI Be an Author?

Most jurisdictions agree: AI cannot be an author under current law. IP law does not recognize non-human entities as capable of holding rights.

- The U.S. case of Naruto v. Slater (2016) involved a monkey selfie and ruled that animals cannot hold copyrights—by analogy, this applies to AI.[10]
- In Australia, the Commissioner of Patents v. Thaler (2022) held that AI cannot be considered an inventor under patent law.[11]

5.2 Who Owns the Output?

Ownership typically flows from authorship. If an AI creates something without human intervention, no copyright subsists. However:

- If a human gives creative input (e.g., crafting prompts, selecting results, editing), they may be deemed the author or at least the copyright owner.
- If AI is used within employment or under a license agreement, the employer or licensee may claim ownership.

OpenAI's Terms of Use (2023), for instance, state:

“You own the output you generate with OpenAI’s models, provided it complies with our terms and applicable law.”

Thus, contractual terms can govern AI-generated content ownership when law is ambiguous.

[9]The Chancellor, Masters and Scholars of the University of Oxford and Others v. Rameshwari Photocopy Services and Another 2016 SCC OnLine Del 4798.
[10]Naruto v Slater, 885 F.3d 1154 (9th Cir 2018)
[11]Commissioner of Patents v Thaler, [2022] FCAFC 62

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5.3 Are AI Outputs "Original"?

Copyright law requires originality, which is judged by:

- Skill and judgment (Canada)
- Author's own intellectual creation (EU)
- Modicum of creativity (US)

AI outputs, generated through statistical models, lack human skill or judgment unless a person curates or shapes the result significantly. Therefore, AI-alone outputs often fail originality tests.

6. Ethical and Practical Implications

6.1 Misuse and Attribution

If AI generates content similar to copyrighted works in its training data, it may inadvertently plagiarize or infringe on human authors' IP.

- Lawsuits have been filed (e.g., by Getty Images and artists) against AI companies for unauthorized use of training data.
- Some jurisdictions are exploring compulsory licensing or dataset transparency mandates.

6.2 Bias and Accountability

AI-generated outputs may reflect biases, stereotypes, or offensive content. If such content is commercialized, who is liable—the prompter, platform, or model provider?

IP law does not yet resolve this, suggesting a need for ethical frameworks alongside ownership laws.

7. The Way Forward: Reform Proposals

The proliferation of artificial intelligence (AI) technologies has challenged long-standing assumptions in intellectual property law, particularly concerning authorship, ownership, and originality. The existing legal frameworks in most jurisdictions, including India, are largely anthropocentric and ill-equipped to address the nuanced realities of machine-assisted creation. As courts and lawmakers across the globe confront these issues, reform proposals are emerging to recalibrate the balance between innovation, protection of creative effort, and public interest. This section proposes a multi-pronged strategy to guide future reforms, including legislative amendments, policy development, and regulatory intervention.

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7.1 Updating IP Laws

One of the most pressing needs is to revisit and revise statutory definitions within copyright and patent laws to account for the rise of AI-generated and AI-assisted works. Traditional intellectual property regimes rest on the foundational concept of a human author or inventor. However, with generative AI models capable of creating music, literature, visual art, and software code autonomously or with minimal human input, the binary classification between human authorship and non-human automation is increasingly obsolete.

7.1.1 Defining "AI-Assisted Authorship"

Legislatures may need to introduce a statutory category for "AI-assisted authorship" to distinguish between works fully created by AI and those where human input plays a meaningful role. Such a definition could rest on the degree of creative control or conceptual contribution exerted by the human operator over the final output. This would help in determining when a human is eligible for IP protection despite the use of AI tools.

7.1.2 Limited IP Rights for Human Contributors

A balanced reform approach could involve granting limited or derivative rights to individuals who significantly contribute to AI-generated content—such as prompt engineers, curators of training data, or designers of creative parameters. These rights could resemble neighbouring or moral rights, offering attribution and limited commercial exclusivity without equating them to full copyright or patent ownership.

7.1.3 AI Rights Registries

In the interest of transparency and traceability, jurisdictions may consider establishing AI rights registries where creators disclose the role of AI in the generation of protected works. This registry could serve as a disclosure mechanism, similar to patent disclosures, ensuring clarity about the extent of human involvement. It would also aid enforcement and policy monitoring, allowing future courts to evaluate disputes with greater factual granularity.

7.2 Dataset Transparency and Licensing

Another critical dimension in the AI-IP interface is the use of training datasets, many of which include copyrighted material scraped without consent or compensation. As large language models (LLMs), image generators, and other generative systems become central to the creative industries, the need for transparency and licensing becomes urgent.

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7.2.1 Disclosure of Training Data

Legal reforms could mandate that developers of AI systems disclose the datasets used to train their models, at least in anonymised or aggregate forms. Such transparency would serve several purposes: (a) it would allow authors and artists to ascertain whether their works were used; (b) it would facilitate judicial scrutiny in copyright infringement suits; and (c) it would support ethical AI development practices.

7.2.2 Copyright Licensing for Datasets

Where datasets include protected works, developers should be required to obtain licenses or seek collective management solutions. A model akin to statutory licensing or extended collective licensing—already used in broadcast and translation industries—could be explored for AI datasets. This would preserve the rights of creators while enabling technological innovation.

7.2.3 Opt-Out Mechanisms for Creators

In alignment with recent proposals under the EU AI Act and related regulations, content creators should be empowered to opt out of having their works included in training datasets. This can be operationalised through machine-readable metadata tags or rights management tools. Such mechanisms ensure autonomy and informed consent for creators, aligning data use with fundamental IP principles.

7.3 India-Specific Recommendations

India stands at a critical juncture, with a fast-growing AI ecosystem and a rich tradition of intellectual creativity. However, the legal framework—particularly the Copyright Act, 1957—has not been updated to reflect the realities of AI-assisted or AI-generated works. While Section 2(d) of the Act provides a definition for "author" that includes "the person who causes a computer-generated work to be created," it remains ambiguous and lacks jurisprudential clarity.

7.3.1 Amendment of the Copyright Act, 1957

The first and foremost reform should involve a targeted amendment to the Copyright Act to clearly define terms like "computer-generated work," "AI-generated work," and "AI-assisted authorship." Moreover, legislative clarity is needed on whether such works are protectable under Indian copyright law and who qualifies as their legal author. This could draw from

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comparative jurisdictions such as the UK Copyright, Designs and Patents Act 1988 (Section 9(3)).

7.3.2 Rights for Prompt Engineers and Data Curators

India could lead in recognising the creative contributions of those who interact with generative AI systems—such as prompt engineers, who craft detailed instructions for AI outputs, and data curators, who assemble and structure datasets. These individuals often perform creative or intellectual functions that merit protection, even if not under full copyright. A sui generis right or an adaptation of moral rights could be developed for such contributors.

7.3.3 Judicial and Tribunal Reforms

Given the technical and philosophical complexities of AI and IP intersections, traditional courts may struggle to adjudicate disputes effectively. India could benefit from establishing specialised tribunals or benches for AI and IP-related matters, drawing inspiration from bodies like the Intellectual Property Appellate Board (IPAB), which was functional until 2021. These specialised forums could deliver nuanced and technologically informed decisions, aiding the evolution of case law in this domain.

8. Conclusion

The question of who owns AI-generated work lies at the intersection of law, technology, ethics, and creativity. Current intellectual property regimes, designed for human expression, are ill-equipped to handle the complexities introduced by generative AI. Most jurisdictions exclude AI from authorship, though some allow human intermediaries to claim ownership depending on their input.

As generative AI becomes increasingly integral to content production, legal systems must evolve to strike a delicate balance between protecting human creativity and fostering technological innovation. Clear legislation, transparent licensing practices, and adaptive judicial interpretation will be crucial in shaping the future of IP in the AI era.