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ARTIFICIAL INTELLIGENCE, COPYRIGHT, AND DEEPFAKES: RETHINKING AUTHORSHIP AND LEGAL FRAMEWORKS

AUTHORED BY - ANVESHA SHARMA

Abstract

Rapid advancements in artificial intelligence have played a key role in assisting humans in various areas of their lives. However, these rapid advancements have posed a challenge to the traditional copyright law frameworks. The recent debate around ***Ghibli art*** threw a light on how an increase in work created by generative AI systems with minimal human intervention has once again made the legal systems around the world question whether such work can be protected under intellectual property laws and if so, who is the rightful owner of the same.

While artificial intelligence has certainly made the lives of humans easier, however, the technology has also been misused to spread false information, damaging reputation and invading privacy of people. The biggest example of such misuse is Deep fakes, which is a big challenge to privacy and security. While India has laws addressing cybercrime and defamation, there are no specific laws which focuses mainly on AI generated manipulative work i.e., deepfakes.

The author in this paper explores the complex and evolving relationship between copyright and AI. The author also tries to throw some light on the rising challenge of Deepfakes and lack of significant laws to govern issues which have come into existence due to increase in advancements in Artificial Intelligence. The author discusses various regulatory frameworks and laws using which the courts are trying to curb the practice of Deepfakes.

Keywords: Intellectual Property Rights, Copyright, Artificial Intelligence, Deepfakes, Personality Rights, Legal Reforms

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Introduction

Copyright laws around the world were drafted to protect an author's work/ creation, a creation which is their original work and to motivate them to keep creating such original works. Having a copyright gives the creators the sole right to distribute and reproduce their work. The introduction of Artificial Intelligence in creation of different kinds of works has opened up a whole new dimension of analysing and discussing the nature of author of a work under copyright laws.

Artificial Intelligence (AI) has rapidly grown and become a crucial part of our daily lives, it can be seen in tools like virtual assistants, chatbots, self-driving cars, and medical diagnostics. Over the years, AI has evolved significantly, this technology is transforming industries, changing how we work, and influencing our everyday interactions. However, while AI offers many benefits, it also raises ethical concerns and questions about its impact on jobs and society.

The issue which has crept in due to advancements of Artificial Intelligence is whether AI-generated work can be considered as a copyrightable matter? Artificial Intelligence has been and still is a grey area when it comes to claiming ownership of the creation, which is an AI-assisted or AI-generated work. There have been significant enhancements in laws recognizing ownership of AI-generated work in several countries like South Africa, China, Canada and European Union (EU), these countries have formed commissions, introduced framework or have framed laws governing Artificial Intelligence. India despite of being one of fastest developing nations with a profound legal system, is a step behind other nations when it comes to AI specific regulations

The rise in use of artificial Intelligence also has various drawbacks, biggest one being breach of privacy. It goes without saying that the growth in technology, has also significantly increased the misuse of the same. Several cases had been registered recently, where a person's identity had been misused through the technology of Deep fakes. Even prominent celebrities like Amitabh Bachan, Anil Kapoor and Rashmika Mandana have been a victim of the same, which is also why there is an urgent need for laws regulating Artificial Intelligence and its misuse. AI-generated deep fakes pose significant economic risks, particularly to IP rights and sectors related to it, which can lead to 1. Erosion of Intellectual Property and Ownership, 2. Reputational and Financial Damage, and 3. Increased Cybersecurity Costs and Risks.

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This author in this paper begins this paper with discussion on the importance of copyright law, what is really considered as a copyrightable subject matter and the need for such protection. And then goes on to examine the growth of Artificial Intelligence in recent years, how it is incorporated in our everyday lives, how it is raising privacy concerns and the urgent need for regulating authorities and implementation of laws for the same.

Understanding Copyright Law

According to the World Intellectual Property Rights Organisation (WIPO), copyright is a legal term used to describe the rights that creators have over their literary and artistic works[1]. It gives the creator exclusive control over how their work is used, reproduced, distributed, and adapted and prevents unauthorised use, duplication or distribution of the copyrighted material. Copyright is a key element of intellectual property as it gives creators exclusive rights over their original works like music, books, software, etc. It protects original works of authorship as soon as an author fixes the work in a tangible form of expression[2]. In simple words, copyright is a safeguard which protects an original work from being duplicated. It is the "right to copy" and only the creator of the work can authorize anyone to reproduce the work. This is the protection given by the law in the hands of the original creators, the law not only provides protection but it also encourages creativity among the upcoming creators. Further, it is necessary to be kept in mind that copyright does not protect ideas themselves, but only their specific expression.

The main objective of copyright is to protect a creators moral and economic rights regarding their work, most importantly ensuring they have control over reproduction, distribution. The main aim of copyright has been to encourage creativity and innovation by providing creators with exclusive rights over their original, it creates a balance between creator's rights and public access to information, knowledge and cultural products while also balancing these rights with the public interest in access to information and artistic works. This protection gives certain reassurance to creators that their efforts won't go to waste, no one will misuse their creation or will not be able to take credit for something that does not belong to them. But, in order to make sure that the protection is granted, there are specific requirements which need to be fulfilled. If someone wants to register copyright in India, then they need to submit:

- An Application Form (Form XIV) which is available on the copyright website and can also be filed in person at the Copyright Office. It needs to be filled out accurately with details about the work, author and applicant.[3]

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- Copies of the work which they want to copyright. If the work is published 3 copies are required and in case of unpublished work 2 copies are required.
  - Literary works: a soft copy or hard copy of the manuscript
  - Musical works: the score or audio recording.
  - Dramatic works: a script.
  - Software: the source code.
- Proof of ownership, which includes a declaration by the applicant affirming ownership or assignment of rights.
- No Objection Certificate (NOC) is mandatory if the applicant is not the author.
- Fees: along with the application fees needs to be paid and the fee structure depends on the type of work.
- Identification and Address Proof
- Power of Attorney, if an attorney is applying on your behalf.

Copyright gives exclusive rights to creators for their original works, but these rights are not absolute. Rights include economic and moral rights, where economic rights include providing exclusive rights to the copyright owners to reproduce, distribute, adapt, display and perform their works and the owners can also authorize others to exercise these rights. On the other hand, moral rights protect their non-economic interests, like the right to be identified as the author and to object to any derogatory treatment of their work.

There are certain limitations on the rights provided to the copyright holder to make sure that the work is not withheld from the public for educational and non-commercial purposes. These limitations were brought into effect in the nature of, the Doctrine of Fair Use which was was introduced to ensure that there is a balance in rights given to the copyright owners. This doctrine allows copying in certain, limited circumstances. The primary belief of the doctrine is that not all copying should be banned from use by the general public, especially for news reporting, teaching and research.[4] Libraries and archives are permitted to make copies of copyrighted works under certain conditions. Another major limitation on the rights of a copyright holder is that copyright is generally limited to the specific country where the copyright was granted (copyright laws vary by jurisdiction).

The question which arises in a copyright is what is considered as a copyrightable subject matter and what is not? All subject matter protected by copyright is known as “works”, and the types

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of works that are created by authors or creators are referred to as Subject Matter. The Copyright Act, of 1957 explains the subject matter which are copyrightable.

Section 13[5] of the Indian Copyrights Act,1957 states that *the copyright shall subsist in the following categories of works:*

(a) original literary, dramatic, musical and artistic works;

(b) cinematograph films; and

(c) Sound Recording

However, there are specific subject matters which cannot be given copyright protection:

1. Works that are not original and not in a tangible medium;
2. Ideas, concepts, themes, principles;
3. Procedures, techniques, methods;
4. Discoveries, facts such as universal truths;
5. Government works such as public records, laws, and regulations.

Works that are not original are not given copyright protection. So now the question arises whether work created with the assistance of Artificial Intelligence is considered as original work and can it be given copyright protection?

Artificial Intelligence in Copyright

Artificial intelligence (AI) refers to computer systems capable of performing complex tasks that in the past only a human could do, such as reasoning, making decisions, or solving problems. The devices and applications equipped with AI can see and identify objects, understand and respond to human language, and learn from new information and experience. By performing these functions, they can make detailed recommendations to users. AI is able to perform independently, replacing the need for human intervention.[6] The tasks that AI perform range from simple, repetitive tasks to complex tasks that require human-like intelligence. Usage of AI is becoming more and more common in industries like healthcare, finance, retail and manufacturing. Moreover, AI helps in eliminating any human error in the data presented and makes the work faster and more accurate. It helps in identifying the mistakes that might be ignored by a human.[7]

Today, the term "AI" describes a wide range of technologies that power many of the services and goods we use every day, from apps that recommend TV shows to chatbots that provide customer support in real time. It includes various technologies like machine learning, deep learning and

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natural language processing (NLP). These technologies enable machines to perform tasks like recognising speech, making decisions, and identifying patterns.[8] In the last five years, the field of AI has made significant progress in almost all its standard sub-areas, including vision, speech recognition and generation, natural language processing - understanding as well as generation, image and video generation, planning, decision-making, and integration of vision and motor control for robotics. It has also made prominent advancements in a variety of fields, including games, medical diagnosis, logistics systems, autonomous driving, language translation, and interactive personal assistance. More specifically, image processing technology has seen a significant growth in recent years, ranging from video-conference backgrounds to the photo-realistic images known as deepfakes. Image processing uses deep learning for recognition, classification, conversion and other tasks, but the time taken for processing has been substantially reduced.[9] Programs running on ImageNet, a massive standardised collection of over 14 million photographs used to train and test visual identification programs, complete their work 100 times faster than just three years ago.[10] Generative AI has also rapidly evolved in recent years. To explain Generative AI in a few words, generative AI has models that generate high-quality images, text, audio, synthetic data and other types of content. These models often learn to create this new content based on the patterns and relationships in datasets of existing content. In the past few years it has transformed how machine interact with humans and understand them. Companies can now create their own specialised AI models using existing, powerful AI models as a base. This means they can quickly adjust these models to handle various tasks without having to train them from the beginning for each specific job. This convenience draws people to use AI more often, which can also be seen in the increase use of AI in the recent years.[11]

AI-Generated vs. AI-Assisted

The work produced with the help of AI can be broadly classified in two sectors, i.e., AI Generated and AI Assisted. The difference between them is on the basis of human involvement in creating the said content. AI-generated is the content or work that is primarily or entirely created by AI with minimal to no human intervention. The AI independently produces text, images, code, or other outputs based on a given prompt or dataset, and it relies on only a few inputs from the user to generate. On the other hand, AI-assisted content is created with human feedback and guidance while using AI as a tool to enhance, refine, or accelerate the process. The human remains the primary creator, using AI for support in tasks such as editing, brainstorming, drafting, or automation. In case the work is assisted, the human has complete control over the work because the is created only the basis of what command is given by the

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human to the system but, when the work is AI-Generated, AI assumes full responsibility of the work.[12] It is generally advised to avoid AI-Generated content in case of academic and research work, professional writing and journalism, legal and business documents because we can not rely on AI for the accuracy of the information provided by it and in case of legal matters and journalism, one shouldn't rely on AI with the kind of sensitive information these matters hold. So, in such cases it is better to rely on AI-Assisted work for getting summary of the documents or to check grammar and get ideas in order to make your work more unique. But the question arises as to whether it is okay to use AI-Assistance to create something and should that creation be a copyrightable subject matter? Does the person have the right to claim ownership of the subject matter that is designed with the help of AI?

For a work to be eligible as a copyrightable matter, it is necessary that there must be human authorship. But then a bigger challenge arises that if the content is AI-Generated then the ownership should be given to the developer of the Generative AI model or the user who provides the prompt or idea for the generation of the content, or neither of them? Copyright laws generally require proof of sufficient effort put into the work to classify it as original work. But in the case of AI-Generated work, there is no specification as to what constitutes as sufficient proof which raises debates of how AI-Generated work can be given the ownership it deserves for the efforts that have put in by the creators.[13] In certain situations, the developer or creator of an AI system might keep ownership of the work generated by the AI, especially if the system is considered part of their intellectual property. However, the user or business utilising the AI to create content might have some rights to the work, depending on the platform's terms and conditions. This is governed by the licensing agreements and user terms set by the platform. Currently, neither the individual generating the AI content nor the user of the AI tool can automatically claim copyright ownership. Since copyright requires a human author, and AI lacks personhood and creativity, the ownership of AI-generated work remains uncertain.[14]

Ankit Sahni's AI-Generated Artwork 'Suryast'

Ankit Sahni, an artist-lawyer, created 'Suryast' using AI software RAGHAV by blending his photo with Van Gogh's The Starry Night. Sahni directed inputs, but the U.S. Copyright Office denied copyright registration, finding AI, not Sahni, as the creative force. Despite appeals, human contribution was deemed insufficient. In contrast, India initially granted copyright registration in 2020 but later questioned the AI tool's legal status and co-authorship validity.

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The registration remains on record, but procedural clarity is lacking. Canada granted protection acknowledging Sahni's input; the U.S. and India require clear human authorship.[15]

One of the reasons why there aren't any stagnant laws in this field could be because of the ethical and privacy concerns that this technology raises. The easy access to this technology makes it convenient for people to misuse it without having any consequences, as there are no proper bodies governing this issue.

Ethical and Privacy Concerns of Artificial Intelligence

AI systems depend on extensive data to enhance their algorithms and boost performance. These datasets may contain personal details like names, addresses, financial data, and sensitive information such as medical records and social security numbers. The gathering and handling of this data raise concerns about its usage and accessibility. A primary privacy concern with AI is the risk of data breaches and unauthorised access to personal information. Given the enormous volume of data being collected and processed, there is a possibility that it could be compromised, either through hacking or other security breaches.[16]

The growth of this technology has also given rise to several privacy concerns, like breaches of data, algorithmic bias and discrimination, lack of transparency and many more. These concerns arise because AI systems often rely on large datasets for training and decision-making, which can include sensitive personal information like health records, financial transactions, and biometric data. Mishandling or unauthorized access to this data can lead to privacy breaches and violations of individuals rights. Additionally, AI algorithms can unintentionally cause bias and discrimination, resulting in unfair outcomes. Biased datasets, flawed algorithms, and insufficient testing can worsen existing inequalities and compromise privacy rights. Moreover, AI-powered surveillance technologies, including facial recognition systems and location tracking tools, raise concerns about mass surveillance and the infringement of privacy rights, leading to extensive monitoring and tracking of individuals' activities, behaviours, and movements, which can erode privacy and civil liberties.[17] A significant privacy concern arose after the development of Deepfake technology.

International laws (UK, US, Canada, etc.)

Artificial Intelligence (AI) and copyright law have become a central point of discussion in the

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legal domain. Different jurisdictions have adopted varying approaches to address the challenges posed by AI-generated works. This section explores the legal frameworks and recent developments in the United Kingdom, the United States, and Canada, highlighting their unique perspectives and everyday challenges.

United Kingdom

In the United Kingdom, the Copyright, Designs and Patents Act 1988[18] (CDPA) provides a framework for protecting computer-generated works. Under Section 178[19] of the CDPA, a "computer-generated" work is defined as one created by a computer in circumstances where there is no human author. The person who made the necessary arrangements for the creation of the work is considered the author, and such works are protected for 50 years from the end of the calendar year in which they were created. This approach separates authorship from creativity, allowing AI-generated works to benefit from copyright protection, provided they meet the standard of originality.

United States

In contrast, the United States maintains a stricter stance on the copyrightability of AI-generated works. The U.S. Copyright Office requires a sufficient level of human authorship for any work to be eligible for copyright protection. This was seen in the case of Kristina Kashtanova's comic book "Zarya of the Dawn", where the US Copyright Office rejected the copyright application for AI-generated images, citing the lack of human authorship. The U.S. legal framework emphasises the necessity of human creativity and intervention in the creation process, thereby excluding purely AI-generated works from copyright protection.[20]

Thaler v. Perlmutter 687 F. Supp. 3d 140[21]

The plaintiff created an AI system called the "Creativity Machine" and sought copyright for an artwork generated by it. The Registrar of Copyright denied the application, citing the lack of human authorship. The plaintiff challenged this decision in court. The court upheld the Registrar's decision, emphasising that copyrightable works must involve human creativity. U.S. copyright law has consistently required human authorship, a principle rooted in the Copyright Act of 1909 and reaffirmed in the 1976 Act. The court found no indication that Congress intended to change this requirement, thus supporting the Registrar's denial of the copyright application.

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Canada

Canada's approach to AI and copyright is still evolving. The Copyright Act of Canada does not explicitly address AI-generated works, but the general principles of originality and authorship apply. Canadian courts have yet to establish clear precedents regarding the copyrightability of AI-generated content. However, the Canadian Intellectual Property Office (CIPO) has acknowledged the growing importance of AI and is actively engaging in discussions to adapt the legal framework to address these emerging challenges.[22]

Despite the differences in legal frameworks, common challenges persist across jurisdictions. These include defining the threshold of human involvement required for copyright protection, addressing the ethical implications of AI-generated content, and balancing the interests of creators, users, and AI developers. As AI technology continues to advance, there is a pressing need for international cooperation and harmonisation of copyright laws to address these issues effectively.

The legal landscape for AI-generated works varies significantly across the United Kingdom, the United States, and Canada. While the UK provides a more inclusive framework for computer-generated works, the US emphasizes human authorship, and Canada is still in the process of defining its stance. As the debate over AI and copyright continues, these jurisdictions will need to adapt their legal frameworks to ensure they remain relevant and practical in the face of rapid technological advancements.

ARTIFICIAL INTELLIGENCE AND DEEPFAKES

To put it in some words, Deepfake technology is a type of artificial intelligence (AI) that is used to produce realistic fake images, sounds, and videos. By utilising machine learning algorithms, deepfake technology assembles manipulated pictures and sounds to create people and events that are entirely made up or never occurred. The issue here is that although this technology can be used for numerous purposes, in today's day and age, it is usually being used for illicit applications. This poses a considerable threat to a person's personality rights. Deepfakes can be used to create intimate images or videos which violate a person's privacy and lead to public humiliation.[23] There have been several instances where deepfakes were used to spread misinformation, create false narratives, manipulate public opinion, which damaged individual's reputation and public image in the society. Although there are laws in India which offer some protection in this domain, like the Information Technology Act, 2000[24] and

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provisions related to privacy, but with the rapid advancements in this technology, a more comprehensive legal framework is required. Which shall codify personality rights, educate the public about the technology and ensure that social media platforms address deepfake content.

Legal and Regulatory Framework

Indian Laws/ Stance of Courts (Data Protection Laws)

India's approach to data protection has evolved significantly over the past decade, because of the increasing digitisation of services and the recognition of privacy as a fundamental right. In India, the Information Technology Act, 2000[25], and the recently enacted Digital Personal Data Protection Act, 2023[26] (DPDP Act) majorly cover the area of data protection.

Until 2023, India did not have a particular data protection law. The Information Technology Act, 2000[27] (IT Act), along with the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011[28] (Privacy Rules), formed the basis of the data protection framework. It was after the landmark judgment in ***Justice K.S. Puttaswamy v. Union of India (2017)***[29] The right to privacy was recognised as a fundamental right under Article 21[30] of the Constitution. It was after this judgment that the law governing bodies began to acknowledging the need for data protection laws in India.

The DPDP Act, 2023[31], is India's first comprehensive law dedicated solely to protecting personal data. It introduced several key principles and compliances for the collection, processing, storage, and transfer of digital personal data. It applies to the processing of digital personal data within India and foreign entities offering goods or services in India. It states that users can give consent to use their data, although, consent must be free, specific, informed, and unambiguous, with an explicit affirmative action and users have the right to withdraw consent at any time.[32]

The Data Protection Board of India (DPBI) is a statutory authority established under Section 18 of the Digital Personal Data Protection Act, 2023[33] (DPDP Act). Its primary mandate is to enforce the provisions of the DPDP Act[34]. Ensuring that data fiduciaries and processors adhere to the legal requirements for protecting personal data. The DPBI is empowered to conduct thorough investigations into data breaches and violations of data protection laws. It has the authority to summon documents, examine witnesses, and carry out inquiries to ascertain the facts surrounding any alleged non-compliance. In addition to its investigative role, the DPBI is responsible for imposing penalties on entities that fail to comply with the DPDP Act[35]. These

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penalties would depend upon the severity of the breach and the extent of non-compliance. The establishment of the DPBI marks a significant advancement in India's data protection landscape, providing a dedicated body to uphold privacy rights and ensure accountability in data processing practices.[36]

While the DPDP Act[37] is a big step towards data protection in India but for it to be more effective it is necessary further actions are essential like establishment of Data Protection Board, notification of rules and regulations and public awareness campaigns. The digital landscape is ever evolving, so it is required that the legal framework for it also keeps changing and updating itself with the new developments.

Recent notifications/guidelines relating to Deepfakes

Deepfakes, which are digitally manipulated videos or images that create very realistic but false representations, have emerged as a significant concern in the realm of digital media and privacy. The potential misuse of deepfakes for malicious purposes, such as misinformation, harassment, and fraud, has prompted calls for robust legal frameworks to address these challenges.[38] This section explores recent notifications and guidelines relating to deepfakes in India, highlighting the need for comprehensive regulations.

In response to the growing threat of deepfakes, the Indian government has taken measures to address the issue. The Ministry of Electronics and Information Technology (MeitY) issued an advisory in December 2023, mandating that social media platforms such as Apple, Google, Meta, and Sharechat ensure users are informed about the penal provisions related to the creation and dissemination of deepfakes. The advisory emphasises that intermediaries must communicate prohibited content under Rule 3(1)(b) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021[39] (IT Rules, 2021), and take swift action to remove such content. Additionally, the Indian Computer Emergency Response Team (CERT-In) published an advisory in November 2024, outlining the threats posed by deepfakes and recommending measures to mitigate these risks. The advisory includes guidelines for identifying and reporting deepfakes, as well as best practices for protecting personal data and privacy.[40]

Despite these efforts, there is a pressing need for more comprehensive regulations to combat the misuse of deepfakes in India effectively. Current laws, such as the IT Act, 2000[41], and the

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IT Rules, 2021[42], they provide a framework for addressing cybercrimes and unlawful content, but they may not fully include the complexities of deepfake technology.

To effectively address the challenges posed by deepfakes, several key measures should be implemented. First, establishing precise definitions of deepfakes and related terms is crucial to ensure legal clarity. Second, implementing strict consent requirements for the creation and broadcasting of deepfakes, especially those involving intimate or sensitive content, is essential. Third, strengthening enforcement mechanisms and imposing significant penalties for violations can help prevent malicious use. Finally, promoting public awareness and education about the risks associated with deepfakes and the legal remedies available is vital for empowering individuals and protecting their rights.

The emergence of deepfakes as a significant threat to privacy, security, and trust in digital media emphasises the urgent need for robust legal frameworks in India. Recent notifications and guidelines represent necessary steps towards addressing these challenges. However, ongoing efforts are required to develop comprehensive regulations that can effectively lessen the risks posed by deepfakes and protect individuals from their harmful effects.[43]

AI, Deepfakes and Personality Rights/Copyright Infringement

Deepfakes are created using AI and raise significant concerns about personality rights and copyright infringement. Although India lacks specific laws on personality rights, courts have addressed violations through constitutional provisions and existing intellectual property laws. Deepfakes can violate privacy and personality rights, especially when used to impersonate or misrepresent individuals, particularly celebrities and public figures. Personality rights, though not explicitly defined in Indian law, are derived from constitutional provisions like Article 21[44] (right to life and personal liberty) and Article 19(1)(a)[45] (freedom of speech and expression).[46] Additionally, deepfakes can potentially infringe on copyright if they are based on copyrighted material or used to create derivative works without permission and to avoid such mis haps in future, the Ministry of Electronics & IT in India has issued advisories requiring social media platforms to take down deepfake content and hold them accountable for non-compliance.[47] While AI is used to create deepfakes, it is not considered an author or creator in the legal sense, raising questions about ownership and copyright of AI-generated content, which has been discussed earlier in this paper. Several Indian celebrities, including Amitabh Bachchan, Anil Kapoor, and Arijit Singh, have also taken legal action against the unauthorised use of their

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names, images, and voices in deepfakes. While deepfakes present complex legal challenges, ongoing efforts by the Indian judiciary and regulatory bodies aim to protect individuals' rights and address the misuse of AI-generated content.

Unauthorised use for Training Data

In order to train AI to produce content, it is necessary to first upload training data to it on the basis of which it would respond to the command given. But the use of data to train AI models without proper consent or authorization from the data owners is called "unauthorized training data usage". And this unauthorized use can lead to various issues including privacy violations, biased outcomes and erosion of trust in AI systems.[48] A recent example of such unauthorized use is the ANI case; where ANI sued OpenAI in November 2024, accusing it of using its published content to train the chatbot without permission. ANI argues that OpenAI infringed its copyright by storing, using and making copies of its copyrighted materials for training purposes without permission. The fact that the content is publicly accessible does not negate the need for OpenAI to obtain permission to use the material. OpenAI's defence to this was that, its actions are legally justified because ANI's material is publicly available. If ANI does not want its content accessed by OpenAI's web crawlers, it can block such access through the "Robots.txt" protocol, a widely used method for restricting web crawlers from indexing content.[49] Although final hearing for this matter has not taken place yet but it is to be kept in mind that this is a very crucial issue and even renowned publication like NewYork Times has also sued Open AI earlier for unauthorized use.

Apart from unauthorized use, misuse of likeness, voice, and copyrighted elements in Deepfakes is also a serious issue. The process of creating deepfakes raises two issues of copyright infringement and authorship. [50]The copyright of deepfakes is a complex issue, as deepfakes often involve the use of copyrighted material from various sources. The real danger of deepfakes lies in how quickly the technology evolves, often outpacing the ability of laws to keep up with its implications. This rapid advancement poses a greater threat than the current limitations of copyright laws and the lack of consistent regulations worldwide. The lack of proper laws regarding AI-generated deepfake music currently leaves artists with few effective options to combat the production and spread of these unauthorised imitations. There are currently three main strategies employed to address the issue. Firstly, stakeholders in the music industry directly requesting digital streaming platforms (DSPs) like Spotify and Apple Music to remove songs. Secondly, artists personally asking their fans to cease streaming of deepfake

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music, and lastly, takedowns by the appropriate authorities.[51]

Ani Media Pvt. Ltd. vs. Open Ai Opco Llc[52]

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Sectors affected by Deepfake Technology

AI and deepfakes are transforming various industries. Some sectors are feeling the impact more intensely than others, facing unique challenges and threats.

1. Financial Services: The financial sector is a prime target for deepfake cyberattacks. These attacks can take various forms, such as sophisticated phishing schemes, identity theft, and fraud. For instance, deepfake technology has been used to impersonate executives in video calls, leading to significant financial losses.[53]
2. Insurance: The insurance industry is grappling with falsified claims and identity fraud. Deepfakes can manipulate evidence, making it difficult for insurers to distinguish between genuine and fraudulent claims. This not only leads to financial losses but also undermines trust in the industry.
3. Media and Entertainment: Deepfakes contribute to the spread of misinformation and propaganda. Fake news and misleading content created using deepfake technology can damage reputations and spread false information rapidly. This is particularly concerning in the context of political campaigns and public figures.[54]

Amitabh Bachchan vs Rajat Nagi and Ors [55]

In this case, renowned actor Amitabh Bachchan's personality rights were violated due to the commercial exploitation of his personality characteristics. The court ordered an ad-interim exparte injunction in favor of Mr. Bachchan, strengthening protections against abuse of Artificial Intelligence technologies such as deepfake technology.[56]

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Arijit Singh vs. Codible Ventures LLP [57]

In light of the unlawful commercial utilisation of Arijit Singh's voice and images by AI platforms, the Bombay High Court protected his personality rights, which is a significant step in the recognition and protection of personality rights in the digital age.

1. Healthcare: In the healthcare sector, deepfakes can be used to create fake medical records or impersonate healthcare professionals, leading to serious ethical and safety concerns. The potential for misuse in telemedicine and patient consultations is significant.[58]
2. Legal and Law Enforcement: Deepfakes pose challenges for the legal system and law enforcement agencies. They can be used to fabricate evidence, complicate investigations, and undermine the credibility of witnesses. Detecting and proving the authenticity of digital content is becoming increasingly complex.

These sectors are investing in advanced AI detection tools and robust verification processes to combat the rising threat of deepfakes.

Conclusion

In conclusion, the issue of copyrighting AI-generated works is a tricky and ever-changing challenge in intellectual property law. Traditionally, copyright protection has always been about human creativity. This idea has been a key part of copyright law for a long time, as seen in the Copyright Act of 1909 and the 1976 Act. The case with the "Creativity Machine" shows that courts still believe that copyrightable works need a human touch. Despite how advanced AI gets, it can't be considered an author under current U.S. copyright law.

But as AI technology keeps getting better, it pushes us to rethink what we mean by authorship and creativity. AI systems are now capable of creating complex and original works, which raises the question: Should these works get copyright protection? Some people think that recognising AI-generated works could boost innovation and creativity. Others worry that it might dilute the human essence of copyright law. However, if the work is AI-assisted rather than being AI-generated, then in my opinion it should qualify as a copyrightable matter if it has sufficient human input which is essential for a material to qualify as copyrightable matter. Anything in moderation should be acceptable.

Deepfakes, which are a specific use of AI, make things even more complicated. These are highly realistic but fake images, videos, or audio recordings of people. They can violate personality rights, especially when they misrepresent or impersonate someone without their

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consent. In India, while there aren't specific laws on personality rights, courts have used constitutional provisions and existing intellectual property laws to address these issues. Articles 21 and 19(1)(a) of the Indian Constitution help protect privacy and freedom of expression, which can be used in cases involving deepfakes. But through this research we are able to conclude there is a need to define deepfake related offences and establish strict penalties for its misuse and social media and tech platforms should be held accountable for deepfake content, they should form strict guidelines with respect to deepfake or AI-generated content being uploaded on their platforms.

The overlap of AI, deepfakes, and copyright law shows that we need a flexible and updated legal framework. As technology evolves, our laws need to keep up. It's crucial for policymakers, legal experts, and technologists to work together to make sure our legal system can handle the challenges of AI-generated works and deepfakes. This collaboration will be key to creating a future where innovation and creativity can thrive within a fair and strong legal system.

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