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THE CONUNDRUM BETWEEN PATENT AND COPYRIGHT LAWS IN AI-DRIVEN DEVICES

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ABSTRACT

The evolution of Artificial intelligence technologies has brought about significant changes, presenting changes to the legal arena concerning intellectual property rights. Copyright and patent are two faces of a coin, which sometimes result in conflict in their application to AI-generated content and inventions. This paper examines the relationship between copyright and patent laws in context of AI-generated content. It sheds light on the conflicts and ambiguities that arise in their application. The conflict between patent and copyright in context of AI rises due to the evolving nature of artificial intelligence, which blurs the lines between creative and inventive processes since these technologies can create both copyrightable and patentable inventions therefore, it is necessary to determine whether an AI generated creation falls under copyright protection (as a creative expression) or patent protection (as a technical innovation). This paper analyses the implications of the conflict between copyright and patent laws on innovation and technological progress in the field of AI. It aims to highlight the nuanced approach that is required to accommodate the challenges and foster innovation while protecting creators and inventors right in this continuous evolving technological landscape.

INTRODUCTION

Technology has become a major part of human life, it influences how we do things, communicate with each other, and organize our social institutions. There are various aspects of technology such as innovation, connectivity, accessibility, adaptability, etc. The list is never-ending due to the multifaceted and evolving nature of technology. Technology often serves as a conduit for the creation, protection, and application of intangible property. The discovery of intangible property refers to the development of assets that lack physical substance but hold value. Intangible property incorporates a wide range of assets that are often legally protected and can contribute significantly to a company's or an individual's value. Intellectual property is a primary category of intangible property and includes patents, trademarks, copyrights, and trade secrets. The increasing use of AI in different sectors has become a prominent trend due

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to its transformative skills. In this article, the conflict between the two categories of Patent and copyright will be conferred concerning algorithm-driven devices. Algorithm-driven devices, powered by artificial intelligence, challenge the traditional boundaries of patent and copyright, leading to clarity in determining rights. The applicability of patent law and copyright law being different has resulted in the conflict of protecting algorithm-driven devices.

WHAT IS PATENT AND COPYRIGHT?

The Patent Act of 1970 "governs patents in India. Under this act, a patent is a legal right granted to an inventor, which prevents others from selling, using, making importing, or distributing the patented invention without their permission for a period of 20 years from the date of filing application"[1]. Chapter two, section 3 of the Indian Patent Act 1970, describes the inventions that cannot be patented which includes an invention that claims anything contrary to established natural laws, which could be contrary to public order, or morality, or which causes serious prejudice to human, animal or plant life, or mere discovery of a scientific principle or mere discovery of a new form of a known substance or use of a known process, etc[2].

Copyright is a form of intellectual property protection granted to creators of original work such as literary works (including computer programs, tables, and compilations including computer databases which may be expressed codes or words), dramas, music, artistic works, movies, and sound recordings under the The Copyright Act, 1957[3]. Copyright law protects the expression of ideas under section 13 of the Copyright Act 1957, copyright protection is convened on literary works for example books, computer programs, movies, music, etc. Copyright is a cluster of rights vested in the owner of copyright under section 14 of this act. Such rights can only be wielded by the owner of the copyright which are economic and moral rights. Economic rights include the right to sell, rent, issue copies, offer, or sale of the copyrighted work and the moral right mentioned in section 57 of the copyright act which recognizes the right to paternity which incorporates the right to assert the authorship of the work and the second right is right to integrity which incorporates right to restrain, and claim damages. In the case of original

[1] The Patents Act, 1970. (n.d.). Available at: https://ipindia.gov.in/writereaddata/Portal/IPOAct/1_31_1_patent-act-1970-11march2015.pdf.
[2] lddashboard.legislative.gov.in. (n.d.). *The Patents Act, 1970|Legislative Department | Ministry of Law and Justice | GoI*. [online] Available at: https://lddashboard.legislative.gov.in/actsofparliamentfromtheyear/patents-act-1970.
[3] lddashboard.legislative.gov.in. (n.d.). *The Copyright Act, 1957|Legislative Department | Ministry of Law and Justice | GoI*. [online] Available at: https://lddashboard.legislative.gov.in/actsofparliamentfromtheyear/copyright-act-1957.

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literary, dramatic, musical, or artistic work the period of copyright in India is 60 years in addition to the author's lifespan.

WHAT IS HARDWARE AND SOFTWARE?

Hardware "refers to physical components (such as electronic and electrical devices) of a vehicle (such as a spacecraft) or an apparatus"[4].

Software "refers to the entire set of programs, procedures, and related documentation associated with a mechanical or electronic system, especially a computer system"[5].

Hardware and software are interdependent and work together to function effectively in a computer system. Hardware mechanisms such as CPU, storage devices, memory, etc., form a computer system. However, without software, these mechanisms remain inactive. The software provides instructions and programs necessary for hardware to conduct its functions. For example, without software (operating system), a computer's hardware would not know how to manage files, run applications, or perform basic functions. The software requires hardware to execute its commands and processes (Hayes). No matter how well-designed the software might be, it needs underlying hardware to operate. The most sophisticated applications or games require hardware like CPU, memory, and graphic capabilities to function efficiently. Therefore, hardware provides a physical platform for software to run, while software gives instructions and purpose to the hardware. Hardware is often protected through patents, which provide exclusive rights to inventors for a period (mostly 20 years) to prevent others from making, using, selling, or importing without permission[6]. Such patents cover physical inventions, innovative devices, machinery, etc. Copyright law covers certain creative or artistic elements incorporated into the design. Software, on the other hand, is usually protected via copyright law, which protects the expression of ideas rather than the ideas themselves[7]. Software is protected through patents as it involves novel methods, processes, or algorithms that meet the

[4] www.merriam-webster.com. (n.d.). *Definition of HARDWARE*. [online] Available at: https://www.merriam-webster.com/dictionary/hardware.
[5] Merriam-webster.com. (2019). *Definition of SOFTWARE*. [online] Available at: https://www.merriam-webster.com/dictionary/software.
[6] Yanisky-Ravid, S. and Velez-Hernandez, L.A. (2017). Copyrightability of Artworks Produced by Creative Robots, Driven by Artificial Intelligence Systems and the Concept of Originality: The Formality - Objective Model. *SSRN Electronic Journal*. doi:https://doi.org/10.2139/ssrn.2943778.
[7] Hayes, C.M. (2023). *Generative Artificial Intelligence and Copyright: Both Sides of the Black Box*. [online] Social Science Research Network. doi:https://doi.org/10.2139/ssrn.4517799.

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patentability requirements. The difference in legal protection mechanisms for hardware (mainly patents) and software (mainly patents) might create intricacies, especially when dealing with technology that combines both. This might create ambiguity as to which legislation holds precedence.

CAUSES OF CONFLICT BETWEEN COPYRIGHT AND PATENT LAWS

Deciding whether AI-driven devices should be patented or copyrighted can depend on various factors and the nature of the technology involved. AI-driven devices often involve hardware and software characteristics. In such cases, both patenting and copyrighting might be relevant. Some elements might not be eligible for patent protection but could be copyrighted, deciding between patent and copyright for AI-driven devices should include careful assessment of their nature role, and functioning of device. The next conflict which follows is the determining of the rightful owner of AI-generated content whether it should be the AI developer, the owner of the AI system, or the user who commands the AI[8]. This technology is collaborative in nature and therefore, includes numerous contributors, and neglecting anyone might create a legal liability. In such cases, contractual agreements might be necessary to address the complicated nature of AI-generated content[9]. Moreover, traditional concepts of patent and copyright laws were designed for human creators/inventors, and as AI evolves it has sparked debates for legal and ethical considerations. Some jurisdictions have attempted to decide on this issue for instance, the US Patent and Trademark Office rejected patent applications citing an AI system as the inventor and held that the inventor should be a natural person[10]. Though there are enduring discussions about the ethical and legal implications of giving IPR to AI[11]. Furthermore, differences in intellectual property laws across jurisdictions might pose challenges for creators, developers, and business technology dealing with AI, since some jurisdictions might not recognize AI as a creator or inventor, while others might be exploring frameworks to accommodate AI-generated content. Also, the absence of international harmonization and recognition of AI-specific laws might strain the legal administrative systems

[8] Reichman, J.H. (1994). Legal Hybrids between the Patent and Copyright Paradigms. *Columbia Law Review*, [online] 94, p.2432. Available at: https://heinonline.org/HOL/LandingPage?handle=hein.journals/clr94&div=71&id=&page=.

[9] HeinOnline. (2021). *About | HeinOnline*. [online] Available at: https://heinonline.org/HOL/LandingPage?handle=hein.journals/injlolw3&div=499&id=&page= [Accessed 2 Jan. 2025].

[10] USPTO (2024). *United States Patent and Trademark Office*. [online] Uspto.gov. Available at: https://www.uspto.gov/.

[11] Abbott, R. (2022). *Intellectual property and artificial intelligence: an introduction*. [online] www.elgaronline.com. Available at: https://www.elgaronline.com/edcollchap/book/9781800881907/book-part-9781800881907-6.xml.

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regarding IP rights.

CONCLUSION

Addressing conflicts between copyright and patent concerning the evolving technology should involve revisiting and developing legal definitions, and standards, and eventually creating dedicated regulations to accommodate AI-generated creations. Patent and copyright laws have different eligibility, duration, and protection mechanisms, leading to discrepancies in categorizing AI-generated content. It is an uncharted legal territory and thus requires a nuanced approach that welcomes the characteristics of AI. Encouraging collaboration between patent, and copyright offices, along with AI experts and stakeholders, is essential to navigate these challenges and foster a balanced system that accommodates and protects AI-generated intellectual property.