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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN

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AI IN INTELLECTUAL PROPERTY: LEGAL CHALLENGES AND THE IMPERATIVE FOR LEGISLATION

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Abstract

This paper concerns with the need for legislation to govern Intellectual property Rights in robots and the products produced by them.

The robot as a whole can be granted protection as a machine under patent law and its software or AI and database can be granted protection under copyright law in India.

The shape and parts of the machinery which helps the Ai or software to perform its functions can be granted protection under the designs Act 2000 and the structure of tis circuit can be granted protection under 'Semi-Conductor Integrated Circuit'.

The main issue lies on the ownership of intellectual property produced by the Artificial Intelligence or the software, this issue can be addressed by way of International Landmark cases in this aspect, there is clear need for legislation as the artificial intelligence has become a significant part of our lives, and is evolving with us every minute.

Research Methodology

The method of research that is used while doing this research paper is theoretical research '*Doctrinal Method of Research*' as the research is based on secondary sources of information such as Internet Articles, Journals, Text books, etc.

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Research Hypothesis

The existing legislation lacks the jurisdiction to cover the rights of the works created by an Artificial Intelligence.

Research Question

1. Is there a need for a new legislation for AI generated IP works?
2. What will be the effects of granting AI the rights of IPR owner?

Introduction

In today's world, the artificial intelligence has become so advanced that it can now create art and assist in creation of various inventions which held boost our science, but the main issue which arises while using an Artificial Intelligence is whether the work produced by it will be protected or not? To answer this issue we need to simply the existing laws and assess the need of a fresh and clear legislation on the subject matter. Since, The work produced by AI is not protected directly under any law it raises certain issues which will be answered through various interpretations of international conventions and case laws. AI is a necessary part of our lives and provides assistance in various uncountable ways, it studies the data given to it and predicts the nature of its consumers or users which in turn eases the job of tech giants such as google, amazon and Facebook. There was study conducted by Facebook where it created two AI chat bots and made them have a conversation with each other, it was soon noticed that the chat bots started using a language which could only be understood by them and had to be deactivated as they no longer served the purpose they were created for that is to analyse how they will interact with a user in the future. Though this interaction between the bots did not cause any danger to anyone but it made a very significant observation that the Artificial Intelligence has the ability to create something of its own, which raise the question again of ownership of the content or work created by it and its protection under various laws.

What Is An AI?

Unlike the inherent intelligence exhibited by both humans and animals, AI is the intelligence expressed by robots.

The most intricate organ in the human body, the brain regulates all bodily processes and processes

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information from the environment. About 86 billion neurons make up its brain networks, which are connected by an estimated 100 trillion synapses. Neuroscientists are still working to comprehend and unravel many of its implications and capabilities.

The fundamental principles of AI are similar to how humans continually change and learn. Machine intelligence technologies will advance as a result of human intellect, creativity, knowledge, experience, and invention.

History of Artificial Intelligence (AI)

Alan Turing, explored the possibility of AI, in his paper "Computing Machinery and Intelligence, in 1950, in which he stated that if humans can solve a mathematical problem using the information, they have then machines can do it too." Five years after Turing's paper, the term Artificial Intelligence was coined on August 31, 1955. It appeared in a proposal titled "2 month, 10 man study of artificial intelligence".

TRIPS Agreement

The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is the most complete multilateral intellectual property (IP) agreement. It plays a central role in promoting trade in knowledge and creativity, resolving trade disputes over intellectual property, and ensuring that WTO members have the headroom to meet their domestic goals.

It frames IP systems in terms of innovation, technology transfer, and public welfare. The agreement legally recognizes the importance of the link between intellectual property and commerce and the need for a balanced IP regime.

TRIPS do not define invention and is left to member states, so we can grant protection of patent to AI, if the member states categorise it as invention in their respective nations than protection can be granted by the courts in this regard, since there exists no clear legislation on this regard any owner of IP(AI) can seek protection in India if India recognizes the artificial intelligence as an invention, but India only provides protections to software's code based on their expression and not on their functionality, so a software is not recognised as an invention under Indian Laws.

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Som Prakash Rekhi vs. Union of India & Anr[1], define the qualification of a legal "person" under Indian law. The Supreme Court has held that "personality" is the sole attribute of a corporation. Such a "personality" is an entity that has the right to sue or may be sued by another entity. AI cannot use such rights or independently perform the tasks required of the legal entity. For example, it is not possible to enter into contracts, assign or acquire patents or patent application rights. It is also impossible for AI to contest or cancel a patent application. Therefore, AI does not meet the criteria to be considered an inventor in India.

Issues:

1. There is no specific law for the regulation of works created by an AI,

   The only solution that can be attained is through interpretation of international conventions and precedents of foreign nation.

   Here the case of David Slater v Wikimedia Commons[2] also known as “Monkey Selfie Case” can be referred to understand the concept of ownership of IP, when it is created by a non-human, in this case the court in united-states held that the picture has no copy right as it has no author, because a non-human cannot be considered as an author.

   Applying the same interpretation in terms of and Artificial Intelligence, it can be observed that since an AI is not an human and does not have necessary characteristics of a human, it cannot be given the right of ownership of the IP created.

   So, will the owner of AI be the owner of IP created by it?

   Any patent that is sought for and awarded over an invention belongs to the inventor as the original owner and the developer/inventor. Due to the fact that "innovating or inventing" an invention is a human activity that entails contributing to the innovative notion, the legislation currently in place prevents AI from being the inventor and, thus, the owner of a patent. The inventor or the employer is the rightful owner of the invention and any patent that has been obtained over it (if an employee devices invention).

[1] Som Prakash Rekhi vs. Union of India & Anr[1], AIR 1981 SC 212
[2] David Slater v Wikimedia Commons

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2. AI covered under different laws of IPR which makes it difficult to simply.

An artificial intelligence is an computer programme who is able to process the data provided to it and could create alternate solutions from it.

An AI's core code is protected under the copy right act in India but its out structure such as an robotic arm will be protected under designs act in India for its uniqueness, its structure of the electrical circuit can be protected under Semi-Conductor Integrated Circuit' which is an another segment of IPR. Due to various legislations available on a single product it can be difficult for a layman to understand and seek remedy in case of an infringement.

3. No laws relating to infringement done by an AI

An Infringement can only be done by a person under section 51[3] of the copy right act, 1957. Since an Artificial Intelligence is not considered a person under the law, any act done by it even an infringement under the common sense, it cannot be considered as an "Infringement" under the law.

4. If works created by Artificial Intelligence are given the status of IP then following will be the issues which will arise:

a) If the courts decide to revisit the issue of AI authorship and treat AI as a creator of AI-generated works, a Pandora's box of legal disputes might follow.
b) It may possibly make it more difficult for inventors to secure patent protection by raising the bar for innovation or fundamentally changing what is meant by "person versed in the art."
c) Accepting inventorship for AI systems would grant AI the powers of a legal person, granting it the ability to own and use property.
d) Accepting inventorship to include AI systems would elevate AI to the status of a legal person, allowing it to hold and exercise property rights.
e) The Artificial Intelligence will forever remain the owner of the work as an Artificial Intelligence can never die.

[3] Section 51 of Indian Copyright Act, 1957

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Why There Is Need For Legislation?

- AI a bigger part of life:

Our daily activities are mostly driven by AI technology from dawn to night. Many of us pick up our laptop or cell phone as soon as we wake up to begin our day. Our decision-making, planning, and information-seeking processes now all automatically include doing this.

- Home Aid uses:

Voice commands are used by these AI-based smart assistants to carry out tasks. Alexa, Siri, Google Assistant, and Cortana are a few examples of such intelligent assistants. Your voice instructions are entered into the AI-powered personal assistants, which later convert them into actions.

- Ai used in computing, management systems and gaming:

The gaming industry is another area where AI technologies have gained popularity. AI may be utilised to develop intelligent, human-like NPCs that communicate with players.

In order to enhance game design and testing, it may also be used to forecast human behaviour. The 2014 Alien Isolation video games employ AI to follow the player around at all times. Two artificial intelligence systems are used in the game: the "Director AI," who frequently knows where you are, and the "Alien AI," which is controlled by sensors and behaviours and persistently pursues the player.

- Applications Of Artificial Intelligence in Education:

The education sector is the one that is most impacted by humans, but artificial intelligence has also started to make inroads there. Even in the field of education, this gradual adoption of AI has increased faculty productivity and allowed them to focus more on students than on administrative or office labour.

What Software Can Be Patented In India?

Software as a whole is not patentable under Indian law, but embedded software may be. The Indian Courts have not yet provided a precise definition of software. According to the 2015 Computer Related Inventions Guidelines, the patent office awarded several software patents in

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accordance with the following criteria.

a) The hardware of the innovation and the software should be novel.
b) If the hardware or the machinery part is unique or new in nature then only patent can be granted in this area.
c) In the event that an innovation depends only on the computer programme, then the patent office should reject such claims.
d) The patent office has the full authority to dismiss or return any application if the hardware or machinery fully depends on the software and cannot stand on the test of novelty without the software.
e) If a computer programme and hardware coexist, the examiner should consider additional patentability factors.

John Locke's Natural Right and Labour Theory

An intangible asset derived from mental production is intellectual property. The government grants the right to exchange the protection for the details on the intangible asset. A person must possess a sound mind that can process information in order to construct a mind. A person has ownership rights over everything he or she has created. A person has ownership over what they laboured to create. 55 when labour and resources are used to create anti-commons on a global scale Intellectual property becomes a natural right in the mind. "Whether in tangible or intangible terms, a person has a natural right to the products of her labour and that these should be acknowledged as her property."

AI has a creation of mind that is made by software developers utilising algorithms and programme codes in accordance with the Natural Right Theory, however the labour input for the problem's resolution comes directly from AI's design. The "fruits of the labour" should be acknowledged as AI's property as it is the creator of the works.

Personality Theory

A person's self-evaluation while creating is known as personality theory. The creator of the personality theory, Hegel, claims that in addition to defending property rights, intellectual property rights also safeguard individuality. The individual should have the freedom to choose when and how he wants to work, as well as how his work should be made public. 57 The theory's sole flaw is that there isn't enough of a link between the innovation and the idea of personality. Through the personality idea, the human involved in the AI's innovation process may be

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safeguarded.

Utilitarian Theory

The creator of utilitarian philosophy is Jeremy Bentham. 58 The rule is to always use your power for the greatest good. The individual who came up with an idea should receive compensation for their efforts, keeping in mind the invention's larger value. IPR has an impact on the social and economic improvement of society, according to the utilitarian model, which is essentially an economic and socially advantageous idea. If the incentive is offered, individuals will work harder and invest more money, time, and effort in their job, leading to more breakthroughs and inventions. However, mere production is not sufficient; for the benefit of the general populace, the invention must be made accessible.

The best way to analyse utility theory is in conjunction with incentive and reward theory. Incentives like royalties must be given in order for numerous efforts and inventions to be necessary and required. Customers may not be able to match the public's needs in terms of quality or quantity if they are not paying proprietors the proper amount. It is appropriate for the creator to get compensation when they produce something that benefits society and is valuable. It is more akin to expressing thanks.

Conclusion

There is a significant need to have a new legislation for AI and its work to be included and governed, if the old legislations are amended to include the new aspects of AI then it will surely cause more confusion in the minds of people, the works of AI has to be protected even though it might not be a ‘personality’ under the law. Since nowadays most of the calculations and works are happening with the assistance of AI we can not leave the work created to be unprotected by the law. The question of ownership will remain a difficult task for legislatures to deal with but can be solved if foreign precedents are looked at for better clarity. It is important to note that since the law does not see an artificial intelligence as a person, any infringement done by it cannot be termed as an infringement of intellectual property rights under the law, which leaves a very huge space which is unregulated currently and is in need of an regulation immediately keeping in mind the pace of growth and evolution of the Artificial Intelligence.