INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

ISSN: 2582-6433

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner what sever for any consequences for any action taken by anyone on the basis of information in the Journal.

ISSN: 2582-6433

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

Dr. Namita Jain

Head & Associate Professor
School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC-NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

ISSN: 2582-6433

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ISSN: 2582-6433

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN- 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ISSN: 2582-6433

THE DEATH OF THE AUTHOR? RETHINKING COPYRIGHT OWNERSHIP IN THE ERA OF GENERATIVE AI

AUTHORED BY - TANISHA
Student
Amity law School, Amity University

Generative Artificial Intelligence (GenAI) has raised urgent questions about how we define authorship and intellectual ownership. Copyright laws were built around the assumption that creative work flows from human imagination, skill, and emotional intent. But today, AI models can produce detailed artwork, stories, music, and even scientific insights without any human-like consciousness. This creates a gap between what copyright law expects and what technology can actually do.

This paper argues that treating authorship as a strict human-only concept is no longer practical. Modern creative work often involves collaboration between humans and algorithms—through prompting, editing, and refining. By examining legal trends in the US, UK, and EU, this study highlights the growing mismatch between legal doctrine and technological reality. The paper concludes that instead of rejecting AI-generated work outright, a new tier of protection—limited, balanced, and sui generis—may be better suited to the emerging creative ecosystem.

Copyright, Digital Media, IPR, Content Theft, AI Creativity, Authorship

Introduction

For centuries, the law has imagined the "author" as a human origin point of creativity—someone who infuses a work with intention, personality, and emotional energy. Whether it was a poet writing verses by candlelight or an inventor discovering a new mechanism, copyright systems always revolved around people.

Generative AI completely upends that assumption.
Models such as GPT, Midjourney, and Claude can write, paint in the style of masters, or draft a legal analysis in a matter of seconds. The system is not "creating" the way a human does; it

ISSN: 2582-6433

does not feel inspiration nor express emotion—yet its output frequently looks and feels indistinguishable from the work of humans. This again blurs the line between tool and creator.

This situation creates a legal dilemma:
-If copyright is a way of rewarding creativity, should AI-assisted works get protection?
-Would companies still invest in AI tools if the outputs of the AI automatically fall into the public domain?
-If only humans can be authors, at what point in collaborative processes do we draw the line?

The current legal approach-especially in the United States-weighs heavily in the direction of denial of protection. As this paper will contend, that position may be shortsighted given the deep way in which AI is being integrated into creative work.

2. Authorship Through History: The Human as Creative Core

2.1 Two Philosophies Behind Copyright

Copyright evolved around two major ideas:

(A) The European "Author as Personality" View

European legal traditions often treat a work as an extension of the artist's identity. Because AI has no personality, emotions, or dignity to protect, it cannot be considered an author under this philosophy.

(B) Anglo-American "Incentive" View

The dominant rationale for copyright in the United States and UK is that it encourages creativity by granting limited monopolies. But if AI-generated content benefits society, shouldn't there be some way to incentivize it?

But even utilitarian systems historically assumed human control. In the landmark case of BurrowGiles v. Sarony (1884), the court allowed copyright for a photograph only because the photographer exercised creative judgment-not because the machine he contributed creativity.

2.2 Non-Humans and the Human-Only Requirement

The "Monkey Selfie" case, Naruto v. Slater, cemented the notion that only humans can be authors. Courts have used this to justify rejecting AI creations.

ISSN: 2582-6433

3. Prompts, Creativity, and the Question of Control

3.1 Lessons from the Zarya of the Dawn Case

In the Zarya of the Dawn decision, the US Copyright Office allowed copyright for the written story, page layout but not for the AI-generated illustrations.

Their argument: users don't have predictable control over Midjourney's exact outputs.

3.2 Why Predictability Is a Weak Standard

Many human creative acts involve unpredictability:

-Pollock's drip paintings

-Street photography

-Improvisational music

None of them relies on pixel-level accuracy. Creativity often requires:

-Selection

-Iteration

-Refinement Prompt engineering has its parallel processes: judgment, experimentation, and curation. To leave these out greatly simplifies modern creativity and misrepresents how such AI tools work.

Under this model, the person who meaningfully enabled the output to be created—be it prompter, curator, or deployer of the AI—would receive exclusive economic rights such as:

- The right to reproduce the work;

-The right to distribute or license it,

-And the right to commercialize derivative uses.

Crucially, these rights would not include moral rights: since algorithmic systems do not possess reputation, consciousness, or personality, there is no coherent justification for including the right of integrity or attribution in this category.

Duration

The century-long duration of the copyright makes little sense in a creative ecosystem where tools, models and datasets get outdated within a year. A more balanced term, such as 5 or 10 years, would: -Allow the human contributor to monetize the output while it is commercially relevant.

-Prevent long-term monopolization of algorithmically generated material and -Ensure that the

ISSN: 2582-6433

public domain continues to grow rapidly. This shorter term aligns with both market realities and the ethical need to maintain cultural access.

4. Global Legal Approaches: A Patchwork System

4.1 The UK's "Computer-Generated Works" Category

The UK stands apart, with Section 9(3) of the Copyright, Designs and Patents Act providing that when no human author can be identified, "the author" is the person by whom the arrangements necessary for the creation of the work are undertaken.

This approach:

-Does not engage in philosophical discussions.

-Focuses on economic investment

-Assigns ownership to the prompter or system operator

This is a law made in 1988 that did not consider today's generative models, and one day courts will have to reinterpret it for present times.

4.2 Patent Cases: The Thaler and DABUS Episode

"When Dr Stephen Thaler tried to list his AI "DABUS" as an inventor, US courts refused to do so. This created a practical dilemma:

If AI discovers something of value, and no human can claim ownership of the invention, does that invention immediately enter the public domain?

If so, companies might not create AI discovery tools simply because they cannot secure legal protection then it is an example of how strictly human-centered laws can conflict with modern innovation.

5. Training Data, Fair Use, and the Coming Economic Bottleneck

5.1 Training AI and the Fair Use Debate

AI models learn from enormous amounts of text, images, code, and other copyrighted materials. Developers argue that training is transformative, non-expressive and similar to reading or learning

But cases like New York Times v. OpenAI demonstrate that models sometimes reproduce text

ISSN: 2582-6433

too closely, which threatens the “transformative use” defense.

5.2 The Risk of a “Data Anticommons”

If every data point used in training needs a license:

-Small businesses will suffer

Open-source AI may collapse

Only large corporations will dominate the ecosystem.

After all, licensing billions of data points would be too expensive and complex, halting the innovation altogether.

6. Proposed Framework: A Sui Generis Right for “Class B” Works

The legal binary of awarding full copyright protection (Life + 70 years) or assigning a work to the public domain is part of a print-era worldview. That architecture assumes that substantial human labor has gone into creating a work and that limiting access for decades is a necessary way of recouping creative investment. But Generative AI breaks that logic. The cost of producing an additional output is nearly zero, even as the investment that enables such outputmodel training, data procurement, prompt engineering, curation, and hardware-is far from trivial.

In order to break this stalemate in cases such as Thaler and the Zarya of the Dawn guidance, this section recommends a new intermediary category of protection, namely, a "Class B" AIGenerated Right. This sui generis model sits alongside, not inside, existing IP statutes. In the preparation of this framework, it has drawn inspiration from the EU's Database Directive, a number of collective rights-management systems, and recent experiments in Ukraine that provide structured protection for non-human outputs.

6.1 The “Class B” Mechanism

Class B rights shift the focus away from metaphysical questions of authorship and toward the more grounded concepts of investment, curation, and deployment—the areas where humans still contribute meaningful value.

Scope of Protection

Under this model, the person who meaningfully enabled the output to be created—be it prompter, curator, or deployer of the AI—would receive exclusive economic rights such as:

• The right to reproduce the work;

ISSN: 2582-6433

-The right to distribute or license it,

-And the right to commercialize derivative uses.

Crucially, these rights would not include moral rights: since algorithmic systems do not possess reputation, consciousness, or personality, there is no coherent justification for including the right of integrity or attribution in this category.

Duration

The century-long duration of copyright makes little sense in the creative ecosystem where tools, models, and datasets are becoming outdated within a year. A more balanced term of 5 to 10 years would:

-Allow the human contributor to monetize the output while it is commercially relevant,

-Prevent long-term monopolization of algorithmically generated material and -Ensure that the public domain continues to grow rapidly.

This shorter term aligns with both market realities and the ethical need to maintain cultural access.

Registration Requirement

Class B rights would be actively registered, whereas traditional copyright simply attaches. Registration could depend upon verifiable provenance markers, such as cryptographic hashing, C2PA-style metadata, or watermarking, enabling:

-Transparency about when and how AI tools were used

A clear chain of custody for disputed outputs, and

-A public record searchable of protected AI-generated works.

Such a system reinforces both transparency and the limitation of frivolous claims, because protection is earned rather than presumed.

6.2 A Statutory Licensing Scheme: The "Scraping Tax"

A sustainable regime cannot focus exclusively on outputs; it also has to engage with the contentious question of training data. Instead of endless litigation over data scraping and model training, this paper proposes a statutory licensing arrangement—operating similarly to collective rights-management organizations in the music sector, such as ASCAP or PRS.

Under this approach:

• The AI developers would pay a contribution to a central fund, in effect a Scraping Tax.

Payments would scale with model size, training complexity, and commercial deployment.

ISSN: 2582-6433

Human contributors whose work appears in training data will be rewarded by sampling-based analysis of dataset composition.
In exchange, the developers of AI would get a safe harbor that would insulate them against mass copyright lawsuits over the training data.

This creates a balanced exchange:
Society recognizes that it is unrealistic to "un-train" existing datasets.
Creation-owners are fairly compensated for the cultural content AI is based upon.
-Developers gain legal certainty, enabling innovation without existential litigation risk.
Rather than pretending we can reverse the existence of large models, this mechanism recognizes reality and structures accountability around it.

7. Conclusion: The Steward and the Synthesizer

Roland Barthes's famous claim of the "Death of the Author" was originally a metaphor: an argument that meaning arises from readers, not from the solitary genius behind the text. Generative AI transforms this metaphor into a literal legal and philosophical dilemma.

If we insist on a Romantic definition of authorship – one that demands a conscious, intentional human mind – we push AI-generated works into a legal vacuum. The probable outcome is that companies will keep these systems closed, using trade secrets and restricted APIs rather than allowing open markets or democratic accountability. On the other hand, recognizing AI as a full legal author risks undermining human creativity and placing cultural production in corporate controlled algorithms.

The middle path shows the most sustainable future. A sui generis framework respects the human role without pretending the machine is a creator in a traditional sense. The human becomes a steward-designing, directing, refining-while the machine acts as a synthesizer that pushes the boundaries of what can be made.

Authorship has not disappeared. It has simply changed position.
Where once the human gripped the pen, now they conduct an orchestra of models, datasets, and algorithms. The challenge for the law is not to resurrect the old author but to recognize the new one in its evolving form.

ISSN: 2582-6433

Conclusion

Creativity is changing. No longer is AI simply a passive tool, but rather a full-fledged partner for creatives. Copyright laws, built on centuries-old assumptions, are struggling to keep up.

A rigid human-only definition of authorship may

Leave millions of AI-created works unprotected

- Discourage investment in new AI technologies
- Create legal uncertainty for creators

What is needed is a balancing act. A sui generis, limited-rights system can recognize AI's contribution without weakening human creativity or the public domain. This would be a framework protecting innovation while ensuring that cultural access continues to be broad and fair.

The future of creativity almost surely lies in collaboration between humans and machines.

Copyright law needs to catch up with this new reality.