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THE ALGORITHMIC MUSE: A COMPREHENSIVE ANALYSIS OF COPYRIGHT PROTECTION AND OWNERSHIP OF ARTIFICIAL INTELLIGENCE GENERATED WORKS IN INDIA

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ABSTRACT

This treatise deals with the existential threat that autonomous Generative Artificial Intelligence (AI) poses to the anthropocentric foundations of the Copyright Act, 1957 in India. Historically, Indian copyright law has been framed around the Hegalian Personality Theory and the Lockean Labor Theory, which consider creative works to be an extension of the will and intellectual effort of a human creator. But the advent of AI created works throws a spanner in the statutory works of authorship (Section 2(d)) and originality (Section 13) to ownership (Section 17). The analysis reveals a major jurisprudential conundrum: Section 2(d)(vi) uses a "legal fiction" to assign authorship to the person who "causes" a computer-generated work to be generated, yet contemporary Large Language Models (LLMs) operate with a level of independence that belies this 1990s-era construct. Further, the Supreme Court's "modicum of creativity" standard as laid down in Eastern Book Company v. D.B. Modak requires an exercise of "skill and judgment". The paper contends that probabilistic algorithms lack the conscious cognitive faculties to satisfy the test laid down in the idea-expression dichotomy of R.G. Anand v. Deluxe Films. The RAGHAV AI (Suryast) controversy, for example, exemplifies these theoretical tensions, as the Indian Copyright Office's inconsistent registration of an AI as a co-author revealed a systemic failure to reconcile non-human entities with statutory definitions. The paper also discusses the so-called "ingestion crisis" identified in ANI v. OpenAI, and considers whether scraping data without authorisation for AI training constitutes a breach of the exclusive reproduction rights in Section 14, or is caught by the strict "fair dealing" exceptions in Section 52. In the end, the treatise calls for a legal structure that balances technological innovation with the economic and moral rights of human creators.

Introduction

The ontological basis of global copyright jurisprudence is bound up with the idea of human creativity. The Copyright Act, 1957[1] in India is based on this anthropocentric paradigm. As artificial intelligence (AI) advances from a simple tool to an autonomous generative entity, this human-centric statutory framework faces an unprecedented existential threat.

The legislative history of Indian copyright law is a direct descendant of the British Imperial Copyright Act of 1911[2] which was heavily influential in the enactment of the Copyright Act, 1957. The 1957 Act, in its inception, was intended to protect the intellectual labour of natural persons. The philosophical sub-text of the time considered 'creation' not just as the production of a physical commodity, but as an intrinsically human act requiring an organic synthesis of intellect, emotion and work.[3] The digital age, initially characterised by primitive software and databases, was comfortably absorbed into this paradigm without disturbing the fundamental premise that a human mind was the ultimate source of originality.

The statutory scheme of the 1957 Act assumes human

[1] The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).
[2] Copyright Act 1911, 1 & 2 Geo. 5 c. 46 (U.K.).
[3] V.K., "The Ahuja, Law Relating to Intellectual Property Rights, (LexisNexis, 3rd edn, 2017).

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authorship without question. Section 2(d)[4] exhaustively covers the subject by defining a "author" in relation to the various works. It expressly ties authorship to the person who writes, composes, or creates the work. Section 13[5] also states that copyright subsists only in "original" works of literature, drama, music and art.

The Indian judiciary's interpretation of "originality" supports this human requirement. In the landmark case of Eastern Book Company v. D.B. Modak. In Modak, the Supreme Court of India definitively moved the threshold away from the utilitarian "sweat of the brow" doctrine to the requirement of a "modicum of creativity."[6] The Court stated that a work must show an exercise of "skill and judgment." Importantly, skill and judgment are cognitive faculties unique to the human mind; an algorithm running probabilistic diffusion models possesses neither. In a similar vein, the landmark decision in R.G. In Anand v. Deluxe Films, the Court held that ideas are not protected, but their expression is.[7] This transition from abstract idea to concrete expression has traditionally required a human conceptualizer. Moreover, Section 17[8], which refers to the author as the "first owner" of copyright, assumes the existence of an entity with the capacity to hold legal property rights, a capacity that is denied to machine algorithms.

The friction between works generated by AI and the Act of 1957 can be best understood in terms of foundational copyright theories. Hegelian Personality Theory states that intellectual property is an extension of the creator's personality and will.[9] Generative AI lacks consciousness and a legal "will" to embed in a work. The Lockean Labor Theory, which bases property rights on the mixing of one's labor with the commons, is similarly strained. A human prompter does put in effort, but the actual "labor" of generation is done autonomously by the machine. Lastly, Utilitarian Incentive Theory aims to provide monetary incentives to creators for adding to the public domain.[10] Algorithms do not need economic incentives to produce output.

The recent RAGHAV AI (Suryast) controversy[11] has been a stark example of the theoretical dissonance over non-human "personality". The Indian Copyright Office first registered the AI painting app "RAGHAV" as a co-author of the artwork Suryast, before publishing a withdrawal notice. This bureaucratic dithering reveals the essential incompatibility of Hegelian theories of personality with algorithmic generation. The Office was essentially repulsed by the idea of formally acknowledging a nonhuman entity as a repository of creative rights.

In an attempt to reform the regime, Section 2(d)(vi) was inserted by the Copyright (Amendment) Act, 1994.[12] The person who causes a computer-generated work to be created shall be the author of the work. This is a direct import of Section 9(3) of the UK's Copyright, Designs and Patents Act (CDPA) 1988, which creates a "legal fiction" that attributes authorship to the human operator of the machine.[13]

However, Section 2(d)(vi) was written with 1990s deterministic software in mind, not modern Large Language Models (LLMs). When an AI is functioning with a high degree of autonomy, it becomes legally tenuous who proximately "causes" the work to be

[4] The Copyright Act, 1957, Sec 2(d) (India).
[5] The Copyright Act, 1957, Sec 13 (India).
[6] Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1.
[7] R. G. Anand v. Deluxe Films, AIR 1978 SC 1613
[8] The Copyright Act, 1957, Sec 17 (India).
[9] G W F Hegel, Elements of the Philosophy of Right (Allen W Wood ed, H B Nisbet trans, Cambridge University Press 1991) 73.
[10] William M. Landes & Richard A. Posner, The Economic Structure of Intellectual Property Law (Harvard University Press 2003).
[11] Suryast, Registration No. A-135891/2020 (India Copyright Office Nov. 25, 2020).
[12] Copyright Act, 1957, Sec 2(d)(vi) (India) (amended by Copyright (Amendment) Act, 1994).
[13] Copyright, Designs and Patents Act 1988 (UK), Sec 9(3).

created: the software developer, the AI itself, or the user entering a prompt. Thus, while the US Copyright Office has taken a strict and unequivocal position against AI authorship (making human authorship an absolute prerequisite), India's Section 2(d)(vi) provides a porous, albeit outdated, statutory gateway.

This anthropocentric vulnerability is being tested at the point of algorithmic training, and at the point of creation. The Indian case, ANI v. OpenAI, currently being litigated in the Delhi High Court, embodies the impending crisis of this paradigm.[14] When the whole of the news and literary works created by humans are fed to train LLMs, the question becomes: does the anthropocentric monopoly granted under Section 14 survive the mechanized, non-consumptive ingestion by an artificial intelligence?

Crossing the Threshold of Originality in Indian Jurisprudence

The ontological crisis that AI has created in copyright law is not limited to the identity of the "author" but also the nature of the "work". Section 13(1)(a) of Copyright Act, 1957 states that copyright only subsists in those literary, dramatic, musical and artistic works that are "original".[15] In order for algorithmic outputs to win protection and then in turn to give rise to the ownership presumptions of Section 17 they must pass the jurisprudential test of originality, a standard that is being severely tested by machine creativity.

Historically, copyright jurisprudence was heavily influenced by the Lockean Labor Theory that justified the enclosure of intellectual property through the sheer expenditure of human labor. This was evident in the UK's "sweat of the brow" doctrine which required mechanical labour, capital and time to be invested to give originality, thus favouring effort over creativity.[16] This pragmatic tolerance was sometimes reflected in the early Indian jurisprudence that extended protection even to ordinary compilations. But as technological automation started to take over the work of mere physical or computational labor, without thought, there was no jurisprudential way to continue with just Lockean effort. A LLM is extremely computationally "sweaty" but it is not cognitively "sparky" which is really what copyright law is all about rewarding.

The definitive break from the "sweat of the brow" doctrine in India came in the landmark Supreme Court decision, Eastern Book Company v D.B. Modak.[17] The Court discarded the idea that only mechanical labour is enough to achieve copyright protection and embraced the Canadian standard of "skill and judgment" with a "flavour of minimum requirement of creativity" (the modicum of creativity). The Court required that the work be more than a mechanical or trivial exercise, and that the creation of it be the result of a conscious, intellectual choice on the part of the author.

This is perfectly consistent with the fundamental dualism set up in R.G. Anand v. Deluxe Films, where the Supreme Court held copyright does not protect bare ideas, but the expression of those ideas.[18] The Modak standard requires an intervening act of human intellectual judgment in transforming an abstract idea into concrete expression, which an algorithmic process based on probabilistic mathematics categorically cannot provide.

But the theoretical problem with applying the "skill and judgment" test to generative AI is deep. Hegelian

[14] Asian News International v. OpenAI Inc., CS(COMM) 2024 (Delhi High Court)
[15] The Copyright Act, 1957, Sec. 13(1)(a) (India). This provision mandates that copyright only subsists in "original" works, a standard that the Indian judiciary has linked to the exercise of human "skill and judgment," thereby complicating the copyrightability of autonomous AI outputs like those seen in the Suryast case.
[16] University of London Press Ltd. v. University Tutorial Press Ltd., [1916] 2 Ch. 601 (U.K.).
[17] Supra Note 2.
[18] Supra Note 3.

Personality Theory requires that a protected work contain the internal will and personality of the creator.[19] Algorithms have no personality to stamp on." The human user gives the idea into an AI tool by inputting a text prompt but it's the AI that does the expression.

This dynamism excludes the applicability of Section 2(d)[20] (definition of the author) and Section 13 (originality)[21]. Can the human prompt engineer say that their instructions are of the Modak standard of "skill and judgment"? "No," said the United States Copyright Office, firmly denying copyright to AI-generated images, on grounds of lack of human authorship.[22] The UK CDPA, however, solves the originality dilemma by using a "legal fiction" in section 9(3) to legislatively presume the human operator to be the author.[23] The RAGHAV AI episode starkly exposed India's administrative inertia on this issue. The Copyright Office's initial registration of the AI as co-author of the artwork Suryast with its human developer implicitly acknowledged the machine's role in the "expression," only to serve a withdrawal notice, in a sudden about-face, reflecting a systemic failure to reconcile algorithmic generation with Hegelian and statutory assumptions of human originality.[24]

The ultimate challenge is 'independent intellectual effort' in the age of neural networks . The Utilitarian Incentive view is that Section 17 gives a sixty-year post-mortem monopoly to a prompter who merely pushed a button, which grossly overvalues minimal human effort and distorts the public domain.[25]

Moreover, the "effort" of the machine is itself conditioned by the training data it was fed, resulting in the seminal litigation in ANI v. OpenAI before the Delhi High Court. ANI alleges that OpenAI's LLMs use highly original human journalism to generate outputs that mimic independent intellectual effort. The court must decide whether the machine's output, which lacks independent human skill and judgment, is indeed an "original" work, or an infringing derivative, which mechanically regurgitates the "sweat" and "creativity" of human authors without meeting the exceptions of fair dealing. In an age of algorithmic synthesis of the library of human knowledge, the "modicum of creativity" threshold of the Modak is the last juridical firewall to protect true human agency.

Ownership and Authorship: The Section 17 Problem

The Copyright Act, 1957 has a statutory architecture that builds a careful chain of title that runs linearly from creation to commercial exploitation. Section 2(d) gives the origin of the work, Section 13 its protectability, and Section 17 the location of its economic monopoly. Generative artificial intelligence badly disrupts this statutory continuum, compelling us to reconsider the allocation of intellectual property when the creator is a machine.

The basic assumption that "the author of any work shall be the first owner of the copyright therein" is stated in Section 17. This assumption is deeply rooted in the Hegelian Personality Theory, which assumes that property rights are the natural, external expression of an individual's will and personality.[26] The law recognizes the close connection between the human mind and its creative expression by granting initial ownership to the author. But this anthropocentric

[19] Supra Note 4.
[20] Supra Note 4.
[21] Supra Note 5.
[22] U.S. Copyright Office, Copyright Registration Guidance: Works Containing Material Produced by Artificial Intelligence, 88 F.R. Reg. 16190 (Mar. 16, 2023).
[23] Copyright, Designs and Patents Act 1988 (UK) s 9(3)
[24] Ananth Padmanabhan, 'The RAGHAV AI Saga: A Test for Indian Copyright Law' (2022) 27 J. Intell. Prop. 112. Rights
[25] See William M. Landes & Richard A. Posner, An Economic Analysis of Copyright Law, 18 J. Legal Stud. 325, 326 (1989) (arguing that copyright must balance the incentive to create against the cost of restricting access to the public domain).
[26] Supra Note 4.

connection spectacularly fails in the case of algorithmic generation. An AI has no legal personality, no capacity to own property, no will to express. Attempting to ascribe "first ownership" to a machine thus creates a jurisprudential vacuum and requires the identification of a human proxy who can take on the economic rights.

To accommodate digital technologies, the 1994 Amendment[27] inserted Section 2(d)(vi), that is, for computer generated works, the author is "the person who causes the work to be created". Inspired by the "legal fiction" of Section 9(3) of the UK CDPA[28], this provision artificially attributes authorship to a human agent.

Applying this 1990s framework to modern Large Language Models (LLMs), however, reveals serious fault lines. The clause must be read together with the R.G. Anand in determining who is the "cause" of the output. The Anand dichotomy: Copyright protects expression, not ideas. The human user inputs the abstract idea in a text prompt; the algorithmic neural network independently executes the concrete expression. Authors are distanced from the actual execution of creativity in this paradox, with Modak viewing the prompter as the legal author under Section 2(d)(vi). The user lacks the "skill and judgment" required by the Supreme Court in Eastern Book Company v. D.B. India's Section 2(d)(vi) requires a legally risky search for a nearby human cause, but the US Copyright Office has sidestepped this ambiguity by applying a rigorous human authorship test and denying outright copyright to AI outputs without assistance.

The application of the "work-for-hire" provisions of Section 17 heightens the systemic incompatibilities. Under sections 17(a) – employment by a newspaper, 17(b) – commissions for works and 17(c) – general contracts of service – the employer or commissioner becomes the first owner, displacing the author's initial ownership.

Importantly, these provisions require either a valid contract of service or for service. An AI algorithm is not a legal person, with no legal capacity to enter into a contract or to give consent to employment. The RAGHAV AI story proved empirically the absurdity of mapping these provisions onto AI.[29] The Copyright Office's first move of recognizing the AI Suryast as a co-author effectively crippled the commercial viability of the work. The AI cannot sign an assignment deed, nor can it work under a Section 17(c) employment contract. The chain of title was irretrievably broken and the Office was forced to issue a hurried withdrawal notice.

The question of who owns what must ultimately be viewed through the lens of the Utilitarian Incentive Theory, which states that copyright is an economic monopoly to incentivize the creation and dissemination of knowledge for the public good.[30]

Reading Section 2(d)(vi) to grant copyright ownership to the human prompter over-rewards trivial effort (a misapplication of Lockean Labor Theory) and clogs the public domain. On the other hand, ownership by the AI developer gives disproportionate control over downstream expressions. This utilitarian calculus is at the core of the ongoing ANI v. OpenAI litigation. ANI claims that OpenAI's models are trained on human-written, copyrighted journalism. If the law permits the operators of the machine to claim ownership over outputs created through the consumption of uncompensated human labor, the primary incentive for human journalists and artists is wiped out. The Section 17 problem is thus not merely a technical glitch in the statute, but rather a structural crisis that threatens to unravel the utilitarian bargain

[27] Supra Note 12.
[28] Supra Note 13.
[29] Ananth Padmanabhan, 'The RAGHAV AI Saga: A Test for Indian Copyright Law' (2022) 27 J. Intelligence. Prop. Rights 112.
[30] William M. Landes and Richard A. Posner, The Economic Structure of Intellectual Property Law (Harvard University Press 2003).

underpinning Indian copyright law.

It features lawyer Ankit Sahni, who is an intellectual property lawyer, who has created a two-dimensional work of art called Suryast using an artificial intelligence painting app called RAGHAV (Robust Artificially Intelligent Graphics and Art Visualizer). Sahni gave the AI his own picture of a sunset and asked it to use Vincent van Gogh's The Starry Night as the style, selecting a numerical variable to determine the intensity of the style transfer.[31]

Suryast (ROC No. A-135120/2020) was registered in November 2020 with the Indian Copyright Office, with Sahni and RAGHAV AI as co-authors. It was a watershed moment - an apparent tacit recognition of an algorithm as a real site of creativity. But the recognition was not to last. Following an internal review and significant legal pushback, the Copyright Office issued a notice of withdrawal, asking Sahni to clarify the legal status of RAGHAV and to explain how an artificial entity could satisfy the statutory definition of "artist" or "author" under the Act.[32]

The main legal argument of Sahni's case was based on the flexible borders of Section 2(d)(vi) of the Act, which says that authorship of a computer-generated work is ascribed to the "person who causes the work to be created." Sahni asserted that he had supplied the base photograph, the style image and the algorithmic parameters, which represented the required Lockean labour, the intellectual "sweat" to lay claim to authorship. Raghav's contribution was different, but he felt that he had under his creative direction. He tried to reconcile the Hegelian Personality Theory and machine execution by stating that the final output was a product of his aesthetic will.

But this argument really throws a spanner in the works of the idea-expression dichotomy set up by the Supreme Court in R.G. Anand v. Deluxe Films. Copyright protects the expression and not the idea behind in Indian jurisprudence. "Sahni just provided the concept through prompts and choosing style transfers, the autonomous neural network did the expression. Therefore, the economic mechanics of Section 17 are undermined because the attribution of co-authorship is ascribed to a non-juristic, non-sentient entity as an AI is unable to legally hold or assign first ownership rights.

This flip-flopping by the Copyright Office shows serious procedural weaknesses. The Registrar's power to withdraw or revoke a validly issued certificate is procedurally ambiguous once a work is registered under section 45[33]. It is normally the High Court (or formerly the Appellate Board) which has jurisdiction to rectify the Register, including the removal of entries wrongly made, and this is done at the instance of a "person aggrieved" under section 50[34] of the Act.

The Registrar's sudden notice of withdrawal is an administrative panic, realising that giving co-authorship to an AI was a blatant violation of the "modicum of creativity" standard laid down in Eastern Book Company v. D.B. Modak. RAGHAV lacks human cognition and thus cannot apply the "skill and judgment" that Modak demands to create an original work, rendering the original registration legally untenable.

Sahni's international push to register Suryast is a vivid illustration of the fractured world consensus on machine creativity. In the United States, Sahni's applications were repeatedly rejected by the

[31] USA Copyright Office Review Board, Second Request for Reconsideration of Refusal to Register SURYAST, Dec. 11, 2023.
[32] Ananth Padmanabhan, 'The RAGHAV AI Saga: A Test of Indian Copyright Law' (2022) 27 J. Intel. Prop. 112 Droits
[33] The Copyright Act, 1957, Sec 45 (India). Although copyright registration is not a prerequisite for protection in India, the Section 45 process remains the primary battlefield for emerging authorship claims, as seen in the Registrar's use of the "inquiry" power to challenge the registration of AI-generated works.
[34] Id Sec 50.

Copyright Office Review Board, culminating in a final refusal in December 2023.[35] The USCO applied a strict anthropocentric standard, finding that Sahni's inputs were merely unprotectable ideas and that the AI's interpolation did not contain the "traditional elements of human authorship."

Whereas Canada's reception was initially warmer. In December 2021, the Canadian Intellectual Property Office (CIPO) registered Suryast with Sahni and RAGHAV as co-authors, arguably taking a position similar to the UK's Section 9(3) CDPA "legal fiction" rewarding the human operator.[36] However, this automated Canadian registration is now under fierce challenge. In 2024, the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC) filed an application in the Federal Court to have the registration struck out, taking a utilitarian view that AI is not original and that acknowledging machine authorship fundamentally distorts the economic incentives of copyright law.[37]

At the end of the day, the Suryast saga proves that the old human-centric paradigms are woefully ill-equipped to regulate the algorithmic muse, be it India's bureaucratic chicken-and-egg indecision, America's rigid anthropocentric gatekeeping, or Canada's looming judicial reckoning.

The ingestion controversy: training data, infringement and fair dealing

The earlier chapters wrestle with the ontological status of AI-generated outputs, but there's an equally profound crisis upstream: the ingestion phase. The architecture of generative AI is entirely based on the mechanical consumption of huge, often copyrighted, datasets. The paradigm shifts the legal inquiry from Section 2(d) (authorship) to Section 14 (infringement) challenging the traditional borders of reproduction and fair dealing under the Copyright Act, 1957.

Web scraping, the systematic automated collection of data from the web, is a prerequisite for training Large Language Models (LLMs). Section 14(1)(a)(i) of the Act confers on the owner of the copyright the exclusive right to "reproduce the work in any material form including storing it in any medium by any means of electronic means".[38]

When an AI developer scrapes data, intermediary and often permanent copies of copyrighted texts, images and code are stored on local servers to train the neural network. From the statutory point of view, it is a prima facie infringement of the right of reproduction strictly speaking. Under the Lockean Labor Theory, the algorithm is stealing the intellectual "sweat" and labor of human authors to build its commercial infrastructure, taking away the rightful monopoly of creators over the fruits of their intellectual exertion without compensation.

This theoretical collision has manifested in the Delhi High Court in the landmark litigation of Asian News International (ANI) v. OpenAI Inc[39]. ANI, a premier Indian news agency, claims that OpenAI illicitly scraped its original, copyrighted journalistic content to train ChatGPT, resulting in massive copyright infringement.

The main argument of the AI companies, also raised in similar US litigations, is based on the idea-expression dichotomy provided for in R.G. Anand v. Deluxe Films. OpenAI argues that LLMs do not "store" or reproduce the exact expression of the scraped works; rather they analyze statistical relationships between words to learn the underlying facts, styles, and ideas, things that are explicitly non protectable under copyright law. ANI counters by demonstrating that ChatGPT sometimes "regurgitates" verbatim news reports, suggesting that the model is capable of retaining and reproducing particular expressions, thereby crossing the thresholds

[35] US Copyright Office Review Board, supra note 19.
[36] Supra Note 12.
[37] *Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC) v. Ankit Sahni*, Notice of Application, July 8, 2024, Fed. Ct. (Can.), File No. T-1717-24.
[38] The Copyright Act, 1957, Sec 14(1)(a)(i) (India).
[39] Supra note 14.

of "skill and judgment" and "modicum of creativity" as set out in Eastern Book Company v. D.B. Modak by illegally copying human output.

In the absence of explicit licensing agreements, AI developers depend on statutory exceptions. In the United States, developers invoke the flexible, four-factor "fair use" doctrine, arguing that training AI is a highly transformative use akin to the mass digitization upheld in Authors Guild v. Google.[40]

But India does not have an open ended "fair use" provision; it has a rigid, exhaustive "fair dealing" framework under Section 52[41]. To avoid infringement, OpenAI needs to make its scraping fall under section 52(1)(a), which allows fair dealing for "private or personal use, including research". The jurisprudential question is enormous. So far, Indian courts have interpreted "research" under this section to mean academic research for non-commercial purposes. Training a multibillion-dollar commercial LLM like ChatGPT strains the semantic and legal boundaries of what is "private research." The UK, for instance, has introduced a dedicated text and data mining (TDM) exception for non-commercial research (Section 29A CDPA). India's 1957 Act, however, does not have a dedicated statutory carve-out for algorithmic data mining, thus leaving a perilous void for AI developers.

The resolution of the ingestion controversy in the end depends on Utilitarian Incentive Theory. The main utilitarian justification for the copyright monopoly is to give human authors the economic incentive to create, which will then enrich the public domain.[42]

If AI's use of data is "transformative" and non-infringing, it opens the door to massive technological innovation. But if an LLM is trained on ANI's news reports and can later produce competitive, real-time news summaries on demand, it directly substitutes the original human creator in the market. The utilitarian bargain is catastrophically broken when AI is permitted to devour human labor for free, and then throw out a commercial substitute which kills that author's market. The future rulings of the Delhi High Court in the ANI case will thus be more than a reading of Section 14; they will be a choice as to whether the Indian copyright system will defend the economic incentives of the human intellect or turn them over to the altar of algorithmic progress.

The Philosophical bases and the nature of machine creativity

To understand the structural deficiencies of the Copyright Act, 1957 in the algorithmic age, the legal question has to move beyond statutory interpretation and into the core philosophies of intellectual property. The ontological problem of generative AI is that jurisprudence must separate conscious human intentionality from the statistical output of a neural network.

Fundamentally, copyright law is rooted in Hegelian Personality Theory of property as the external expression of the individual's internal will, personality, and freedom.[43] A "work" protected under Section 13(1)(a) is conventionally characterized as an extension of the human author's mind.

This Hegelian paradigm blows up in the face of generative AI. An algorithm has no consciousness, no subjective experience, no legal "will" to embed in a painting or a poem. As held by the Supreme Court in

[40] Authors Guild v. Google, Inc., 804 F.3d 202 (2d Cir. 2015).

[41] The Copyright Act, 1957, Sec 52 (India). Unlike the flexible "fair use" doctrine in the U.S., the Indian framework consists of an exhaustive list of "fair dealing" exceptions. Any automated data processing or AI training that does not strictly fall within the enumerated purposes of Sec 52(1)(a) is, prima facie, an act of infringement. See also Academy of General Education, Manipal v. B. Malini Mallya, (2009) 4 SCC 256.

[42] William M. Landes and Richard A. Posner, The Economic Structure of Intellectual Property Law (Harvard University Press 2003).

[43] Supra Note 4.

Eastern Book Company v. D.B. "A 'modicum of creativity' is required by the originality requirement, and this creativity is to be expressed through human 'skill and judgment.'Judgment inherently requires a conscious mind making qualitative, aesthetic or intellectual choices. An AI is incapable of meeting the Modak standard because it lacks a personality. An AI's output is a function of mathematical determinism, not a reflection of a human character.

Utilitarian Incentive Theory , on the other hand, accounts for the copyright monopoly (e.g. the exclusive rights granted under Section 14 and the ownership under Section 17) as a necessary evil in economics to encourage the production of public goods.[44] Lockean Labor Theory proceeds with the reward for the intellectual "sweat" of the creator.

Yet artificial intelligence does not need economic incentives, nor does it suffer from Lockean labor fatigue. An algorithm will produce a million symphonies whether or not a sixty-year post-mortem monopoly is granted. The United States Copyright Office heavily relies on this utilitarian logic which requires strict human authorship as the assignment of monopolies to non-humans does not further the constitutional purpose of incentivizing human progress.[45] The ANI v. OpenAI litigation pending in India highlights the peril of the utilitarian workaround attempted by the UK CDPA's Section 9(3)[46] which awards authorship to the human programmer to incentivize technological investment. If OpenAI is permitted to ingest the Lockean labor of human journalists (ANI) without any restriction for training an AI, and then monopolize the AI's output, the utilitarian bargain is reversed. This kills the market for human creators, while rewarding a machine that needs none.

The most glaring failure of AI to be compatible with the Hegelian "soul" of copyright is Section 57 of the Copyright Act[47], which gives the author intrinsic moral rights. The right to paternity (that the author be attributed as the author of the work) and the right to integrity (that the work not be distorted in a manner prejudicial to the author's honor or reputation).

Moral rights are closely connected with human dignity. This jurisprudential absurdity is exemplified by the administrative chaos surrounding the RAGHAV AI saga. By temporarily registering the AI Suryast as a co-author, the Copyright Office inadvertently acknowledged the moral rights of a software program. Can an AI's output be distorted later and can a machine lose "honor" or "reputation"? The quick withdrawal of the Suryast registration is an indication of a systemic awareness that Section 57 cannot be mapped on to a non-sentient entity – a reaffirmation that the Indian copyright regime is inextricably linked to human dignity.

Finally, the debate focuses on the dichotomy established in R.G. Anand v. Deluxe Films : copyright protects expression not idea. Human creativity is intentional, conscious, cognitive conversion of an abstract idea into particular, tangible expression.

Generative AI is on a completely different ontological plane. LLMs and diffusion models do not "think" of an expression. They calculate the statistical

[44] Supra Note 25.

[45] U.S. Copyright Office, Copyright Registration Guidance: Works Containing Material Produced by Artificial Intelligence, 88 F.R. Reg. 16190 (Mar. 16, 2023).

[46] Copyright, Designs and Patents Act 1988, Sec 9(3) (U.K.). Instead of dealing with the philosophical question of machine creativity, the UK avoids the issue by assigning authorship to the party who makes the "necessary arrangements": AI output is not a creative act, but a protectable asset of the human or corporate entity that made the technological process possible.

[47] The Copyright Act, 1957, Sec 57 (India). Section 57 has very often been called the "soul" of the Act and protects the personality of the author by the rights of paternity and integrity. The built-in basic philosophical obstacle to granting full authorship status to non-human entities such as AI is the human need for "honour and reputation" that is built-in to this section.

probability of a sequence of words or the distribution of pixels from their training data. The human enters a prompt which conveys an idea that cannot be protected. The next " expression " is produced by the machine using stochastic probability . No deliberate human skill or judgment is exercised . Section 2(d) creates a false equivalence between the miraculous workings of human brains and the mechanical workings of algorithmic prediction, placing machine outputs on equal footing with human creations.

Comparative Jurisprudence

The Copyright Act, 1957 is beset with structural deficiencies to address algorithmic creativity which does not exist in a vacuum. Because generative AI is situated in borderless digital networks, domestic legal paradigms are inevitably shaped by global jurisprudential currents. A comparative study of the United Kingdom, the United States and the European Union reveals a different theoretical approach to machine generation and highlights the crossroads at which the Indian intellectual property law stands today.

The Legal Fiction of the UK: Section 9 (3) of the CDPA 1988.

The United Kingdom is the earliest statutory attempt to preempt the algorithmic dilemma. Section 9(3) of the Copyright, Designs and Patents Act (CDPA) 1988[48] creates a "legal fiction" for computer generated works, stating that the author is "the person by whom the arrangements necessary for the creation of the work are undertaken.". This section is essentially based on Utilitarian Incentive Theory, emphasizing the economic reward of human investment over traditional notions of artistic creation.India directly imported this system in 1994 through Section 2(d)(vi) of the Copyright Act, 1957 which assigns authorship to the person who "causes the work to be created." However, the transposition of this utilitarian fiction into the Indian context has caused severe conflict with Section 13(1)(a). The UK model was built for deterministic software, not autonomous neural networks. When an Indian user gives a prompt to a Large Language Model (LLM), the user just gives the idea and the machine does the expression. This is against the R.G. Indian Copyright Office registration and withdrawal of the artwork Suryast, the RAGHAV AI saga, for reasons unknown, is an example of the paralysis of applying a UK-style legal fiction and trying to maintain the Hegelian "modicum of creativity" threshold as set up in Eastern Book Company v. D.B. Modak.

The US Structure: Human Authorship and the "Monkey Selfie" Precedent

In the US, in contrast to the utilitarian pragmatism of the UK, a rigid anthropocentric position has been adopted, based on Hegelian Personality Theory. The US Copyright Office (USCO) does not register works autonomously generated by AI, unless they have a significant human-authored component. This limitation is largely based on the Ninth Circuit's decision in the case of Naruto v. Slater (the "Monkey Selfie" case), which definitively held that non-human entities do not have the legal right to claim copyright.[49] While India showed some hesitancy during the Suryast registration process by briefly contemplating an algorithm as a legal entity that could possess Section 17 first-owner rights, the USCO flatly rejected Ankit Sahni's similar application for Suryast. The US paradigm is a strict Lockean Labor Theory; because a machine cannot exert human intellectual labor, its output is immediately in the public domain unless a human author can demonstrate they exerted enough "skill and judgment" in modifying the AI's raw output.

The EU AI Act: Transparency Mandates .and Training Data Governance

While the US and UK are debating the output (Section 2(d) and Section 13), the European Union has

[48] Supra Note 13.

[49] Naruto v. Slater, 888 F.3d 418 (9th Cir. 2018).

decisively shifted to regulating the input (Section 14). The landmark EU Artificial Intelligence Act introduces sweeping transparency obligations, requiring general-purpose AI providers to disclose detailed summaries of the copyrighted data used for training.[50] The EU regime further enhances the Text and Data Mining (TDM) exception under the Digital Single Market Directive, which enables scraping but importantly maintains a Lockean "opt-out" mechanism for rightsholders. This is proactive to balance the utilitarian innovation and the original creators' property rights. In contrast, India's ANI v. OpenAI litigation reveals a gaping statutory void. The Indian Copyright Act does not have a specific TDM exception and must resort to the narrow, non-commercial "research" fair dealing defense under Section 52(1)(a).[51] Consequently, Indian courts are compelled to retroactively shoehorn multi-billion dollar LLM training into outdated, analog statutory exceptions.

Harmonisation Trends: India's Place in the Global Intellectual Property Landscape

Currently, India finds itself at the crossroads of conflicting jurisprudential models. Its statute is modeled on the UK's utilitarian legal fiction, Section 2(d)(vi), which in theory allows human operators to claim machine outputs. At the same time, its judiciary, in accordance with the Modak standard, requires a Hegelian demonstration of conscious human "skill and judgment" similar to the US stricture. India must reconcile these conflicting paradigms to achieve global harmonization and resolve the ownership quandaries of Section 17. The ongoing ANI litigation and the fallout from the RAGHAV AI controversy mean that India can no longer rely on nebulous legislative transplants. This demands a bespoke legal architecture, one that could be inspired by the EU's proactive data governance on inputs and legislate to clarify whether s 2(d)(vi) can indeed tackle the absence of human intentionality in algorithmic outputs.

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[50] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act).

[51] The Copyright Act, 1957, Sec 52(1)(a) (India).