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## **TITLE OF THE PAPER- ARTIFICIAL INTELLIGENCE: A MACHINE OR AN AUTHOR IN REFERENCE WITH COPYRIGHT ACT IN INDIA**

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### **ABSTRACT**

The world is growing and the rapid growth is in the field of technology. Due to technological growth, Artificial intelligence is becoming a very vital part of our day-to-day lives. While the use of AI can be seen in every field such as medical science, education, entertainment (music, games, etc) industry, and many other sectors Intellectual Property Rights are not an exception. Though AI, in the beginning, is created by programming some codes together in today's world AI can create and perform tasks like music, art, lyrics, etc on its own without receiving any help from its creator, and by doing this AI is technically becoming an author for the work. All these types of capabilities in AI put forth several interesting yet muddled copyright questions. The main question that arises is whether the work created by AI can be registered as copyright. This question is an ongoing debate. Closely associated with authorship issues, other issues inevitably arise such as the duration of copyright and the moral rights of the author. It can be said that AI is a man-made machine or intelligent agent that is created by humans. Earlier copyright was granted only to original works such as novels, books, and music, but today even software is given copyright by stating the fact that in software the programs typed are like books which are written in a certain language which is called codes in computer language. One of the products of this technology is AI which is now ruling the world. This paper will discuss whether the work of AI is eligible for copyright protection or not. The challenges that are faced by IPR are very serious more specifically in copyright law. The dissertation will discuss the authorship and "deep fake" works that are produced by AI and it will also discuss the legal position of India and several countries. The discussion made in WIPO regarding this issue has also been discussed in this paper.

Keywords: AI, IPR, Copyright, authorship, duration, originality.

### **INTRODUCTION**

Rights have been defined by Inhering as "legally protected interests<sup>2</sup>", it is a right that is protected by law and is recognized by law and there are certain remedies that arise if the rights

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<sup>1</sup>The author is a student at Madhusudan Law College, Cuttack.

<sup>2</sup> DR.S.R. MYNENI, LAW OF INTELLECTUAL PROPERTY 02-03 (9<sup>th</sup> Ed., 2019).

are violated. On the other hand, the property is a corporeal property i.e., a land one person owns or debts a person owes. But the definition of property changed in the evolving world with the intellect of man and a new form of property i.e., intellectual property is identified. Intellectual property is intangible and this property is owned by the man's intellect as a result of his/her creation from the mind. Types of intellectual rights identified by WIPO are:

1. Copyright
2. Trademark
3. Patent
4. Design
5. Geographical Indication
6. Layout Design of integrated circuits
7. Undisclosed information.

In IPR one of the most important aspects of rights is Copyright, it protects the unauthorized use of the original work created by the author. In India, copyright law is governed by The Copyright Act, 1957 which grants exclusive rights to the author over their original work for a lifetime and 60 years afterward. In earlier days copyright is granted to works that are creative ideas or artistic expression like music, films, lyrics, novels, etc. But in today's world, even computer programs like software are given copyrights as it is considered that the program used to create the software is like a book that is written in a certain language or code that is creative. In *Burlington Home Shopping Pvt. v. Rajnish Chibber*<sup>3</sup>, the main question before the Delhi High Court arose was for the protection of computer databases. Here, the Court decided that a compilation of addresses developed by anyone by devoting time, money, labor, and skill amounted to a 'literary work'. However, the sources might be commonly situated.

One of the creations of this technology is Artificial Intelligence (AI) which can exactly replicate human intelligence to perform tasks that can be performed by a human applying his/her independent mind. Though AI is created by programming by a human mind in a later stage it can perform tasks or even create original works like music, and lyrics on its own without taking any external input from its creator, and by doing this the AI technically is becoming the author or owner of the work produced by it.

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<sup>3</sup> Burlington Home Shopping Pvt. v Rajnish Chibber, AIR 1995 PTC (15) 278.

Development in technology has changed the world drastically by pushing the limits of intellect to create a new era called Artificial Intelligence by entering a milestone in the history of innovation. The term 'Artificial Intelligence' was first coined by John McCarthy in 1956<sup>4</sup>. Until now, there is no legal definition for 'Artificial Intelligence'. Artificial Intelligence may be stated as 'the ability of machines to do things that people would say require intelligence'<sup>5</sup>. In simple words, Artificial Intelligence can be defined as the ability of a machine or computer program to think and learn. The basic principle for creating Artificial Intelligence is to build machines that are equipped for thinking, acting, solving problems, and learning like humans<sup>6</sup>. Russ Pearlman states, "The central goals of AI include reasoning, knowledge, learning, planning, natural language processing i.e., understanding and speaking languages, and the ability to move and manipulate objects"<sup>7</sup>. According to WIPO, there are 3 categories of AI systems<sup>8</sup>. Namely:

1. expert (or knowledge base) system;
2. perception system; and
3. natural language system.

Technology like Generative Adversarial Networks which are deep learning are used to create deep fakes<sup>9</sup>. The images, audio, and videos that are produced by this technology are similar to the existing original work but are fabricated as deep fake works. This technology can be used for various legitimate purposes, but instead, it is used for deceiving the public to cause harm to the reputation of individuals<sup>10</sup>.

AI in legal terms can be considered as a mixture of programming and information. The main base of AI is 'artificial neural networks' that are 'brain-inspired systems that are designed to imitate the way the human mind learns'<sup>11</sup>. Artificial neural networks can self-learn by which the AI can produce better results as it has access to more data. As AI can self-learn, it carries out tasks independently or with limited human interference. It is wrong to say AI is one technology, instead, it should be said a field that has many subfields, "like machine learning,

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<sup>4</sup> Fredy Sanchez Merino, *Artificial Intelligence and a New Cornerstone for Authorship*, 9 WIPO-WTO Colloquium Papers, 28 (2018).

<sup>5</sup> PHILIP C. JACKSON, *INTRODUCTION TO ARTIFICIAL INTELLIGENCE 1* (Dover Publication Inc., 1985).

<sup>6</sup> ARTIFICIAL INTELLIGENCE, OED ONLINE, [https://www.oed.com/dictionary/artificial-intelligence\\_n](https://www.oed.com/dictionary/artificial-intelligence_n) (last visited Jan 25, 2024).

<sup>7</sup> Russ Pearlman, *Recognizing Artificial Intelligence (AI) as Author and Investors under U.S. Intellectual Property Law*, 24 RICHMOND JOURNAL OF LAW & TECHNOLOGY 4, (2018).

<sup>8</sup> V.K. Ahuja, *Artificial Intelligence And Copyright: Issues And Challenges*, ILI LAW REVIEW (Jan 26, 2024, 7:30 PM), <https://ili.ac.in/pdf/vka.pdf>.

<sup>9</sup> Edvinas Meskys, Aidas Liaudanskas, Julija Kalpokiene, and Paulius Jurcys, *Regulating deep fakes: legal and ethical considerations*, 15(1) JIPLP 24, 24 (2020).

<sup>10</sup> Giorgio Patrini, *Mapping the Deepfake Landscape*, GIORGIO PATRINI (Jan 27, 2024, 8:00 AM), <https://giorgiop.github.io/posts/2018/03/17/mapping-the-deepfake-landscape/>.

<sup>11</sup> Douglas Harris, *Deepfakes- False Pornography Is Here and the Law Cannot Protect You*, 17 DUKE LAW & TECHNOLOGY REVIEW 99, 98 (2019).

robotics, language processing, and deep learning<sup>12</sup>." Two subsets of AI can be considered as "Machine Learning", and "Deep Learning." Machine Learning is an inbuilt algorithm in the computer program that "allows it to learn from data input, and to evolve and make future decisions" either on its own or in the direction<sup>13</sup>. For a better understanding, it can be said that the machine-learning algorithm takes the programmer's input to produce a better result on its own. So, it can be concluded that the parameters are set by the programmers while the actual work is generated by AI<sup>14</sup>. Examples of AI are computers playing chess and self-driving cars. With the involvement of AI, there are two categories of creative works:

1. 'AI-generated' works, and
2. 'AI-assisted' works.

AI-generated works also known as "generated autonomously by AI" refers to the work that is generated by AI without human intervention. In this category, AI may produce work that is not anticipated or intended by the human, it may change its behavior to get a better result. On the contrary, AI-assisted work is produced with human intervention<sup>15</sup>.

## IMPLICATION OF AI IN COPYRIGHT LAW

Initially, all the works that were produced by the computer were directly produced with the intervention of humans for which every right of the works was given to the creators of AI. However, due to the advanced technological improvement, AI has become more powerful and capable of producing original works without any human intervention. Due to this capability of AI, the question about the creator and the copyright owner of the work arose. In this scenario, three aspects can be considered regarding the creator or copyright ownership of the work generated by AI<sup>16</sup>. They are;

1. **The creator of AI or work by AI with human intervention** - Here, the creative inputs that are provided by the creator of AI play a significant role and the copyright is given to the human creator of AI. Many nations follow this type of practice like the UK, India, Hong

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<sup>12</sup> Corrs Chambers Westgarth, *Artificial Intelligence and copyright: ownership issues in the digital age*, CORRS CHAMBERS WESTGARTH (Jan 27, 2024, 6:00 PM), <https://www.corrs.com.au/insights/artificial-intelligence-and-copyright-ownership-issues-in-the-digital-age>.

<sup>13</sup> Sahajveer Baweja and Swapnil Singh, *Beginning of Artificial Intelligence, End of Human Rights*, LSE (Jan 28, 2024, 9:45 AM), <https://blogs.lse.ac.uk/humanrights/2020/07/16/beginning-of-artificial-intelligence-end-of-human-rights/>.

<sup>14</sup> Andres Guadamuz, *Artificial Intelligence and copyright*, WIPO MAGAZINE (Jan 28, 2024, 11:15 AM), [https://www.wipo.int/wipo\\_magazine/en/2017/05/article\\_0003.html](https://www.wipo.int/wipo_magazine/en/2017/05/article_0003.html).

<sup>15</sup> WIPO Secretariat, *Revised Issues Paper on Intellectual Property Policy and Artificial Intelligence*, WIPO/IP/AI/2/GE/20/1 REV dated May 29, 2020, at 12.

<sup>16</sup> Sainee Abhishek, *Artificial Intelligence and Copyright Issues*, LEGAL SERVICE INDIA (Jan 28, 2024, 7:00 PM), <https://www.legalserviceindia.com/legal/article-9895-artificial-intelligence-and-copyright-issues.html>.

Kong, etc. The UK copyright law, states that: "in creative works like literary, dramatic, musical or artistic works that are generated by computer the person who made the necessary arrangement for the creation of the work should be considered as the author<sup>17</sup>."

In *Nova Production Ltd v. Mazooma Game Ltd*<sup>18</sup>, the authorship of the video game produced by AI was in question. The UK court held that the creator of the AI has the authorship of the video game. The creator was the one who "set the rules for the game and created various elements of the game and also put logic by which it was generated and the one who wrote the relevant codes for the game."

2. **AI itself or work by AI without human intervention** - Here, AI generates work on its own without any human intervention, the issue of authorship in this matter is complex. The AI-generated work may use biased statements or toxic language which may cause defamation or obscenity; provoke some caste, creed, or religion; or produce some undesirable result. If such a scenario occurs then it will become difficult to fix the civil and criminal damage that is caused by AI as it is not recognized as a living entity. The best way to control the damage is to delete the work of AI or in the worst case to ban the AI software. One more issue that arises is if the work produced by AI is "substantially similar"<sup>19</sup> to any existing work that already has a copyright in its name then it will be difficult for the copyright owner to hold the AI infringer as it is not a human. Also, if AI becomes the author, then it will not be able to transfer the ownership of the work, in the absence of personhood. There are two reasons for this<sup>20</sup>. They are:

a. If a machine is granted sole ownership, then it will directly amount to a legal personality to AI by which it can exercise all its rights, but no country still recognizes such rights to a machine. Countries like Germany, France, and Spain state that the works created must have the "imprint of the author's personality", and the authorship of AI should be denied as AI does not have its personality. Most importantly if AI is made a legal entity, then it should possess the capacity to enter into a contract with other individuals. AI will also be responsible for its acts and have duties under the law. It will also have the capacity "to sue and be sued" under the law. Due to these reasons, most of the country is not in favor of granting legal status to AI.

b. It is well established that copyright is granted to original works which is the result of human creation and intellect mind and AI not being human cannot have the same rights.

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<sup>17</sup> The Copyright, Design, and Patent Act, 1988, Sec 9(3), 1988 (UK).

<sup>18</sup> *Nova Production Ltd v Mazooma Game Ltd & Ors*, (2007) EWCA Civ 219.

<sup>19</sup> V.K. Ahuja, *supra* note 7.

<sup>20</sup> Sainee Abhishek, *supra* note 15.

Another important aspect of not granting AI legal status is the term to be granted to AI-generated works. In general, the term Copyright works are granted the lifetime of the owner and 50 or 60 years afterward depending upon the laws of the countries. But what will be the term to be granted to AI-generated work as it is immortal? If AI is granted as an author, then it will be difficult for AI to negotiate the royalty with another person and to enforce rights that are available to the author under copyright law. Making AI an author will cause more difficulties than resolving them.

The Copyright Office of the United States said that it will "register an original work of authorship, on the condition that the work is created by a human being." Concerning this statement, a landmark case law strengthens it. *Feist Publications v. Rural Telephone Service Company, Inc.*<sup>21</sup>, where the court stated that "information alone without a minimum of original creativity cannot be protected by copyright." Hence, only a product created by a human intellect can be copyrighted.

3. **Nobody** - One popular option where the authorship of the work generated by AI should be deemed to be free i.e., no one is the owner of the work produced by AI like it can be used for 'public use.' But all the big companies do not want to put so much effort and capital into developing a product through AI just for public use without any profit. So, this scenario becomes hostile for big companies.

In the future, humans will be working with AI to produce some works and certain features of AI can create challenges for Intellectual Property Law<sup>22</sup>. They are:

**1. Creativity** - It is well known that AI can create new products without human intervention and it can also improve the existing ones. As they have the data, they are capable to copy and reproduce the information in a better outcome.

**2. Unpredictability in outcome** - AI is based on certain algorithms capable of producing unpredictable outcomes. As the work of AI is independent, it can change the desired outcome to make the result look better. For example, AI can create a painting that is different from the existing ones.

**3. Independent and autonomous operation** - Once the creator of AI has written the algorithms and the AI has received all the information, then the work that is produced is independent. AI makes its own decision regarding the outcome of the product it generates as an autonomous individual.

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<sup>21</sup> *Feist Publications v Rural Telephone Service Company, Inc.*, 499 U.S. 340; 111 S.Ct. 1282.

<sup>22</sup> Dr. Shlomit Yanisky Ravid and Xiaoqiong Liu, *When Artificial Intelligence Systems Produce Inventions: An Alternative Model For Patent Law At The 3A ERA*, 39 CARDOZO LAW REVIEW 2215, (2018).

**4. Capable of data collection and communication** - AI can collect data from the outside world. AI gathers data and continues to produce works on its own. By producing work, it receives feedback and then improves the result on its own.

## **LEGAL POSITION OF INDIA AND SEVERAL COUNTRIES**

### **European Union Countries and the United States Copyright Law**

In a general sense, AI is created by a developer's intellect and mind. The algorithms that are coded by the programmers are protected as software in the present copyright law. It is argued that the software created to make AI comes under literary work and it enjoys copyright protection under international treaties, including many jurisdictions like the USA and the EU legislation.

In the earlier days, the EU legislation has not provided any explanatory definition of copyright programs under the Computer Programs Directives. Due to this in the present, the question that arises is whether the human or the AI should be entitled to authorship of the work. With the use of AI in every field to produce literary, musical, dramatic, and artistic works the legal challenge comes into question for who will own the copyright once produced automatically and autonomously without any human intervention. The Court of Justice of the European Union (CJEU) states that any expression of a computer program is protected if the expression is capable of performing a task or carrying out a function. Article 2(1) of the Computer Program Directive states that "the creator of the computer program should be a natural person or a group of natural persons or a legal person who is recognized by the legislation as the right holder of the work." The literal meaning of this clause is that it sets the general principle of copyright in the EU and that is the author of the work shall be a natural person which means a human being. He/she should be recognized by the legislation. So, in the current copyright law, a non-human entity with no legal personhood like AI is not eligible for authorship of any creative works<sup>23</sup>.

As discussed above there are two types of work that AI can generate, so the first step is to distinguish the work which is AI-created and the work which is AI-assisted.

In the United States, if the author creates a work with the help of AI and if he/she establishes before the court that AI is used as a tool/medium to create the work then the work will be

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<sup>23</sup> Rose Maria Ballardini, Kan he and Teemu Roos, *AI Generated Content: Authorship and Inventorship in the Age of Artificial Intelligence*, UNIVERSITY OF HELSINKI (Jan 30, 2024, 11:00 AM), <https://www.cs.helsinki.fi/u/ttonteri/pub/aicontent2018.pdf>.



protected under the Copyright Act<sup>24</sup>. In *Naruto v. Slater*<sup>25</sup>, also known as the 'Monkey Selfie' case, the court of the US held that the monkey cannot be considered as an author of the selfie that clicked. So, in the US, copyright is granted to humans and not to animals or machines<sup>26</sup>. However, the situation is not the same in the case of AI as it can generate works on its own. When the work is created by AI using a computer there appears an "apparent gap between the human's input and the machine's output."<sup>27</sup>

In *Burrow Gills Lithographic Company v. Sarony*<sup>28</sup>, the camera and the photographs that were clicked were new to the world as the case arose in 1884. A new dispute in the SC of the US arose regarding whether a photograph that is taken by a camera (a machine) will be protected under the copyright law of the US. The court held that the photograph falls under the scope of copyright as it exhibits the requisite of originality that is entitled to protection. Since the photograph taken by the author exhibits his original mental conception the court granted the protection under copyright<sup>29</sup>.

The UK practice is different than that of the other EU countries and the USA. According to the provision that is followed in the UK is that of computer-generated work (CGW). The provisions that are followed by the UK define computer-generated work in the Copyright, Designs, and Patent Act, 1988 (CDPA). The Act states that "the work is generated by computer in circumstances such that there is no human author of the work"<sup>30</sup>. The Act also states that the developer of the 'AI' is the actual copyright holder of the work that is generated by the machine<sup>31</sup>.

## INDIAN COPYRIGHT LAW AND AI

Unlike the CDPA, Indian Law does not define "Computer-generated work". It, however, defines "author", 'as literary, artistic, musical, and dramatic works that are computer-generated as the person who causes the work to be created'<sup>32</sup>. To qualify for the protection of copyright in India, first, it has to meet the standard of 'modicum of creativity' that is laid down in

<sup>24</sup> Express Newspapers v Liverpool Daily Post & Echo (1985) 1 WLR 1089.

<sup>25</sup> *Naruto v Slater*, No. 16-15469 (9<sup>th</sup> Cir. 2018).

<sup>26</sup> Kalin Hristov, *Artificial Intelligence And The Copyright Dilemma*, 57(3) IDEA, 435 (2017).

<sup>27</sup> Nahide Barsi, *The Question of Authorship in Computer-Generated Work*, PENNCAREY LAW UNIVERSITY OF PENNSYLVANIA (Jan 31, 2024, 10:45 AM), <https://www.law.upenn.edu/live/news/9691-the-question-of-authorship-in-computer-generated>.

<sup>28</sup> *Burrow Gills Lithographic Company v Sarony*, (1884) 111 U.S. 53.

<sup>29</sup> Lokesh Vyas, *Copyrightability Of A Photograph: A Cryptic Concept?* IPRMENTLAW (Jan 31, 2024, 7:50 PM), <https://iprmentlaw.com/2020/07/11/copyrightability-of-a-photograph-a-cryptic-concept/#:~:text=Relevantly%2C%20when%20an%20original%20photograph,a%20mechanical%20reproduction%20of%20reality..>

<sup>30</sup> The Copyright, Design and Patent Act, 1988, Sec.178, 1988 (UK).

<sup>31</sup> *Supra* note 16.

<sup>32</sup> The Copyright Act, 1957, Sec 2(d)(vi), 1957 (India).

*Eastern Book Co v. D.B. Modak*<sup>33</sup> case. In this case, the court set a balance between the 'sweat of brow' and the 'modicum of creativity' test. At one end there is the 'sweat of brow' test that analyzes the originality of the work, which can be entitled to anyone for copyright protection if done with proper labor and capital. On the contrary, the benchmark for creativity is set which requires a novel and non-obvious creation and production to get copyright protection. By adopting these two concepts the court found a 'middle path' with the pre-requisite of 'adequate skill and judgment' as a result setting a level of proving originality to get protection under copyright<sup>34</sup>.

Adding to the above-mentioned requirements, there is another pre-requisite that is to be considered for the copyright of the work done by AI to obtain ownership which falls under the umbrella of "authors" as defined in the Copyright Act, 1957. This would be problematic as AI generally is not considered a legal personality in the current legal framework of the Copyright Act, 1957. As in the Act, it is prescribed that for a work to be created the actual creator or contributor for the 'expression' should be a human or a legal person. Thus, when the issue arises about the creation of AI, the authorship of AI would be a controversial matter under the Indian Copyright Laws<sup>35</sup>.

The Delhi High Court elaborates on the meaning of "author" in the case of *Camlin Pvt. Ltd. v. National Pencil Industries*<sup>36</sup>. In this case, the court stated that the "mechanically recreated printed carton" was not a subject matter of copyright as it was not clear who the author of the carton was. The court further added, "Copyright is only allowed to a natural person or the creator who created the work on its own." In this case, the plaintiff failed to claim any copyright in any carton that has been mechanically duplicated by a printing process as the work did not originate from the author. It can be concluded from this case that neither a machine can be an author of an artistic creation, nor it can have a copyright attached to it<sup>37</sup>. "The plaintiff is a juristic person and is incapable of being the author of any work in which copyright has already been obtained," the Delhi HC stated this statement in *Tech Plus Media Private Ltd. v. Jyoti Janda*<sup>38</sup>. The court further declared that the plaintiff may become the owner of the copyrighted work if he enters into a contract with the author.

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<sup>33</sup> *Eastern Book Co v D.B. Modak*, (2008) 1 SCC 1.

<sup>34</sup> Shreya Sampathkumar, *Eastern Book Company & Ors. v. D.B. Modak and Anr.*, IP MATTERS (Jan 31, 2024, 10:00 PM), <https://www.theipmatters.com/post/eastern-book-company-ors-v-d-b-modak-and-anr>.

<sup>35</sup> NITI Aayog, National Strategy for Artificial Intelligence (2018), Discussion Paper <https://niti.gov.in/sites/default/files/2019-01/NationalStrategy-for-AI-Discussion-Paper.pdf> (last visited Feb 1, 2024, 10:35 AM).

<sup>36</sup> *Camlin Pvt. Ltd. v National Pencil Industries*, AIR 1986 DELHI 444.

<sup>37</sup> *Id.* At 54-55.

<sup>38</sup> *Tech Plus Media Private Ltd. v Jyoti Janda*, AIR 2014 Delhi High Court.

## COPYRIGHT AND GENERATIVE AI

The innovation behind generative AI is advancing day by day, and so is the misuse of the technology is increasing. One example of the misuse of technology is the creation of deep fake, which is being widely used to spread disinformation online. Generative AI is the subset of Artificial Intelligence, where the machine is trained to create new content, such as music, images, and even digital art. This kind of AI is called 'generative' because it can generate new data that are unique and original. The Generative AI is planned in such a manner that it will learn from the data sets and patterns that are provided to it make predictions and generate new content that is comparatively similar to what it has learned. There are two popular generative AI models<sup>39</sup>. They are:

- 1) **Transformer-based models-** These types of AI gather information from the internet to create text-based content from articles to press etc. For instance, GPT gathers information from the internet to create text-based content.
- 2) **Generative Adversarial Networks or GANs-** These types of AI create images and multimedia just by using both imagery and text inputs.

Among these two types of generative AI, GANs have to be considered the most dangerous one when it comes to generating disinformation relating to deep fakes as they generate the most real-life images that can be difficult for one to recognize that they are created by AI. Aside from the issue of authorship, WIPO identified copyright issues relating to deep fake also. Deep fakes are visuals and voice recordings that are not real but with the help of the AI, the visual content and voice of a person appear to be real. The algorithms the Generative Adversarial Networks (GANs) use is that "the programmer puts input in large datasets of images, videos, and sounds that work together to create new images, sounds, and videos that are nearly close to the datasets but they are not directly the replication of the datasets." These networks often play a role in creating deep fakes of celebrities and sportspersons. There are three categories of deep fakes<sup>40</sup>. They are:

- I.**Face Swap-** As the name suggests the replacement of one's face with another in photo or video content.
- II.**Lips Sync-** Making someone say something in a video or audio content that they do not usually say.
- III.**Puppet Technique-** Making someone move in a way that they do not usually do.

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<sup>39</sup> Stephen Davies, *Generative AI and deepfakes. How artificial intelligence tools will sow disinformation*, THUMOS. (Feb 1, 2024, 7:50 PM), <https://thumos.uk/generative-ai-and-deepfakes/>.

<sup>40</sup> Danielle F. Bass and Nathaniel Penning, *The Legal Issues Surrounding Deepfakes*, HONIGMAN (Feb 2, 2024, 9:50 AM), <https://www.honigman.com/the-matrix/the-legal-issues-surrounding-deepfakes>.

It should be noted that the better the GANs have data access, the more realistic the deep fakes look.

Since copyright creators "have the sole right to create and duplicate their work in any tangible form," deep fakes that operate any tangible form of the work may be subject to copyright violation. In addition to the Digital Millennium Copyright Act, the works created by social media platforms are required to take down the deep fake that violates the copyright. But some limitations are being set out. Firstly, celebrities "are not likely to be the copyright proprietors of the pictures or recordings that are in question for deep fakes" and the actual owner of the copyright may file for copyright violation claim. For instance, Vogue effectively expelled a deep fake of Kim Kardashian from an online site where the deep fake operated to create a video by Vogue. And secondly, deep fake owners may claim "fair use," a convention that safeguards duplicating when apt in a "transformative" way. For example, for 'comments, feedback, and news reporting.<sup>41</sup> However, whatever use of the copyright may be that indicates an improper use of deep fakes. In the coming year these issues will be rising more as the use of AI continues to increase and so is the challenge of deep fake issues. The WIPO has been looking into the issue of deep fakes and trying to resolve it<sup>42</sup>.

### **INTERNATIONAL ORGANIZATION PROTECTING INTELLECTUAL PROPERTY**

The Berne Convention of 1886, is an ancient international-level treaty, and it does not recognize "non-human authorship<sup>43</sup>". Since the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement also incorporates some rules mentioned in the Berne Convention it also does not recognize such work of AI. It can also be considered the same for the WIPO Copyright Treaty and WIPO Performance and Phonograms Treaty of 1996. Meanwhile, it can be said that the international legal authorities on copyright did not prevent the possibility of non-human authorship in national legislation. The international authorities set a baseline that should be followed by the national legislature<sup>44</sup>, but simultaneously the national government has the freedom to set new provisions for the protection of their author and artist work. Let's discuss the international organization that protects copyright.

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<sup>41</sup> *Id.*, at 12.

<sup>42</sup> *Supra* note 14, at 23.

<sup>43</sup> Sam Ricketson, *People or Machin: The Berne Convention and The Changing Concept of Authorship*, 16(1) COLUMBIA VLA JOURNAL OF LAW AND THE ARTS 1, (1991).

<sup>44</sup> Dilan Thampapillai, *The Gatekeeper Doctrines: Originality and Authorship in Australia in the Age of Artificial Intelligence*, WIPO-WTO COLLOQUIUM PAPER 2, (2019).

## 1. Berne Convention (Protection of Literary and Artistic Works)

Bilateral treaties were the first step taken at the international level for the protection of copyright in the 19th century. India signed the Berne Convention on April 1, 1928. Several treaties provided mutual recognition of the right but neither of them is thorough enough to understand nor do they have a consistent pattern, so for a consistent system the international treaty formed the Berne Convention for the preservation of literary and artistic works. Berne Convention can be considered the ancient international treaty for copyright. On September 9, 1886, it was adopted, at Berne and came into force on December 4, 1887. It was signed in 1886 at Berne, Switzerland, and it was revised multiple times.

The fundamental principles of this convention are<sup>45</sup>:

- a. The primary and basic rule of the convention states the fair status of the preservation of literary and artistic design that comes into being from the contracting state.
- b. The second rule states that all the work created by an artist or author is automatically protected, notwithstanding any legal formalities for protection. That means no prerequisites or conditions need to be fulfilled by the creators or distributors to use the © sign. However, it is advised to get copyright registered to avoid the fear of infringement and by registering the copyright it will bring different advantages to the creator.
- c. The final rule of the treaty promises to safeguard the creative and literary works and is free of the protection term within the nation where the work is created, with certain restrictions.

## 2. The Universal Copyright Convention (UCC)

As an alternative to the Berne Convention, The Universal Copyright Convention (UCC) was formed in 1952 in Geneva. The articles that are mentioned in the Convention were not in favor of some countries and they do not sign up for the terms and conditions provided in the Berne Convention. Authors of countries who are not members of the Berne Convention also get protection under the UCC. To ensure that the work of citizens in the Berne Convention countries gets protection in the Non-Berne Convention countries, the Berne Convention countries become part of the UCC. To make sure that the UCC did not conflict with the Berne Convention, Article 17 of the UCC declares that no provisions of the Berne Convention are affected by the UCC. It further states that if a country has withdrawn from the Berne

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<sup>45</sup> ABOU NAJA INTELLECTUAL PROPERTY, <https://www.abounaja.com/blogs/berne-convention> (last visited on Feb 6, 2024, 7:45 PM).

Convention after 1st January 1951, then it will not get protections under the UCC in countries of the Berne Convention Union<sup>46</sup>.

The UCC was created as an alternative to the Berne Convention, for the following purposes<sup>47</sup>:

- a. To make sure that more countries get into the international copyright community, as some countries are not in favor of some articles that were mentioned in the Berne Convention.
- b. The UCC is more flexible and easier to observe as compared to the Berne Convention.
- c. For developing countries, the UCC is an easy convention to obey.

### 3. World Intellectual Property Organization (WIPO)

WIPO is an international organization that allows worldwide safeguarding of the rights of artists and inventors of intellectual property. In Stockholm on July 14, 1967, it was adopted and came into force on April 26, 1970. The organization is established with two main objectives<sup>48</sup>:

- a. To promote the protection of Intellectual Property worldwide; and
- b. To ensure administrative cooperation among the Intellectual Property Unions established by the treaties that WIPO administers.

### WIPO COPYRIGHT TREATY

This treaty was formed in 1996 with a special arrangement under the Berne Convention. In this treaty, any member nation including those not bound by the Berne Convention are required to follow the provisions of the 1971 Paris Act of the Berne Convention for the safeguard of creative and artistic work. On 6 March 2002, this treaty came into effect. India is a party to the treaty, but not a party to the Berne Convention under the WIPO Copyright Treaty.

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<sup>46</sup> Shubhangi Sharma and Toshi Tiwari, *Intellectual Property Rights: An overview of leading organizations and conventions*, IPLEADERS (Feb 3, 2024, 11:15 AM), <https://blog.ipleaders.in/leading-international-instruments-related-to-intellectual-property-rights/>.

<sup>47</sup> Akshara Bala, *What is Universal Copyright Convention?* QUICK COMPANY (Feb 3, 2024, 7:30 PM), <https://www.quickcompany.in/articles/what-is-universal-copyright-convention>.

<sup>48</sup> WIPO, [https://www.wipo.int/treaties/en/convention/summary\\_wipo\\_convention.html#:~:text=WIPO's%20two%20main%20objectives%20are,the%20treaties%20that%20WIPO%20administers](https://www.wipo.int/treaties/en/convention/summary_wipo_convention.html#:~:text=WIPO's%20two%20main%20objectives%20are,the%20treaties%20that%20WIPO%20administers). (last visited Feb 7, 2024).

This treaty clarifies that only the authentic expression is protected under Copyright and it excludes concepts, and business practices from its range. This treaty's provisions protect computer programs and databases. Article 4 of the Treaty grants protection for computer programs as literary work, and Article 5 of the Treaty declares that data or database compilations are granted protection as Intellectual Property under copyright<sup>49</sup>. This treaty predicted the need for a new legislature and made it clear by explaining the existing copyright laws, specifically in the digital world.

#### 4. The TRIPS Agreement

The WTO (World Trade Organization) was established for the protection of Intellectual Property Rights via the TRIPS Agreement (Trade-Related Aspects of the Intellectual Property Rights). The main objective of the treaty is to maintain a similar collection of laws that supports Intellectual Property defense like Copyrights, trademarks, Patents, Geographical Indications, etc. This Agreement takes care of both social and economic i.e., it supports creators and artists of Intellectual Property Rights and encourages inventions and originality. After the TRIPS Agreement came into force many countries changed their laws or enacted new laws for the protection of IPR. As a part of the TRIPS Agreement, India has the responsibility to impose its terms under the local legislature of IPR.

The TRIPS Agreement lays down an important rule of legal standards in digital copyright rights. Article 10 of the Agreement grants protection to computer programs as it qualifies as literary works under the Berne Convention and even databases are granted protection under copyright<sup>50</sup>.

### CONCLUSION

Copyright is a right that is granted to a person for his intellectual work and that should not be violated in any way. But the use of technology is growing day by day in our daily lives which is creating problems with copyright law. As discussed above the implication of AI in copyright law is increasing and it can be said that in future the AI will play an important role. The matter in question of authorship and ownership of AI-generated work in copyright laws has forced the international authorities to come up with a different way of solution for all

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<sup>49</sup> Abhishek Bhushan Singh and Diksha Kumari, *Issues and challenges of Copyright in the Internet World*, 1(4) BURNISHED LAW JOURNAL, (2020).

<sup>50</sup> British Horseracing Board v William Hill, 2001 RPC 612.

countries. No proper evidence is present to label this problem and every rule that is followed has its flaws. Putting AI-generated works in the public realm is not a proper solution as doing this will demoralize the AI programmers and the companies who own such AI to further fund this domain.

The *sui generis* can be considered as a better alternative to convey this issue in Intellectual Property law. "*Sui Generis*" is a Latin term that means "of its own kind." In legal terms, *sui generis* means a distinct legal classification<sup>51</sup>. So technically speaking this type of provision grants protection to work which is different from traditional concepts of Intellectual Property Rights. The rules followed by *sui generis* are not strict as compared to general Intellectual Property Rights. One author has proposed a rule for the duration of such AI-generated works to be as low as 5 to 10 years. He also stated that inside the copyright community, by granting protection for such a shorter duration "the new provision of AI copyright protection would give rise to less involvement with the existing copyright law and there would be minor possibilities for AI authors to remove human authors from creative markets, as the former has less duration to protect their copyrights." The WIPO is dealing with these issues very carefully as it is very crucial. The *sui generis* for now is considered as the only option for this situation. AI should be granted less protection as compared to human creation as there must be a balance between protecting human creation and Artificial Intelligence.

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