

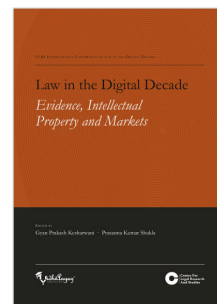
CHAPTER 11

Copyright Infringement and Corporate Liability: Navigating the Modern Digital Landscape

Pallavi Pal

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CHAPTER 11

Copyright Infringement and Corporate Liability: Navigating the Modern Digital Landscape

DR. PALLAVI PAL*

The evolution of Artificial Intelligence (AI) has revolutionized the production of literary, artistic, musical, and digital content, prompting a reassessment of established copyright doctrines concerning authorship, ownership, and infringement. The technological systems are such that they are capable of independently creating content with no human intervention, or minimal intervention resulting in arising of complex legal questions concerning authorship, ownership, originality, and liability. The traditional copyright laws were primarily designed to protect human creativity and therefore struggle to address the legal status of AI-generated works. This has given rise to the new issues relating to AI developers and operators, whether they may be held liable for direct copyright infringement where AI-generated outputs substantially reproduce or closely resemble protected copyrighted works. This issue has assumed considerable importance in light of the rapidly advancing capabilities of generative AI systems, such as ChatGPT and DALL·E, which are capable of producing sophisticated textual, visual, and audiovisual content that may incorporate recognizable elements of copyrighted material. Under prevailing statutory provisions and judicial precedents, AI companies may, in certain circumstances, be exposed to direct copyright liability for infringing outputs generated by their systems. However, the application of traditional copyright doctrines to AI-generated content presents novel legal complexities that challenge established principles of infringement analysis. Existing tests for determining liability were developed in the context of human authorship and conduct and therefore require substantial adaptation to address the distinctive characteristics of AI technologies. This paper examines three interrelated dimensions of this emerging legal challenge. Firstly, it analyses the foundational principles of copyright law governing corporate liability, with particular emphasis on the doctrines of direct, contributory, and vicarious infringement as applied to AI-generated content. The second part of the paper evaluates the applicability of these traditional doctrines to generative AI systems, including issues relating to the use of copyrighted training data, substantial similarity, and the doctrine of transformative use. The final part of the paper assesses the adequacy of existing legal frameworks in addressing challenges posed by AI-driven copyright disputes and proposes potential regulatory and judicial responses aimed at achieving an appropriate balance between the protection of intellectual property rights and the encouragement of technological innovation.

1 INTRODUCTION

Copyright law was built to protect creators against unauthorized copying, but digital technologies have made copying, distribution, and modification faster, cheaper, and harder to police. For corporations, this creates legal exposure not only when they directly use infringing content, but also when their platforms, employees, contractors, users, or algorithms facilitate infringement. The result is a legal environment in which companies must manage both intellectual property compliance and operational risk.

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The issue is especially pressing for platforms hosting user-generated content and for AI firms training or generating content using large datasets. In these settings, liability questions often turn on knowledge, control, financial benefit, and response speed once infringement is discovered.¹

Copyright law, therefore, has historically recognized human creators as authors and vested them with a bundle of exclusive rights over their original works. These rights encompass the authority to reproduce, publish, distribute, adapt, and commercially exploit their creations, derive economic benefits therefrom, transfer or assign copyright ownership, and safeguard their honour and reputation against any distortion, mutilation, or misuse that may prejudice their interests. The legal recognition of authorship has thus served as the foundation upon which copyright protection and liability for infringement have been constructed.

At the international level, the Berne Convention for the Protection of Literary and Artistic Works serves as a cornerstone of copyright protection. The Convention guarantees international recognition and protection of literary and artistic works, extending its benefits not only to authors but also to their successors in title. By facilitating the enforcement of authors' rights and preserving the integrity of creative expressions, the Convention strengthens the legal position of authors across jurisdictions. Furthermore, it promotes transparency in copyright ownership by encouraging the identification of authors through their names or pseudonyms, thereby reducing uncertainty concerning authorship. Consequently, the Berne Convention occupies a pivotal role in the protection, recognition, and preservation of authors' contributions to literature and the arts, while providing the foundational framework for the global regulation of authorship and copyright.

Notwithstanding these international efforts, fundamental questions relating to the identification of authors and the attribution of copyright ownership have continued to attract significant scholarly and legal attention. The emergence of software-assisted creation has long generated debate within intellectual property jurisprudence, particularly regarding the role of computers and, more recently, artificial intelligence as instruments of creative production. Although technological capabilities have advanced considerably over the decades, the legal questions surrounding authorship and ownership of machine-assisted or machine-generated works remain unresolved, necessitating further judicial interpretation, legislative intervention, and doctrinal clarification.²

The rise of artificial intelligence has further complicated the copyright landscape by introducing concerns that extend beyond authorship and ownership to include copyright infringement and corporate liability. Modern generative AI systems are trained on vast datasets that frequently contain copyrighted literary, artistic, musical, and audiovisual works. This has generated significant legal controversy regarding whether the unauthorized use of copyrighted material during the training process constitutes copyright infringement. Equally contentious is the question of liability when AI-generated outputs substantially reproduce or closely resemble protected works. As AI systems increasingly operate with limited human intervention, determining responsibility for infringing acts becomes increasingly complex. Courts and scholars have debated whether liability should rest with the developers of AI models, the corporations that deploy and commercialize such systems, the users who generate the outputs, or a combination

¹ For cases in which courts have found companies secondarily liable for their users' direct copyright infringement, see *Metro-Goldwyn-Mayer Studios Inc. v. Gorkster, Ltd.*, 545 U.S. 913, 935–36 (2005); *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1024 (9th Cir. 2001).

² Pamela Samuelson, *AI Authorship?*, (2020) 63.7 *Communications of the ACM* 20, at 22.

thereof. Consequently, the issue of corporate liability has emerged as a central concern in contemporary copyright discourse, particularly as technology companies continue to profit from AI-generated content while relying upon copyrighted materials to develop and refine their models.

Recognizing the challenges posed by technological innovation, the United States established the Commission on New Technological Uses of Copyrighted Works (CONTU) in 1974. The Commission examined the implications of computer technology for copyright law and recommended significant reforms, including the recognition of computer programs as copyrightable subject matter. It further advocated extending copyright protection to encompass the various uses of software in computer-related operations. Importantly, CONTU emphasized that lawful owners of computer program copies should retain the freedom to use and adapt such programs within the limits prescribed by copyright law, thereby balancing the interests of copyright holders with those of users.

Subsequently, in 1986, the United States Office of Technology Assessment (OTA) undertook a comprehensive study examining the impact of emerging technologies on intellectual property rights. The OTA evaluated the adequacy of the federal copyright framework in addressing technological innovation and concluded that rapid technological developments were exerting a transformative effect on the intellectual property system. The study underscored the necessity of continual legal adaptation to ensure that copyright law remains responsive and effective within an evolving technological landscape.

The advent of artificial intelligence has further intensified these debates by fundamentally transforming the creation of literary, musical, artistic, and digital works. AI systems are no longer confined to facilitating human creativity; they increasingly generate original content with minimal human intervention. A notable illustration of machine-generated creativity emerged in 2016 with the development of a Japanese artificial intelligence system that produced a novel entitled *The Day a Computer Writes a Novel*. The work attracted considerable attention and was shortlisted for the prestigious “Hoshi Shinichi Literary Award”, demonstrating the growing sophistication of AI-generated creative outputs. Likewise, the release of “Hello World” by SKYGGE highlighted the expanding collaboration between artificial intelligence and human creators in the field of music. Widely regarded as one of the earliest examples of a fully AI-generated musical composition, the project exemplifies the transformative potential of artificial intelligence within creative industries.

Recent litigation against major artificial intelligence companies has brought these issues into the limelight. Authors, artists, musicians, publishers, and media organizations have initiated lawsuits alleging that AI developers unlawfully reproduced copyrighted works during the training of generative models and subsequently generated outputs that imitate or replicate protected expression. These disputes have raised critical legal questions concerning the scope of copyright infringement in the context of machine learning, the applicability of traditional doctrines such as fair use, and the extent to which corporations developing and deploying AI systems may be held directly, vicariously, or contributorily liable for infringing activities. As courts across multiple jurisdictions grapple with these novel challenges, the intersection of AI-generated creativity, copyright infringement, and corporate accountability has emerged as one of the most significant and rapidly evolving areas of contemporary intellectual property law.

The deployment of conventional copyright principles in the AI context has revealed significant gaps within the current legal framework. On the one hand, an overly expansive interpretation of infringement may impede technological innovation and the development of transformative AI systems. On the other hand, inadequate protection may undermine the legitimate interests of copyright holders and erode

incentives for creative production. The autonomous learning processes and content-generation capabilities of modern AI systems necessitate a more nuanced legal approach capable of reconciling intellectual property protection with the promotion of technological advancement.

In the light of the above stated scenario, it is important to emphasize that the paper contributes to the existing scholarship in several significant ways through its comparative study of jurisdictions operating under both civil law and common law systems. This paper examines three interrelated dimensions of this emerging legal challenge. *Firstly*, it analyses the foundational principles of copyright law governing corporate liability, with particular emphasis on the doctrines of direct, contributory, and vicarious infringement as applied to AI-generated content. *Secondly*, it evaluates the applicability of these traditional doctrines to generative AI systems, including issues relating to the use of copyrighted training data, substantial similarity, and the doctrine of fair use. *Finally*, it assesses the adequacy of existing legal frameworks in addressing contemporary challenges posed by AI-driven copyright disputes and proposes potential regulatory and judicial responses aimed at achieving an appropriate balance between the protection of intellectual property rights and the encouragement of technological innovation.

2 FOUNDATIONAL PRINCIPLES OF COPYRIGHT LAW GOVERNING CORPORATE LIABILITY

The rapid advancement of artificial intelligence technologies has challenged the traditional framework of copyright law by introducing novel questions concerning liability for infringing acts committed through autonomous or semi-autonomous systems. While copyright law was originally designed to regulate human conduct, the increasing involvement of corporations in the development, deployment, and commercialization of generative artificial intelligence has necessitated a re-examination of the principles governing copyright infringement and corporate accountability.

In this context, the doctrines of direct, contributory, and vicarious infringement serve as the primary legal mechanisms through which liability may be imposed upon corporate entities whose AI systems generate infringing content.

Direct copyright infringement occurs when a protected work is reproduced, distributed, publicly displayed, performed, or adapted without the authorization of the copyright owner. Traditionally, liability for direct infringement is imposed irrespective of the defendant's intention or knowledge, making it a strict liability offence in many jurisdictions. Therefore, in order to prove direct infringement, a plaintiff must establish ownership of a valid copyright and unauthorized copying of protected expression.

The application of this doctrine to generative AI presents significant challenges. AI systems are trained on extensive datasets that may contain copyrighted material, often collected from publicly accessible sources without explicit authorization from copyright owners. During the training process, copyrighted works may be reproduced, stored, and analysed by machine-learning algorithms. Consequently, rights holders have argued that such acts constitute unauthorized reproduction under copyright law. Furthermore, liability concerns arise when AI-generated outputs substantially resemble or replicate protected works, raising questions as to whether the resulting output constitutes an infringing reproduction.³

In the light of the context, a number of AI companies and scholars have argued that the AI training process constitutes "fair use" and is therefore non-infringing. "This doctrine serves as a critical limitation on the copyright holder's exclusive rights and provides potential defence for AI companies. The four

³ U.S. Copyright Office, Copyright and Artificial Intelligence, Part 3: Generative AI Training (2025).

testing parameters for finding out the fair use: the purpose and the character of the use, the nature of the copyrighted work, the amount used and the market effect.”⁴ While the courts have generally found that technological innovations transforming the copyrighted work to make a new work are considered as fair use,⁵ the AI systems process and recombine the information in such a way that blurs the lines between inspiration, transformation and reproduction. Here it becomes difficult for the court to decide as to how to apply the ‘fair use’ doctrine.⁶

Furthermore, the market effect analysis opens up a new dimension in the AI context. Courts must consider not only the immediate impact on existing markets for copyrighted works but also the potential future markets that AI generated content might create or disrupt.⁷

In the context of corporate liability, AI developers and technology companies may face claims of direct infringement where they actively reproduce copyrighted material during model training or where the architecture of their systems predictably generates infringing outputs. However, determining direct liability becomes more complex where the alleged infringement results from autonomous computational processes rather than deliberate human action. This has led courts and scholars to debate whether traditional standards of direct infringement are adequate for addressing AI-generated content.

2.1 Contributory Copyright Infringement

Contributory infringement is a form of secondary liability that arises when a party knowingly contributes to, facilitates, or induces the infringing conduct of another. The doctrine emerged to prevent entities from avoiding liability by distancing themselves from the actual act of infringement while nonetheless enabling or encouraging such conduct.

To establish contributory infringement, two elements generally must be satisfied: first, the defendant must possess actual or constructive knowledge of the infringing activity; and second, the defendant must materially contribute to or induce the infringement. In the digital environment, courts have frequently applied this doctrine to online service providers, file-sharing platforms, and technology intermediaries that facilitate copyright violations by users.

The doctrine assumes particular significance in relation to generative AI systems. Technology companies that design, train, and distribute AI models may be accused of materially contributing to copyright infringement if their systems enable users to generate unauthorized reproductions of copyrighted works. For example, where a corporation is aware that users are employing its AI tools to generate content that closely imitates copyrighted material and fails to implement reasonable safeguards, it may be argued that the corporation has materially contributed to the infringing conduct. Similarly, the intentional promotion of AI systems as capable of reproducing particular artistic styles, literary works, or copyrighted content may strengthen claims of contributory liability.

The contributory infringement framework is especially relevant because it allows courts to assess corporate conduct even where the corporation itself is not the direct creator of the infringing output. As a result, it provides an important mechanism for addressing the intermediary role played by AI developers in the copyright ecosystem.

⁴ 17 U.S.C. § 107 (enacted by the Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541); see also H.R. REP. NO. 94-1476, at 65–66 (1976).

⁵ See *Authors Guild v. Google, Inc.*, 804 F.3d 202, 214–18 (2d Cir. 2015).

⁶ *Authors Guild*, 804 F.3d at 229.

⁷ *Authors Guild*, 804 F.3d at 229.

2.2 Vicarious Copyright Infringement

Vicarious infringement represents another form of secondary liability that does not require proof of knowledge or intent. Instead, liability is imposed where a defendant possesses the right and ability to supervise or control the infringing activity and derives a direct financial benefit from that activity. The doctrine is rooted in agency principles and reflects the notion that entities benefiting from infringement should bear responsibility when they possess the capacity to prevent it.

In the context of AI-generated content, vicarious liability may be particularly relevant to corporations that operate and monetize generative AI platforms. Technology companies often maintain substantial control over the design, training methodologies, content moderation systems, and deployment of AI models. They may also derive significant economic benefits through subscription fees, licensing arrangements, advertising revenue, or increased market valuation resulting from the popularity of their AI services.

Where a corporation possesses the technical capability to restrict infringing outputs yet fails to implement effective safeguards, courts may consider whether the company exercised sufficient control over the infringing activity. Likewise, where the availability of copyrighted content enhances the commercial value and attractiveness of an AI system, the financial benefit requirement may be satisfied. Consequently, vicarious liability offers copyright holders an avenue for holding corporations accountable even in circumstances where direct participation in the infringing act cannot be conclusively established.

The doctrines of direct, contributory, and vicarious infringement collectively provide the legal foundation for evaluating corporate responsibility in the age of generative artificial intelligence. However, their application to AI-generated content remains uncertain due to the unprecedented nature of autonomous machine learning systems. Unlike traditional copyright disputes involving identifiable human actors, AI-generated works often involve multiple stakeholders, including developers, model trainers, platform operators, and end users. This diffusion of responsibility complicates the attribution of liability and exposes limitations within existing copyright frameworks.

Recent litigation against major AI companies has highlighted these challenges by raising questions concerning unauthorized use of copyrighted works for model training, the generation of outputs that mimic protected expression, and the extent to which technology corporations should bear responsibility for the actions of their AI systems. As courts continue to grapple with these issues, the doctrines of direct, contributory, and vicarious infringement remain central to determining the contours of corporate liability in the emerging landscape of artificial intelligence and copyright law.

In light of these developments, it is increasingly evident that traditional copyright doctrines must either be adapted or supplemented through legislative reform to address the unique challenges posed by generative AI. Establishing clear standards of corporate accountability will be essential for balancing technological innovation with the protection of authors' rights and the integrity of the copyright system.

2.3 Human Authors v Non-Human Authors: A Comparative Analysis

Amid this backdrop, AI has caused global disruption within the copyright systems. The issues regarding the meaning and scope of "authorship" have been globally discussed. The Berne Convention has not

explicitly defined the term “author” but it laid down the broader perspective including both ‘human’⁸ (author) and ‘legal entity’⁹ (authorship) creators, meaning thereby the convention strongly refers to the individual who created the work.¹⁰ Therefore, it could be said that copyright protection is exclusively granted to man-made creative works only.¹¹

In India, the copyright regime attributes authorship in relation to computer-generated literary, dramatic, or artistic works to the individual who undertakes the necessary arrangements for the creation of such works. Nevertheless, notwithstanding the involvement of artificial intelligence in the creative process, the law continues to regard the human contributor as the primary creative force operating behind the generation of the work.¹²

The Copyright Act, 1957¹³ does not expressly define the term “author” in the context of literary and artistic works. However, Section 2(d) of the Act provides a broad statutory interpretation of the concept. Under the provision, the author of a literary or dramatic work is identified as the person who creates the work, whereas in the case of a musical work, authorship is attributed to the composer. Similarly, for artistic works other than photographs, the “author” is recognized as the artist responsible for the creation. In the context of photographs, the Act specifically designates the person taking the photograph as the author.

The above-stated view is supported by the copyright systems in the European Union (EU). The legal framework governing copyright within the European Union comprises international treaties, Union legislation, and domestic laws enacted by individual Member States. The scope and nature of rights afforded to creators of original works differ across EU Member States, shaped by their respective legal traditions and national copyright regimes.

The notion of “authorship” under EU copyright law is therefore not entirely uniform and often depends upon the legal tradition followed within a particular Member State. Under the continental European approach, derived from the French concept of *droit d’auteur*, authorship incorporates both moral and economic rights. Moral rights such as the right of attribution and the right to preserve the integrity of a work are regarded as inalienable and cannot ordinarily be transferred or waived. Economic rights, however, are transferable in nature.

In contrast, common law jurisdictions, including the United Kingdom and, within the European Union, Ireland, Malta, and Cyprus, generally place greater emphasis on economic rights than on moral rights.¹⁴ Although British and Irish copyright law recognize moral rights, such as the right to claim authorship and to object to derogatory modifications, these rights may be waived by the author. Consequently, the determination of who qualifies as an “author” under EU copyright law depends significantly

⁸ Paris Act relating to the Berne Convention for the Protection of Literary and Artistic Works, 9 September 1886, 3 U.N.T.S. 1,161 (entered into force 15 December 1972).

⁹ Caroline Anfray et al., Reflection paper on copyright, patient-reported outcome instruments and their translations, (2018) 16 Health and Quality of Life Outcomes 1.

¹⁰ The wording of the above text strongly suggests that “author” and “authorship” for the purposes of the Convention refer to the individual who created the work. As a result, it seems acceptable to say that copyright protection is exclusively granted to man-made creative works. See Jane C. Ginsburg, The Concept of Authorship in Comparative Copyright Law, 52 DePaul L. Rev. 1063, 1069 (2003).

¹¹ Paul Goldstein, International Copyright: Principles, Law, and Practice, (New York, USA: Oxford University Press, 2001).

¹² Andres Guadamuz, “Artificial Intelligence and Copyright”, WIPO Magazine (2017), online: WIPO https://www.wipo.int/wipo_magazine/en/2017/05/article_0003.html.

¹³ Section 2(d) of the Indian Copyright Act, 1957, No. 14, Acts of Parliament, 1957.

¹⁴ Comparative Law Library Unit, European Parliamentary Research Service, “Copyright Law in the EU: Salient Features of Copyright Law Across the EU Member States” (2018), European Parliament online: European Parliament [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/625126/EPRS_STU\(2018\)625126_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/625126/EPRS_STU(2018)625126_EN.pdf).

upon the applicable legal framework and the relative importance attributed to moral and economic rights within that system.¹⁵

Whereas, in the common law countries such as the US, the UK, Ireland, Malta, and New Zealand, there are discussions and debates regarding the recognition of “non-human” authors in copyright law. These jurisdictions adopt a predominantly *utilitarian approach*, wherein the primary objective of copyright law is to incentivize creativity and innovation while simultaneously promoting public access to creative works for the broader benefit of society.¹⁶ Under this framework, comparatively lesser emphasis is placed upon the personality or identity of the author, thereby theoretically creating scope for discussions concerning non-human authorship. Nevertheless, judicial interpretation, particularly within the United States, has consistently clarified and limited the ambit of copyright protection to works originating from human intellectual effort and creativity.¹⁷

The Supreme Court of the United States, while interpreting the Copyright Act, has repeatedly affirmed that copyright subsists only in works created by human authors. “Historically, human authorship has been heavily stressed in US copyright law. The U.S. Copyright Act does not explicitly address AI-generated works, but the stance of the U.S. Copyright Office is particularly relevant.”¹⁸ The most recent edition of the Compendium of U.S. Copyright Office Practices states that, “The U.S. Copyright Office will register an original work of authorship, provided that the work was created by a human being.”¹⁹

Copyright law in the United States is fundamentally grounded in utilitarian principles, whereby copyright protection functions as an incentive mechanism encouraging authors, artists, and inventors to create works for the broader benefit of society. This constitutional objective is reflected in Article I, Section 8, Clause 8 of the Constitution of the United States, which empowers Congress to promote the progress of science and the useful arts through the grant of exclusive rights.²⁰

As previously discussed, United States copyright jurisprudence requires a sufficient degree of human intellectual effort and creativity in order to establish the originality necessary for copyright protection. Although Title 17 U.S.C. § 102 does not expressly address the copyrightability of AI-generated works, the United States Copyright Office has consistently clarified that works generated solely through artificial intelligence are not eligible for copyright protection unless they embody meaningful human authorship or creative contribution.²¹

It is, however, pertinent to note that the “work made for hire” doctrine under the amended Copyright Act of 1976 permits an employer or commissioning party to be recognized as both the legal author and owner of a work created by an employee within the scope of employment or pursuant to a contractual arrangement.²² While this doctrine presupposes the existence of a human creator, it has nevertheless

¹⁵ *Copyright, Designs and Patents Act 1988*, c. 48, §§ 77, 80 (UK), <https://www.legislation.gov.uk/ukpga/1988/48/contents>.

¹⁶ *Id.*

¹⁷ China IPR SME Helpdesk, *Copyright Protection in China: A Guide for European SMEs* (2010), archived at https://web.archive.org/web/20240926170458/https://intellectual-property-helpdesk.ec.europa.eu/system/files/2020-10/EN_Copyright_guide_Aug_2010.pdf.

¹⁸ Anthi Gaidartzi & Irini Stamatoudi, Authorship and Ownership Issues Raised by AI-Generated Works: A Comparative Analysis, 14 *Laws* 57, at 3 (2025), <https://doi.org/10.3390/laws14040057>.

¹⁹ U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* § 306 (3d ed. 2021).

²⁰ U.S. CONST. art. I, § 8, cl. 8.

²¹ See Anthi Gaidartzi & Irini Stamatoudi, Authorship and Ownership Issues Raised by AI-Generated Works: A Comparative Analysis, 14 *Laws* 57, at 6 (2025), <https://doi.org/10.3390/laws14040057>.

²² U.S. Copyright Office, *Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code* (2022), <https://www.copyright.gov/title17/title17.pdf>.

generated scholarly debate regarding whether AI-generated outputs produced during the course of employment may indirectly qualify for protection under such arrangements. Nonetheless, this proposition remains legally unsettled and has yet to receive definitive judicial determination.

This judicial approach significantly narrows the applicability of copyright protection by confining it to creations derived from human creativity and intellectual conception. A notable illustration is *Burrow-Giles Lithographic Co. v. Sarony*²³, wherein the Court defined an author as the “originator” or “maker” to whom a work owes its origin. In that case, photographs were recognized as embodying the original intellectual conceptions of the author. Likewise, in *Goldstein v. California*²⁴, the Court reaffirmed that an “author,” in the constitutional sense, refers to an individual who writes, composes, or creates an original work, thereby emphasizing the requirement of human intellectual contribution.

These precedents collectively underscore that the concept of authorship is intrinsically linked to human creativity, intellectual labour, and originality. The jurisprudence establishes that authorship arises from the act of creation undertaken by a natural person exercising independent intellectual effort. Consequently, non-human entities are excluded from recognition as authors within the constitutional and statutory framework of copyright law.

The requirement of originality was further elaborated in *Feist Publications, Inc. v. Rural Telephone Service Co.*²⁵, where the Court held that copyright protection extends only to works that are original to the author. The judgment clarified that a work must exhibit a sufficient degree of creativity and independent expression attributable to the author in order to qualify for copyright protection. Accordingly, mere compilations of facts or data lacking creative selection, coordination, or arrangement fail to satisfy the threshold of originality required under copyright law. The ruling thus reaffirmed that copyright subsists only in expressions reflecting distinct and independently created intellectual effort.

The settled jurisprudence of the Supreme Court emphasizing human authorship has consistently been reaffirmed by lower federal courts. These courts have uniformly rejected attempts to extend authorship recognition to non-human entities. In *Urantia Foundation v. Maaberra*,²⁶ the Ninth Circuit Court of Appeals held that a book allegedly authored by non-human spiritual beings could attract copyright protection only where there existed substantial human selection, arrangement, and editorial contribution. The Court thereby emphasized that meaningful human participation in the creative process remains indispensable for copyright protection.

Similarly, in *Cetacean Community v. Bush*,²⁷ the Court addressed questions concerning the legal standing of non-human entities in the context of federal environmental statutes. Although constitutional standing under Article III was discussed, the Court ultimately held that animals lacked statutory standing under those statutes, a rule the Ninth Circuit later applied to the federal Copyright Act in *Naruto v. Slater*.²⁸ Together, the decisions highlighted the distinction between constitutional standing and statutory entitlement under copyright law, while reaffirming that non-human entities cannot be recognized as authors within the prevailing legal framework.

²³ *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884).

²⁴ *Goldstein v. California*, 412 U.S. 546 (1973).

²⁵ *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991).

²⁶ *Urantia Found. v. Maaberra*, 114 F.3d 955, 964 (9th Cir. 1997).

²⁷ *Cetacean Cmty. v. Bush*, 249 F. Supp. 2d 1206 (D. Haw. 2003), *aff'd*, 386 F.3d 1169 (9th Cir. 2004).

²⁸ *Naruto v. Slater*, 888 F.3d 418 (9th Cir. 2018).

In light of the settled judicial precedents and the prevailing practices of the United States Copyright Office, it is apparent that independently generated AI-created works are not presently eligible for copyright registration or protection. The existing legal framework maintains that works produced solely through autonomous artificial intelligence systems do not satisfy the requirement of human authorship necessary for copyright subsistence.

The established jurisprudence, together with the administrative guidelines issued by the Copyright Office, consistently reaffirms the foundational principle that copyright law is intended to protect the originality, intellectual labour, and creative expression of human authors. Although artificial intelligence technologies have evolved considerably and are capable of generating sophisticated and commercially valuable outputs, the absence of direct and meaningful human involvement in the creative process raises substantial legal concerns regarding the applicability of copyright protection to such works.

3 AI AND HUMAN INVOLVEMENT: A PREREQUISITE FOR COPYRIGHT?

The issue of whether human intervention constitutes an indispensable prerequisite for copyright protection remains one of the most debated questions at the intersection of artificial intelligence and intellectual property law. “Broadly, AI-generated works may be categorized into two distinct classes: *first*, works produced with substantial human involvement, wherein artificial intelligence functions merely as a tool employed to achieve human-directed creative objectives; and *second*, works generated autonomously by AI systems with minimal or no meaningful human participation.

Works falling within the former category generally satisfy traditional copyright standards, particularly the requirement of originality, which has historically been understood as the product of human intellectual effort, skill, and judgment. In contrast, autonomously generated AI outputs raise far more intricate legal, philosophical, and ethical concerns relating to creativity, intentionality, accountability, and the very concept of authorship in the absence of human agency.”²⁹

Notwithstanding this apparent distinction, the boundary between these categories is often difficult to delineate in practice. Numerous AI-generated outputs arise through a combination of human prompts, instructions, supervision, and autonomous generative processes, thereby creating hybrid works that resist rigid binary classification. Consequently, legislative and judicial responses to this issue differ significantly across jurisdictions. While certain legal systems require a substantial degree of human creative contribution as a condition precedent for copyright protection, others adopt a comparatively broader or more flexible approach toward computer-generated works.³⁰

The World Intellectual Property Organization (WIPO) addressed the concern in the paper titled “Conversation on Intellectual Property Policy and Artificial Intelligence”, referring to the increasing use of AI in creating literary and artistic works.³¹ Excluding AI-generated works from copyright protection would reinforce the doctrinal position that copyright law is premised upon the protection and encouragement of human creativity, rather than machine-generated output. Such an approach would underscore

²⁹ Kalin Hristov, Artificial Intelligence and the Copyright Dilemma, 57 IDEA: J. Franklin Pierce Ctr. for Intell. Prop. 431, 435–36 (2017).

³⁰ Niloufer Selvadurai & Rita Matulionyte, Reconsidering Creativity: Copyright Protection for Works Generated Using Artificial Intelligence, 15 J. Intell. Prop. L. & Prac. 536, 536–43 (2020).

³¹ WIPO Secretariat, Revised Issues Paper on Intellectual Property Policy and Artificial Intelligence, WIPO/IP/AI/2/GE/20/1 REV. (May 21, 2020), at para. 23.

the principle that the copyright system is intended to incentivize, reward, and preserve the fruits of human intellectual effort.

“Conversely, extending copyright protection to AI-generated works would reflect a policy orientation favouring the dissemination and availability of creative output to the public, irrespective of whether such works originate from human authorship or machine generation. On this view, the copyright regime would be understood as prioritizing access to creative works over a strict distinction between human and artificial creativity.”³²

During the second and third Sessions of the WIPO Conversation on Intellectual Property and Artificial Intelligence, the issue was examined through two competing perspectives. Those opposing copyright protection for AI-generated works advanced several arguments in support of their position. They contended that the involvement of human input, when combined with the automated functioning of AI algorithms, is predominantly technical in nature and does not, by itself, justify the conferral of copyright protection.³³ They further emphasized that human authorship remains a settled and foundational principle of copyright law, whereas AI remains an evolving concept lacking sufficient doctrinal certainty.

In addition, the opponents maintained that works generated by AI should properly fall within the public domain.³⁴ They argued that extending copyright protection to the arrangement, selection, and creation of AI-assisted output would raise significant policy concerns and could unduly restrict the public domain. In their view, subjecting a wider range of AI-generated literary and artistic works to copyright protection would diminish public access to such creations.³⁵

4 WHETHER AI-GENERATED CREATIONS FULFIL THE THRESHOLD OF ORIGINALITY REQUIRED FOR COPYRIGHT PROTECTION?

In essence, the concept of “originality” denotes that a work seeking copyright protection must emanate from an identifiable author or creator and embody a degree of independent intellectual creation reflective of the author’s personal expression, rather than constituting a mere reproduction or wholly derivative work.

Under common law jurisprudence, originality was historically associated with the “*sweat of the brow*” doctrine, which emphasized the labour, skill, and effort expended in the creation of a work. However, in jurisdictions such as the United States, the standard of originality has undergone gradual transformation, and mere industrious effort or labour, in the absence of creativity, is no longer considered sufficient to establish originality or attract copyright protection. This modern approach aligns with the utilitarian philosophy underlying copyright law, which seeks to encourage human creativity and incentivize authors by granting legal protection to original intellectual expression. There have been repeated attempts to address the issue of whether the AI generated works are to be considered as original or not. The judiciary has significantly responded and clarified time and again but there has always been inconsistency between the common law countries and the civil law countries.

³² Ibid.

³³ WIPO Secretariat, Summary of Second and Third Sessions, WIPO Conversation on Intellectual Property (IP) and Artificial Intelligence (AI), WIPO/IP/AI/3/GE/20/INF/5 (Jan. 8, 2021), at para. 36.

³⁴ Ibid.

³⁵ Ibid., at para. 39.

The decision in *Hollinrake v. Truswell*³⁶ further clarified the doctrine of originality within copyright jurisprudence. The Court held that originality does not depend upon the novelty or uniqueness of a work; rather, it is determined by whether the work originates from the author's own intellectual and creative effort. Accordingly, a work may be regarded as original provided that it is independently created and not copied from another source. The ruling thus reaffirmed that the essence of originality lies in authorship and independent creation, rather than in the existence of absolute novelty. By emphasizing the requirement of personal authorship and the absence of copying, the decision significantly shaped the understanding of originality within the jurisdiction of England and Wales.³⁷

Similarly, in *University of London Press Ltd v. University Tutorial Press Ltd*,³⁸ the Court observed that a work may be considered original where it reflects a sufficient degree of skill, labour, and judgment and is not reproduced from an existing work. This interpretation of originality, grounded in independent creation and the absence of copying, became highly influential within United Kingdom copyright law. It is noteworthy, however, that the traditional "skill and labour" standard in the United Kingdom has subsequently been shaped and refined by the jurisprudence of the Court of Justice of the European Union (CJEU).³⁹

Similarly, the courts in the United States have consistently recognized that originality requires at least a minimal degree of creative input. In *Burrow-Giles Lithographic Co. v. Sarony*,⁴⁰ the Court emphasized that copyrightability is contingent upon the presence of creative intellectual labour. Likewise, in *Time Inc. v. Bernard Geis Associates*, the District Court acknowledged that originality in photography may be reflected through elements of personality and creative judgment, including the selection of the subject, composition, framing, lighting, and timing of the photograph. "While recognizing the artistic and visual nature of photographic works, the Court refrained from evaluating the artistic merit or aesthetic quality of the work itself."⁴¹

Further clarification regarding the originality threshold was provided in *Baltimore Orioles, Inc. v. Major League Baseball Players Association*⁴², where the United States Court of Appeals for the Seventh Circuit held that originality comprises two essential requirements: first, the work must originate independently from the author, and second, it must embody at least a minimal degree of creativity. The Court thereby distinguished between independent origin and creative expression, emphasizing that both elements are necessary to satisfy the originality requirement. "Independent origin" requires that the work emanate from the author's own intellectual effort rather than constituting a copy or imitation, whereas the requirement of "minimal creativity" recognizes that even a modest degree of creative contribution may suffice for copyright protection.

Likewise, in *Alfred Bell & Co. v. Catalda Fine Arts, Inc.*,⁴³ the Court of Appeals elaborated upon the "doctrine of originality" by holding that originality necessitates two essential conditions. *First*, the work must originate from the author through independent creation. *Second*, the work must contain at least a

³⁶ *Hollinrake v. Truswell*, [1894] 3 Ch. 420, 427 (Eng.).

³⁷ See Hafiz Gaffar & Saleh Albarashdi, Copyright Protection for AI-Generated Works: Exploring Originality and Ownership in a Digital Landscape, 15 Asian J. Int'l L. 23, 38 (2025), <https://doi.org/10.1017/S2044251323000735>.

³⁸ *Univ. of London Press Ltd. v. Univ. Tutorial Press Ltd.*, [1916] 2 Ch. 601 (Eng.).

³⁹ *Newspaper Licensing Agency Ltd. v. Melthwater Holding BV*, [2011] EWCA (Civ) 890 (Eng.).

⁴⁰ *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884).

⁴¹ *Time Inc. v. Bernard Geis Assocs.*, 293 F. Supp. 130 (S.D.N.Y. 1968).

⁴² *Baltimore Orioles, Inc. v. Major League Baseball Players Ass'n*, 805 F.2d 663 (7th Cir. 1986).

⁴³ *Alfred Bell & Co. Ltd. v. Catalda Fine Arts, Inc. et al.*, 191 F.2d 99 (2d Cir. 1951).

minimal degree of novelty or creative distinction. By articulating these principles, the Court clarified that copyright protection extends only to works reflecting independent intellectual effort and some degree of creative individuality, however slight, and not to mere reproductions or mechanical imitations of pre-existing works.

The common law countries such as the US and the UK prefer authorship over novelty while finding the threshold of originality. On the other hand, the civil law countries place less emphasis on “labour and skill” and more on inherent connection between the author and the creation. In these jurisdictions, moral rights play a crucial role including author’s entitlement to be credited for their work and to maintain control over integrity.⁴⁴

5 CONCLUSION

The global legal framework governing AI-generated works remains fragmented, with jurisdictions adopting divergent approaches to authorship and copyright protection. While the United States and the European Union continue to emphasize human authorship, jurisdictions such as China have adopted comparatively broader approaches accommodating AI-assisted creativity. This lack of uniformity creates significant legal uncertainty in the rapidly expanding market for AI-generated content.

The study argues that existing copyright regimes, grounded in human-centric notions of originality and authorship, are insufficient to address the complexities of autonomous AI-generated works. Accordingly, there is a growing need for a coherent international framework capable of balancing innovation, legal certainty, ethical accountability, and the protection of human creativity. Such a framework may include *sui generis* protection, compulsory licensing mechanisms, or revised standards of authorship recognizing collaborative human–AI creation.

This paper examined the issue of copyright protection for AI-generated works and identified several important findings. *First*, originality remains a fundamental requirement for copyright protection, requiring a work to reflect human creative choices and intellectual contribution. While fully autonomous AI-generated works may fail to satisfy this threshold, AI-assisted works involving meaningful human input may qualify for protection.

Second, the Court of Justice of the European Union (CJEU) has significantly influenced the interpretation of originality by emphasizing creative freedom and independent intellectual creation. *Third*, the study highlights the need for continued legal and policy discussions to address emerging issues relating to authorship, ownership, and attribution in AI-generated works.

Accordingly, policymakers and researchers should focus on developing a balanced and adaptable legal framework capable of accommodating technological innovation while safeguarding the principles of human creativity and copyright protection.

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⁴⁴ See Hafiz Gaffar & Saleh Albarashdi, Copyright Protection for AI-Generated Works: Exploring Originality and Ownership in a Digital Landscape, 15 Asian J. Int’l L. 23, 39 (2025), <https://doi.org/10.1017/S2044251323000735>.