Artificial Intelligence and Copyright Law -The Authorship Quandary

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'First published on LEXOLOGY' Authors are: Gautam Razdan and Kanupriya Chawla Artificial Intelligence (AI) is the simulation and augmentation of human intelligence demonstrated by machines. It has the potential to revolutionise the world and is set to become the most impactful human innovation in history. However, it has been remarkably challenging to determine the author of an AI-generated work and the ongoing technological revolution exacerbates the impending need to investigate the confluence of copyright law and AI. This article endeavours to explore three prospective contenders with respect to the ownership of the AI-generated works:

- AI
- Developer of AI
- User of AI

The first alternative is for the AI to be granted ownership. However, the current copyright legal framework all across the globe does not enable the AI to be deemed as the owner. Conferring such ownership to AI potentially props up newer hurdles such as AI's lack of legal personhood. The next step is to explore the realm of attributing ownership to the developer of AI. This category shall include individuals who contributed to the creation and development of AI-generated works. Vesting copyright in software developers is justifiable when their contributions are integral to the very existence of the end product. The third possibility is that the ownership be allocated to the user of the AI system. This requires a careful examination of the magnitude of the contribution by the user towards the final product. In the case of Google's AI programme Poem Portraits, for instance, a user merely types a word into the AI system in order to generate a poem[1]. Although the user contributed to the AI system's output, their contribution cannot be regarded as sufficient effort to qualify for copyright protection and thus, the user cannot be deemed as the owner of the AI. The prevailing intellectual property frameworks in jurisdictions all across the globe were not formulated with AI in mind. While no single country has an exhaustive legal framework governing the intersection of copyright law and AI, the current approach being adopted by different jurisdictions appears to be to tackle the authorship conundrum in AI-created works on a case-by-case basis.

USA

The US copyright office has crystallized its stance on the issue laying down that human authorship is a prerequisite for granting copyright ownership in the United States of America. This approach stems from *Feist Publications v. Rural Telephone Service Company, Inc.* [2] wherein it was held that copyright law only protects "the fruits of intellectual labor that are founded in the creative powers of

the mind". The courts over the years have defined an author as "to whom anything owes its origin; originator; maker; one who completes a work of science or literature"[3]. The United States Court of Appeals reaffirmed the erstwhile position in law with *New Idea Farm Equipment Corp. v. Sperry Corp.*[4], wherein the court ruled that works created by a machine or mechanical process will not be registered if there has been no creative input or assistance from a human being. The ideology that a non-human cannot own copyright and hence cannot claim for infringement of copyright was further endorsed in *Naruto v* Slater[5].

UK

UK has been at the forefront with the first attempt at a legislative solution to render copyright protection in the UK for AI-generated works being made over three decades ago. The UK Parliament introduced the category of computer-generated works as part of the Copyright, Designs and Patents Act 1988 which manifested as Section 9(3) of the Copyright, Designs and Patents Act 1988. In accordance with Section 9(3) of the CDPA, the author of a computer-generated literary, dramatic, musical, or artistic work "shall be deemed to be the person by whom the arrangements necessary for the production of the work are undertaken"[6]. Economic justification for copyright was a prominent precursor leading to this position, which is based on the cardinal principle of rewarding the person who invested in the development of the programme that created the end product.

INDIA

The Indian Copyright Act, 1957 defines "author" in relation to "any literary, dramatic, musical, or aesthetic work that is computer-generated" as "the person who causes the work to be formed"[7]. Section 2(d) encapsulates the firm viewpoint of the framers of the Copyright Act in that copyright protection can only be vested in a natural humans. The Delhi High Court clarified the meaning of the term "author" in *Camlin Pvt. Ltd. v. National Pencil Industries*[8] wherein the creator of a "mechanically duplicated printed carton" could not be identified and the Courts concluded that it was not a subject of copyright. The terms of India's Copyright Act are still ambiguous as to who can claim authorship of an AI-generated work that was created without human involvement.

POSSIBLE SOLUTIONS

The dissection of this quandary has oscillated between finding new avenues and being met with hurdles owing to the current legal framework. It has created an imminent need to keep pace with the technological disruptions. While fully integrating artificial intelligence as the author of a creative work may be too far-fetched, a more pragmatic approach can be adopted by way of a compromise. A feasible and pertinent solution is the enforcement of a separate sui generis system of protection. A sui generis system can be envisaged for creations generated by AI, taking into account the links between

the management of works of the mind and artificial works[9]. The benefit of a sui generis system is that right holders would only be awarded a limited scope of protection, allowing them to restrict others from making exact copies of the machine-generated work. The focus of this unique protection would be on the attribution of rights to the creator, owner, or user of the AI system[10]. This ensures a harbour for algorithmic creativity while corresponding to the matrix of the current legal frameworks governing copyright law. [1] https://artsexperiments.withgoogle.com/poemportraits [2] Feist Publications v. Rural Telephone Service Company, Inc , 499 U.S. 340 (1991). [3] Burrow-Giles Lithographic Co.v.Sarony,111U.S.53,58(1884). [4] New Idea Farm Equipment Corp. v. Sperry Corp , 916 F.2d 1561 (Fed. Cir. 1990). [5] Naruto v. Slater, 2018 WL 1902414. [6] UK Copyright, Designs and Patents Act 1988, s. 9(3) [7] The Copyright Act, 1957, s.2 (d). [8] Camlin Pvt. Ltd. v. National Pencil Industries , AIR 1986 Delhi 444. [9] WIPO's Draft summary of intellectual property policy and artificial intelligence (second issue) [10] Professor Ole-Andreas Rognsad, "Before The Singularity: Copyright And The Challenges Of Artificial Intelligence' (n15) the concept of ownership over AI generated works".

KEY CONTACT



Gautam Razdan

Partner

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