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# Role of Artificial Intelligence in Artist Work, is the Legal Framework of India ready for it

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## ABSTRACT

*“Observing the Growth in the Field of Technology, one can only imagine the time when AI will take humans to unimaginable levels of progress”. Humans and progress go hand in hand and history is proof of this hunger for new changes and development. India and the United Kingdom are among the few countries who have given recognition to the computer-generated works. The main focus of the article is to address the relationship between Copyright and Artificial Intelligence in the field of artistic works and to make an attempt to identify the vacuum and lacunae in the copyright law of India pertaining to it, taking assistance from the UK law. The article further analyses the possibility of granting copyright to the AI machines. After a comprehensive analysis, the author aims at suggesting an alternative mechanism which can be adopted in order to cover the vacuum thus created.*

*“Artificial Intelligence is a tool not a threat” - Rodney Brooks*

## I. INTRODUCTION

History is proof that we humans are a part of a dynamic society, a society that's ever changing and ever evolving. Every thread, that this fabric of society is woven with, has advanced greatly to redefine boundaries. 'Art' has been an important aspect of human life since the very beginning. The tradition of storytelling through art, has also seen its very own evolution story, from paintings on the cave walls and cloth woven canvas to the development of photography and now to machine developed art. The progress in art facilitated humans to realize its potential benefits giving rise to the primitive concepts of "authorship", "ownership", "right to exploitation" and "right to prevent others from using the work" and many more. The 6<sup>th</sup> century, 'Battle of Cul Dreimhe' in Ireland fought over the oldest manuscripts called "Cathach"<sup>3</sup> is a proof of these sentiments that humans had developed over

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<sup>3</sup> Royal Irish Academy, Cathach/ The Psalter of ST Colomba, <http://web.archive.org/web/20140702153948/http://www.ria.ie/Library/Special-Collections/Manuscripts/Cathach.aspx>

their creative pieces. Fundamentally, these human emotions gave rise to the origin and development of the Copyright laws today.

World's first copyright law was the Statute of Anne which was enacted in England in the year 1709<sup>4</sup>.

Art and copyright laws simultaneously kept developing through the years and building their inter relations, globally. The Bern Convention was the first convention to regulate the copyrights among various nations<sup>5</sup>. India too is a member since 1928<sup>6</sup>. However, we have reached a point where development in art has surpassed that of copyright.

Similar to the hundreds of revolutions that we have witnessed we are on the verge of yet another revolution of artificial intelligence, with the potential to wipe out our entire human race if we do not learn to effectively coexist. The former head of the Google brain, Andrew Ng compares the Transformational impact of AI to that of Electricity more than 100 years ago<sup>7</sup>. Artificial intelligence has brought about tremendous fundamental changes in every aspect. Even in the field of art, through the development of technology, AI produced artworks have now become a reality. AI generated art in simple terms is a neural network art, generated using complex algorithms<sup>8</sup>. AI and art have had a strong interaction since many years, however it has only come to light in the recent years because of various accomplishments like the auction sale of the AI made portrait by Christie's<sup>9</sup> to the first robot-artist named AI-DA<sup>10</sup>. India too is progressing as New Delhi's Nature Morte art gallery has now opened the India's first AI art exhibition<sup>11</sup>.

This gives rise to the question whether the existing copyright laws have the ability to govern and encompass within itself this new development in art? Or whether a new mechanism is required to govern this new field of copyright and AI?

## II. ANALYSIS OF COPYRIGHT LAW

The Indian Copyright Act, 1957 is the governing act in relation to all copyright matters. Sec 2

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<sup>4</sup> [http://www.iprightsoffice.org/copyrigt\\_history/](http://www.iprightsoffice.org/copyrigt_history/)

<sup>5</sup> <https://www.wipo.int/treaties/en/ip/bern/>

<sup>6</sup> [Catach/The Psalter of ST Columbia https://pib.gov.in/PressReleaseSelfframePage.aspx?PRID=1534892](https://pib.gov.in/PressReleaseSelfframePage.aspx?PRID=1534892)

<sup>7</sup> National Strategy for Artificial Intelligence #AIFORALL, Niti

Aayog, (<https://niti.gov.in/sites/default/files/2019-01/NationalStrategy-for-AI-Discussion-Paper.pdf>)

<sup>8</sup> Christopher mcFadden, nov 10 2019, <https://interestingengineering.com/7-of-the-most-important-ai-artists-that-are-defining-the-genre>

<sup>9</sup> <https://www.christies.com/features/A-collaboration-between-two-artists-one-human-one-a-machine-9332-1.aspx>

<sup>10</sup> Katy Cowan, 04.06.2019, <https://www.creativeboom.com/inspiration/meet-ai-da-the-worlds-first-robot-artist-capable-of-drawing-people-from-life/>

<sup>11</sup> Prajakta Hebbar, India witnesses first ever artificial intelligence art show, <https://analyticsindiamag.com/first-ai-art-show-india/>

(d)(vi) talks about computer-generated artist work and that authorship should be given to the ‘person’ who causes the work to be created. This provision is similar to the UK law of computed generated works. Sec 178 of the Copyright, Designs and Patents Act of the United Kingdom, states that the author of a computer-generated literary, dramatic, musical or artistic work, shall be taken to be the individual who undertook the necessary arrangements for the creation of the work. The problem with this provision in the UK law, according to **Ros Lynch, Director, Copyright & IP Enforcement, U.K. Intellectual Property Office (UKIPO)** is that this creates more ambiguity<sup>12</sup>. There is no clarification given, the person who causes the work to be created can be the person who created the algorithm or the artist who feeds the necessary information to AI or the person who employs the artist to create the art. The same ambiguity is witnessed in the Indian law too. **Who is the person who causes the work to be created?**

The other argument is that to avoid this ambiguity the copyright should be given to the AI itself. But this equally has its own negatives if not more. To analyze this further, the objectives of this act should be discussed.

In the celebrated judgement of **Eastern Book Company v. D.B. Modak**<sup>13</sup>, it was stated that the primary objective of granting copyright is not as a reward to the creator but to encourage the creator and promote the progress of art. The essential question that arises is, *whether AI needs such an encouragement or reward to develop art? Whether the objective of the act gets accomplished in the real sense when the AI is incapable to feel encouraged or rewarded?* Further, in **Holy Faith International v. Dr. Shiv K. Kumar**<sup>14</sup>, the court observed that the main aim of copyright act is to protect man’s work, labor, skill or test from being taken away by other people. Here, the word “man” evidently does not include an AI machine. Apart from this, even in the copyright act, the definition of the term “author” only indicates a living human being. The bigger question is with the concept of “labour”. To make an AI-generated painting, the machine used a Generative AI system called the **Generative Adversarial Network** or (GAN)<sup>15</sup>. Information needs to be fed by the artist to the AI and using the self-learning mechanism it makes itself understand as to what the output is required. The AI has a twofold working system, first the generator and the critique. The output is usually more than

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<sup>12</sup> <https://www.copyright.gov/events/artificial-intelligence/transcript.pdf>

<sup>13</sup> Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1.

<sup>14</sup> Holy Faith International v. Dr. Shiv K. Kumar, 2006 (33) PTC 456 (AP) at p. 463

<sup>15</sup> Tim Scheider & Naomi Rea, Has Artificial Intelligence Given Us the Next Great Art Movement? Experts Say Slow Down, the ‘Field Is in Its Infancy’, <https://news.artnet.com/art-world/ai-art-comes-to-market-is-it-worth-the-hype-1352011>

thousand pictures that the artist needs to select from<sup>16</sup>. The labour of the artist includes-

- 1) choosing the data to be fed to the algorithm
- 2) change the algorithm as per the artist's requirement and
- 3) choose the best output from the lot generated by the AI.

The input of labour by the artists is also significant and granting copyright to the AI would be unfair as the labour by the Artist would remain unrecognised.

Further, section 13 of the Copyright act, 1956, states that copyright subsists in the following works-

- 1) original literary, dramatic, musical and artistic works
- 2) cinematograph films
- 3) sound recordings<sup>17</sup>

the essential word, that portrays one of the essential subject matters of copyright is "**original**" and the question that arises is **whether art generated by AI is an original work?**

The second step of GAN system uses the information that the AI is fed with to critic the work produced to check if it matches with what is expected before generating the final artwork. If it uses information of previous works, it's difficult if not impossible for the AI with the current advancement in technology to generate "original" work, this defies the subject matter of copyright. It can be perceived as a derivative work but not an original work. In **Entertainment Network (India) Ltd v. Super Cassette Industries Ltd**<sup>18</sup>, it was discussed that sec 13(a) protects original work, whereas sec 13(b) and 13(c) protect derivative works. But it clearly only refers to derivative works of cinematograph films and sound recordings. The derivative protection prima facie is not granted to artistic work.

Further, for granting copyright to a derivative work, it is necessary to have substantial creativity<sup>19</sup>. The next question that is posed is **whether a non-human element has the ability to be "creative"?** Creativity has not been defined by any statute however through the judicial decisions like **Syndicate of the Press of the University of Cambridge v. B.D. Bhandari**<sup>20</sup> and **Dr. Reckeweg & Co. GMBH v. Adven Biotech Private Ltd**<sup>21</sup> it can be

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<sup>16</sup> <https://www.copyright.gov/events/artificial-intelligence/transcript.pdf>

<sup>17</sup> V.K. Ahuja, 3<sup>rd</sup> edition

<sup>18</sup> Entertainment Network (India) Ltd v. Super Cassette Industries Ltd., 2008(37) PTC 353 (SC) at p.377.

<sup>19</sup> Rediff.com India Ltd v. E-eighteen.com Ltd., 2003 (55) PTC 294(Del) at p. 312.

<sup>20</sup> Syndicate of the Press of the University of Cambridge v. B.D. Bhandari, 2011(47) PTC 244 (Del.) (DB) at p. 293,

<sup>21</sup> Dr. Reckeweg & Co. GMBH v. Adven Biotech Private Ltd., 2008 (38) PTC 308 (Del).

perceived that creativity is regarded as a human ability.

Apart from this, practically if AI is granted copyrights, **how would AI enforce these rights?**

The copyright is as a bundle of negative rights, which means that it gives the right holder the ability to prevent others from using his work in certain manner and also right to claim compensation from him.<sup>22</sup> These rights need to be enforced, but the AI cannot possibly do so, given the current technology advancements. Hypothetically, if a work of AI gets infringed upon, **how will the AI claim compensation?** Furthermore, if AI happens to infringement an existing copyright, **how would it be held liable for compensation?**

### III. AUTHORS' COMMENT AND SUGGESTIONS

The advancements in technology have taken artistic works beyond all boundaries. The AI generated art, prima facie could be seen as a copyrightable work, but that is highly questionable. The output of these machines challenges the very foundation of copyright laws. It defies the boundaries of the scope of copyright, the subject-matter or copyright and even the basic elements of it. Stretching these boundaries for accommodating the ever-developing AI, as and when required only expose us to risks of creating blemishes in our statutes. Apart from this, it is impractical to persistently amend our Copyright Act as the field of AI is constantly going to advance creating newer hurdles in the part of copyright.

To overcome these issues, a separate mechanism could be instilled which would only cater to AI created works. This new mechanism could be an independent and parallel field to intellectual property with its scope including AI-intellectual property. This will protect the existing scope and subject matter of copyright from changing and thereby creating lacunas and will also allow AI-art to develop without the existing boundaries that were created when AI wasn't even contemplated.

### IV. CONCLUSION

The World is progressing and "change" is inevitable. There will a time where AI driven works are existing in almost every fields. This will soon create a need for a regulation and a statutory body to govern it. The current lacunas existing in the field of copyright and artificial intelligence need to be addressed soon. The Indian Copyright Act though mentions of "computer generated artist works", creates ambiguity as to who is the rightful author. We should be prepared well in advance for what the future beholds. Whether there should be amendments or a separate legislation which gives proper coverage to the field of Artificial

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<sup>22</sup> Hugh Laddie, *The Modern law of Copyright* (London),1980.

Intelligence and Copyright should be analyse and acted upon . Thus Concluding the Article and Coming back to the Primary focus of “Change”, the words of **Stephen hawking** derive immense importance “**Intelligence is the ability to change**”

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