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Reassessing Copyright Laws in the Era of Artificial Intelligence

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Abstract

In the 21st century, the use of artificial intelligence (AI) has created a significant amount of disruption for copyright law. The existing copyright laws around the world do not adequately protect intellectual property that is generated using AI because they do not presently provide clear guidelines for AI-created works. Currently, there is no clear definition of copyright infringement related to AI, and there is no internationally accepted agreement on how to address this problem between countries through the United Nations (UN).

Indian authorities are examining copyright laws stemming from the 1957 Copyright Act due to the many legal challenges associated with generative AI (like text or video that has been created by using a computer algorithm). As a result, the Government of India has established an expert group to help assess how generative AI will affect intellectual property law, which includes the copyright system, as well as how cases of copyright infringement using generative AI will be handled both in India and globally through an international response to this issue.

The expert group consists of eight members and will focus on three primary areas related to generative AI: whether copyright law applies to works created using AI as a training tool; whether AI can be considered an author; and whether works created by AI can be considered derivative works. The group has been asked to undertake an in-depth investigation of all aspects related to generative AI's impact on India's copyright system.

These efforts will help position both India and the international community to better navigate through the various legal complexities created by the advancements of AI technologies. The first part of the committee's working paper has been published for stakeholder feedback.

Key words: 1. Artificial Intelligence 2. Copyright 3. Intellectual Property4. International laws5. UN-level agreement.

1.Introduction

The rapid growth of AI Technologies has changed fundamentally how we produce, share and interact with Creatively generated media. Generative AI Technologies now make it possible to generate a wide variety of Creative works (e.g., text, images, music, video, software code) that have similar characteristics to those created by Humans. These developments provide significant advantages in terms of efficiency, innovation, and accessibility; however, they pose considerable challenges to the Copyright Law in many countries around the world.

Copyright Law in many countries is based upon the assumption that creative works are created exclusively by Human authors. The rise of AI-generated content calls into question any distinction between Human Creativity and Machine created works, raising complex questions about Authorship, Ownership, Originality, Liability and Infringement issues. Further complicating the situation is the fact that AI Systems often utilise large datasets containing content that is Copyrighted, thereby leading to additional discussions about Fair Use, Licensing, and Moral Rights.

On an international level, a variety of organizations - including WIPO, UNESCO, and the European Union - have begun to discuss and develop policy responses to the new problems posed by this technology, but despite these initiatives, there is currently no unified international legal framework that governs AI-generated works. As such, there is a need for a thorough analysis of both AI and copyright law as it relates to AI-generated works in order to identify existing gaps in legal regulation and offer recommendations for future progress in the area of law.

The following objectives will be pursued through researching this topic:

1. Investigating the concept of copyright in the context of their use as a means of controlling human creativity in general

2. Assessing the current national and international regulatory framework regarding AI's use of copyright law

3. Identifying the legal and ethical issues that arise from the use of AI to create works of fiction and non-fiction

4. Making an argument for amending copyright laws in line with those found in other countries to address the international implications of these emerging technologies.**3. Methodology**

This study employs both a descriptive and analytical methodology. This includes collecting and analysing data from a wide variety of sources (e.g., books, scholarly journals, policy documents, international legal frameworks, reports by WIPO and UNESCO as well as other governmental publications) through secondary research methods. A comparative study of the different ways in which countries/sub-regions are approaching the challenge of AI technologies and copyright has also been carried out.

4. Legal uncertainties about copyright protection and AI

Given the ever-changing landscape of copyright law, it is imperative to assess whether the current legislation pertaining to copyright (Copyright Act of 1957) is adequate and, if necessary, to develop policies or make legislative revisions that will ensure that authors' rights are adequately protected. Revisions to the Copyright Act of 1957 should address complex issues, such as authorship, ownership, and copyrightability of works entirely produced by AI without any direct human creative participation, so that the challenges of AI in copyright can be adequately addressed. If revisions to the Copyright Act of 1957 are to be made, the following should be taken into account:

4.1. Clearly Recognizable Human Authorship

The law needs to clearly say that only human beings or legally recognized entities can hold copyright and moral rights, even if they use AI tools to help them. Therefore, human authors or legally recognized entities must provide consent to be able to hold these rights. AI systems should only be seen as tools, and not as legal authors**.**

4.2. Requirements for Measurement and Reporting:

It should be required to disclose whenever content is mostly or entirely generated using AI, particularly in relation to education, law, journalism and commercial publication. Additionally, organizations that use generative AI must keep accurate records of the datasets and processes used to generate anything.

4.3. Protection of Rights of Training Data:

All developers of artificial intelligence must ensure that they obtain training data legally and use them according to licensing agreements, open access or otherwise fair use or fair deal rights. If authors or publishers do not wish to be included in training their data for AI, they shall have the right to opt out from being included in accordance with applicable EU and OECD law.4.4. Protection of Moral Rights

It is crucial to safeguard the moral rights of authors, which include attribution, integrity, and reputation. Measures should be taken to prevent unauthorized AI remixing, confusion, or imitation of style that could damage an author's reputation.

4.4. The Creation of Attribution/Acknowledgment Mechanisms

Where generative AI systems have been trained on identifiable copyright protected works, a system should be implemented to create a collective attribution/acknowledgement framework, similar to international collective licensing frameworks.

4.5. The Need for a Fair Compensation/Licensing Mechanism

New statutory/collective licensing schemes must be created to enable AI systems' use of copyrightable material in their training processes. Revenue sharing/remuneration mechanisms should also be explored by creators who have significantly contributed works to generative AI systems.

4.6. The Prohibition of Misleading AI Outputs

The law should prohibit AI-generated outputs that are misleading, such as falsely attributing the work to a human, impersonating a live or deceased author without consent or creating deceptive deep fakes and other misleading derivative works that could mislead or confuse the public.

4.7. Rights of Institutions and Organizations

Institutional and organizational rights should be protected in order to protect the interests of publishers, universities, and research institutions in relation to their proprietary databases, digitized archives, and institutional IP that is used or incorporated into generative AI systems.

4.8. Accountability and Liability Framework

The framework for allocation of accountability and liability should define the responsibility for copyright infringement and defamation caused by AI-generated content in order to designate the Developer, Implementer and/or User of an AI system as responsible for any breach of copyright or defamation resulting from AI-generated materials and NOT the AI system itself as responsible.

4.9. Educational and Research Use Protections

There should be an express clause for international harmonization located within the legislation to ensure compliance with international agreements such as WIPO Copyright Treaty, Berne Convention, EU AI Act principles, UNESCO's recommendations for AI ethics and regular review provisions relative to global standards to maintain alignment with changing global standards.

4.10. Dispute Resolution and Enforcement Mechanisms

Develop an AI/IP regulatory Agency or Tribunal that has the ability to resolve grievances in an expedited manner for all authors and institutions using an AI system.

5. Do Artificial Intelligence-Generated Resources Comply with Copyright Laws?

There is still much to debate about whether resources developed using Artificial Intelligence are compliant with copyright laws globally. To better understand how to evaluate this issue, we will discuss several factors which affect the evaluation of the subject matter.

5.1. Copyright and AI Training Data

AI systems are created using a variety of different types of material like books, articles, photos, and music that all may be protected by copyright law. If you do not have legal permission to use any of these materials, you may have committed copyright infringement.

5.2. Ownership of AI-Generated Works

As of right now, there isn't enough information about whether or not an AI-generated work has an associated copyright owner. Most jurisdictions believe that a work created with no human involvement is not protected by copyright law. However, in some areas, some limited rights may be granted to the user of an AI application.

5.3. Global Regulations and Guidelines

Countries like the United States, including the European Union and India, are now conceptualizing new regulations about AI and copyright laws. Organizations such as the World Intellectual Property Organization (WIPO) are also discussing the creation of law and guidelines related to copyright for artificial intelligence (AI).

5.4. Ethical Responsibilities

AI systems, as machines, cannot intentionally comply with copyright laws; this is the responsibility of the organizations/developers that create the AI system. Therefore, users of AI-generated outputs have the ethical responsibility of verifying the sources of their input and obtaining legal permission when appropriate.

5.5. Prospective Developments

It is possible that copyright laws for AI will be developed in a regulatory framework. Therefore, it will be necessary to develop a balance between protecting rights to the creator and/or artist vs. facilitating the success of technology. As expressed above, current artificial intelligence resources do not fall into either a "Yes" or "No" category in regard to meeting copyright compliance requirements. This can only change if compliance laws or rules are reformed, whether through ethics and morality or global.

6. Are the provisions regarding AI and copyright currently being adhered to in international legislation?

6.1. International Laws Do Not Have Specific Provisions Relating To The Interrelationship Between Copyright And Artificial Intelligence

There are currently no international laws that provide a specific legal framework for the interaction between copyright and artificial intelligence. International treaties such as the Berne Convention and the WIPO Copyright Treaty protect and recognise the rights of authors in their literary works, but they are silent on how

data is to be used in training artificial intelligence and on the legal status of works that are produced by artificial intelligence. Specifically, the Berne Convention provides authors with automatic copyright protection, but does not address the issues of whether or not works created with the aid of artificial intelligence can be copyright protected, or whether or not the use of works protected by copyright for the purpose of training artificial intelligence will infringe the rights of copyright holders.

6.2. Many countries and regions are considering or developing laws regarding copyright of AI (Artificial Intelligence) in absence of an international standard. The European Union has the pending EU AI Act, which will go into effect in 2025, that will add rules regarding transparency and require disclosure of data usage in connection with AI training and copyright implications, thus providing some oversight for AI related copyright issues. Denmark is considering a separate legislation to create laws for preventing misuse of deep fakes similar to copyright protection for someone's likeness or voice. Various proposed laws are in Congress with United States legislators, such as the Generative AI Copyright Disclosure Act, but uncertain whether any of the proposed law will be enacted in the future. None of these efforts will be part of an international agreement or convention because each country is free to enact their own copyright laws.

6.3. Legal Cases, Disputes, and Problems in the Judicial System

There has been a surge in the quantity of legal actions worldwide that have shed light on the new difficulties associated with Copyright and; Artificial Intelligence (AI). Major authors and; publishers have taken legal steps against AI companies, including an important settlement with Anthropic in the United States, along with legal action against Open AI in India. These instances reiterate the immediate necessity of not only accurately enforcing existing laws but having the proper legal reform to deal with Copyright issues involving AI.

6.4. Main Difficulties

The most significant difficulties associated with Copyright and; AI are the lack of definitive regulations concerning AI within the currently existing Copyright framework, the outdated nature of International Law, and the fact that no comprehensive agreement exists at the United Nations (U.N) level since existing instruments such as the Berne Convention (1887) and WIPO Treaty(1991) do not provide sufficient clarification concerning AI.

7. The principal conclusions of the research are outlined as follows:

1. Traditional Copyright Law primarily recognizes "human" authorship and, therefore, excludes giving legal recognition as an author to an AI system in most jurisdictions.

2. Much confusion exists regarding who owns the rights to works created by an AI system — whether the owner of the data the AI system is using, the programmer who created the algorithm, or the person using the algorithm or whether or not the works are unassigned. The law does not currently have clear answers to these questions.

3. Existing laws do not address many of the issues surrounding authenticity, infringement, and liability that may arise with works created by an AI system.

4. When an AI system is trained using copyrighted works, there are numerous unresolved issues regarding fair use, consent, and the payment to the original creator(s).

5. Recognizing the urgency of this issue, global bodies have begun considering the question, but establishing meaningful international legal standards is still underway.

6. A lack of cohesive international laws may cause legal uncertainty, cross-jurisdictional conflict, and allow for potential misuse of artificial intelligence technology throughout the world.

7. There is a growing consensus that copyright reform needs to strike a fair balance between fostering innovation and protecting the rights of human creators.

Conclusion

At present, there are no sufficient international rules for dealing with the complexity between copyright and AI (i.e., copyright issues arising from the creation/usage of AI). There is a lack of an international agreement on copyright as it relates to AI. Countries have developed their copyright laws differently, and many countries have judicial systems that will decide specific copyright disputes based on best practices for each individual case. Therefore, there is still a lot of uncertainty regarding copyright, so countries are continuing to follow previous agreements/statutes/best practices for copyright processing, such as fair use.

International treaties recognize traditional copyright but do not provide for specific rules that cover the amount/type of data that is being used to train an AI, nor does it provide rules related to how AI-generated works will be handled legally. Specific copyright laws and regulations covering AI will likely be created in the future, and it will be critical to find a balance between protecting the rights of creators and enabling technology to progress. There is no clear answer to whether or not there is total compliance with copyright laws by the current state of AI; whether AI resources will comply depends on the outcome of legal reform worldwide, ethical considerations and international treaties.

Countries around the world, including the U.S., Europe (the European Union), and India, are establishing new regulatory frameworks for AI-based copyright. Organizations including WIPO (the World Intellectual Property Organisation) are working to establish copyright frameworks for AI. The question of who would own content developed by AI is very unclear, and includes questions such as: Who owns the rights to copyright works created by an AI? Or colour pictures AI has created? Or AI music pieces? Establishing copyright worldwide will be essential; in the future, copyright law must apply to AI-based resources.

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