

Artificial Intelligence and the Philosophical Foundations of Copyright Protection

Ms. Nidhi Singh Menaria¹ & Dr. Atul Jain²

¹Ph.D Scholar, Amity Law School, Amity University, Haryana

²Associate Professor, Amity Law School, Amity University, Haryana

Abstract

As the Influence of Artificial intelligence is increasing day by day, people have started using AI, even more, in generating things which are the subject matter of Copyright Law. In such a situation, the protection Intellectual Property under Copyright Law is getting threatened. This paper discusses the four theories which justify the Intellectual Property Laws, especially Copyright Law and thereafter, examines whether works generated by Artificial Intelligence fits into any of these theories or not? An attempt has been made to answer the questions like whether AI qualifies John Locke's Labour theory deeply engrained with Sweat of the brow doctrine? This paper also examines the "Prompt Engineering." How AI deepfake creations compromises the moral rights supported by personality theory? We have discussed how AI companies are using Social Planning theory for their own benefit? This analysis is backed by case laws, provisions of The Copyright Act, 1947, and arguments in favour and against artificial intelligence in respect of the issues.

Conclusion has been drawn, while answering the questions raised in this paper alongwith certain suggestions to resolve the existing complications.

Keywords-- Intellectual property, Copyright, AI, Deepfake, Intellectual Property Laws.

I. Introduction

Artificial Intelligence (hereinafter referred as 'AI') is not about machine swapping individuals, but about change and adaptation. The technological development of Artificial Intelligence has modified the role of human-beings, up to a large extent, how do they work, how do they create creative works and, last but not the least, how do they process of creation information. The same has been reiterated by Sam Altman (Open AI CEO) in 2026 said "AI won't replace humans. But Humans who use AI will replace those who don't."¹

Artificial intelligence is an invention that is redesigning the world by speeding up the productivity, changing labour markets and governing massive economic growth. On the other hand, it also raises alarm in cases, such as spreading misinformation, privacy violations etc. All of this leading to massive increase in litigations around the world but this paper is only concerned with the Intellectual Property cases where Copyright is in issue.

Intellectual property rights such as copyright were given to humans, so that they could use his work which has been created after putting labour, in the exclusion of others for limited years. In India, limitation period for Copyright is set as 60 years after the death of the author. It is done to maintain a balance between public interest and private interest of the copyright owner. Universal Declaration of Human Rights (hereinafter referred as 'UDHR') has recognised the right of society to enjoy arts etc. in paragraph 1 and right of the Copyright Owner in Paragraph 2 of Article 27. This Rights protected under the Copyright law was justified by various traditional theories, but after the arrival of Generative-AI, which is a part of Artificial intelligence. Artificial Intelligence has disrupted this setting of Intellectual Property laws.

Generative-AI has the capability to generate text, paintings, images, music etc. in a few moments. All of these are subject- matters of Copyright and from a very long time only humans were used to be associated with these works. All Philosophical justification of Intellectual Property (hereinafter referred as 'IP') were interpreted while keeping human-beings in the mind. But now, many supporters of AI try to claim copyright ownership and sometimes, authorship for generative-AI.

To resolve these issues, in this paper traditional Intellectual Property theories are revisited and examined to see whether Artificial Intelligence can be fitted into these theories or not? Various arguments in support or against have also been analysed.

The paper is only concerned with the Copyright Law; hence, challenges are addressed from the perspective of copyright only.

II. What is Generative-AI?

Generative- AI is one of the kinds of Artificial Intelligence that uses machine learning models which have been already trained and loaded with lots of information, in the form of data. Generative-AI basically uses it to learn pattern/s, and make prediction from that uploaded information and thereafter, when some prompt is given to the artificial intelligence, then it generates the content accordingly. It is nothing like searching content on internet, it does not use algorithm to find and select the desired content on existing sources. AI generates new content by predicting what word would be the next in a text or what pixel would come next in an image etc.²

Capabilities of the Generative-AI:

- It can create text for an article, story or a movie-plot, question and answers etc. eg. ChatGPT, etc.
- By providing a prompt a specific kind of image or painting can be generated by using stable diffusion, Midjourney etc.
- Music composition (Suno AI) and video generation (Open AI Sora and cartoon animation style Pika can be used) by generative-AI.

These were only few to mention, though Generative-AI has many more capabilities.

The issue is, AI generated content as above-mentioned is the subject matter of the Copyright Act, 1957. S.13³ describes the classes of work on which copyright subsists. AI-related Copyright issue is basically divided into two: Input phase deals with training phase and Output Phase deals with what AI generates after giving prompt etc. Copyright related to all these above-mentioned materials were given to human-beings, because all the theories which are the foundation of Intellectual Property Laws (hereinafter referred as IP Laws) were generated keeping humans centre to them. But, after coming of artificial intelligence there have been incidents around the world where people are demanding copyright ownership for the AI or with making AI co-author, similar to what happened in the case of ‘Suryast painting’ where a person named Ankit Sahni generated a painting named as ‘Suryast’ with the help of RAGHAV app and asked for co-authorship alongwith AI, that is, RAGHAV app from an Indian Copyright Office. Somehow, he managed to get it but later on, this copyright was withdrawn by the Indian Copyright Office, on the basis that AI cannot be Copyright Owner.⁴ To solve this and other related issues like this philosophical foundations of Copyright law needs to be revisited.

III. Theories Justifying Intellectual Property

There are many theories which helped in the building the foundations of Intellectual Property Laws, because there are different Intellectual Property Laws like Copyright, Trademark, Patent, Design and more. Each IP law is protecting different set of things. Therefore, one theory cannot be sufficient enough to provide the Philosophical justifications behind all the IP Laws. The four most prominent theories that justify Intellectual Property Laws, especially Copyright are mentioned below. They are named as Labour theory and Personality theory which belongs to the deontological or normative school of thought, Utilitarian theory or incentive theory belongs to the consequentialist school of thought and the fourth is, social-planning theory.

A. Labour Theory

The doctrine of “Sweat of the Brow” is engrained in the Locke’s⁵ Labour theory of Property, and it says that every person has a right to claim the fruits of his labour. In the past, the doctrine was very much prevalent under English Common Law, and authorises the ownership over a property on the basis of time, money and skill spent on a property which thereafter resulted into a work, the doctrine completely disregarded creative novelty.⁶

However, contemporary jurisprudence has rejected the above-mentioned doctrine just to prevent individuals from having monopoly over basic facts or raw materials. Public interest was prioritised over the Private interest. In 1991, U.S. court has abolished the same doctrine and added the elements of “Modicum of creativity,” that is, minimal creativity threshold which needs to be fulfilled in order to appropriate the property and work has needs to be original.⁷

Locke also added the proviso of leave “enough and as good” for the commons, before owing the creation made by mixing hard labour.

Nowadays, when most of the subject matters of Copyright Law are created by the help of Generated-AI by giving prompts, does AI fits into Locke's theory and can it be justified? For instance, giving 400 words prompt to generative-AI. Can it be considered as human labour and get the ownership of the property created? As far as, 400 words prompt is in question, it can be owned. As it certainly qualifies the modicum of creativity threshold because prompt requires a proper selection of words in expressing the idea clearly and effectively, in order to get the desired result. But when the question of owing the Output produced arises, it cannot be legally owned. Though, mental labour has been put in articulating 400 words in the form of Prompt but no human-labour is mixed with finally produced Output. Labour of generation of Output was completely under the control of AI which contains final expression, mechanics and the whole arrangement of the Output. Hence, Final Output is uncopyrightable. And AI doesn't fit into Locke's theory, AI functions like commissioned machine, where End User and AI companies both are simply trying to harvest the fruits of others' Labour by usage of the process called as data scraping⁸. Therefore, it degrades the value of the original creator's market which is the clear violation of the Locke's proviso.

B. Personality Theory

Kant⁹ and Hegel¹⁰ are among the main figures of Personality theory. According to them, when a creator creates anything, he puts his inner self and soul into that creation. When any artist creates a painting, composes a piece of music etc., he dispenses his mind and thoughts into it. That is why it is considered as an extension of his personality. And anything is done with the work of the artist or creator which diminishes its value and it is against the wishes of the creator, it is considered as if freedom and dignity of the creator is harmed because his creation is undetachable piece of his personality. In Hegel's words, the creator has "put his will into the matter."¹¹

This theory justifies moral rights of the Performer under S.38B¹² and author's special right provided under S.57 of the Copyright Act, 1947. AI deepfake creations compromises these rights. Artificial intelligence clone's voices of the artist and produces similar work. This kind of work gains popularity in the market because targeted audience is unable to make out a difference between real and fake. Apart from other violations of 'The Law', it violates the 'moral rights' of the author and performer by stripping off their creative identity from the work. For example, in a case of a song is created by the help of generative-AI and it is deceptively similar to an already existing song in the market.

The underlying principle of personality theory is violated because a unique personality existed in the song is used without the authority of the author or performer. On June 24, 2024, lawsuits have been filed against two AI companies namely, 'Suno'¹³ and 'Udio'¹⁴ (AI tools used to make music), by Sony Music, Universal Music and others, they alleged that their copyrighted music has been used to train AI without their prior approval. As per complainants, "works created by AI is far from transformative, in fact, it ingests copyrighted work to spit out new, competing music files."¹⁵

Hence, far from trying to fit-in, actually generative-AI violates personality theory.

C. Utilitarian Theory

Another justification for the intellectual property (hereinafter referred as 'IP') stems from this theory, Bentham¹⁶ and Mill¹⁷ are the two prominent philosophers of it. The theory categorises an act or activity as a just act, if it increases the amount of happiness already existed. "Bentham labelled it as the greatest good for the greatest number."¹⁸

Now, the application of this theory to Intellectual property, shifts the attention towards how beneficial IP is for the society at large. As per the belief of the supporters of this theory, IP laws like Copyright, trademark etc. should be protected as they inspire the creativity, that is, the creation of new works like literature and art, innovations were few examples to mention, which ultimately benefits the society. Furthermore, gains encashed by the creator in terms of finances, works as an incentive for more such creations.

But in case of Generative-AI, large number of paintings, literature, songs etc. can be generated.

And AI does not spend money on food items or place to live, like human-beings, nor legal protection of IP Laws works for them as a motivation for keep creating. Hence, the whole idea of Utilitarian theory of providing incentives to an author to encourage him to produce more creations and innovations, does not fit-in with Generative-AI.

In fact, Generative-AI is the violator of this theory, which is incentivising the author or creator for the time and money spent by them on the creation of new works. They have been provided with the limited period of protection over their work. But, Generative-AI uses their copyrighted work without their permission in order to get trained through data-sets. If the interest of this original copyright owner is not protected, then eventually, they would lose their financial incentive and would stop making new creations and innovations. Consequently, there will be no new data available to train the AI models. Hence, no justifications can be provided for AI to make place under this theory.

D. Social Planning Theory

This legal philosophy is articulated and termed by William Fisher¹⁹. According to this theory, Intellectual property Laws must be structured in a way that a goal of making a fair, democratic and vibrant society could be achieved. For that an equilibrium between private ownership of creations and their availability in the public domain needs to be maintained. A place where unrestricted flow of information exists for people to access and disseminate, for the cultural progress of the society.²⁰ It diverges from utilitarian theory, which was more associated with economic welfare. Whereas, Fisher's theory is closely associated with the cultural progress of the society.

Whereas, in case artificial intelligence, Supporters often argue that unrestricted free flow of information helps in building a technologically advanced Artificial Intelligence which will eventually, be beneficial for the public. On the other hand, some argues that AI defenders try to misuse this theory for their

continuation of data scrapping and eventually, Companies who own AI will lock it, in paid AI models. In the name of making a culturally progressing and thriving society, they are in fact concentrating of power in their own hands and simultaneously destroying the human creators' incentives.

IV. Conclusion

This paper has emphasized on various challenges that occurred in Copyright legal regime because of the massive technological development of Generative-AI and people adopting that technologically in their day-to-day life, especially for the creation of art works and other kinds of creativity which is the subject matter of the Copyright Law. After considering the several arguments in the light of philosophical justifications provided for the Intellectual Property Laws, especially Copyright law, it can be concluded that above-mentioned four theories do not justify granting of Copyright to the works generated by Artificial intelligence. In fact, in certain cases, Artificial intelligence has actually disrupted the underlying principle of these theories.

AI doesn't fit into Locke's theory, AI functions like commissioned machine, where End User and AI companies both are simply trying to harvest the fruits of others' Labour by usage of the process called as data scrapping. Therefore, it degrades the value of the original creator's market which is the clear violation of the Locke's proviso.

Along with this, another noteworthy question, How AI deepfake creations compromises the moral rights supported by personality theory? It violates the 'moral rights' of the author and performer by stripping off their creative identity from the work. For example, in a case of a song that is created by the help of generative-AI and it is deceptively similar to an already existing song in the market. The underlying principle of personality theory is violated because a unique personality existed in the song is used without the authority of the author or performer.

This is followed by the issue, how AI companies are using Social-Planning theory for their own benefit? AI defenders try to misuse this theory for their continuation of data scrapping and eventually, Companies who own AI lock it, in paid AI models. In the name of making a culturally progressing and thriving society, they are in fact concentrating of power in their own hands and simultaneously destroying the human creators' incentives.

However, courts of different jurisdictions are trying to resolve the above-mentioned challenges and various issues related it, by older Copyright laws, but, according to authors, this will not be successful strategy, in long run, as the philosophical justification underlying Current Copyright laws cannot work, adequately, in a society where AI is also an active player. Hence, new AI-specific Philosophical systems and Laws associated to it should be enacted, as AI is here to stay.

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