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## The AI Copyright Conundrum: Navigating Authorship and Ownership in the AI Landscape

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*The rapid development of artificial intelligence (AI) has raised complex questions about copyright protection for AI-generated works. This article analyses the copyright laws of various nations to determine the question of authorship and ownership in AI-generated works. Through a comparative analysis, this article explores the legal frameworks that govern AI-generated works and examines the criteria for copyright protection, the role of human intervention, and the ownership rights of creators, users, and owners of AI systems. The analysis reveals significant variations in copyright laws and highlights the need for harmonisation and clarification in this emerging area of law. To address the challenges posed by AI copyright infringement, this article proposes several solutions. Firstly, establishing a uniform protection regime with a new legal framework to recognise AI-generated works as a distinct category of intellectual property and identify the true owners of the work so as to give them authorship rights. Secondly, when it comes to attribution of ownership we have discussed the possibilities of identifying the AI and the AI developer as sole owners as well as joint authorship. By exploring the complexities of AI's copyright and proposing practical solutions, this article aims to contribute to the ongoing debate and shape the future of copyright law in the age of AI.*

**Keywords:** *copyright protection, ai-generated works, authorship, ownership, originality, international copyright laws, artificial intelligence.*

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## INTRODUCTION

The nexus between copyright law and artificial intelligence (AI) has emerged as a key area of legal contention in the quickly changing digital landscape. The rise of artificial intelligence-generated content has put conventional ideas of authorship and ownership to the test, prompting a re-examination of copyright frameworks. This article delves into the complexities of copyright protection for AI-generated works which includes the question of authorship as well as attribution of ownership. The intersection of Artificial Intelligence (AI) and human creativity is both exhilarating and fraught with challenges. As AI begins to produce art, music, literature, and other creative outputs such as critiquing, it prompts us to re-evaluate the nature of creativity and its uniquely human attributes.<sup>1</sup>

The Legal Quandary of AI Creativity is that they are works produced by machine learning algorithms without direct human intervention. The crux of the legal quandary lies in the definition of authorship. Copyright law traditionally protects works created by humans, reflecting the creative expression and intellectual effort of the author. However, when an AI is the primary creator, the absence of human authorship presents a conundrum for copyright registration. This legal lacuna has far-reaching implications, as it leaves creators and owners of AI systems in a state of uncertainty regarding their rights and responsibilities. Furthermore, the absence of clear guidelines has led to a surge in copyright infringement cases involving AI-generated works, thereby undermining the very fabric of intellectual property rights. Thus the debate over copyright protection for AI-generated works is far from settled. As AI continues to advance, there is a growing imperative for legislative updates to address the unique challenges posed by AI creativity. Policymakers and legal scholars must grapple with questions of originality, authorship, ownership and the role of human involvement in AI-generated works.

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<sup>1</sup> Anthony McCosker and Rowan Wilken, *Automating vision: The social impact of the new camera consciousness* (1st edn, Routledge 2020)

## AUTHORSHIP - THE CRITERION OF HUMAN TOUCH

The heart of copyright law lies in the principle of originality, a criterion that determines the eligibility of a work for copyright protection. Originality has traditionally been associated with human creativity i.e. a unique expression of ideas that reflects the author's personality and intellect. However, as AI systems begin to produce works that rival human creativity, the lines between machine-generated output and human creative output have become very thin, challenging the very foundation of copyright as we know it. Softwares such as OpenAI's ChatGPT, and Microsoft's Copilot, inter alia, are capable of generating unique and personalised content in no time. Thus the advent of AI has certainly disrupted the existing legal framework concerning copyright protection with its ability to create artistic and literary works.<sup>2</sup> The fundamental question here is regarding the determination of authorship when a non-human entity such as AI happens to create or compose a work.

The Berne Convention for the Protection of Literary and Artistic Works, established in 1886, is a cornerstone of international copyright law, shaping the landscape of authorship and ownership in the creative world. At its core, the Convention enshrines the principle of national treatment, ensuring that workers are protected in all signatory countries as they are in their country of origin. This treaty recognises the rights of authors and ensures that their creative works reap the benefits of copyright protection. Authorship, as understood from the Berne Convention, is predicated on the notion of originality and a personal, human touch to the work created. Although the convention does not explicitly define the term author it encompasses both human authors and legal entities. There are two stances adopted by various countries so far regarding this. The first one is denying copyright ownership to AI completely on the ground that AI cannot be regarded as an author<sup>3</sup> and the second is to recognise non-human authors by attributing them with copyright.

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<sup>2</sup> Hafiz Gaffar and Saleh Albarashdi, 'Copyright Protection for AI-Generated Works: Exploring Originality and Ownership in a Digital Landscape' (2024) Asian Journal of International Law

<<http://dx.doi.org/10.1017/S2044251323000735>> accessed 02 May 2024

<sup>3</sup> Ralph D Clifford, 'Intellectual Property in the Era of the Creative Computer Program: Will the True Creator Please Stand Up?' (1997) 71 Tulane Law Review

<[https://scholarship.law.umassd.edu/cgi/viewcontent.cgi?article=1077&context=fac\\_pubs](https://scholarship.law.umassd.edu/cgi/viewcontent.cgi?article=1077&context=fac_pubs)> accessed 02 May 2024

The first approach is followed much by USA and EU member states which is in line with the Berne convention where the concept of authorship is centred around human involvement. In the USA, for instance, the US Copyright Office declares that it will 'register an original work of its authorship, provided that the work was created by a human being'. Works that do not satisfy this requirement are not copyrightable thus recognising the work created by humans as eligible for protection.<sup>4</sup>

However, examining the case law in these countries, particularly in the US, clarifies the stance taken on this issue. The US Supreme Court, in its interpretation of the Copyright Act,<sup>5</sup> has consistently maintained that copyright protection is limited to works created by human authors. In *s Burrow-Giles Lithographic Co. v Sarony*<sup>6</sup>, the court defined an author as the 'originator' or 'maker' to whom a work owes its origin and in the case of *Goldstein v California*<sup>7</sup> and *Feist Publications v Rural Telephone Service Company*<sup>8</sup>, Inc the court pointed out that originality is a constitutional requirement. The Supreme Court reaffirmed that an author, in the constitutional sense, refers to an individual who writes or composes an original work. The term 'author' was interpreted as the 'originator' to whom the work owes its origin. These legal precedents emphasise the importance of human involvement and creativity in the concept of authorship highlighting the requirement for a human originator, excluding non-human entities from being recognised as authors within the constitutional framework of the US thereby narrowing down the scope of copyright protection by restricting its application to creations that stem from human creativity only.

It is important to note that, many other nations particularly countries which belong to the commonwealth recognise the copyrightability of AI art in some form, including the United Kingdom, India, New Zealand, Ireland and Hong Kong<sup>9</sup>. These countries follow a utilitarian theory that focuses on providing public access to creative works for the benefit of society. This

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<sup>4</sup> *Stephen Thaler v Shira Perlmutter, Registrar* [2023] Civ Action No 22-1564 (BAH)

<sup>5</sup> The Copyright Act 1976

<sup>6</sup> *Burrow-Giles Lithographic Co. v Sarony* [1884] US LEXIS 1757

<sup>7</sup> *Goldstein v California* [1973] 412 U.S 546

<sup>8</sup> *Feist Publications, Inc. v Rural Telephone Service Co* [1991] 499 U.S. 340

<sup>9</sup> Mackenzie Caldwell, 'What Is an "Author"?-Copyright Authorship of AI Art Through a Philosophical Lens' (2023) 61(2) *Houston Law Review* <<https://houstonlawreview.org/article/92132-what-is-an-author-copyright-authorship-of-ai-art-through-a-philosophical-lens>> accessed 11 May 2024

theory conceptualises copyright as a utilitarian device to ‘promote the creation of artistic or useful works that will benefit society.’<sup>10</sup> This potentially opens the door for non-human authors. However, unlike these nations, it does not seem that the United States is ready to accept AI art in a statutory sense. Australia also strictly links authorship with natural persons and denies the authorship of AI, a good example of which is the decision in *Telstra Corporation Ltd. v Phone Directories Company Pty Ltd.*<sup>11</sup>

The EU Copyright law does not currently provide explicit protection for computer-generated works, unlike the UK position<sup>12</sup>. Only a few provisions in EU copyright law directly address the issue of authorship. The Computer Programs Directive enshrines the general principle that the author is the natural person who has created a work. However, it grants the Member States discretion to deviate from this principle based on their national laws.<sup>13</sup>

The European Court of Justice in its landmark decision *Infopaq International A/S v Danske Dagbaldes Forening*<sup>14</sup> held that copyright only applies to original works, and originality must reflect the ‘author’s own intellectual creation’ making it clear that a human author is a prerequisite for a copyrighted work to exist.

Unlike many countries, the UK’s Copyright Designs and Patents Act 1988 expressly provides for copyright protection of computer-generated works that do not have a human creator. The law designates that where a work is ‘generated by computer in circumstances where there is no human author<sup>15</sup>’, the author of such a work is ‘the person by whom the arrangements necessary for the creation of the work are undertaken and grants Protection lasts for 50 years from the date

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<sup>10</sup> Roberto Garza Barbosa, ‘The Philosophical Approaches to Intellectual Property and Legal Transplants. The Mexican Supreme Court and NAFTA Article 1705’ (2009) 31(3) *Houston Journal of International Law*

<[https://www.researchgate.net/publication/228172648\\_The\\_Philosophical\\_Approaches\\_to\\_Intellectual\\_Property\\_and\\_Legal\\_Transplants\\_The\\_Mexican\\_Supreme\\_Court\\_and\\_NAFTA\\_Article\\_1705](https://www.researchgate.net/publication/228172648_The_Philosophical_Approaches_to_Intellectual_Property_and_Legal_Transplants_The_Mexican_Supreme_Court_and_NAFTA_Article_1705)> accessed 11 May 2024

<sup>11</sup> *Telstra Corporation Ltd v Phone Directories Companies Pty Ltd* [2015] FCAFC 156

<sup>12</sup> Aaron Hayward et al., ‘The IP in AI: Does copyright protect AI-generated works?’ (*Herbert Smith Free Hills*, 16 May 2023) <<https://www.herbertsmithfreehills.com/insights/2023-05/the-ip-in-ai-does-copyright-protect-ai-generated-works>> accessed 07 May 2024

<sup>13</sup> Hugenholtz, P.B, Quintais, J.P. Copyright and Artificial Creation: Does EU Copyright Law Protect AI-Assisted Output?. (2021) 52 <<https://doi.org/10.1007/s40319-021-01115-0>> accessed 04 May 2024

<sup>14</sup> *Infopaq International A/S v Danske Dagblades Forening* [2009] ECLI:EU:C:2009:465

<sup>15</sup> The Copyright, Designs and Patents Act 1988, s 178

the work is made.<sup>16</sup> The 'Author' under the CDPA may be an individual or corporate body and thus the company or the team of engineers developing the intelligent agent could be the 'author' of a work generated by the intelligent agent.<sup>17</sup>

As mentioned earlier in countries that have a common law system we see a slight rift in their approach when it comes to granting authorship. India, among other countries, has adopted the second strategy in contrast. For computer-generated works, the person who initiated the creation process is considered the author, as per Section 2(d)(vi) of the Indian Copyright Act.<sup>18</sup> This could potentially open up the possibility for a broader interpretation of authorship, which might include AI-generated works, provided there is significant human contribution.<sup>19</sup> This is in line with UK legislation, where the term 'author' is used to confer ownership to the initiator of the work, acting in the role of an author. Notably, this definition is not limited to individual authors but also encompasses legal entities like corporations and organisations. Such an inclusion points to the possibility of a wider interpretation of authorship, especially in the context of works created by Artificial Intelligence.

The case of *Eastern Book Company v D.B. Modak* is particularly relevant when discussing the originality required for copyright protection. In this case, the Supreme Court of India set a precedent by establishing a balance between the 'sweat of the brow' doctrine and the 'modicum of creativity' test<sup>20</sup>. It is to be noted that the idea of 'originality' has shifted significantly from the 'sweat of the brow' principle to the 'modicum of creativity' standard established by the U.S. Supreme Court in *Feist Publication Inc. v Rural Telephone Service*. The 'sweat of the brow' doctrine granted copyright protection based on the effort, skill, and investment of the creator rather than on originality. However, in the *Feist* case, the Supreme Court rejected this doctrine, ruling that for a work to be considered original, it must be independently created and display a

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<sup>16</sup> The Copyright, Designs and Patents Act 1988, s 11

<sup>17</sup> Sik Cheng Peng, 'Artificial Intelligence and Copyright: The Authors' Conundrum' (*Wto.org*, 14 November 2019) <[https://www.wto.org/english/tratop\\_e/trips\\_e/colloquium\\_papers\\_e/2018/chapter\\_13\\_2018\\_e.pdf](https://www.wto.org/english/tratop_e/trips_e/colloquium_papers_e/2018/chapter_13_2018_e.pdf)> accessed 10 May 2024

<sup>18</sup> The Copyright Act 1957, s 2 (d)(vi)

<sup>19</sup> Nayantara Sanyal, et. al., 'Intersection of Intellectual Property Rights and AI-Generated Works – Part I' *Bar and Bench* (05 March 2024) <<https://www.barandbench.com/law-firms/view-point/intersection-intellectual-property-rights-ai-generated-works-part-i>> accessed 06 May 2024

<sup>20</sup> *Eastern Book Company and Ors v D.B. Modak and Ors* (2008) 1 SCC 1

modicum of creativity. The court ruled that the copyright of the Eastern Book Company's law reports, which included edited judgments with added features like headnotes, was valid because these additions constituted a sufficient amount of creativity beyond mere labour. According to the Supreme Court, it is improper to evaluate individual components of a work in the character of a compilation separately from the total when determining whether it is original. Thus, *prima facie* there exists nothing to refuse copyright, on the grounds of 'originality', for a work created by an Artificial Intelligence unless it is a copy.

The fact that computers can generate original works does not mean they acquire authorship and become the subject of copyright. Many countries do not recognise the authorship of AI. Article 11 of China's Copyright Law<sup>21</sup> states, 'A natural person who creates a work is its author. In China, two landmark legal decisions have set a precedent regarding the copyright status of AI-generated content. The first one was *Beying Film Law Firm v Beying Baidu Netcom Science & Technology Co Ltd (Film)*<sup>22</sup> where it was held that work being created by natural persons was a prerequisite for to be granted protection under the Copyright Law of the People's Republic of China. The second one *Shenzhen Tencent Computer System Co Ltd v Shanghai Yingxun Technology Co Ltd*<sup>23</sup> the first case that judicially confirmed that AI-generated outputs could be granted copyright protection in China. The court recognised that creations by AI programs like *Dream Writer* should be granted copyright protection. However, it also suggested that the claimant of authorship needs to meet the standard criteria of intellectual creativity as stipulated by Chinese legislation to establish authorship rights.<sup>24</sup> The two cases not only played an essential role in copyright protection for AI-generated outputs in China but also had significant influence internationally.<sup>25</sup>

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<sup>21</sup> Copyright Law of the People's Republic of China 2001, art 11

<sup>22</sup> *Bexig Film Law Firm v Bexiug Baidu Netcom Science & Technology Co Ltd* [2018] Jing 0491

<sup>23</sup> *Shenzhen Tencent Computer System Co Ltd v Shanghai Xingxun Technology Co Ltd* [2019] Guangdong 0305 Civil First Trial No 14010

<sup>24</sup> Han Wang, 'Authorship of Artificial Intelligence-Generated Works and Possible System Improvement in China' (2023) 14(2) *Beijing Law Review* <<https://doi.org/10.4236/blr.2023.142049>> accessed 03 May 2024

<sup>25</sup> Yong Wan and Hongxuyang Lu, 'Copyright protection for AI-generated outputs: The experience from China' (2021) 42 *Computer Law & Security Review* <<https://doi.org/10.1016/j.clsr.2021.105581>> accessed 03 May 2024

## OWNERSHIP ATTRIBUTION

The issue of authorship turns into the issue of ownership when it comes to copyright protection. Recognising no copyright protection for AI-generated works is not at all an option.<sup>26</sup> Thus if protection is to be granted then someone must have exclusive rights over the particular work<sup>27</sup>. This takes away the risk of the work falling into the public domain, freely accessible and available for use by the public with no rights at all.<sup>28</sup>

Now the fundamental question that arises here is regarding the attribution of copyright ownership. There are three primary contenders for copyright ownership: the human author, the technical program (AI), and finally the programmer or developer of the AI application.

Advocates of attributing copyright to the technical programmer or developers themselves argue for a paradigm shift, emphasising the creative capabilities embedded within AI systems. This perspective challenges traditional notions of authorship, positing that the entity responsible for developing and implementing the AI should be recognised as the rightful copyright holder.<sup>29</sup> Entitlement to copyright in AI-produced works can also serve as an incentive for AI programmers and companies to invest in research and development related to AI and promote the dissemination of these works.<sup>30</sup>

It is worth noting the practical challenges with vesting copyright in the AI programmers or developers. Often, a team of coders or contributors collaboratively develops an AI system and determining every individual contribution for co-authorship can be a complex task.<sup>31</sup> Unlike traditional scenarios, where joint authorship requires agreement and harmony of interest, AI

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<sup>26</sup> Courtney Whiteand and Rita Matulionyte, 'Artificial Intelligence Painting The Bigger Picture For Copyright Ownership' (2020) 30(4) Australian Intellectual Property Journal <<https://researchers.mq.edu.au/en/publications/artificial-intelligence-painting-the-bigger-picture-for-copyright>> accessed 08 May 2024

<sup>27</sup> Peng (n 17)

<sup>28</sup> *Ibid*

<sup>29</sup> Robert C. Denicola, 'Ex Machina: Copyright Protection for Computer-Generated Works', (2016) 69 Rutgers University Law Review <<https://www.rutgerslawreview.com/wp-content/uploads/2017/07/Robert-Denicola-Ex-Machina-69-Rutgers-UL-Rev-251-2016.pdf>> accessed 11 May 2024

<sup>30</sup> Pamela Samuelson, 'Allocating Ownership Rights in Computer Generated Works' (1986) 47 University of Pittsburgh Law Review <<https://lawcat.berkeley.edu/record/1112407?ln=en&v=pdf>> accessed 16 May 2024

<sup>31</sup> Wang (n 24)



situations lack this cohesion<sup>32</sup>. For instance, the case of *Acohs Pty Ltd v Ucorp Pty Ltd* highlights this issue where it was held there was no joint authorship between the programmers and transcribers because their contributions were separate.<sup>33</sup> Even when joint ownership is established, exercising rights becomes problematic as permission from all co-owners would be necessary for licensing or assigning of rights as laid down in the case of *Seven Network (Operations) Ltd v TCN Channel Nine Pty Ltd*<sup>34</sup>. Additionally, vesting copyright in AI programmers or companies poses another challenge which is that programmers or developers are kept in the dark unaware of works created by end users, rendering enforcement impossible and rights meaningless.<sup>35</sup>

The second alternative considers attributing copyright ownership to the technical program itself. This perspective emphasises the novelty of AI's creative capabilities considering AI's capacity to autonomously generate works without direct human intervention.

Attributing authorship rights to an AI for its creations is not as simple as it sounds and could have large-scale legal implications. For instance, if AI were to be given authorship rights in an AI-generated work and its work was either infringed upon or it infringed upon an existing copyrighted work, in such a scenario, neither the AI can enforce its copyrighted work against potential infringement nor can the AI be sued for potentially infringing an already existing copyrighted work since AI can neither be considered a juristic nor a natural person and cannot be sued<sup>36</sup>. The courts have indeed taken note of this challenge. Indian courts have been particularly proactive in restraining the unauthorised use of AI for copyright infringement. For instance, In *Anil Kapoor v Simply Life India*, the Court issued an injunction against the use of Artificial Intelligence to create fake, morphed content, especially for commercial purposes.<sup>37</sup> It aimed to protect the personality rights of the individual. Similarly, in *Mareta v Google Inc.*, the

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<sup>32</sup> Peng ( n 17 )

<sup>33</sup> *Acohs Pty Ltd v Ucorp Pty Ltd* [2012] FCAFC 16

<sup>34</sup> *Seven Network (Operations) Ltd v TCN Channel Nine Pty Ltd* [2005] FCAFC 144

<sup>35</sup> Wan (n 25)

<sup>36</sup> Shradha Prakash, 'Copyright ownership of AI generated content in India' (*Sujata Chaudhri Ip Attorneys*, 16 March 2023) <<https://www.sc-ip.in/post/copyright-ownership-of-ai-generated-content-in-india>> accessed 08 May 2024

<sup>37</sup> *Anil Kapoor v Simply Life India & Ors* (2023) CS(COMM) 652/2023

US District Court ruled that remedial measures such as to prevent copyright infringement and privacy protection must be construed broadly to include new technologies.<sup>38</sup>

In most jurisdictions when it comes to copyright protection protection period is counted from the year following the death of the author. For example, CDPA s 12(7)<sup>39</sup> states that 'copyright expires at the end of the period of 50 years from the end of the calendar year in which the work was made. Under the Indian Copyright Act<sup>40</sup>, in the case of original literary, dramatic, musical, and artistic works the 60-year protection period is counted from the year following the death of the author. Now the problem here is that If the AI is granted authorship over such work, the whole rationale behind the time period of protection under the copyright law loses its applicability since AI has a perpetual existence.<sup>41</sup>

Another challenge to allocating ownership in AI is its lack of legal status. If AI were granted legal status to receive copyright ownership, it would open the floodgates and bring about 'serious reflections on the broader consequences of affording legal personhood to machines.

Moral rights as recognised in many jurisdictions, protect the personal and reputational value of a work to its creator. With AI, the application of moral rights has become unclear. Thus the question of whether a machine can have reputational concerns, if not, do these rights transfer to human operators or the end user needs to be answered.<sup>42</sup>

Most of the jurisdictions and legal frameworks across the nation recognize the significance of the individual who undertakes the essential steps for the creation of computer-generated works even in cases where the final output is generated purely by AI. As a result, it can be inferred that copyright protection for AI-generated works is contingent upon a substantial contribution made by the person responsible for orchestrating the necessary processes involved in their creation. According to some extending copyright to AI art held by the end user is the most practical

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<sup>38</sup> *Matera v Google Inc* [2016] Case No 15-CV-04062-LHK

<sup>39</sup> Copyright, Designs and Patents Act 1988, s 12 (7)

<sup>40</sup> The Copyright Act 1976

<sup>41</sup> Wan (n 25)

<sup>42</sup> Jean-Marc Deltorn and Franck Macrez, 'Authorship in the Age of Machine learning and Artificial Intelligence' (2019) <<https://dx.doi.org/10.2139/ssrn.3261329>> accessed 12 May 2024

solution<sup>43</sup> because they argue that it is only reasonable to assume that AI is the mere mechanical creator of the work, whereas the end user is the intellectual creator of the work.<sup>44</sup> However, there are much larger problems to this.

The major challenge in attributing ownership to the user is regarding the contribution and control of the user over the final output. Some scholars argue that the end-user has no control over the final output and thus should not be treated as the ‘author’ of a computer-generated work.<sup>45</sup>

It is also possible that the users of the A. I. The system may have aided in the conception of the work rather than the actual creation of the work.<sup>46</sup> In such a scenario, these users could be credited for a creation to which they haven’t made any substantial intellectual contribution. Therefore, assigning ownership rights to such users would mean rewarding those who haven’t genuinely created the work, which goes contrary to the principles of copyright laws.<sup>47</sup> Thus granting authorship rights to the end-user of the programme is likely to diminish any incentives for the programmers to create or improve the artificial intelligence agent as it deprives the AI of its due acknowledgement and would amount to unjustly reaping benefits from the efforts and labour of the AI programmer which is unfair.

## CONCLUSION

Authorship exists in AI artworks. The question of ownership in authorship is rooted in the fundamental notion of originality and human contribution, leaving us without a clear understanding of who should rightfully claim ownership rights. In some instances, it may be justifiable to grant copyright to the software coder or developer, while in others, it might be

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<sup>43</sup> Denicola (n 29)

<sup>44</sup> Caldwell (n 9)

<sup>45</sup> Evan H Farr, ‘Copyrightability of Computer-Created Works’ (1989)15(1) Rutgers Computer & Technology Law Journal <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/rutcomt15&div=7&id=&page=>> accessed 11 May 2024

<sup>46</sup> Victor M Palace, ‘What if artificial intelligence wrote this: artificial intelligence and copyright law’ (2019) 71(1) Florida Law Review <<https://scholarship.law.ufl.edu/flr/vol71/iss1/5/>> accessed 14 May 2024

<sup>47</sup> Atif Aziz, ‘Artificial Intelligence Produced Original Work: A New Approach to Copyright Protection and Ownership’ (2023) 2(2) European Journal of Artificial Intelligence and Machine Learning <<https://www.ej-ai.org/index.php/ejai/article/view/15>> accessed 11 May 2024

more appropriate to attribute it to the user, such as an artist, whose contribution directly impacts the final product.

Many solutions have been proposed to the copyright problems raised by AI, with some of the more prominent including joint authorship and modifications of the work-for-hire doctrine.<sup>48</sup>

Joint authorship could potentially address some of the complexities surrounding AI and copyright by recognising the collaborative nature of works created with the assistance of AI. Recognising joint authorship can encourage collaboration between humans and AI, fostering innovation where it ensures that human creators retain moral rights over their contributions, preserving their ability to be credited and protecting the integrity of the work at the same time it creates guidelines for the extent of AI contributions that qualify for joint authorship.

The work-for-hire doctrine, under U.S. copyright law (17 U.S.C. § 101), specifies that when a work is created by an employee within the scope of their employment, or under certain specified conditions for a commissioned work, the employer or the commissioning party is considered the legal author and owner of the work. This can very well be applied in the case of AI too. The entity that employs the human who operates the AI, or commissions the work produced by the AI, can be considered the owner of the resulting copyright. This aligns with the existing legal framework where the employer or commissioner retains ownership of works created within the scope of employment or as part of a contractual agreement.

Different jurisdictions have approached the problem with different solutions. While the UK recognises the authorship of the owner of the AI, on the other hand, India recognises the joint authorship of the owner of the AI and AI itself. USA does not give due credit to the originality of the works created by AI and allows the same to go into the public domain. Apparently, there is no uniform protection regime for the same.

Since the laws in different jurisdictions are not uniform, It is a challenge to have a uniform protection regime. International conventions are at the forefront of addressing the complex

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<sup>48</sup> Kalin Hristov, 'Artificial Intelligence and the Copyright Dilemma' (2017) 57(3) The IP Law Review <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2976428](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2976428)> accessed 08 May 2024

issues posed by AI and copyright. While existing frameworks like the Berne Convention were not designed with AI in mind, organisations such as WIPO, the EU, and the U.S. Copyright Office are actively engaged in finding solutions. In recent years, WIPO has initiated various studies and consultations to understand the implications of AI on copyright law. The organisation is exploring potential frameworks that could accommodate AI-generated works while ensuring that human creativity is not undermined. These efforts aim to create a balanced and equitable framework that recognises the contributions of both human authors and AI systems, ensuring that the legal landscape evolves in step with technological advancements. As discussions continue, the international community will play a crucial role in shaping the future of copyright in the age of artificial intelligence. Therefore it is important that international conventions break the silence on this aspect and reach a consensus as to what is the best possible way to deal with the problem by creating a concrete uniform regime.