

CAN ARTIFICIAL INTELLIGENCE CREATE? A CRITICAL EXAMINATION OF ORIGINALITY, AUTHORSHIP, AND COPYING IN AI-GENERATED WORKS

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ABSTRACT

Artificial intelligence can now create music, art, and literature that closely resembles human work. This development creates serious problems for copyright law, which has always assumed that only humans can be authors. This paper examines whether AI can truly “create” in the legal sense and explores who should own the rights to AI-generated content. The study analyzes court decisions and legal guidelines from the United States, European Union, China, and India. The findings show that different countries take different approaches. American and European courts insist that copyright protection requires human authorship. The Thaler v. Perlmutter case in the US and the Cofemel case in Europe both rejected copyright for purely AI-generated works. Chinese courts, however, have shown more flexibility, granting protection when human input; such as creative prompts and careful selection; shapes the final output. The paper also addresses deeper questions. Could an AI system ever be considered a legal author? Current philosophical and scientific limitations make this unlikely, as we cannot determine whether machines possess consciousness or genuine creativity. The authors propose practical solutions, including a new type of legal protection specifically designed for AI-generated works, clear rules for disclosing AI involvement, and international cooperation to create consistent standards. Copyright law must adapt to technological change while preserving its core purpose: encouraging human creativity for public benefit.

KEYWORDS: Artificial Intelligence; Originality; Authorship; Copyright; AI-Generated Works.

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INTRODUCTION

The rapid advancement of artificial intelligence has fundamentally altered the creative landscape, challenging traditional copyright frameworks that have historically centered on human authorship and original creation⁸⁵. As AI systems autonomously generate increasingly sophisticated music, literature, and visual art, longstanding copyright principles face unprecedented legal and philosophical strain regarding the definition of authorship and ownership⁸⁶. It evaluates emerging case law and regulatory proposals while advocating for a sui generis legal regime that addresses the realities of autonomous creativity, safeguards human innovation, and ensures equitable rights allocation in the digital era. Specifically, the proliferation of generative algorithms capable of producing literary, musical, and artistic works without direct human intervention necessitates a critical re-evaluation of established intellectual property paradigms⁸⁷. Core copyright doctrines, particularly the requirements of human authorship and originality derived from an identifiable creator, are increasingly difficult to reconcile with the abstract reality of autonomous machine generation⁸⁸. Current jurisprudence predominantly reflects a consensus that works generated autonomously by AI lack the requisite human creative input to qualify for copyright protection, thereby leaving such outputs in the public domain⁸⁹. This judicial stance is deeply rooted in the conviction that copyright law is designed to incentivize human ingenuity, preserving a conceptual space where the special quality of human creativity remains distinct from machine-generated output⁹⁰. However, some scholars argue that AI can be as equally creative as human beings as they follow the same laws of cultural production, suggesting that the modern copyright regime's entanglement with the 18th-century concept of exceptional individual genius may require a fundamental ideological reconstruction⁹¹. To operationalize this reconstruction, legal systems must develop more nuanced standards for recognizing authorship in AI-assisted works, shifting

⁸⁵ Gaidartzi, A., & Stamatoudi, I. A. (2025). Authorship and Ownership Issues Raised by AI-Generated Works: A Comparative Analysis. *Laws*, 14(4), 57. <https://doi.org/10.3390/laws14040057>

⁸⁶ Katabi, M. R. (2025). Beyond Human Authorship: Rethinking Copyright Ownership in the Age of Autonomous Artificial Intelligence. *East African Journal of Law and Ethics*, 8(1), 279. <https://doi.org/10.37284/eajle.8.1.3580>

⁸⁷ GAFFAR, H., & Albarashdi, S. H. (2024). Copyright Protection for AI-Generated Works: Exploring Originality and Ownership in a Digital Landscape. *Asian Journal of International Law*, 1. <https://doi.org/10.1017/s2044251323000735>

⁸⁸ *ibid*

⁸⁹ Hardman, B., & Housel, J. (2023). A Sui Generis Approach to the Protection of AI-Generated Works: Balancing Innovation and Authorship. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.4557004>

⁹⁰ Geiger, C. (2023). Elaborating a Human Rights friendly Copyright Framework for Generative AI. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.4634992>

⁹¹ Xiao, Y. (2022). Decoding Authorship: Is There Really no Place for an Algorithmic Author Under Copyright Law? *Deleted Journal*, 54(1), 5. <https://doi.org/10.1007/s40319-022-01269-5>

focus from the initial generation of content to the subsequent creative choices made by human users who select, arrange, or substantially modify the algorithm's output⁹². This approach recognizes two primary instances where copyright protection may be justified: when a human artist intentionally selects or organizes AI-created content to form an original composition, and when an artist substantially alters content originally produced by AI such that these alterations meet standard copyright criteria⁹³. The United States Copyright Office exemplifies this perspective, maintaining that works produced by a machine operating “randomly or automatically without any creative input or intervention from a human author” are ineligible for registration, thereby necessitating an assessment of whether traditional elements of authorship, such as conception and execution, originated from a human or the machine⁹⁴. The CJEU has further reinforced this anthropocentric requirement in cases such as *Cofemel – Sociedade de Vestuário SA v G-Star Raw CV*, establishing that if a work’s realization is dictated by technical constraints or rules that permit no creative freedom, it cannot satisfy the originality threshold for copyright protection. This precedent underscores the broader jurisprudential principle that originality is inextricably linked to the author’s intellectual contribution, requiring that protected works reflect the author's free and creative choices rather than mere mechanical execution⁹⁵. The concept of originality varies significantly across jurisdictions, yet it remains a fundamental prerequisite for copyright protection that demands intellectual creation resulting from the author's free and creative choices. The United States Supreme Court has consistently interpreted this requirement strictly, defining an author as the “originator” to whom a work owes its origin and emphasizing that copyright protection is limited to creations stemming from human creativity and intellectual effort⁹⁶. This strict interpretation has been applied to AI-generated outputs, as evidenced by the United States Copyright Office's refusal to register works like Thaler's **A Recent Entrance to Paradise** on the grounds that human intervention is a sine qua non condition for protection, a stance

⁹² GAFFAR, H., & Albarashdi, S. H. (2024). Copyright Protection for AI-Generated Works: Exploring Originality and Ownership in a Digital Landscape. *Asian Journal of International Law*, 1. <https://doi.org/10.1017/s2044251323000735>

⁹³ Mei, Y. (2024a). Prompting the E-Brushes: Users as Authors in Generative AI. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.4751625>

⁹⁴ Kamocki, P., Bond, T., Lindén, K., Margoni, T., Kelli, A., & Puksas, A. (2024, July 9). Mind the Ownership Gap? Copyright in AI-generated Language Data. *Linköping Electronic Conference Proceedings*. <https://doi.org/10.3384/ecp210008>

⁹⁵ Supra f.n. 8

⁹⁶ Supra f.n. 8

similarly upheld in the EU through rulings such as *Cofemel* which require that Works reflect the author's free and creative choices⁹⁷.

LITERATURE REVIEW

Current jurisprudence predominantly reflects a consensus that works generated autonomously by AI lack the requisite human creative input to qualify for copyright protection, thereby leaving such outputs in the public domain. This judicial stance is deeply rooted in the conviction that copyright law is designed to incentivize human ingenuity, preserving a conceptual space where the special quality of human creativity remains distinct from machine-generated output⁹⁸. The longstanding judicial emphasis on human authorship is often justified by the necessity of protecting the fruits of intellectual labor, a principle reinforced by decisions from the United States Copyright Office affirming that copyright can only protect creations resulting from human creativity⁹⁹. In *Thaler v. Perlmutter*, the United States District Court for the District of Columbia upheld the Copyright Office's denial of registration for AI-generated visual art, ruling that a work must be the result of human authorship to receive protection under the Copyright Act of 1976 and the Copyright Clause of the Constitution¹⁰⁰. The court highlighted the constitutional intent that copyright protection is designed to incentivize human ingenuity, thereby excluding non-human entities from being recognized as authors within this legal framework¹⁰¹. Conversely, the Beijing Internet Court has diverged from this anthropocentric trend by acknowledging the protectability of images generated by Stable Diffusion, emphasizing the critical role of prompt engineering and parameter settings in determining the originality of the resulting work¹⁰². This decision marks a significant departure from the prevailing consensus in Western jurisdictions, suggesting that the intellectual effort involved in crafting specific prompts and configuring generation parameters may satisfy the threshold for originality even when the pixel-level execution is performed by an algorithm¹⁰³. Scholars examining this emerging landscape have debated the cognitive agency of AI systems,

⁹⁷ Hugenholtz, P. B., & Quintais, J. P. (2021). Copyright and Artificial Creation: Does EU Copyright Law Protect AI-Assisted Output? *Deleted Journal*, 52(9), 1190. <https://doi.org/10.1007/s40319-021-01115-0>

⁹⁸ Supra f.n. 8

⁹⁹ Mukherjee, A., & Chang, H. H. (2025). Charting the Parrot's Song: A Maximum Mean Discrepancy Approach to Measuring AI Novelty, Originality, and Distinctiveness. *arXiv (Cornell University)*. <https://doi.org/10.48550/arxiv.2504.08446>

¹⁰⁰ Al-Sharieh, S. (2025). Copyright Denied for Generative AI: Remarks on Thaler v Perlmutter. *Utrecht Journal of International and European Law*, 40(1), 48. <https://doi.org/10.5334/ujel.644>

¹⁰¹ Supra f.n. 8

¹⁰² Zollinger, A. (2024). Creations generated by artificial intelligence in literary and artistic property: the new death of the author? *Eastern Journal of European Studies*, 15(2), 257. <https://doi.org/10.47743/ejes-2024-0213>

¹⁰³ Амповска, М. (2025). Judicial Responses to AI-Generated Works: A Comparative Case Law Analysis on Copyright. *Review of European and Comparative Law*, 62(3), 107. <https://doi.org/10.31743/recl.18615>

with some arguing that current AI lacks genuine creative independence because its outputs are strictly determined by human-programmed instructions, positioning the technology closer to a sophisticated amanuensis than a true author¹⁰⁴. This perspective posits that while AI systems may functionally mimic creative processes, they ultimately lack the autonomy and free will necessary for independent authorship, a view supported by legal frameworks that distinguish between human-generated and machine-assisted creativity¹⁰⁵. Despite the general exclusion of purely autonomous generation, an alternative perspective suggests that copyright may be applicable when humans collaborate with AI during the creative process, as evidenced by the 2019 Dreamwriter Case in China where the Shenzhen Nanshan District Court recognized protection for AI-generated news articles due to substantial human contributions in data selection and algorithm design¹⁰⁶. Compared to traditional assisting tools for creation such as a camera, humans have less control and understanding of the creative process in the context of generative AI¹⁰⁷. This erosion of creative control creates a situation where the user relies on the AI's automated processing with minimal input, a dynamic that mirrors the legal uncertainties surrounding point-and-shoot photography where the extent of human agency determines copyrightability¹⁰⁸. The U.S. Copyright Office has reinforced this standard by refusing to register works produced by a machine or mere mechanical process that operates randomly or automatically without any creative input or intervention from a human author, arguing that prompts function more like instructions to a commissioned artist rather than ultimate creative acts¹⁰⁹. This analogy suggests that the user identifies what they wish to have depicted, but the machine ultimately determines the specific implementation of those instructions, thereby distinguishing the interpretative autonomy of the AI model from the direct physical control characteristic of traditional artistic instruments¹¹⁰. This delegation of aesthetic decisions implies that elements such as style, pattern, and structure are autonomously determined by the model rather than the user, preventing the generated image from originating

¹⁰⁴ Supra f.n. 15

¹⁰⁵ Supra f.n. 16

¹⁰⁶ Weuts, R., Bleher, J., Bleher, H., Flores, R., Xuanyang, G., Pujso, P., & Almási, Z. (2025). AI Governance in Higher Education: A course design exploring regulatory, ethical and practical considerations. *arXiv (Cornell University)*. <https://doi.org/10.48550/arxiv.2509.06176>

¹⁰⁷ Berbec, A. (2025). Intent, control and creative freedom in AI- Supported Output: Lessons from Photography. *SCRIPTed A Journal of Law Technology & Society*, 22(1), 4. <https://doi.org/10.2218/scrip.22.1.2025.11648>

¹⁰⁸ *ibid*

¹⁰⁹ Mei, Y. (2024a). Prompting the E-Brushes: Users as Authors in Generative AI. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.4751625>

¹¹⁰ Lucchi, N. (2023). ChatGPT: A Case Study on Copyright Challenges for Generative Artificial Intelligence Systems. *European Journal of Risk Regulation*, 15(3), 602. <https://doi.org/10.1017/err.2023.59>

as a direct expression of human creativity¹¹¹. While the user's prompt may describe the desired outcome, the lack of final creative control over the system's interpretation and content creation has led authorities to conclude that such works lack sufficient human authorship for copyright protection¹¹². This legal stance stands in contrast to the recognition that AI-assisted works do attract copyright protection when they involve some degree of human intervention¹¹³. However, defining the precise threshold at which guided control transforms into authorship remains a contentious issue, particularly given that users often lack transparency regarding the system's internal processing and final decision-making parameters¹¹⁴. The lack of transparency regarding these internal mechanisms further complicates the assessment of authorship because users are frequently unable to predict how the system will bridge the gap between their input and the final output. The U.S. Copyright Office has emphasized that because of the significant distance between what a user may direct the system to create and the material it actually produces, users lack sufficient control to be treated as the "master mind" behind the generated images¹¹⁵. Consequently, the concept of authorship is increasingly being analyzed through the lens of cognitive dissonance as users and legal systems alike struggle to reconcile the perception of AI as a creative agent with the reality that artistic tools, from brushes to complex algorithms, do not create art independently but rather serve as instruments for human artists¹¹⁶. This conceptual framing necessitates a rigorous examination of the specific criteria used to evaluate human creativity within AI-assisted workflows, particularly focusing on the dichotomy between generative autonomy and user intent. This analysis must therefore interrogate the functional limitations of the prompt mechanism itself, assessing whether the textual instructions provided by a user exercise sufficient originality to constitute the "modicum of creativity" required for copyright protection¹¹⁷. To systematically evaluate these complex questions surrounding authorship and originality, this study employs a qualitative legal analysis that examines existing judicial decisions, administrative guidelines, and

¹¹¹ Murray, M. D. (2023). Tools Do Not Create: Human Authorship in the Use of Generative Artificial Intelligence. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.4501543>

¹¹² Lee, K., Cooper, A. F., & Grimmelmann, J. (2023a). Talkin' 'Bout AI Generation: Copyright and the Generative AI Supply Chain. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.4523551>

¹¹³ Saw, C. L., & Lim, D. (2025). The Case For AI Authorship In Copyright Law. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.5108423>

¹¹⁴ Supra f.n. 23

¹¹⁵ Supra f.n. 26

¹¹⁶ Supra f.n. 27

¹¹⁷ Supra f.n. 25

theoretical frameworks governing intellectual property rights in the context of generative AI technologies¹¹⁸.

RIGHTS - WHETHER AVAILABLE TO PERSONS ONLY AND NOT TO AI ENTITIES?

While historically and legally, rights have been reserved for humans, ethical reasoning and recent legal innovations are actively challenging that exclusivity. The frontier of rights is expanding, particularly toward sentient animals and natural systems, forcing us to re-examine the very foundation of what it means to be a rights-bearing entity.

The question is no longer just “Are rights only for humans?” but “What are the morally relevant criteria for having rights, and which entities meet those criteria?” This is one of the defining ethical questions of our time. The emerging debate suggests that if personhood and intrinsic rights can indeed be decoupled from strictly biological human characteristics, the moral community may need to expand to encompass artificial intelligences and other non-human entities that demonstrate capacities such as autonomy, self-consciousness, and complex cognitive functions¹¹⁹¹²⁰¹²¹. Within current AI ethics frameworks, scholars are increasingly interrogating whether non-carbon-based entities might be granted rights based on these capacities, despite the fact that traditional rights discourse has historically been grounded in biological consciousness¹²². This debate often centers on the philosophical problem of whether artificial intelligence can ever possess the subjective experience necessary to qualify for personhood, with some arguing that rights claims for such entities cannot be resolved without first addressing the “hard problem of consciousness.”¹²³. Consequently, the assignment of intrinsic rights to systems remains theoretically contentious since moral rights are viewed as constitutive of personhood rather than legal fictions, creating a distinction that might grant a robot like Sophia a right against arbitrary destruction without necessarily equating to a full human right to life¹²⁴. Some theorists propose that if these machines achieve sufficient

¹¹⁸ Mazzi, F. (2024). Authorship in artificial intelligence-generated works: Exploring originality in text prompts and artificial intelligence outputs through philosophical foundations of copyright and collage protection. *The Journal of World Intellectual Property*, 27(3), 410. <https://doi.org/10.1111/jwip.12310>

¹¹⁹ Dall’Agnol, D., 2020. Human and nonhuman rights. *Revista de Filosofia Aurora* 32 55 . doi:10.7213/1980-5934.32.055.ds01

¹²⁰ Fasel, R.N., 2018. The Old ‘New’ Dignitarianism. *Res Publica* 25 4 , 531. doi:10.1007/s11158-018-09411-2

¹²¹ Younas, A., Younas, R., 2018. Sustainability of Artificial Intelligence: Reconciling Human Rights with Legal Rights of Robots. *SSRN Electronic Journal*. doi:10.2139/ssrn.3164535

¹²² Cheng, L., Gong, X., 2024. Appraising Regulatory Framework Towards Artificial General Intelligence (AGI) Under Digital Humanism. *Deleted Journal*. doi:10.1515/ijdlg-2024-0015

¹²³ Kiškis, M., 2023. Legal framework for the coexistence of humans and conscious AI. *Frontiers in Artificial Intelligence*. doi:10.3389/frai.2023.1205465

¹²⁴ Dall’Agnol, D., 2020. Human and nonhuman rights. *Revista de Filosofia Aurora* 32 55 . doi:10.7213/1980-5934.32.055.ds01

autonomy or moral agency, the current legal distinction between natural and legal personhood may need to accommodate a new category of artificial entities distinct from biological humans¹²⁵. Such a classification would require establishing unique legal features and implications regarding the attribution of rights and duties, as existing categories like natural persons, legal persons, animals, or objects may prove insufficient to address the reality of sophisticated autonomous systems^{126,127}. Legal personhood itself is an elastic concept created by legal systems to grant rights and responsibilities to entities when beneficial, suggesting that AI could theoretically attain this status similar to corporations or geographic features¹²⁸. However, a critical distinction remains between conferring legal personhood for instrumental purposes; such as liability; and granting inherent moral rights grounded in consciousness or biological existence¹²⁹. This epistemic gap regarding whether AI can possess genuine intentionality or moral status suggests that granting rights to such entities premised on these capacities may be premature without resolving the underlying “hard problem” of consciousness¹³⁰. The difficulty of ascertaining whether non-biological entities possess subjective experience creates a fundamental barrier to resolving questions of AI personhood and moral standing¹³¹. Since artificial systems lack the shared biological and evolutionary heritage that allows us to reasonably infer consciousness in animals, we may be unable to circumvent this philosophical barrier when addressing the possibility of AI rights¹³². The lack of shared biological and evolutionary heritage that permits the inference of consciousness in animals means we may lack the necessary framework to determine if non-biological entities possess the subjective experience required for moral status¹³³. This challenge is further complicated by the fact that current AI operates on syntactic and algorithmic principles, whereas human consciousness is posited to be quantum in nature, raising questions about

¹²⁵ Safdari, A., 2023. Person, thing, Robot: a moral and legal ontology for the 21st century and beyond: by David Gunkel. *Ethics and Information Technology* 25 4 . doi:10.1007/s10676-023-09731-9

¹²⁶ Harris, J., Anthis, J.R., 2021. The Moral Consideration of Artificial Entities: A Literature Review. *Science and Engineering Ethics*. doi:10.1007/s11948-021-00331-8

¹²⁷ Tzimas, T., 2018. Artificial Intelligence as Global Commons and the “International Law Supremacy” Principle. doi:10.2991/rais-18.2018.13

¹²⁸ Green, B.P., 2018. Ethical Reflections on Artificial Intelligence. *Scientia et Fides* 6 2 , 9. doi:10.12775/setf.2018.015

¹²⁹ Natural Persons, 2023. , in: The MIT Press eBooks. The MIT Press, p. 71. doi:10.7551/mitpress/14983.003.0007

¹³⁰ Harris, J., Anthis, J.R., 2021. The Moral Consideration of Artificial Entities: A Literature Review. *Science and Engineering Ethics*. doi:10.1007/s11948-021-00331-8

¹³¹ Bryson, J.J., Diamantis, M., Grant, T.D., 2017. Of, for, and by the people: the legal lacuna of synthetic persons. *Artificial Intelligence and Law* 25 3 , 273. doi:10.1007/s10506-017-9214-9

¹³² Supra F.n. 45

¹³³ Wright, R.G., 2019. The Constitutional Rights of Advanced Robots (and of Human Beings). *Arkansas law review* 71 3 , 613. doi:10.54119/alr.wzqd2139

whether artificial consciousness could emerge through self-programming or if it remains fundamentally distinct from human phenomenology¹³⁴. The absence of shared evolutionary markers and objective criteria creates significant uncertainty about the true capabilities of non-human entities, complicating the development of ethical guidelines and regulatory frameworks for AI autonomy¹³⁵. One significant conceptual hurdle is that questions of personhood are inextricably linked to the nature of consciousness, a genuinely open philosophical problem regarding qualitative experience that complicates but does not necessarily preclude recognizing AI systems as legal actors¹³⁶. According to mainstream anthropocentric AI ethics, humans are currently presumed to be the only entities consciousness, agency, and autonomous decision-making derived from beliefs and values, whereas AI systems are categorized as advanced tools lacking personal experiences and operating solely based on programmed data and algorithms¹³⁷. This bifurcation is challenged by alternative philosophical perspectives, such as the “hard problem” of consciousness and the knowledge argument, which contend that physical processes and algorithmic information processing may be insufficient to generate subjective experience, thereby casting doubt on whether artificial systems can ever truly possess the phenomenological qualities associated with personhood¹³⁸. Consequently, the absence of shared biological and evolutionary heritage that permits the inference of consciousness in animals means we may lack the necessary framework to determine if non-biological entities possess the subjective experience required for moral status¹³⁹. This epistemic challenge raises questions about how humans would detect or validate such consciousness in artificial systems, particularly given that current definitions of personhood are deeply rooted in biological and phenomenological assumptions that do not easily translate to non-human substrates¹⁴⁰. The dominant view among researchers suggests that the first-person, subjective nature of consciousness may remain unattainable through calculations and algorithms, making it difficult to conceptualize a consciousness devoid of this phenomenological subjectivity¹⁴¹.

¹³⁴ Milczarek, E., 2023. Artificial intelligence’s right to life. *AI and Ethics* 4 2 , 587. doi:10.1007/s43681-023-00296-3

¹³⁵ Supra F.n. 39

¹³⁶ Risse, M., 2018. Human Rights and Artificial Intelligence: An Urgently Needed Agenda. *Revista Publicum* 4 1 . doi:10.12957/publicum.2018.35098

¹³⁷ Supra F.n. 39

¹³⁸ Blackshaw, B.P., 2023. Artificial Consciousness Is Morally Irrelevant. *AJOB Neuroscience*. doi:10.1080/21507740.2023.2188276

¹³⁹ Schwitzgebel, E., Garza, M., 2020. Designing AI with Rights, Consciousness, Self-Respect, and Freedom, in: Oxford University Press eBooks. Oxford University Press, p. 459. doi:10.1093/oso/9780190905033.003.0017

¹⁴⁰ Browning, H., Veit, W., 2020. The Measurement Problem of Consciousness. *Philosophical Topics* 48 1 , 85. doi:10.5840/philtopics20204815

¹⁴¹ Orbik, Z., 2024. Husserl’s concept of transcendental consciousness and the problem of AI consciousness. *Phenomenology and the Cognitive Sciences* 23 5 , 1151. doi:10.1007/s11097-024-09993-8

Furthermore, the emergence of artificial entities possessing self-awareness or intentional capabilities would likely force a fundamental rethinking of established concepts regarding consciousness, self-consciousness, and moral agency¹⁴². Despite the theoretical debates surrounding these capacities, the practical determination of whether an AI system has achieved consciousness, agency, or moral status faces profound epistemological difficulties due to the lack of universal definitions and the subjective nature of human interpretations¹⁴³. These difficulties include the determination problem, where no consensus exists on which specific attributes or combination of qualities, such as rationality or sentience, should be designated as the necessary criterion for personhood¹⁴⁴. Even if consciousness were settled as a requirement, profound epistemological obstacles remain in verifying whether non-biological entities possess genuine subjective experience, as we currently lack a defined methodology to distinguish between authentic AI consciousness and sophisticated simulation¹⁴⁵. Crucially, a key epistemic barrier is how to interpret the experience of even a very cognitively sophisticated agent that is so differently physically instantiated, as it is unclear how we would properly comprehend the phenomenal consciousness of a machine-based agent that is disembodied and whose interactions with the world are alien to our own¹⁴⁶. Furthermore, the epistemic opacity inherent in self-learning AI systems complicates the task of determining whether a technological artefact possesses phenomenal consciousness and how deep such consciousness might run¹⁴⁷. This opacity is exacerbated by the absence of a general theory explaining how consciousness arises from non-conscious processes, which constitutes the “hard problem” of consciousness and leaves experts without a definitive method for empirically testing for sentience in non-human systems¹⁴⁸. Nevertheless, there is currently progress in developing empirical tests, as the absence of a principled epistemic difference between testing for animal and AI consciousness suggests that validated methods for detecting consciousness in evolutionary

¹⁴² Pagallo, U., 2017. From Automation to Autonomous Systems: A Legal Phenomenology with Problems of Accountability 17. doi:10.24963/ijcai.2017/3

¹⁴³ Dreksler, N., Caviola, L., Chalmers, D., Allen, C., Rand, A.S., Lewis, J., Waggoner, P., Mays, K.K., Sebo, J., 2025. Subjective Experience in AI Systems: What Do AI Researchers and the Public Believe? arXiv (Cornell University). doi:10.48550/arxiv.2506.11945

¹⁴⁴ Safdari, A., 2023. Person, thing, Robot: a moral and legal ontology for the 21st century and beyond: by David Gunkel. Ethics and Information Technology 25 4 . doi:10.1007/s10676-023-09731-9

¹⁴⁵ Artificial Agency, Consciousness, and the Criteria for Moral Agency: What Properties Must an Artificial Agent Have to Be a Moral Agent?, 2007. . SSRN Electronic Journal. doi:10.2139/ssrn.983503

¹⁴⁶ McKeown, A., 2023. Cerebral Organoid Research Ethics and Pinning the Tail on the Donkey. Cambridge Quarterly of Healthcare Ethics 32 4 , 542. doi:10.1017/s0963180123000221

¹⁴⁷ Ruiter, A. de, 2025. Dangerous liaisons: social AI and the problem with the relational turn to moral status. AI & Society. doi:10.1007/s00146-025-02638-7

¹⁴⁸ Fernandez, I., Kyosovska, N., Luong, J., Mukobi, G., 2024. AI Consciousness and Public Perceptions: Four Futures. arXiv (Cornell University). doi:10.48550/arxiv.2408.04771

distant species could potentially be adapted for artificial systems¹⁴⁹. However, this adaptation faces significant limitations, as the dominant approaches to artificial consciousness often leap over the epistemic wall created by our lack of a deep explanation of consciousness, thereby compromising the evidentialist principles necessary for rigorous assessment and leaving us with a position of justified agnosticism¹⁵⁰. This state of uncertainty is particularly problematic given that ethical frameworks for assigning moral status typically presuppose the presence of valenced consciousness, yet no persuasive narrative currently exists regarding how such qualitative states might emerge in artificial systems¹⁵¹. This difficulty is compounded by the fact that the physical organization of artificial systems is fundamentally removed from that of humans, making the assessment of sentience in machines even more uncertain than the disputed distribution of consciousness among biological entities¹⁵². The application of biological markers of consciousness to non-organic systems presents a profound epistemic challenge, leading to a position of agnosticism regarding artificial consciousness¹⁵³. Support for this agnostic stance stems from the observation that current evidence is insufficient to determine whether AI could be conscious, leaving evidentialism as the only warranted approach until a reliable method for detecting consciousness in non-biological substrates is established¹⁵⁴. The difficulty of securing such empirical verification is compounded by the philosophical worry that consciousness may simply be the kind of phenomenon that is not amenable to empirical study in principle¹⁵⁵.

CORE ISSUES OF AI AND COPYRIGHTS

The interaction between artificial intelligence and copyright law raises several foundational issues that challenge traditional doctrines rooted in human creativity and authorship.

HUMAN AUTHORSHIP REQUIREMENT

Copyright law across jurisdictions is premised on the assumption that a protected work must originate from a human author exercising intellectual control over the creative process¹⁵⁶. The

¹⁴⁹ Dung, L., 2022. Why the Epistemic Objection Against Using Sentience as Criterion of Moral Status is Flawed. *Science and Engineering Ethics* 28 6 . doi:10.1007/s11948-022-00408-y

¹⁵⁰ McClelland, T., 2024. Agnosticism About Artificial Consciousness. arXiv (Cornell University). doi:10.48550/arxiv.2412.13145

¹⁵¹ Wasserziehr, J.H., 2025. The Moral Ambiguity of the AI Consciousness Debate, in: *Frontiers in Artificial Intelligence and Applications*. doi:10.3233/faia241490

¹⁵² Supra F.n. 65

¹⁵³ McClelland, T., 2024. Agnosticism About Artificial Consciousness. arXiv (Cornell University). doi:10.48550/arxiv.2412.13145

¹⁵⁴ *ibid*

¹⁵⁵ Supra F.n. 64

¹⁵⁶ 17 U.S.C. sec. 102(a); see also *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884).

increasing capacity of AI systems to autonomously generate expressive outputs calls this assumption into question, as purely machine-generated works lack identifiable human agency traditionally required for authorship.¹⁵⁷

ORIGINALITY AND CREATIVITY

While AI-generated outputs may appear novel or aesthetically valuable, they often lack human intent and conscious creative choice.¹⁵⁸ Most copyright regimes define originality in terms of the author's intellectual creation or creative freedom, a standard reflected in judicial interpretation in both U.S. and EU jurisprudence.¹⁵⁹

LEGALITY OF TRAINING DATA

A major unresolved issue concerns the legality of using copyrighted works as training data for AI models.¹⁶⁰ The large-scale ingestion of protected content raises questions about infringement, licensing obligations, and the applicability of exceptions such as fair use or text-and-data-mining provisions, particularly where training occurs without the consent of rights holders.¹⁶¹

DERIVATIVE VERSUS ORIGINAL WORKS

Another doctrinal challenge lies in determining whether AI-generated outputs constitute original works or merely derivative recombination of pre-existing copyrighted material.¹⁶² Given that generative models rely on patterns learned from existing datasets, distinguishing independent creation from impermissible derivation remains legally and technically complex.

HUMAN - AI COLLABORATION

The growing prevalence of human–AI collaborative creation further complicates authorship analysis.¹⁶³ Determining when AI functions as a tool under human direction, and when its contribution becomes substantial enough to challenge sole human authorship, remains a contentious issue in comparative copyright discourse.

COPYRIGHT LAWS

¹⁵⁷ U.S. Copyright Office, Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence (2023).

¹⁵⁸ 17 U.S.C. sec 102(a); Copyright Act, 1957, sec. 13.

¹⁵⁹ Infopaq International A/S v Danske Dagblades Forening, Case C-5/08, EU:C:2009:465; Feist Publications, Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991).

¹⁶⁰ World Intellectual Property Organization, Revised Issues Paper on Intellectual Property Policy and Artificial Intelligence (2020–2023).

¹⁶¹ 17 U.S.C. Sec 107 (fair use); Directive (EU) 2019/790, arts. 3–4 (text and data mining exceptions).

¹⁶² 17 U.S.C. sec.101 (definition of derivative work).

¹⁶³ U.S. Copyright Office, Compendium of U.S. Copyright Office Practices sec. 306 (3d ed.).

Copyright law operates within a fundamental dialectic, functioning not as a simple grant of rights but as a carefully calibrated instrument of cultural and scientific policy. Its legitimacy and purpose are derived from the delicate equilibrium it must maintain between two potentially conflicting imperatives: the proprietary interests of individual creators and the broader informational and cultural needs of the public. This duality is not an internal contradiction but a symbiotic relationship, wherein the protection of the former is understood as a necessary predicate for achieving the latter. The law, therefore, constructs a framework that simultaneously incentivizes origination and ensures the eventual enrichment of the public domain.

At its core, copyright provides a legal architecture designed to translate creative labor into a limited form of property. By vesting authors with a bundle of exclusive economic rights; control over reproduction, distribution, public performance, and the creation of derivative works; the statute creates a marketable commodity from an intangible work. This commodification serves a crucial utilitarian function: it allows creators and their intermediaries to capture the economic value of their works, thereby mitigating the public goods problem inherent in intellectual creations, which are by nature non-rivalrous and easily copied. This economic incentive is posited as a necessary precondition for the sustained production and dissemination of cultural and scholarly artifacts. In certain jurisdictions, this economic focus is complemented by a recognition of the author's moral personhood, safeguarded through rights of attribution and integrity, which protect the non-economic interests tied to the creator's identity and reputation.

This grant of exclusivity, however, is not an absolute entitlement but a limited statutory privilege, granted in contemplation of a larger social good. As articulated in the constitutional lodestar of many legal systems, the ultimate aim is “To promote the Progress of Science and useful Arts.” The protection afforded to creators is thus a means to an end, a temporal incentive designed to stimulate the very creative activity that will, in due course, replenish the cultural commons. This teleological orientation finds its most concrete expression in the principle of a finite term. The deliberate expiration of copyright, after which a work irrevocably passes into the public domain, is perhaps the most profound testament to the law's ultimate fidelity to the public. It embodies the understanding that the cultural and intellectual inheritance of a society must not remain perpetually enclosed within private holdings, but must eventually become a freely accessible foundation for future creation.

The precise contours of copyright's subject matter further refine its function, delineating the boundaries between protectable expression and unprotectable ideas, facts, and methods. This distinction, often traced to the idea-expression dichotomy, ensures that copyright's monopoly does not extend to the fundamental building blocks of knowledge and innovation, which remain free for all to use. Similarly, the law explicitly excludes from its purview functional concepts, systems, and discoveries, directing them towards the more exacting requirements of patent law, and leaves short phrases and identifiers to the realm of trademark. These demarcations are essential for preventing the copyright system from overreaching and impeding, rather than fostering, intellectual and commercial progress.

To complete its equilibrium, copyright law incorporates a range of doctrinal safety valves that mediate between the proprietary right and the public interest in access and use. The doctrine of fair use, or its counterpart fair dealing, stands as the most significant of these, operating as a flexible, equitable rule of reason that permits unauthorized uses for socially valuable purposes such as criticism, scholarship, and commentary. It functions as a crucial check on the potential for copyright to stifle the very discourse it is meant to encourage. Other limitations, such as the first sale doctrine, which exhausts the distribution right after an initial lawful sale, facilitate the functioning of secondary markets and the lending practices of libraries. Compulsory licensing mechanisms, in turn, represent a pragmatic legislative compromise, permitting certain uses while ensuring a revenue stream to rights holders in situations where individual negotiation would be transactionally prohibitive. Collectively, these doctrinal mechanisms operationalize the law's inherent balancing act, ensuring that the private right remains a servant, not a master, to the public good.

INDIA

Copyright law in India is primarily governed by the Copyright Act, 1957, which provides statutory protection to original works of authorship while ensuring a balance between private rights and public interest. The Act came into force in January 1958, replacing the Indian Copyright Act of 1914 that was largely based on British legal principles. The enactment of the 1957 legislation marked an important shift towards an indigenous and comprehensive copyright regime tailored to India's socio-economic and cultural context.

The Act protects a wide spectrum of creative expressions, including literary, dramatic, musical, and artistic works, as well as cinematographic films and sound recordings.¹⁶⁴ It confers

¹⁶⁴ Copyright Act, 1957, Section 13(1)(a)–(c).

exclusive rights upon creators, such as the right to reproduce, issue copies, adapt, translate, distribute, and communicate the work to the public. These rights are essential for recognizing authorship, ensuring economic returns, and promoting creative activity.

With respect to the duration of protection, copyright generally subsists for the lifetime of the author and continues for sixty years after their death¹⁶⁵. In the case of certain categories of works, such as cinematographic films and sound recordings, the term of protection is calculated differently under the Act.¹⁶⁶ The time-limited nature of copyright ensures that creative works eventually enter the public domain, thereby facilitating wider access to knowledge and cultural resources.

An important feature of the Copyright Act is the inclusion of limitations and exceptions through the doctrine of “fair dealing.” The Act permits limited use of copyrighted works without authorization for purposes such as private study, research, criticism, review, reporting of current events, and education.¹⁶⁷ Judicial interpretation has further clarified and expanded the scope of fair dealing in order to balance authors’ rights with freedom of expression and public interest.¹⁶⁸

The Copyright (Amendment) Act, 2012 introduced significant reforms to address challenges posed by digital technology and online dissemination of content. The amendments strengthened protection for digital works and recognized internet broadcasting. They also introduced penalties for the circumvention of technological protection measures and safeguards for rights management information.¹⁶⁹¹³ Additionally, the amendments ensured statutory and inalienable royalties for authors and composers, particularly in the music and film industries.

The 2012 amendments also aligned Indian copyright law with international obligations under treaties such as the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, which emphasize protection of copyright and related rights in the digital environment.¹⁷⁰ Overall, the Copyright Act, 1957, as amended, reflects the evolving nature of intellectual property law in India in response to technological advancements and global standards.

¹⁶⁵ Copyright Act, 1957, Section 22.

¹⁶⁶ Copyright Act, 1957, Sections 23–29.

¹⁶⁷ Copyright Act, 1957, Section 52(1)(a), (b), (i).

¹⁶⁸ *Civic Chandran v. Ammini Amma*, 1996 (16) PTC 329 (Ker), at 335–336.

¹⁶⁹ Copyright Act, 1957, sections 65A–65B.

¹⁷⁰ World Intellectual Property Organization, WIPO Copyright Treaty, arts. 6–8 and World Intellectual Property Organization, WIPO Performances and Phonograms Treaty, arts. 10–15.

EU LAWS

Copyright protection within the European Union is governed by a harmonized legal framework established through EU directives and regulations. EU copyright law protects creators' rights over their original works, ensuring that they enjoy exclusive rights to reproduce, distribute, and publicly communicate their creations.¹⁷¹ Protection is automatic upon the creation of an original work, and no formal registration is required.¹⁷²

Copyright protection in the European Union generally lasts for the lifetime of the author plus seventy years after their death.¹⁷³ In cases of joint authorship, protection extends to seventy years after the death of the last surviving author.¹⁷⁴ This harmonized duration ensures uniformity across Member States and strengthens legal certainty within the internal market.

Authors are granted several exclusive economic rights under EU law. These include the right of reproduction, which allows authors to authorize or prohibit direct or indirect copying of their works. The distribution right grants authors control over the sale or other transfer of ownership of copies within the European Union. Additionally, the right of communication to the public enables authors to make their works available to the public, particularly through digital and online platforms.

The harmonization of copyright law across Member States has been achieved primarily through legislative instruments adopted by the European Union. The Directive 2001/29/EC (Information Society Directive) laid the foundational framework for copyright protection in the digital environment, including the recognition of certain exceptions and limitations such as private copying. More recently, the Directive (EU) 2019/790 (Digital Single Market Directive) addressed challenges posed by digital platforms and online content-sharing services, requiring them to implement measures to prevent unauthorized dissemination of copyrighted works.¹⁷⁵

In addition to substantive rights, the European Union has strengthened enforcement mechanisms through measures aimed at combating infringement and ensuring effective remedies for rights holders. At the same time, EU copyright law seeks to maintain a balance between the interests of creators and public access to knowledge, incorporating exceptions for education, research, quotation, and other socially beneficial purposes.

¹⁷¹ Consolidated Version of the Treaty on the Functioning of the European Union (TFEU), art. 114 (basis for harmonization measures).

¹⁷² Directive 2001/29/EC, recital 9.

¹⁷³ Directive 2006/116/EC, art. 1(1).

¹⁷⁴ *Ibid.*, art. 1(2).

¹⁷⁵ Directive (EU) 2019/790, art. 17.

Recent debates within the European Union concern the interaction between copyright law and emerging technologies, particularly artificial intelligence. The use of copyrighted material for AI training, questions of licensing, and the status of AI-generated content have generated significant legal and policy discussions.¹⁷⁶ These developments illustrate the continuing evolution of EU copyright law in response to technological transformation.

Overall, EU copyright law provides a comprehensive and harmonized framework that protects creators while adapting to the realities of the digital single market

USA

Copyright law in the United States is primarily governed by the Copyright Act of 1976, which grants authors exclusive rights over their original works for a limited period. The Act forms the backbone of modern U.S. copyright law and is codified under Title 17 of the United States Code. It provides a comprehensive statutory framework for the protection of original works of authorship, including literary, musical, dramatic, artistic, and audiovisual works.

Under U.S. copyright law, authors are granted several exclusive rights intended to incentivize creativity and promote the progress of arts and sciences.¹⁷⁷ These rights include the right to reproduce the work, distribute copies, publicly perform and display the work, and prepare derivative works based upon the original.¹⁷⁸ Unauthorized exercise of any of these rights constitutes copyright infringement unless covered by statutory exceptions.

The duration of copyright protection in the United States generally lasts for the lifetime of the author plus seventy years after their death.¹⁷⁹ In the case of works made for hire, anonymous works, or pseudonymous works, copyright subsists for ninety-five years from the year of first publication or one hundred and twenty years from the year of creation, whichever expires first. Works published before 1 January 1930 have entered the public domain and may be freely used without authorization.¹⁸⁰

Although copyright protection is automatic upon fixation of a work in a tangible medium of expression, registration with the U.S. Copyright Office provides significant legal advantages.¹⁸¹ Registration is a prerequisite for initiating an infringement suit in federal court

¹⁷⁶ European Commission, Copyright and Artificial Intelligence (Policy discussions and consultation documents, 2020–2023).

¹⁷⁷ U.S. Const. art. I, Sec.8, cl. 8.

¹⁷⁸ 17 U.S.C. Section 106(1)–(6).

¹⁷⁹ 17 U.S.C. Section 302(a).

¹⁸⁰ 17 U.S.C. § 305.

¹⁸¹ 17 U.S.C. sec. 408.

and enables copyright owners to claim statutory damages and attorney's fees. While registration is not mandatory, it is strongly recommended for effective enforcement of rights.

Upon expiration of the statutory term, copyrighted works enter the public domain, allowing unrestricted use by the public. The public domain plays a vital role in ensuring the free flow of knowledge, cultural expression, and innovation.

A fundamental principle of U.S. copyright law is the idea-expression dichotomy, under which copyright protection extends only to the expression of ideas and not to the ideas, facts, or concepts themselves.¹⁸² This principle ensures that copyright does not impede intellectual freedom or competition. Additionally, the doctrine of fair use permits limited use of copyrighted material without authorization for purposes such as criticism, commentary, news reporting, teaching, scholarship, and research. Courts determine fair use by applying a four-factor test that balances private rights against public interest.

Overall, U.S. copyright law establishes a structured and balanced system that protects creators' rights while ensuring access to creative works through doctrines such as fair use and the public domain.

CURRENT LEGAL LANDSCAPE: COPYRIGHT PROTECTION AND ARTIFICIAL INTELLIGENCE

The rapid advancement of artificial intelligence has generated complex legal questions concerning authorship and copyright protection across jurisdictions. In the United States, the U.S. Copyright Office has consistently maintained that copyright protection extends only to works created by human authors and has denied registration to works produced solely by artificial intelligence without meaningful human involvement.¹⁸³ This position reflects the long-standing human authorship requirement embedded in U.S. jurisprudence and reinforced through administrative guidance.¹⁸⁴ Courts have similarly emphasized that copyright subsists only in works reflecting human intellectual conception.¹⁸⁵

Within the European Union, judicial interpretation by the Court of Justice of the European Union has reinforced the principle that copyright protection requires originality understood as

¹⁸² *Baker v. Selden*, 101 U.S. 99 (1879).

¹⁸³ U.S. Copyright Office, Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence (2023).

¹⁸⁴ *ibid*

¹⁸⁵ U.S. Copyright Office, Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence (2023).

the author’s own intellectual creation.¹⁸⁶ In *Cofemel Sociedade de Vestuário SA v G-Star Raw CV*, the Court clarified that a work must reflect the exercise of free and creative choices by a human author.¹⁸⁷ This jurisprudence effectively excludes purely AI-generated outputs that lack demonstrable human creative freedom from copyright protection under EU law.

In contrast, Chinese courts have adopted a comparatively flexible approach. Judicial decisions in China have recognized copyright protection for certain AI-assisted works where sufficient human input; particularly through creative prompts, selection, or arrangement; demonstrates intellectual contribution.¹⁸⁸ Although Chinese law does not explicitly grant authorship to artificial intelligence systems, courts have shown willingness to assess the degree of human involvement in determining protectability.

At the global level, a discernible trend has emerged: the majority of jurisdictions currently exclude purely AI-generated works from copyright protection unless meaningful human creative input can be established. The central debate across legal systems revolves around the threshold of human creativity necessary to justify protection and whether traditional authorship doctrines can adequately accommodate generative technologies. As artificial intelligence continues to evolve, legislative and judicial bodies worldwide are increasingly confronted with the challenge of balancing innovation incentives with foundational principles of copyright law.

COMPARATIVE ANALYSIS

<i>Jurisdiction</i>	<i>Stance on AI Authorship</i>	<i>Key Legal Test</i>
<i>U.S.</i>	<i>Strictly human-only</i>	<i>Human creative input required</i>
<i>EU</i>	<i>Human creative freedom</i>	<i>Author’s free and creative choices</i>
<i>China</i>	<i>Flexible, human-in-the-loop</i>	<i>Prompt originality and iterative control</i>

THEORETICAL PERSPECTIVES: AI AS TOOL VERSUS AI AS AUTHOR

¹⁸⁶ Infopaq International A/S v Danske Dagblades Forening, Case C-5/08, EU:C:2009:465.
¹⁸⁷ Cofemel Sociedade de Vestuário SA v G-Star Raw CV, Case C-683/17, EU:C:2019:721, pg. 29–31.
¹⁸⁸ Shenzhen Tencent Computer Systems Co. Ltd. v. Shanghai Yingxun Technology Co. Ltd., Shenzhen Nanshan District People’s Court (2019).

The debate surrounding artificial intelligence and copyright law is not merely doctrinal but deeply theoretical, centering on whether AI should be conceptualized as a tool employed by human creators or as a potential author in its own right.

AI AS TOOL (INSTRUMENTAL THEORY)

Under the dominant view in contemporary copyright jurisprudence, artificial intelligence is regarded as an advanced technological instrument, analogous to a camera, software program, or digital editing tool.¹⁸⁹ According to this perspective, authorship remains vested in the human user who exercises creative control over the process, whether through prompt design, selection, arrangement, or post-generation modification. Courts and administrative authorities in major jurisdictions maintain that copyright subsists only where human intellectual conception is present.¹⁹⁰ This tool-based approach preserves the traditional human authorship requirement and avoids expanding copyright protection beyond its doctrinal foundations.

AI AS AUTHOR (AUTONOMOUS CREATIVITY THEORY)

A minority but growing body of scholarship challenges the purely instrumental characterization of AI, arguing that highly autonomous systems operate in ways comparable to human cultural production.¹⁹¹ Proponents of this view contend that advanced generative models can exhibit independent pattern recognition, stylistic development, and adaptive learning, thereby raising questions about whether the exclusive attribution of authorship to humans remains conceptually adequate. While no major jurisdiction currently recognizes AI as a legal author, the theoretical argument suggests that future legal reform may require reconsideration of the relationship between creativity, intentionality, and legal personality.¹⁹²

The tension between these perspectives reflects a broader philosophical question within copyright theory: whether protection is justified primarily as a reward for human labor and personality, or as an incentive for the production of socially valuable works regardless of their source. As artificial intelligence systems become increasingly autonomous, this theoretical divide is likely to shape legislative and judicial responses worldwide.

CHALLENGES

¹⁸⁹ *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884).

¹⁹⁰ U.S. Copyright Office, Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence (2023); *Cofemel Sociedade de Vestuário SA v G-Star Raw CV*, Case C-683/17, EU:C:2019:721.

¹⁹¹ World Intellectual Property Organization, *Revised Issues Paper on Intellectual Property Policy and Artificial Intelligence* (2020–2023 discussions).

¹⁹² European Parliament Research Service, *Intellectual Property Rights and Artificial Intelligence* (Policy Department Report).

The integration of artificial intelligence into creative processes has introduced a range of conceptual and practical challenges for copyright law, particularly in relation to authorship, ownership, and the meaning of creativity itself.

CHALLENGES IN DEFINING HUMAN CONTRIBUTION

One of the foremost difficulties lies in determining the threshold of human contribution necessary for copyright protection. A persistent question concerns where the line should be drawn between human guidance and machine execution. The increasing sophistication of prompt engineering raises doubts as to how much user input qualifies as authorship, especially when prompts merely initiate, rather than shape, the final output. Similarly, uncertainty persists as to whether activities such as algorithm training, dataset selection, and data curation constitute creative acts or remain purely technical processes. This challenge is further compounded by the lack of transparency in AI decision-making, as the opaque and autonomous functioning of many AI systems makes it difficult to attribute creative choices to identifiable human actors.¹⁹³

IMPLICATIONS FOR CREATORS AND INDUSTRY

These definitional ambiguities have significant implications across stakeholder groups. For artists and creators, AI offers new modes of collaboration and creative experimentation but also poses the risk of diluting the value of human artistry if machine-generated outputs receive comparable legal protection. For technology developers, the absence of clear ownership rules creates uncertainty regarding the commercial exploitation of AI-generated content. Policymakers, meanwhile, face the complex task of balancing incentives for technological innovation with the need to protect human creators' rights. At a broader societal level, these developments prompt a re-evaluation of the concept of "creativity" itself, challenging traditional assumptions that link creative expression exclusively to human intellect.

Collectively, these challenges highlight the inadequacy of existing copyright frameworks in addressing AI-driven creativity and underscore the need for nuanced, forward-looking regulatory responses.¹⁹⁴

SUGGESTIONS

¹⁹³ World Intellectual Property Organization, Revised Issues Paper on Intellectual Property Policy and Artificial Intelligence (2020–2023).

¹⁹⁴ European Parliament Research Service, Artificial Intelligence and Intellectual Property: Challenges and Opportunities (Policy Report).

In response to the doctrinal uncertainty surrounding AI-generated works, several reform-oriented proposals have emerged in academic and policy discourse. These proposals aim to preserve the human-centric foundations of copyright law while accommodating technological innovation.

SUI GENERIS PROTECTION

One widely discussed approach is the creation of a sui generis intellectual property regime specifically tailored to AI-generated works. Such a framework would operate independently of traditional copyright and would protect AI outputs without requiring strict human authorship. The rationale behind this proposal is to prevent doctrinal distortion of existing copyright principles while still incentivizing investment in AI-driven creativity. The scope and duration of protection under this model could be narrower than conventional copyright, thereby ensuring that monopolistic rights are not excessively expanded.

GRADED ORIGINALITY TEST

Another proposal advocates the adoption of a tiered or graded originality standard, under which the extent of legal protection would correspond to the degree of human creative involvement. Where human input is substantial; such as through detailed prompts, selection, arrangement, or modification; full copyright protection may be justified. Conversely, where AI operates autonomously with minimal human contribution, only limited or neighbouring-right-style protection may be granted. This approach seeks to preserve the principle of human intellectual creation while introducing flexibility into the assessment of originality.

REGISTRATION AND DISCLOSURE REQUIREMENTS

A further reform suggestion involves enhancing transparency through mandatory disclosure of AI involvement during the copyright registration process.¹⁹⁵ Applicants could be required to specify whether AI tools were used and to what extent the output reflects human intellectual contribution. Such procedural safeguards would assist courts and administrative bodies in assessing authorship claims and reduce the risk of over-claiming rights in purely machine-generated content. This approach has already gained attention in administrative practice, particularly in the United States.

INTERNATIONAL HARMONIZATION

¹⁹⁵ U.S. Copyright Office, Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence (2023).

Given the transnational character of artificial intelligence technologies and digital dissemination, fragmented national approaches risk creating regulatory inconsistencies. There is therefore increasing emphasis on developing harmonized international standards through multilateral forums such as the World Intellectual Property Organization. Global coordination would promote legal certainty, reduce forum shopping, and ensure that creators, developers, and users operate within a coherent regulatory framework across jurisdictions.

Collectively, these reform proposals illustrate the evolving nature of copyright discourse in the AI era. While traditional copyright law remains anchored in human creativity, adaptive regulatory models are increasingly viewed as necessary to balance innovation, fairness, and global consistency

CONCLUSION

The core question; whether artificial intelligence is capable of creation; admits no singular resolution. Although contemporary AI systems exhibit impressive proficiency in generating outputs that emulate or even exceed human creative endeavors in technical complexity, the notion of “creation” enshrined in copyright jurisprudence remains fundamentally tethered to human intellectual agency. The predominant judicial consensus in principal jurisdictions, especially the United States and the European Union, upholds human authorship as an essential prerequisite for copyright protection. This stance, exemplified in decisions such as *Thaler v. Perlmutter* and *Cofemel*, embodies a profound commitment to copyright's constitutional and statutory aims: to promote human innovation rather than remunerate independent machine functions. Accordingly, works produced solely by AI, absent significant human creative contribution, are relegated to the public domain. Nevertheless, this anthropocentric orthodoxy confronts mounting pressure from technological advancements and jurisprudential divergences. The rise of advanced human-AI collaborative processes; involving iterative prompt refinement, selective curation, and substantive user modifications; undermines the rigid binary between human authorship and machine generation. The Beijing Internet Court's affirmation of copyright protectability for Stable Diffusion-generated images, predicated on the originality embedded in prompt engineering and parameter adjustments, exemplifies a marked departure from Western doctrinal stringency. Such disparities reveal the absence of global consensus and accentuate the imperative for unified, prospective regulatory frameworks.

The philosophical debate concerning whether AI entities could qualify as authors endowed with rights persists as a theoretically divisive issue, albeit one that is practically unripe for

resolution. Extending personhood or moral status to artificial systems encounters formidable epistemological barriers, notably the “hard problem” of consciousness and the lack of common biological substrate that enables inference of subjective experience. Although legal personhood constitutes a malleable construct extensible to non-human entities, as evidenced in corporate law precedents, ascribing inherent moral rights to AI necessitates resolving inquiries into sentience and intentionality that defy empirical substantiation at present. This epistemic uncertainty militates against precipitous acknowledgment of AI as independent authors, while preserving openness to prospective reassessment contingent upon technological advancements. The doctrinal hurdles delineated; establishing thresholds for human contribution, evaluating originality in human-AI collaborations, adjudicating the permissibility of training data utilization, and delineating derivative from original expression; collectively underscore the insufficiency of prevailing copyright regimes in accommodating AI-facilitated creativity. Conceiving AI instrumentally as an advanced implement, though jurisprudentially expedient, obfuscates the paradigmatic transformation wrought by generative systems that manifest interpretive autonomy and aesthetic discernment exceeding direct human oversight. This attenuation of creative agency, exacerbated by the inscrutability of algorithmic operations, impedes conventional authorship scrutiny and imperatives refined assessment paradigms.

Amid this paradigm shift, the present study endorses malleable regulatory adaptations that safeguard copyright's anthropocentric tenets while facilitating technological progress. A sui generis protection mechanism emerges as a viable conduit, instituting a bespoke intellectual property rubric for AI-generated outputs decoupled from orthodox copyright precepts. This architecture would avert doctrinal contortion, furnish stimuli for AI development, and mitigate the limbo of legal indeterminacy for machine outputs. Ancillary provisions, such as tiered originality evaluations attuned to human creative input levels and obligatory disclosure mandates in registration processes, would bolster transparency and aid tribunals in authorship adjudication. Paramountly, harmonization via international bodies like the World Intellectual Property Organization is indispensable to forestall regulatory balkanization and secure cohesive transnational oversight. In essence, the inquiry “Can artificial intelligence create?” yields to the more pivotal question “How ought the law to address AI-generated outputs?” Copyright jurisprudence, as a conduit for cultural and scientific advancement, must arbitrate contending priorities: stimulating human ingenuity, nurturing technological innovation, guaranteeing public domain access to knowledge, and upholding doctrinal integrity. This equipoise eludes absolutist repudiation or unqualified embrace of AI outputs, necessitating

granular, context-attuned scrutiny that accommodates the continuum of human-machine symbiosis. The trajectory of copyright amid AI proliferation resides not in rigid doctrinal fortifications but in supple architectures adaptable to technological flux, consonant with the cardinal mandate of fostering scientific and artistic progress. As AI propels inexorably forward, jurisprudence must ascend to harmonize innovation with foundational principles, securing apt niches within the intellectual property matrix for tomorrow's creations; be they human, machinic, or chimeric.

