

# COPYRIGHT, AUTHORSHIP AND ORIGINALITY: A DIGITAL TRILOGY



**Wednesday Wisdom**  
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## 1. Introduction:[1]

Does the picture exhibited above look familiar to you? Do you catch a sight of any famous personality camouflaged/disguised in it? If yes, then you are absolutely right! The picture has been generated using Artificial Intelligence (“AI”) for artwork.

We all take pride in our creations and innovations and want to take all steps to ensure that creativity and innovativeness is rightly attributed to the creative minds. The legal regimes around the world have also enacted multiple statutes that ensure protection to authors for their works.

In the past few years, there has been consistent transformation in the landscape of digital innovation. Various emerging technologies including Artificial Intelligence (“AI”) are creating breakthroughs in the market and providing instant and sometimes creative solutions at hand for interested recipients. AI applications like ChatGPT have made it easy for anyone to obtain a result/response from these tools. Recently, an AI generated artwork has also won an award in a distinctive and well recognized annual art competition.

Any solution that is not directly originating from a human mind may pose questions about its originality and authorship, especially while determining copyright protection.

## 2. What is Copyright?

Copyright is a special form of a distinctive Intellectual Property Right (“IPR”) which ensures that the author alone has certain exclusive rights determined by Copyright Act, 1957 (Act) in India for his/her created works. Copyright is granted to safeguard the original works in the category of literary works inclusive of computer-generated work, tables, data, artistic works, dramatic, musical works, cinematographic films and sound recordings.

## 3. Who is an author?

Emphasis has to be led upon the definition of “author” under section 2(d)(vi) of the Act which defines an 'author' as, in case of:

Literary or dramatic work: Author

Musical Work: Composer

Artistic work other than the photograph: Artist

Photograph: the person taking the photograph

Cinematographic film or sound recording: the producer

And specifically in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;".

It is amply clear that for any work generated by a computer, the human behind it would be the author.

[1]The article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

One must remember that the rationale behind human authorship is that benefits associated with copyright such as assignment and licensing of work results into financial benefits to the creator. Also, when a person is the author, he/she can be held accountable for the defects or irregularities with respect to his/her copyrighted work.

#### **4. Can copyright be granted to all works?**

One important judgement that is to be noted is Navigators Logistics Limited vs Kashif Qureshi and Ors, decided by the Delhi High Court[2].

In this case, the employer Navigators Logistics filed a case against its ex-employees while contending that the defendants had conspired with each other and wrongfully retained compilation of confidential list of customers along with their contact details in spite of their resignations. The employer also claimed copyright in this compiled customer list asserting it to be “literary work”.

The High Court of Delhi ruled out that, in order to claim copyright in compilation, the author must produce the material with exercise of his skill and judgment and that must not be so trivial that it could be characterized as purely mechanical exercise. The Court dismissed the case and held that neither was the material confidential nor was the material capable of copyright protection.

Further, relying upon an important precedent[3] in this subject the Court held that in order to be author, the person needs to be a natural person, a human being and not an artificial/juristic person. Such juristic person can be owner of the copyright but is incapable of being author of literary work in which copyright subsist.[4]



[2]CS(COMM) 735/2016

[3]Rupendra Kashyap vs Jivan Publishing House Pvt. Ltd. 1994 (28) DRJ 286

[4]Tech Plus Media vs Jyoti Janda CS (OS) 119/2010

## 5. What is originality in a work?

Originality is at the center of the Indian Copyright Act 1957. Copyright can be granted only to the creator of the original work with respect to literary, dramatic, musical and artistic work under Section 13 of the Act and for cinematographic films and sound recordings. IT should be noted that there is no copyright in any idea.

The Copyright Act, 1957 does not expressly define the term “original” and thus each case will have to be independently determined after due appreciation of facts and efforts of the author.

However, over the years certain doctrines have been applied by the judiciary:

**Doctrine of Skill and Judgment:** Whether there was actual exercise of skill and judgment or was it so trivial that it could be characterized purely as a mechanical exercise.

The Skill and Judgment test was articulated in the classical case of Eastern Book Company (Appellant) Vs. D.B. Modak case<sup>[5]</sup>. In this case, the main law point was whether compilation of judgments with additional footnotes, cross referencing, sequencing, arrangement of paragraphs was original work.

The Supreme Court laid down that “(i) to claim copyright in a compilation, the author must produce the material with exercise of his skill and judgment which may not be creativity in the sense that it is novel or non-obvious but at the same time it is not a product merely of labour and capital; and, (ii) The exercise of skill and judgment required to produce the work must not be so trivial that it could be characterized as purely as mechanical exercise.”

It was ruled that setting of paragraphs by the Appellants of their own in the judgment entailed the exercise of brain work, reading and understanding of subject of disputes, different issues involved, statutory provisions applicable and interpretation of the same. Dividing them in different paragraphs so that chain of thoughts and process of statement of facts and the application of law relevant to the topic discussed is not disturbed, would require full understanding of the entire subject of the judgment. Making paragraphs in a judgment could not be called a mechanical process. It requires careful consideration, discernment, and choice and thus it can be called as work of an author.

Therefore, relying upon the doctrine of Skill and Judgment, the Supreme Court held that sequencing, paragraph arrangement, numbering etc. requires a high level of interpretation skills, legal knowledge, and exercise of judgment from the author’s perspective and that the work created by the author is original.

[5] (2008)1 SCC 1



## 7. A recent example to note on works generated by AI and the copyright application

As fascinating as it seems, AI is also now capable of creating artworks by itself. The fact can be traced to year 2019 where an AI painting application named RAGHAV standing for Robust Artificially Intelligent Graphics and Art Visualizer developed an artwork called - SURYAST. An application for the same was filed with the Indian Copyright Office which was outrightly refused. The second application was made in this respect with RAGHAV and the Programmer/Developer of the App as co-authors and the same got registered only to be withdrawn after a year by Copyright office insisting information about “legal status” of the App. [8] The current status of the application is not known.

## 8. Some questions to ponder

Copyright is a bundle of rights such as assignment, licensing, right against infringement etc. and it also attracts accountability and liability for transgression with someone else’s work. How will a non-human entity such as an AI be held accountable in the event of transgression?

## 9. The way forward

Today India is actively promoting technological upgradation and it’s IPR protection through various Government Initiatives with an active intention of fostering entrepreneurship and the start-up ecosystem. Copyright protection is an important aspect which investors look up to while investing in such projects in order to secure their rights and to generate revenue from the same.

Where there is high assumption of input or active intervention of human in getting the desired result from AI, one can rightly question whether such human behind it shall be considered for authorship. This can lead to protection of IP as well as encourage creativity and innovation among civilians and entrepreneurs which is the prime object of Copyright law in first place.

It is noteworthy to look at Report no.161 titled “Review of the Intellectual Property Rights Regime in India”[9]which recommends separate category of rights for AI related solutions and inventions for their protection as IPR and further recommends the Department to make efforts in reviewing the existing Copyright legislation in this respect. This report has been endorsed by the Delhi High Court In OpenTV Inc. Vs. The Controller of Patents and Designs and Ors[10]. where the Court elaborated that it is necessary to reconsider the existing legislations as the country is losing out on the emerging opportunities in the field of business methods or application of computing and digital technologies. The Court specifically has recommended that the Department should make efforts in reviewing the existing legislations of The Patents Act, 1970 and Copyright Act, 1957 to incorporate the emerging technologies of AI and AI related inventions in their ambit.

[8] <https://jindaldigest.weebly.com/blog-781581/the-story-of-raghav-an-analysis-of-ai-and-copyright-ownershi>

[9] [GOI IP-Review.pdf \(iprlawindia.org\)](#)

[10] C.A.(COMM.IPD-PAT) 14/2021 : Delhi High Court

For any feedback or response on this article, the author can be reached on [kedar.gurjar@ynzgroup.co.in](mailto:kedar.gurjar@ynzgroup.co.in) and [Nandita.Damle@ynzgroup.co.in](mailto:Nandita.Damle@ynzgroup.co.in)



**Author: Kedar Gurjar,**

Kedar is an associate at YNZ Legal.

By qualification he is Bachelor of Commerce and Bachelor of Law from Mumbai University.

**About Nandita Damle,**

Nandita is a Legal Advisor at YNZ Legal.  
She is also a member of Bar Council of Maharashtra & Goa.  
By qualification she has completed Bachelor of Arts in Political Science and Bachelor of Law from Mumbai University.

