COPYRIGHT AND GENERATIVE AI IN INDIA: ANALYSING AUTHORSHIP, OWNERSHIP AND HUMAN CREATIVITY

AI DISCLOSURE STATEMENT

The author used an AI-assisted writing tool during the preparation of this scholarly article solely for language editing and grammar refinement. All legal research, analysis, case law interpretation, arguments, conclusions, and suggestions presented in this article are the authors own original work and reflect the authors own review and judgement. This article was prepared with AI assistance and is not AI-generated.

ABSTRACT

The increasing use of generative artificial intelligence (GenAI) has created significant uncertainty, particularly concerning the copyrightability, authorship and ownership of AI-generated works. This article examines whether AI-generated material produced through prompt-based generative AI tools can receive copyright protection. It also examines, where protection exists, who should be recognised as the author and owner of such works. Focusing primarily on Indian copyright law, the article examines the existing law and analyses whether it is equipped to deal with the legal issues that arise. It analyses Section 2(d)(vi) of the Copyright Act, 1957, Sections 13 and 17 and the principles established in *Eastern Book Co. v. D.B. Modak*. The article further examines the evolving position of the Indian Copyright Office, including its decision of August 31, 2026 concerning Stephen Thaler's AI system DABUS. A comparative analysis of the United States, United Kingdom, South Korea and Japan is undertaken to identify different international perspectives. The article argues that a uniform approach based merely on the use of AI is inadequate because human involvement may range from minimal prompting to substantial creative selection, modification and control. It proposes a framework that distinguishes between AI-generated and AI-assisted works and evaluates copyright protection according to the nature and extent of human creative contribution. The article concludes by recommending greater clarity under Indian copyright law regarding authorship, ownership, evidentiary requirements and the treatment of works involving varying degrees of generative AI assistance.

KEY WORDS: Copyright Act 1957, Section 2(d)(vi), Thaler-DABUS, Intellectual Property Rights, IPR, GenAI, Artificial Intelligence, AI, Authorship, Originality.

I. INTRODUCTION

Intellectual property rights (IPR) include vast categories of legal protections such as patents, trademarks, copyrights, industrial designs, and trade secrets. IPR protects creative or intellectual outputs arising from human ideas, skill, or thought. These protections give the owner a bundle of rights that include, but are not limited to, exclusive use and exploitation, the right to transfer or assign those rights to third parties, the right to prevent unauthorised use, and the right to license and derive financial benefit for a specified period of time as determined by statutory boundaries. Without these legal protections, creators and companies would lose the ability to protect and commercially exploit their creative works. They would stop investing their time and energy in new projects only to have them copied by others without due recognition. Moreover, technological and artistic advancement would stagnate because creators could not safely monetise their achievements.

Copyright, in particular, as a form of intellectual property, protects original expressions such as books (fiction or non-fiction), music, art, films, and software code. Protection arises from the moment a work is fixed in a tangible medium. In simpler words, copyright protects how an idea is expressed, but not the raw idea or fact itself. The World Intellectual Property Organisation (WIPO) defines copyright as the legal term used to describe the rights that creators have over their literary or artistic works.[1] The rights derived under copyright can be broadly categorised as economic and moral rights. The former allows the owner to derive financial reward if their work is used by others, whereas the latter protect the non-economic interests of the creator.

Artificial intelligence has undergone significant technological development.[2] AI became a mainstream, mass-popular phenomenon in late 2022, triggered by the public release of user-friendly generative tools. It is now an everyday consumer and business dependency, and its usage in every domain is undeniable. The recent resurgence of 1980s-inspired photos on social

[1] *Copyright*, WIPO, https://www.wipo.int/copyright/en/ (last visited Oct. 22, 2026) (on file with author).
[2] *See* Michael Haenlein & Andreas Kaplan, *A Brief History of Artificial Intelligence: On the Past, Present, and Future of Artificial Intelligence*, 61 Cal. Mgmt. Rev. 5, 2-5 (2019).

media is one such example.[3] Generative artificial intelligence is a type of AI that creates content such as text, images, music, audio, or video output and software code based on patterns it learns from existing data. Unlike traditional AI, a generative AI creates material in response to instructions input by a user. These instructions are colloquially known as a prompt.

In recent years, the growing use of generative AI tools such as ChatGPT, Claude, DALL-E, and Midjourney has thrown open the doors of creative expression. Before the widespread adoption of artificial intelligence, art, writing, and music were produced solely through human effort without any algorithmic generation, manipulation, assistance, guidance, or input. Now, a person merely needs to type out a simple text prompt, and the AI model will generate what was asked for. Moreover, the prompter can further ask the model to make any necessary changes or additions as needed to suit their preferences or requirements.

A question that is emerging at this juncture relates to the authorship and ownership of such AI-generated material. To whom should the copyright belong: the AI system, the developers of the AI model, or the user who input the prompt?

II. THE EXISTING LEGAL FRAMEWORK IN INDIA

India's approach remains rooted in the traditional principles of human authorship, but it is currently undergoing significant evolution to address emerging technological realities.[4] OpenAI CEO Sam Altman stated in August 2025 that "India is our second-largest market in the world after the US, and it may well become our largest market."[5] In India, copyright is governed by the Copyright Act, 1957. However, this Act was enacted prior to the proliferation of AI usage, and the courts and authorities have had to interpret the law to make it applicable to AI-generated work due to the lack of Parliament-enacted legislation specifically addressing AI.

1. Copyright Act, 1957

[3] Soumi Pyne, *Viral '80s trend: Why is the internet suddenly looking back at the 1980s*, Hindustan Times (Sept. 10, 2026, 4:27 AM IST), https://www.hindustantimes.com/lifestyle/spiritual/viral-80s-trend-why-is-the-internet-suddenly-looking-back-at-the-1980s-101788993917481.html (last visited Sept. 11, 2026) (on file with author).
[4] Ayushee Sinha, *AI-Generated Works in IP Laws: Contemporary Authorship and Ownership Challenges Amidst Evolving Legal Frameworks*, 6 E-J. Acad. Innovation & Rsch. Intell. Prop. Assets 46, 53 (2025).
[5] *OpenAI CEO Sam Altman at GPT-5 launch: "India is our second-largest market…but…"*, Times of India (Aug. 10, 2025, 8:11 AM IST), https://timesofindia.indiatimes.com/technology/tech-news/openai-ceo-sam-altman-at-gpt-5-launch-india-is-our-second-largest-marketbut-what-users-are-doing-with/articleshow/123178437.cms (last visited Sept. 13, 2026) (on file with author).

Section 2(d)(vi) of the Copyright Act, 1957 defines "author" in relation to any literary, dramatic, musical or artistic work which is computer-generated as the person who *causes the work to be created*.[6] According to Section 13 of the Act, copyright subsists in original literary, dramatic, musical, and artistic works.[7] Section 17 governs who the first owner of the work is and Sections 18–19 establish the assignment of copyright and its mode of assignment. Against this statutory background, Indian copyright law lays a special emphasis on *who* actually causes the work to be created for computer-generated works.

Section 17 of the Act[8] states that the author of a work is the first owner of the copyright, subject to statutory exceptions contained therein. Applied to the present context, Section 17 becomes relevant only after the question of authorship has been determined under Section 2(d)(vi) and the work is found to satisfy the requirements for copyright protection under Section 13. In the context of generative AI, we need to address first whether the work is sufficiently original to attract copyright protection; second, whether a human can be identified as the "person who causes the work to be created" under Section 2(d)(vi); and third, whether that person is consequently entitled to first ownership under Section 17.

Section 2(d)(vi) does not expressly prescribe how the concept should be applied in AI generated content where creative decisions are distributed between the human user and the AI system. Similarly, Section 17 does not contain a specific rule addressing ownership of generative AI outputs. As a result, there is doubt regarding both ownership and the original question of authorship.

2. Eastern Book Co. v. D.B. Modak

In the landmark ruling in Eastern Book Co. v. D.B. Modak,[9] the Supreme Court declined to follow the English "sweat of the brow" doctrine as well as the high creativity threshold of the United States. The court held that to claim copyright in derivative works sourced from the public domain, there must be a "modicum of creativity" combined with original skill, judgement, and labour.[10] Eastern Book Co. provides the originality framework against which human creative contribution in AI-assisted works may be assessed.

[6] The Copyright Act, 1957, No. 14, Acts of Parliament, 1957, § 2(d)(vi) (India).
[7] Id. § 13(1)(a).
[8] Id. § 17(a)–(e).
[9] Eastern Book Co. v. D.B. Modak, (2008) 1 SCC 1, 39 (India).
[10] Id. at 37.

By rejecting the "sweat of the brow" doctrine, the originality standard cannot be satisfied merely by demonstrating the time or effort expended in formulating prompts. The "modicum of creativity" doctrine weighs against copyright protection being extended to AI-generated content based on a simple prompt with no expressive human creativity. The doctrine extends protection to AI-assisted content where the human has actively shaped the final expression using their own judgement and skill. Moreover, because AI lacks a conscious mind to independently exercise judgement, the current consensus in India prevents an AI application from being recognised as a sole or co-author under the Indian Copyright Act.[11]

3. Decisions of the Indian Copyright Office

In November 2020, the Indian Copyright Office (ICO) initially granted copyright registration for the artwork Suryast, listing Ankit Sahni and the AI tool RAGHAV as co-authors. This was a significant decision because it expressly recognised an AI system as a co-author for the first time in India.[12] The decision was widely reported and suggested a potentially progressive stance by the ICO. However, the ICO subsequently issued a withdrawal notice, requesting Mr. Sahni to provide further clarification on the legal status of the RAGHAV AI tool. The notice specifically referenced Sections 2(d)(iii) and 2(d)(vi) of the Copyright Act, emphasising that an "author" must be an artist or the "person who causes the work to be created".[13] This reversal indicated that the initial grant was likely a preliminary decision that did not survive deeper legal scrutiny.

The ICO addressed the question again when Dr. Stephen L. Thaler applied for copyright registration of a piece of art created by his AI system DABUS, titled "A Recent Entrance to Paradise."[14] The ICO questioned whether DABUS could qualify as the "author" of a computer-generated work under Section 2(d)(vi). The ICO found persuasive support in Aalmuhammed v. Lee[15] and rejected the claim that DABUS should be the author due to its independent functioning. The ICO stated that DABUS was not the "mastermind" and that DABUS's role was intermediate.[16] The ICO further maintained that a work's conception and autonomy in

[11] *See* Copyright Act, 1957, § 2(d)(vi) (India); *infra* Part II.3 (discussing the Indian Copyright Office's order on the DABUS application).
[12] Shivam Kumar Mishra, *Who Owns AI-Generated Content? A Critical Analysis of Copyright Authorship Under the Indian Copyright Act, 1957*, 8 Indian J.L. & Legal Rsch. 8051, 8053 (2026).
[13] Madhuri Hardia & Navin Dave, *Copyright Protection for AI-Generated Works in India*, 5 Int'l J. Progressive Rsch. Eng'g Mgmt. & Sci. 822, 825 (2025).
[14] Stephen L. Thaler (DABUS), Diary No. 9356/2022-CO/A, 1 (Copyright Off., India Aug. 31, 2026).
[15] Aalmuhammed v. Lee, 202 F.3d 1227, 2 (9th Cir. 2000).
[16] Thaler (DABUS), Diary No. 9356/2022-CO/A, at 27.

execution are not the same thing.[17] Dr. Thaler designed the architecture, goals, constraints, training approach, and operating guidelines that DABUS followed. The ICO stated: "Whether legal personhood or authorship should ever be extended to autonomous artificial intelligence remains a policy decision strictly reserved for Parliament, and cannot be introduced via administrative reinterpretation."[18]

The ICO noted that Section 13(1)(a) of the Copyright Act makes "original" an express condition for the subsistence of copyright in an artistic work, but the Act does not define the term "original". The ICO took into account the source and type of the linguistic and visual inputs, how the DABUS system operated, the roles played by Dr. Thaler and DABUS, how the final composition came to be, and whether the work replicated any identifiable prior work or had enough independent expressive character to meet the Section 13 threshold of "originality." The ICO also referred to decisions in University of London Press Ltd. v. University Tutorial Press Ltd.,[19] and Eastern Book Co. v. D.B. Modak,[20] and considered the relationship between Section 13 and Section 2(d)(vi). Based on the technical explanation and material on file, and for the purposes of the current registration proceedings, the ICO determined that the resulting composition was not predetermined in its final form and did not appear to reproduce any identified pre-existing work. The ICO determined that the particular visual composition met the "minimal degree of expressive creativity" required by Eastern Book Co. The ICO did, however, observe that there was no concrete evidence on file to show that the work was copied from a specific source or another work.[21]

The ICO considered whether Dr. Thaler had established a legal basis claiming first ownership of copyright despite DABUS having been named as the author in the application. The ICO noted that if DABUS were treated as the author, the applicant would have to establish either a statutory exception under Section 17 or a valid transfer under Sections 18 and 19. Section 19

[17] Id. at 29.
[18] Thaler (DABUS), Diary No. 9356/2022-CO/A, at 48; *see also* Roushan K. Singh, *Original, yes. Author, no: Copyright Office rejects AI authorship, but not AI-generated art*, SCC Online Blog (Sept. 1, 2026), https://www.scconline.com/blog/post/2026/09/01/authorship-of-ai-legislative-prerogative-dabus-copyright-office/ (last visited Sept. 14, 2026) (on file with author).
[19] University of London Press, Ltd. v. University Tutorial Press, Ltd., [1916] 2 Ch. 601, 32 (Eng.).
[20] Eastern Book Co., (2008) 1 SCC at 28 (India).
[21] Sohini Ghosh, *AI can create original work but can't be its author: India's copyright ruling explained*, Indian Express (Sept. 1, 2026, 1:38 PM IST), https://indianexpress.com/article/cities/delhi/ai-cannot-be-author-copyright-office-rejects-dabus-artwork-stephen-thaler-10858241/ (last visited Sept. 14, 2026) (on file with author).

expressly requires a written assignment signed by the assignor or duly authorised agent. The ICO found that neither had been established.[22]

The ICO denied the application because it was legally incompatible with the existing law. The ICO clarified that the denial was due to the applicant's continued incorrect identification of DABUS as author despite receiving notice, a hearing, and an explicit chance to amend the application's initial incorrect details. The ICO also made it clear that Dr. Thaler is free to pursue copyright registration based on specifics that accurately identify the author and the appropriate basis of ownership.[23]

III. EMERGING CHALLENGES

1. Varying degrees of human creative involvement

A uniform approach to determining copyright ownership in AI-generated works is inadequate. So far, we have assumed that human involvement automatically confers ownership on the human user. However, while making use of various GenAI tools, there are varying degrees of human creative involvement. These interactions can range from something as simple as "generate a picture of a cat" to complex inputs that go through a large number of iterations.

Consider a simple prompt— "generate a picture of a dog sitting on a beach". In this scenario, human involvement is minimal. The next level of input would involve a more detailed prompt where the human user specified the lighting, colour palette, artistic style, position of the subject, background, etc. Moving up the ladder, the user generates 50 outputs, modifies their prompts repeatedly to achieve a particular output, finally rejects 49 options and selects one. The next rung of the ladder can be a situation where the user supplies an original sketch and asks the AI model to transform it. Another scenario arises where an AI model generates a base image based on the user's prompt, thereafter the user substantially alters it in Photoshop or another similar program. We should also consider that a user can utilise an AI tool to generate a prompt or series of prompts and subsequently inputs that AI-generated prompt into another AI system to generate content. These are materially different situations involving different degrees of human input and therefore warrant different treatment under copyright law. At what point can a user claim to be the "person who causes the work to be created" and claim copyright protection for

[22] Thaler (DABUS), Diary No. 9356/2022-CO/A, at 42.
[23] Id. at 46.

the generated work? One must also take into consideration the creator's ability to influence and control the output and the time invested by the user.

2. AI developer as the author

Elmahjub offers a different perspective that also considers varying levels of input. According to him, "Where a human author engages in substantial, creative modification of an AI-generated output—through selection, arrangement, and alteration that meets the threshold of originality, copyright can and should protect that human contribution." On his account, protection attaches to the human authorship and not to the raw algorithmic output, which lacks the philosophical grounding necessary for protection and should remain in the public domain. To argue otherwise, he contends, "is to mistake the function of a sophisticated tool for the act of human creation and to ignore the fundamental principles upon which copyright law is built."[24]

3. "AI-generated" vs "AI-assisted"

With the growing use and application of AI in every domain of personal and professional lives, it becomes necessary to draw a line between AI-generated and AI-assisted content. The former refers to work in which the expressive elements of the final output are substantially determined by the AI system, with little or no human creative intervention beyond initiating the generation process. Whereas the latter refers to work in which AI is used as a tool, but a human exercises sufficient creative control over the selection, arrangement, modification or final expression of the work. These two should not be treated as rigid categories but rather as points on a spectrum of human involvement in creative expression.

IV. INTERNATIONAL PERSPECTIVES

1. United States – "Human authorship" standard

The copyright clause of the United States Constitution grants Congress the power "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors … the exclusive Right to their respective Writings."[25] Copyright in the United States applies to "original works of authorship fixed in any tangible medium of expression".[26] In Thaler v.

[24] Ezieddin Elmahjub, *The Algorithmic Muse and the Public Domain: Why Copyright's Legal Philosophy Precludes Protection for Generative AI Outputs*, 58 Comput. L. & Sec. Rev. 106170, 8 (2025).
[25] U.S. Const. art. I, § 8, cl. 8.
[26] 17 U.S.C. § 102(a) (2018).

Perlmutter,[27] the D.C. Circuit held that by the plain meaning of the text, an "author" must be a human being capable of intellectual, creative, or artistic labour. The court affirmed that generative AI cannot be an "author" under the Copyright Act. Copyright protection in the United States requires human authorship.[28]

The Copyright Act empowers the U.S. Copyright Office to establish regulations for administering the Act.[29] It has issued guidelines for "Copyright Registration for AI Generated Material" wherein applicants have a duty to disclose the inclusion of AI-generated content in a work submitted for registration and provide a brief explanation of the human author's contribution towards the work.[30]

In its report on Copyright and Artificial Intelligence, it classified AI-related outputs into three types: i) Fully Autonomous AI works, ii) Human-Aided AI works, and iii) AI-assisted works.[31] The Copyright Office has concluded that existing legal doctrines are adequate to resolve questions of copyrightability. The Office concluded that outputs are copyrightable, in whole or in part, where AI is used as a tool and a human determines the expressive elements they contain. [32] When an AI system determines the expressive elements of its output, the generated material is not the product of human authorship.[33] Prompts alone are unlikely to satisfy these requirements.[34]

In summation, the stance of the United States is clear: copyright belongs to the human user as long as they satisfy the expressive element and human authorship requirement. The law in this regard is similar to the applicable law in India and comparisons can be easily drawn.

2. United Kingdom – "Necessary Arrangements" rule

[27] Thaler v. Perlmutter, 130 F.4th 1039, 3 (D.C. Cir. 2025), cert. denied, No. 23-5233 (U.S. Mar. 18, 2025).
[28] U.S. Copyright Off., *Compendium of U.S. Copyright Office Practices* §§ 306, 313.2 (3d ed. 2021).
[29] 17 U.S.C. § 702 (2018).
[30] *U.S. Copyright Office Issues Guidelines for AI-Generated Work*, SCC Online Blog (Mar. 28, 2023), https://www.scconline.com/blog/post/2023/03/28/us-copyright-office-guidelines-for-registration-of-ai-generated-work-legal-research-legal-news-updates/ (last visited Sept. 11, 2026) (on file with author).
[31] U.S. Copyright Off., *Copyright and Artificial Intelligence, Part 2: Copyrightability* (Jan. 2025), https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf (last visited Aug. 15, 2026) (on file with author).
[32] *Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence*, 88 Fed. Reg. 16190 (Mar. 16, 2023) (to be codified at 37 C.F.R. pt. 202), https://copyright.gov/ai/ai_policy_guidance.pdf (last visited Sept. 5, 2026) (on file with author).
[33] U.S. Copyright Off., *Compendium* § 507.1.
[34] U.S. Copyright Off., *Copyright and Artificial Intelligence, Part 2: Copyrightability*, at 18 (Jan. 2025).

In the United Kingdom, copyright is governed by the Copyright, Designs and Patents Act, 1988 (CDPA). Material generated by AI with minimal human input sits in a unique position under Section 9(3) of this Act. UK copyright law traditionally requires a human author to satisfy the originality requirement. Section 9(3) of the CDPA addresses computer-generated works (CGWs). [35] It states: "In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken."

The term "computer-generated", as defined in Section 178 of the CDPA[36] refers to works "generated by computer in circumstances such that there is no human author of the work." The author is assigned by legal fiction to the person making the necessary arrangements, and these authors do not receive any moral rights.[37] This section applies only to purely AI-generated works. AI-assisted works, on the other hand, involve significant creative human contribution, and copyright lies with the user.

In Nova Productions Ltd. v. Mazooma Games Ltd.,[38] the court noted that individual screen graphics generated during gameplay are created by the programmer or developer of that game, who becomes the "author". The player interacting with the interface cannot claim ownership, as it is a protectable computer-generated work. It is important to note that as of now Section 9(3) has not been interpreted by courts in any prominent case concerning generative AI. Therefore, there is no case that can be relied on as a precedent.

In the landmark judgement delivered by the UK Supreme Court in Thaler v. Comptroller-General,[39] the court firmly ruled that an AI system cannot be recognised as an "inventor" because it lacks legal personality. The Supreme Court unanimously dismissed his appeal, and held that an AI machine must have legal personality and cannot hold or transfer rights. While this was a case dealing with patents, the same understanding can be applied to copyright protection for users of AI generative tools. Protection can only apply to the human user behind the machine.

United Kingdom's "necessary arrangements" and India's "person who causes the work to be created" under Section 2(d)(vi) are conceptually similar. Both address computer generated

[35] Copyright, Designs and Patents Act 1988, c. 48, § 9(3) (UK).
[36] Id. § 178.
[37] Id. § 79(2).
[38] Nova Prods. Ltd. v. Mazooma Games Ltd., [2007] EWCA (Civ) 219, 5 (Eng.).
[39] Thaler v. Comptroller-Gen. of Pats., Designs & Trade Marks, [2023] UKSC 49, 8-12 (UK).

works. However, India lacks the same level of statutory specificity regarding AI-generated works.

3. South Korea – "Human-led" requirement

South Korea's Copyright Act explicitly mandates that a protectable work must be a "creative production that expresses human thoughts or emotions"[40]. The Ministry of Culture, Sports and Tourism (MCST) guidelines reinforce that purely AI-generated text, art, or audio cannot be copyrighted.[41]

The Korea Music Copyright Association (KOMCA) issued a ban in 2025 on registration of AI-generated music and royalties citing the absence of clear legal standards and management plans for music utilising AI.[42] KOMCA is a non-profit, creator-owned organisation that serves 30,000 songwriters, composers and music publishers and administers a catalogue of more than 3.7 million works, including those of notable Korean artists such as Psy, BTS, Super Junior, and EXO.[43] Thereafter, in August 2026, it allowed copyright registration and royalties for AI-assisted music, provided that a human creator makes a substantial and leading contribution to the creative process.[44] Songs created using only simple prompts are not eligible for royalties or copyright registration. When registering AI-assisted works, creators are required to verify their disclosures, clearly identify the AI tools used, and describe how they were used. However, this recognition was short-lived. Soon after, KOMCA decided to revoke the modifications to its rules regarding the reporting and registration of musical works, as well

[40] Copyright Act, Act No. 12137, Dec. 30, 2013, art. 2, para. 1 (S. Kor.), https://elaw.klri.re.kr/eng_service/lawView.do?lang=ENG&hseq=32626 (last visited Sept. 11, 2026) (on file with author).
[41] *A Guide on Generative AI and Copyright Released in English*, Ministry of Culture, Sports & Tourism (S. Kor.) (Apr. 15, 2024), https://mcst.go.kr/english/policy/pressView.jsp?pSeq=391 (last visited Oct. 22, 2026) (on file with author).
[42] Daniel Tencer, *South Korea's largest music copyright collective just banned registration of songs created with AI*, Music Business Worldwide (Apr. 2, 2025, 7:04 PM UTC), https://www.musicbusinessworldwide.com/south-koreas-largest-music-copyright-collective-just-banned-registration-of-songs-created-with-ai/ (last visited Oct. 23, 2026) (on file with author).
[43] Id.
[44] Mandy Dalugdug, *South Korea's KOMCA ends ban on AI-assisted songs – false filings now risk royalty holds and contract termination*, Music Business Worldwide (Aug. 5, 2026, 11:36 AM UTC), https://www.musicbusinessworldwide.com/south-koreas-komca-ends-its-ban-on-ai-assisted-songs-false-filings-now-risk-royalty-holds-and-contract-termination/ (last visited Sept. 10, 2026) (on file with author).

as the associated modifications to the standard contract terms it employs when composers and songwriters give the association management of their copyrights.[45]

It is important for Korea to establish legal and institutional standards for AI-assisted music through a consensus-building process involving the National Assembly, the government, the music industry and other stakeholders. Such standards can also guide music registration in other countries. This is particularly relevant to India, where Bollywood is increasingly using AI-generated music in films and series.[46]

4. Japan – "Creative Intention-led" principle

Japan views generative AI strictly as a "tool", comparable to a paintbrush or a camera. The Japan Copyright Act defines "copyrighted work" as "a creatively produced expression of thoughts or sentiments that falls within the literary, academic, artistic, or musical domain" and "author" as "a person who creates a work."[47] Japan recognises only natural or legal persons as authors. AI itself does not have legal personality and hence cannot be an inventor, as decided by the Intellectual Property High Court in the DABUS appeal.[48]

According to the "General Understanding on AI and Copyright in Japan" by the Agency for Cultural Affairs, Government of Japan,[49] the copyrightability of AI-generated content is determined on the merits of each case. Japan relies on two main factors for determination: creative intention and creative contribution. Examples of creative contribution include detailed instructions/input that specifically indicate what is required as creative expression, repeated generation attempts, the user's review of the generated material, correction of the instructions/input, and selection from multiple output materials. These guidelines are merely the subcommittee's interpretation of the existing Copyright Act and are not legally binding.

[45] Choi Min-ji, *Music copyright group backtracks on AI-assisted song registration rule*, Korea JoongAng Daily (Aug. 25, 2026, 9:06 PM KST), https://www.koreajoongangdaily.com/korea/music-copyright-group-backtracks-on-aiassisted-song-registration-rule/12843828 (last visited Sept. 9, 2026) (on file with author).
[46] *See, e.g.*, Manish Singh, *Indian filmmaker Ram Gopal Varma abandons human musicians for AI-generated music*, TechCrunch (Sept. 19, 2024), https://techcrunch.com/2024/09/19/indian-filmmaker-ram-gopal-varma-abandons-human-musicians-for-ai-generated-music (last visited Oct. 22, 2026) (on file with author).
[47] Copyright Act, Act No. 48 of 1970, art. 2, para. 1, items (i)–(ii) (Japan), Japanese Law Translation, https://www.japaneselawtranslation.go.jp/en/laws/view/3379 (last visited Sept. 13, 2026) (on file with author).
[48] David Tilt, *Thaler in Japan: More of the Same?*, 21 J. Intell. Prop. L. & Prac. 489, 490 (2026).
[49] Agency for Cultural Affairs, Gov't of Japan, *General Understanding on AI and Copyright in Japan* (Legal Subcomm., Copyright Subdivision, Cultural Council) (May 2024), https://www.bunka.go.jp/english/policy/copyright/pdf/94055801_01.pdf (last visited Sept. 11, 2026) (on file with author).

The Osaka District Court convicted a defendant of copyright infringement involving AI-assisted modifications.[50] The defendant in the case employed artificial intelligence (AI) techniques to alter, colourise, and enhance vintage Japanese black-and-white movies that were still protected by active copyright. Then, without authorisation, the defendant produced and sold the AI-altered copies on DVD. The court held that original copyright belongs to the legally recognised creator and that utilising generative AI to modify or enhance an already-existing protected work does not absolve the conduct of infringement.

Japan provides a potentially useful model for India because it does not treat AI use itself as determinative. Instead, the inquiry focuses on whether the human user's creative intention and contribution are sufficiently reflected in the final output. A similar test should be incorporated in India as well.

V. RECENT DISCUSSIONS

The Eighth Session of the WIPO Conversation on Intellectual Property (IP) and Frontier Technologies sought to bring together stakeholders to discuss important issues, to help establish best practices for the protection of creative works in the digital age, and to provide a map for navigating the challenges brought to the copyright system by GenAI.[51]

The Ninth Session of the WIPO Conversation on "Training the Machines – Bytes, Rights and the Copyright Conundrum" provided a platform for an in-depth exploration, aiming to understand the multifaceted relationship between training data and its collection of data sets from publicly available sources.[52]

In the Tenth Session of the WIPO Conversation on IP and Frontier Technologies, stakeholders discussed "Generative AI-IP and Outputs"—whether AI-generated content should be eligible

[50] Osaka Dist. Ct., Jan. 28, 2026 (Japan), *See* CODA (Content Overseas Distribution Association), *Arrest Made for Selling Pirated DVDs of Classic Black-and-White Films That Had Been Colorized,* (Jul. 17, 2025), https://coda-cj.jp/en/news/740/ (last visited Oct. 22, 2026) (on file with author).
[51] WIPO, *WIPO Conversation on Intellectual Property and Frontier Technologies, Eighth Session*, WIPO/IP/CONV/GE/2/23 (Sept. 20–21, 2023), https://www.wipo.int/meetings/en/details.jsp?meeting_id=78188 (last visited Aug. 15, 2026) (on file with author).
[52] WIPO, *WIPO Conversation on Intellectual Property and Frontier Technologies, Ninth Session*, WIPO/IP/CONV/GE/24 (Mar. 13–14, 2024), https://www.wipo.int/meetings/en/details.jsp?meeting_id=81668 (last visited Aug. 15, 2026) (on file with author).

for copyright protection and whether AI poses a threat to human creators or serves as a valuable collaborator. [53]

Dr. Stephen Thaler filed two core inventions (a fractal-based food container and a neural-flame emergency light) generated by his AI system DABUS (Device for the Autonomous Bootstrapping of Unified Sentience) through a Patent Cooperation Treaty (PCT) application that branched out into parallel applications across 18 jurisdictions.[54] He explicitly stated that the inventions were created by his AI system DABUS. Decisions from countries like the United States, the United Kingdom, Israel, Japan, Saudi Arabia, Singapore, South Korea, India, Australia, China, and the European Patent Office have largely reached the same conclusion and denied listing an AI system as a creator, with the sole exception of South Africa.[55] These countries and patent offices have ruled that an inventor must be a human, natural or juristic person. Any change in this position is a matter for the relevant law-making bodies to decide. Thus, it can be used as comparative support for the proposition that AI lacks legal personality and cannot currently be treated as an "author". Even South Africa's stamp of approval occurred only because South Africa's Patent Act does not define what an "inventor" is, unlike other countries. It listed DABUS as the inventor but listed Thaler as the patent owner.[56]

On December 8, 2025, the Department for Promotion of Industry and Internal Trade (DPIIT) formed an eight-member committee to examine the intersection of "Generative Artificial Intelligence and Copyright". The Committee was tasked with evaluating whether the existing Indian legal framework on copyright adequately addresses the issues raised by this new

[53] WIPO, *WIPO Conversation on Intellectual Property and Frontier Technologies, Tenth Session*, WIPO/IP/CONV/GE/2/24 (Nov. 5–6, 2024), https://www.wipo.int/meetings/en/details.jsp?meeting_id=84809 (last visited Sept. 13, 2026) (on file with author).

[54] WIPO, Food Container and Devices and Methods for Attracting Enhanced Attention, WO/2020/079499, (Apr. 23, 2020), https://patentscope.wipo.int/search/en/WO2020079499, (last visited Oct. 21, 2026) (on file with author).

[55] Thaler v. Vidal, 43 F.4th 1207 (Fed. Cir. 2022), cert. denied, 143 S. Ct. 1783 (2023); Thaler v. Comptroller-Gen. of Pats., Designs & Trade Marks, [2023] UKSC 49 (UK); Beijing Intell. Prop. Ct., (2024) Jing 73 Xing Chu No. 6353 ((2024) 京73行初6353号), (China); Seoul High Ct., Case No. 2023Nu52088, May 16, 2024 (S. Kor.); J 8/20 (Designation of Inventor/DABUS), Eur. Pat. Off. Legal Bd. of Appeal, Dec. 21, 2021; Commissioner of Patents v. Thaler [2022] FCAFC 62 (Austl.), *rev'g* Thaler v. Commissioner of Patents [2021] FCA 879 (Austl.); Tel Aviv-Yafo Dist. Ct., Cases Nos. 268604 & 268605, [Dec. 31, 2025] (Isr.); Intell. Prop. High Ct., Jan. 30, 2025, Reiwa 5 (Gyo-U) No. 5001 (Japan); Patent Application No. 521422019 (Saudi Arabia); Patent Application No. 11202254184A (Sing.); Patent Application No. 202017019068 (India). *See* Artificial Inventor Project, *Patents* (Mar. 6, 2026), https://artificialinventor.com/patent/ (last visited Oct. 22, 2026) (on file with author).

[56] Companies & Intell. Prop. Comm'n, *Patent Journal Including Trade Marks, Designs and Copyright in Cinematograph Films*, vol. 54, at 255 (July 2021) (S. Afr. Patent No. 2021/03242), https://iponline.cipc.co.za/Publications/PublishedJournals/E_Journal_July%202021%20Part%202.pdf (last visited Oct. 21, 2026) (on file with author).

technology and whether amendments to the law are required and to give its recommendations. The Committee subsequently finalised Part 1 of its Working Paper for stakeholder feedback.[57] The first part of the Working Paper primarily addresses the use of copyrighted content in AI training. Questions concerning authorship and copyrightability of AI-generated outputs were identified for consideration in a subsequent part.

VI. POLICY RECOMMENDATIONS

The world's traditional legal frameworks seem to be ill-equipped to deal with the questions that growing AI usage poses. There is a certain lacuna in the law at the moment. International conventions govern copyright, the most prominent being the Berne Convention for the Protection of Literary and Artistic Works.[58] Whether a country is a signatory to a convention and recognises its binding value is another question. Nevertheless, international law still does hold certain persuasive strength.

India and other WIPO member states could consider whether the existing international copyright framework requires further clarification concerning AI-generated and AI-assisted works. WIPO currently takes a neutral, multilateral policy stance on artificial intelligence, serving as an international forum to guide global rules rather than impose strict binding laws.[59] The WIPO should formulate a convention that comprehensively addresses the varying degrees of user input and their corresponding copyright protections. However, keeping in mind the complicated process of amending treaties and negotiating new conventions, WIPO should develop an international framework or soft-law instrument addressing authorship, copyrightability, disclosure and provenance of AI-generated and AI-assisted works as an interim measure.

Indian copyright law, today, does not have a satisfactory system for allocating liability for infringement, and determining authorship, across the AI value chain, and instead of patching together regulations as ad hoc fixes, it is essential that Indian copyright law be reformed. New provisions are necessary to establish clear rules for ownership and to define a pragmatic test

[57] Dep't for Promotion of Indus. & Internal Trade, Ministry of Com. & Indus., Gov't of India, *Working Paper on Generative AI and Copyright, Part 1* (Dec. 8, 2025), https://www.dpiit.gov.in/static/uploads/2025/12/ff266bbeed10c48e3479c941484f3525.pdf (last visited Sept. 14, 2026) (on file with author).

[58] Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised at Paris July 24, 1971, 828 U.N.T.S. 221.

[59] *Artificial Intelligence and Intellectual Property Policy*, WIPO, https://www.wipo.int/en/web/frontier-technologies/artificial-intelligence/conversation (last visited Oct. 22, 2026) (on file with author).

for originality in the AI context. A “Human Creative Contribution” test should be introduced that takes into consideration possible factors such as specificity of the prompt, creative intent, number and nature of iterations, selection among outputs, arrangement/coordination, human modification, use of pre-existing human-created material, control over expressive elements, and the degree of unpredictability of the AI output.

The standards for copyright in AI-generated content should be included in a separate section that also distinguishes between AI-generated and AI-assisted content. India should consider granting the developer or user of an AI system (but not the system itself) a shorter-term sui generis right, which is a unique, non-copyright right, for works that are judged to have insufficient human creative contribution. This would encourage the development of AI tools without compromising copyright's essential human-centeredness.

The law must recognise the reality of creative collaboration between humans and AI. We recommend statutory recognition of AI-assisted works involving substantial human creative contribution, without recognising the AI system itself as an author or legal rights-holder. The human creator would be the sole author and owner under Section 17, but the work could be registered as “AI-Assisted Creation” or “AI-Involved Creation.” This formal recognition would play a dual role: it would be transparent and would acknowledge the AI system’s role in content generation without granting it legal personhood.

VII. CONCLUSION

The law must distinguish the artist who uses a digital tool from the operator who merely initiates a generative process. Going forward, there should be a new evidentiary burden on those seeking protection for works incorporating artificial intelligence. The deciding question on copyright protection should no longer be *whether* AI was used, but *how* it was used and to what extent the final work can be attributed to human creativity.