Chat GPT and Copyright: Legal and Ethical Challenges

Kumari Simran Sharma & Aditi Singh Kavia

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- Kumari Simran Sharma[1] & Aditi Singh Kavia[2]

Abstract

Chat GPT, has revolutionized human-computer interactions by enabling human-like conversations. This cutting-edge technology has numerous benefits but raises serious legal and ethical questions. This paper intends to understand the legal and ethical challenges and propose solutions. The AI language model is trained using a vast amount of data, including literary works, which is the subject matter of copyright. the output generated by the Chat GPT can likely be similar to the existing copyright-protected work, which can cause copyright infringement issues. It aims to highlight the legal issues, mainly concerning liability, copyright protection, ownership, intellectual property rights, privacy rights, attribution, and accountability relating to these works. The ethical challenges of plagiarism, misinformation and unauthorized use and misuse of work in the academic field, and the legal provisions under the Copyright Act, 1957 and Information Technology Act, 2000 and other regulations relating to data protection to understand the applicability of these laws on the Chat GPT are analyzed. The paper intends to examine the legal framework for regulating AI in countries like the US, Canada, England, Singapore, New Zealand and China, by examining the judicial position on AI's ownership and liability aspects through relevant case laws. A regulatory framework for the responsible use of technology, which can be conducive to mitigating the legal and ethical risks associated with artificial intelligence is proposed.

Keywords: *Chat GPT, Authorship, Copyright, Infringement, Artificial Intelligence (AI)*

Introduction

The term *Chat GPT* stands for *'Chat Generative Pre-Trained Transformer'*, which is a language model. This Artificial Intelligence model is trained on enormous amount of data such as books, articles, websites, newspapers or other literary works. It is based on neural networks and helps generate information based on the user prompts. There has been rampant use of Chat GPT in forming employers' contracts, setting question papers, patent applications, confidential contracts and research

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[1] Assistant Professor, SVKM's NMIMS (Deemed to be University), Mumbai; email: simran3101@yahoo.com

[2] Assistant Professor, CHRIST (Deemed to be University), Bengaluru; email: aditisinghkavia@gmail.com

papers, which have raised eyebrows as it highlights concerns pertaining to the privacy of the individuals and liability issues in cases where the generated output results in copyright infringement.[3] The history of AI can be traced back to when Alan Turing in 1940s introduced electronic computers.[4] Turing propounded the theory on computer machinery and intelligence which became the Turing test. Other pioneer scholars such as John McCarthy, Marvin Minsky, and Allen Newell developed Artificial Intelligence models which focused on language processing and problem-solving by exhibiting human-like intelligence.[5]

The evolution of artificial intelligence technology like the Chat GPT, Metaverse, Google Deep Dream has been remarkable, but has also posed unique legal and ethical challenges. Like, the Chat GPT is providing misinformation by generating inaccurate and biased information, creating privacy breaches and copyright issues. The current legal system is not abreast with the rapidly developing technology, and it can potentially be catastrophic for the public at large if it is not regulated effectively. [6]

Legal challenges associated with Chat GPT

The exponential use of Artificial Intelligence, specifically Chat GPT, poses some serious legal and ethical concerns. There have been heated debates concerning legal implications of Chat GPT under Intellectual Property Laws. The legal concerns encompassing Chat GPT are as follows: Copyright Infringement, Ownership of the AI-generated

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[3] SpicyIP, 'ChatGPT and the Underlying Copyright Malady' (*Spicyip*, 10 March 2023) <https://spicyip.com/2023/03/ai-and-copyright-law-analysing-the-impact-of-chatgpt.html> accessed 20 May 2023.

[4] Catherine Tucker, 'Privacy, Algorithms, and Artificial Intelligence', *The Economics of Artificial Intelligence: An Agenda* (University of Chicago Press 2018) <https://www.nber.org/books-and-chapters/economics-artificial-intelligence-agenda/privacy-algorithms-and-artificial-intelligence> accessed 21 May 2023.

[5] Michael Haenlein and Andreas Kaplan, 'A Brief History of Artificial Intelligence: On the Past, Present, and Future of Artificial Intelligence' (2019) 61 CMR 5 <https://doi.org/10.1177/0008125619864925> accessed 21 May 2023.

[6] Stuart J Russel, Peter Norvig & Ernest Davis, *Artificial Intelligence: A Modern Approach* (3rd ed. 2010).

work, Copyright Protection, Liability, Privacy Issues, Assignment, Economic and Moral Rights.

- **Copyright Infringement:** An enormous amount of data, including books, articles, and other published work on the internet, is being fed to the AI language model to generate output that can be potentially similar to the existing work. The output generated by the Chat GPT is often the literary works of authors, and such acts have the potential to cause copyright infringement.[7]

- **Ownership:** There is a legal complexity surrounding the term ownership as Chat GPT is owned by Open AI, which is not a person as per Indian Copyright laws. Only persons who possess personality as given by the law are entitled to rights deemed as owners or authors. There is a legal loophole which is being misused by the language model. There is a lot of ambiguity around who owns the AI model, whether it is user, developer, or Open AI.[8]

- **Copyright Protection:** The real issue pertaining to Chat GPT is copyright protection, the works created by the AI model are not truly original as it is a mix of a wide array of works gathered from the internet which is a combination of copyright-protected literary works. The output generated by AI will not fulfil the criteria of originality.[9] As the work created by Artificial Intelligence is the result of algorithm and patterns created by it and can be similar to existing works.

- **Liability:** That is another concern which questions the usage of Chat GPT as the output generated is sourced from articles, books and other literary works which are the subject matter of copyright. Any work

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[7] Anushka Sail, 'Chat GPT and Intellectual Property Rights' (2023) SSRN <https://www.ssrn.com/abstract=4445275> accessed 16 May 2023.
[8] Moish Peltz, 'Exploring the Legal Minefield of ChatGPT and Intellectual Property Rights' (*Falcon Rappaport & Berkman LLP*, 8 December 2022) <https://frblaw.com/exploring-the-legal-minefield-of-chatgpt-and-intellectual-property-rights/> accessed 20 May 2023.
[9] Ravindra Kumar & Professor Pankaj Kumar, 'Training AI and Copyright Infringement: Where Does the Law Stand?' (2011) 23 IJL 12.

generated by Chat GPT can be identical to the existing work and can amount to copyright infringement. The major issue that arises when the AI-generated output is identical to the existing work, who would be liable for copyright infringement?[10] As the work created by the AI lacks human element but is developed by the digital developer, Open AI and other entities, it becomes a serious predicament to determine the liability in legal issues.

- **Privacy issues:** The data added in the Chat GPT might include confidential information, including trade secrets, business strategy or patent applications.[11] The Chat GPT can later disclose such data to third parties and can lead to a breach of trust. This raises serious questions about the misuse of information and infringement of the user's privacy rights.[12] Open AI has explicitly stated that it will not take any reasonability for data leaks or privacy breaches.[13]

- **Assignment:** As per the terms of use, the rights have been assigned to the user for the output generated, which poses a serious question as to the accountability. The input generated by the user might be a single sentence, and the output generated is in the form a research paper, article, or an essay. In such cases, shifting the liability on the user by assigning the rights is a serious concern.[14]

- **Economic and Moral rights:** The concept of economic and moral rights in relation to AI is complex as the law grants such rights to the

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[10] Xiuquan Li and Tao Zhang, 'An Exploration on Artificial Intelligence Application: From Security, Privacy and Ethic Perspective', *(2017) IEEE 2nd (ICCCBDA)* .

[11] Tucker (n 2).

[12] 'ChatGPT in Practice – Major Legal Issues | Article | Chambers and Partners' <https://chambers.com/articles/chatgpt-in-practice-major-legal-issues> accessed 20 May 2023.

[13] Arul George Scaria and Vidya Subramanian, 'Need for an Ethical Framework on Usage of Generative AI in the Legal Realm' (*LiveLaw,* 30 March 2023) <https://www.livelaw-in.nujs.remotlog.com/columns/chatgpt-bing-chat-lawyers-privacy-policy-personal-information-of-users-data-breach-usage-of-ai-tools-225166> accessed 21 May 2023.

[14] Joe Sekhon, Oleksandra Ozcan and Sercan Ozcan, 'ChatGPT: What the Law Says about Who Owns the Copyright of AI-Generated Content' (*The Conversation*, 17 April 2023) <http://theconversation.com/chatgpt-what-the-law-says-about-who-owns-the-copyright-of-ai-generated-content-200597> accessed 16 May 2023.

author of the work; however, in the case of Chat GPT it cannot be owned by the Artificial intelligence as it is non-human. As per the terms of the user, it states the rights are assigned to the user. The right of assignment can only be exercised by the author of copyright as per the copyright laws. In this case, Chat GPT clearly lacks due to absence of human element in creation of the work. Moral Rights poses serious question as it relates to the personality of the author and is associated with the attribution, integrity and paternity over the work and deals with the reputational aspects of the work, which makes it more debatable when it relates to AI which has no legal personality.

Critical Analysis of Laws applicable to Chat GPT in India

Chat GPT involves literary works, which is a subject matter of copyright as stipulated under Section 14 of the Copyright Act, 1957. The ownership as mentioned under Section 17 of the Copyright Act, states that the author of the literary work shall be the first owner, and the definition of the author only includes humans and does not extend to AI as per copyright law.[15] The terms of use of Open AI-owned Chat GPT outline the liability of the users, which includes not to use it for harmful or illegal purposes.[16] The terms of use clearly state that the AI assigns all the rights, titles and interests in the output generated to the user.[17] It is pertinent to examine the assignment concept as under the Act.

Section 18 of the Act posits assignment, the Open AI terms of use do not comply with the legal provisions governing assighment under the Copyright Act. As it states that the Open AI has assigned all the rights to the user over output which does not align with the copyright laws wherein only owner or author which necessarily has to be person can

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[15] Joe McKendrick, 'Who Ultimately Owns Content Generated by ChatGPT and Other AI Platforms?' (*Forbes,* 21 December 2022) <https://www.forbes.com/sites/joemckendrick/2022/12/21/who-ultimately-owns-content-generated-by-chatgpt-and-other-ai-platforms/> accessed 16 May 2023.
[16] Sekhon, Ozcan and Ozcan (n 12).
[17] 'Terms of Use' (*OpenAI*, 14 March 2023) <https://openai.com/policies/terms-of-use> accessed 20 May 2023.

assign rights to the assignee.[18] In addition, assignment in future work can't take place before the work exists; it can occur only after the work has been created, which means any output generated by the AI or yet to be generated cannot be assigned to the user.[19] Further, Section 19 states that no assignment is valid unless signed by both parties which is not complied in the terms of use wherein the assignment is not valid as it is not explicitly told to the users and lacks the informed consent aspect and therefore vitiates the assignment.[20] As the user arguably cannot be the owner or assignee of the work created by the Open AI, the liability of a digital developer, company or AI is to be assessed and the contribution of digital developers, open AI need to be examined to impose liability in copyright infringement matters.[21]

Under the law, an assignment can be terminated only when both parties agree to terminate, which is not observed as under the termination clause of Terms of Use for such works given by Open AI. When there is a violation of Section 2 (Usage Requirements), Section 5 (Confidentiality, Security and Data Protection), Section 8 (Dispute Resolution) or Section 9 (General Terms), it gives Open AI the authority to suspend user access to services in cases of non-compliance, which questions the legality and validity of the terms of use. As the Terms of Use state that the content is assigned to the user, then on what basis Open AI has the authority to terminate the assignment when it is not the owner of the work created. Under the Terms of Use, arbitration is the preferred mode for dispute resolution, which is not in alignment with the copyright laws, as Section 19 A states that in case of dispute between assignee and assignor, one of them has to file a complaint and the case will be filed in Appellate Board.

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[18] Parth Lalit Sagdeo, 'Blending Machine Intelligence with Natural Intelligence: Artificial Intelligence and Law' (2020) 3 Issue 6 IJLMH 1215 <https://heinonline.org/HOL/P?h=hein.journals/ijlmhs8&i=1229> accessed 20 May 2023.

[19] Gyandeep Chaudhary, 'Artificial Intelligence: Copyright and Authorship/Ownership Dilemma?' (2022) 13 IJLJ 212 <https://heinonline.org/HOL/P?h=hein.journals/ijlj13&i=673> accessed 20 May 2023.

[20] Copyright Act 1957

[21] Annanay Goyal, 'Regulating Artificial Intelligence: An Indian Standpoint' (2020) 18 SA 122 <https://heinonline.org/HOL/Page?handle=hein.journals/supami18&id=137&div=18&collection=journals> accessed 20 May 2023.

Further, Section 21 states that copyright can only be relinquished after submitting the notice to the Registrar of Copyright, which means relinquishment of copyright cannot happen without the Registrar's intervention.[22] It is safe to say that the Terms of Use are not in consonance with the copyright laws and has blatantly ignored the domestic laws which raises questions on its validity. According to Section 51 of the Copyright Act, if the person exercises any economic rights of the author without their permission, by reproduction or distribution of work, it will amount to copyright infringement. In cases where the output generated is identical or similar to other copyright-protected work, it will amount to infringement. In such cases, the question arises as to who should be held liable for issues relating to the work generated by the AI.

However, as per the Terms of Use, the Open AI has shifted all liability onto the shoulder of the user in case of default when the work poses a security risk or is used for fraudulent or illegal purpose which is debatable. The user must also indemnify for any losses or expenses accrued by using the services. In any case, the affiliates, company, or licensors are held accountable as per the terms they are not liable to pay any direct or indirect damages and the user would indemnify such contracts. Indemnity Contracts are inconsistent as there is no relationship between the user and the AI, they are two separate interdependent contractors; no party is in a position to bind the other for the fulfilment of any term without the other party's informed written consent, which questions the legality of the terms imposed on the users without any justifiable reasoning.[23]

Chat GPT collects a vast quantity of personal data about the user and provides such data to third parties such as vendors, business transfers, affiliates, government or any other third party without the user's consent.[24]

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[22] Anushka Dwivedi, 'Convergence of Artificial Intelligence with IP Laws' (2022) 3 JCLJ 791 <https://heinonline.org/HOL/Page?handle=hein.journals/juscrp3&id=4031&div=389&collect ion=journals> accessed 20 May 2023.
[23] Gautam Badlani, 'Artificial Intelligence and the Need for Reform in Copyright Laws' (2021) 1 LSJ 1 <https://heinonline.org/HOL/P?h=hein.journals/lglspuj1&i=138> accessed 20 May 2023.
[24] 'Privacy Policy' <https://openai.com/policies/privacy-policy> accessed 20 May 2023.

As there is no overarching data protection in India, it is pertinent to examine the existing laws on data protection.[25] Information Technology Act, 2000 as amended later in 2008, incorporated some data protection and privacy provisions.[26] Other regulations include Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011. Data protection is discussed in IT Act; Section 43A states that the body corporate dealing in personal sensitive data should maintain reasonable security practices. In cases of default, the corporate body is liable to pay compensation, as can be seen in the privacy policy; the open AI is following no reasonable practices to protect the users' privacy. [27] Section 72 A states that intentional disclosure of information, particularly sensitive personal data about the user without their consent, is liable to compensation. Open AI expressly states in the privacy policy that the user's personal information can be shared with business organisations, the government or for any other purpose without the user's consent, which shows blatant disregard to privacy of the users.

As per the IT rules, the body corporate need to explain the privacy policy in an easy and comprehensible manner and before data collection, they need to present an opt-out option to the users to refrain from sharing their information and withdraw their consent at any time. Disclosure of sensitive personal information would require informed consent of the user. Chat GPT at the login stage with the Gmail account does not ask for permission to collect personal data about the users. There is no privacy policy pop-up that flashes before the screen, it automatically gets connected to the chat window, which raises a serious question of the non-visibility of privacy policy and no opt-out option available for the users.

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[25] Goyal (n 19).
[26] Renu Bala Rampal and Swaraj Singh Raghuwanshi, 'Demystifying Rights of AI Generated Inventions' (*LiveLaw,* 15 April 2023) <https://www.livelaw-in.nujs.remotlog.com/law-firms/law-firm-articles-/ai-generated-inventions-chatgpt-indian-patent-act-dabus-united-states-patent-trademark-office-european-patent-office-226394> accessed 21 May 2023.
[27] Li and Zhang (n 8).

International Legal Landscape on the Regulation of AI

The exponential growth of AI tools is currently shaking the entire world and is alarming due to a set of challenges it brings along. Legal experts worldwide are preparing to amend current Intellectual Property Laws, making it compliant with ongoing technological advancement. Copyright laws are built on a balanced approach to boost creativity and make work publicly accessible. An analysis of legal developments in copyright laws and their applicability to the AI technology is conducted to ascertain the legal position on AI regulation across countries.

United Kingdom and New Zealand

Globally, U.K. and New Zealand have been two most prominent countries which give copyright protection to Computer Generated Works (CGW) and have very similar copyright laws. The term of protection both these countries provide for CGW is less than protection for human-generated works. If we look at ownership, even while giving copyright protection to CGW, both countries have granted ownership to humans only and not computers. Both in U.K.[28] and New Zealand[29], the owner of CGW is a person who made the arrangements necessary for the creation of work. None of these countries attribute moral rights to the author. Thus, any work based on the manipulation of work generated by a computer is without any protection.

Another major issue to be observed here is the definition of CGW[30], which defines it as a work that *"is generated by computer in circumstances such that there is no human author of the work."* This makes it unclear if this would also include AI generative work. No clarification has still come up from UK legislators over this. Although no change seems to be ongoing in UK or European Union with regard to their copyright laws, but a proposed Artificial Intelligence Act is underway in EU, within which

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[28] Copyright, Designs and Patents Act 1988, S.9(3)
[29] Copyright Act 1994, S.5(2)(a)
[30] Copyright, Designs and Patents Act 1988, S.178

lawmakers are planning to impose a condition on generative AI that they make available a summary disclosing the use of copyrighted training data sources by their system[31].

EU's Text and Data Mining Exception

In 2014, EU had come up with Text and Data Mining (TDM) Exception to Copyright laws under Copyright in Digital Single Market permitting use of copyrighted protected works scientific training and analysis, thus, making non-commercial use, which is for text and data mining, permissible under copyright law. In June 2022, to stay ahead of competition in AI space and to give boost to such technological advancement, EU came up with a proposal to add Text and Data Mining (TDM) Exception for commercial use as well, however this received much backlash from different stakeholder and as a result, in February 2023, they took a decision to take it back[32]. Hence, if inputs used for training AI software which are later being used for creation of new work which could have commercial implication would amount to copyright infringement or not is still an open question.

United States

Unlike the UK, the US Copyright laws do not recognize computer-generated works to be copyrightable subject matter. However, with the advent of AI tools, various applications have been made to the US Copyright Office to seek copyright protection over AI-generated contents, which the office ultimately rejected. Recently, in March 2023, the US has come up with Copyright Registration Guidelines for AI-

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[31]João Pedro Quintais, 'Generative AI, Copyright and the AI Act' (*Kluwer Copyright Blog*, 9 May 2023) <https://copyrightblog.kluweriplaw.com/2023/05/09/generative-ai-copyright-and-the-ai-act/> accessed 20 May 2023.

[32] Deborah Kirk and Brett Shandler, 'UK Government to Consult AI Firms and Creative Sector in Revising Text and Data Mining Exception Proposal' (*Latham & Watkins*, 5 May 2023) <https://www.latham.london/2023/05/uk-government-to-consult-ai-firms-and-creative-sector-in-revising-text-and-data-mining-exception-proposal/> accessed 21 May 2023.

generated works[33]. With introduction of these guidelines, the US has tried to resolve various ongoing issues revolving around copyright protection to AI-generated content. The Copyright Office made it clear that only products as a result of human creativity could be awarded copyright. Where work involves human-AI collaboration, copyright would subsist only over the human created part. However, where AI generated contents have been generated and selected in a creative way by a human making resulting work sufficiently original, it would attract copyright protection.[34]

However, the most contentious issue of all which is whether using copyrighted works to train generative AI would amount to copyright infringement or qualifies as fair use defense is still sub-judice in the US. In January 2023, several artists have filed a class action lawsuit against Stable Diffusion, an image generator AI software program for unlawfully using their images to train their AI[35]. Similarly, in February 2023, Getty Images has filed a lawsuit against Stability AI for allegedly unauthorized copying millions of images from their website for training their AI[36]. Another interesting lawsuit is pending in the US where the plaintiff has challenged the human authorship requirement of copyright law claiming it to be outdated with the current AI advancement[37]. Decisions in all of these cases would be paramount for the US copyright laws.

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[33] 'Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence' (*Federal Register*, 16 March 2023) <https://www.federalregister.gov/documents/2023/03/16/2023-05321/copyright-registration-guidance-works-containing-material-generated-by-artificial-intelligence> accessed 21 May 2023.

[34] 'Copyright Office Issues New Guidance on AI-Assisted Works, but Legal Concerns Linger - Eversheds Sutherland' (*Eversheds Sutherland,* 21 April 2023) <https://us.eversheds-sutherland.com/NewsCommentary/Legal-Alerts/258038/Copyright-office-issues-new-guidance-on-AI-assisted-works-but-legal-concerns-linger> accessed 21 May 2023.

[35] Blake Brittain, 'Getty Images Lawsuit Says Stability AI Misused Photos to Train AI' (*Reuters*, 6 February, 2023) <https://www.reuters.com/legal/getty-images-lawsuit-says-stability-ai-misused-photos-train-ai-2023-02-06/> accessed 21 May 2023.

[36] Blake Brittain, 'Lawsuits Accuse AI Content Creators of Misusing Copyrighted Work' (*Reuters*, 18 January 2023) <https://www.reuters.com/legal/transactional/lawsuits-accuse-ai-content-creators-misusing-copyrighted-work-2023-01-17/> accessed 21 May 2023.

[37] 'Thaler v. Perlmutter' (*Mesh IP Law - Intellectual Property Attorney*) <https://www.meshiplaw.com/litigation-tracker/thaler-v-perlmutter> accessed 21 May 2023.

Canada

The Canadian Copyright Act, under section 5(1)(a), provides scope only for human to be copyright owner, thus ruling out AI being owner of copyright of the work generated. Interestingly, similar to India, AI Raghav is registered as a co-author by Canadian Copyright Office (CIPO). Since, the laws are not clear with regard to AI Generative contents; this approach has been adopted by CIPO considering it vital for promoting the production of socially valuable content. This is being seen as a way to strike a balance by making the work not entirely unprotected, but not attributing it to anyone who does not deserve the credit.

China

It is very interesting to look into position of China's Copyright law, being designed as a hybrid of common law and civil law, as to how much their current law has scope to regulate AI Generative works. In 2020, the Supreme People's Court while discussing over revision to copyright law has emphasized over the need to accurately define the types of works for promoting the development of the emerging AI industries[38]. While a revision to copyright laws may look underway to bring clarity even the current laws already have scope there to incorporate AI generated works. The latest 2021 Amendment was largely made to adapt to the technological developments. The definition of "work" here is inclusive in nature, Article 3 provides that "works" comprises "intellectual achievements in the fields of literature, art and science, which are original and can be expressed in a certain form". Further Item 9 of Article 3 provides that "works" also includes "other intellectual achievements conforming to the characteristics of the works". This miscellaneous clause gives a very wide scope to definition of "work" making it possible to even incorporate works generated by AI as copyrightable subject matter.

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[38]Joanne Kuai, Raul Ferrer-Conill and Michael Karlsson, 'AI-Journalism: How the Chinese Copyright Law Protects Tech Giants' AI Innovations and Disrupts the Journalistic Institution' (2022) 10 Digital Journalism 1893.

However, the protection is given to only actant led work, not machine led, who was responsible for creation of AI.

The Nanshan Public District Court in the landmark judgment of *Shenzhen Tencent v. Shanghai Yingxun*[39], recognized an article written by Dreamwriter, an AI, to be copyrightable subject matter and held that developer of AI and their licensee to be copyright owner. On one hand, where this judgment goes one step ahead in putting a judicial stamp to the ongoing ownership debate but on the other, it raises various concerns regarding the validity of assignment, infringement of copyright of works used in input to train AI etc.

Singapore

Singapore has recently overhauled its copyright laws to make it compliant with ongoing technological advancement and to meet modern needs. One of the radical changes that have been brought by the Copyright Act 2021 is introduction of Computational and Data Analysis (CDA) Exception[40]. This CDA exception is similar to TDM exception given under EU laws. Subject to certain conditions and safeguards, this exception permits lawfully accessed copyrighted works, to be used for various computational data analysis, including training Artificial Intelligence software. The most important thing to be noted here, which is different from current EU laws, is that it allows this exception for both commercial as well as non-commercial usage.

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[39]ZHOU Bo, 'Artificial Intelligence and Copyright Protection --Judicial Practice in Chinese Courts'. (*World   Intellectual   Property   Organisation,*   24   November   2019) <https://www.wipo.int/export/sites/www/aboutip/en/artificial_intelligence/conversation_ip_ai/pdf/ms_china_1_en.pdf> accessed 20 May 2023.
[40]'New Singapore Copyright Exception Will Propel AI Revolution' (15 November 2021) (*https://www.insidetechlaw.com/blog/new-singapore-copyright-exception-will-propel-ai-revolution*) <https://www.insidetechlaw.com/blog/new-singapore-copyright-exception-will-propel-ai-revolution> accessed 21 May 2023.

Judicial Position on Artificial Intelligence

The judicial position on Artificial Intelligence is nascent as the complexities of Artificial Intelligence are hard to interpret; few notable judgments focus on artificial intelligence and pricy rights. *K S Puttaswamy v. Union of India[41]* is a landmark judgement as it recognized right to privacy as a fundamental right. While the judgement did not focus on the intricacies of artificial intelligence regulation but gave guidelines that have implications on the ownership and liability issues relating to artificial intelligence.[42] The judgement also emphasized on the drafting of data protection legislation to protect the informational privacy of individuals which led to the formation of Justice B N Sri Krishna committee to draft a data protection law focusing on data minimization, storage limitation, purpose limitation and informed consent. The judgement is crucial as it lays the foundation for data protection and privacy rights and ensures effective deployment, use and regulation of artificial intelligence technologies.[43]

In another judgement, *V.B. Mohammed Ibrahim v. Alfred Schafranek[44],* the court interpreted the definition of the person and observed that neither body corporate nor an organization can be considered as a sole inventor as it is not a person. The court held that only a natural person can be granted the rights of a sole inventor as the organization or an AI lacks the skills and knowledge which is expected of a person. In *Som Prakash Rekhi v. Union of India & Anr[45]* the apex court decided on what constitutes a person in the eyes of the law. The court observed that a person is entitled to a certain set of rights, such as the right to sue, and the right to be heard, which can only be granted to any

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[41] *K S Puttaswamy v. Union of India* [2017] 10 SCC 1.
[42] 'Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors.' (*CCGNLUD,* 2017) <https://privacylibrary.ccgnlud.org/case/justice-ks-puttaswamy-ors-vs-union-of-india-ors> accessed 21 May 2023.
[43] Suchana Seth, 'Machine Learning and Artificial Intelligence' (*Economic & Political Weekly,* 2017) 52 <https://www.epw.in/journal/2017/51/privacy-after-puttaswamy-judgment/machine-learning-and-artificial-intelligence.html> accessed 21 May 2023.
[44] *V.B. Mohammed Ibrahim v. Alfred Schafranek* [1960] AIR Mys 173.
[45] *Som Prakash Rekhi v. Union of India & Anr* [1980] AIR, [1981] SC 212.

person with a legal personality. Artificial intelligence does not possess any personality and hence is devoid of any rights and cannot be considered as a person. In a recent case, *Google Inc. v. XXXX & Ors.[46]* and other connected matters, the court has stressed on the right to be forgotten of the parties, and has instructed Google to deploy an artificial intelligence tool to identify the data relating to the party and remove it from the internet for eternity.[47]

In *Authors Guild, Inc. v. Google,Inc.*[48] in this case, google scanned a vast number of copyright-protected works. Such literary work was used for the training of AI to assist the search functionality feature; the court, in this case, held that the unauthorized use of published books and using the snippets of the books which are used for a separate purpose would not amount to copyright infringement. There is no substantial impact on the commercial market. The display of information is also limited, the case was tested on the four parameters of the fair use doctrine being adopted in the US, and it was held that it is covered under fair use as it is highly transformative work and would not amount to copyright infringement.

Conclusion

The era of Artificial Intelligence is rapidly growing. It is affecting our daily lives in a huge way. Therefore, the law needs to be abreast with the changing dynamics of artificial intelligence. The Intellectual Property laws currently in the UK, India and New Zealand seem to be wide enough to give a scope of judicial interpretation to substantiate several legal issues. On the other hand, Chinese Copyright law provides room to regulate actor led innovation. Segregating the concept of authorship and ownership helps various jurisdictions like China and India in assigning copyright ownership to certain non-human entities as well. At the same

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[46] *Google Inc. v. XXXX & Ors* [2023] 12 KER 182.
[47] Navya Benny, 'Right to be Forgotten | Kerala High Court Refuses to Expunge Remarks Suggesting Google To Use AI Tools To Remove Identifiers From Judgments Online' (*LiveLaw*, 11 April 2023) <https://www.livelaw-in.nujs.remotlog.com/news-updates/kerala-high-court-dismisses-review-petition-google-right-to-be-forgotten-225984> accessed 21 May 2023.
[48] *Authors Guild, Inc. v. Google* [2015] Inc 804 F.3d 202.

time wider interpretation of various available defences and exceptions in countries like US, UK and Singapore gave way to the AI usage and development. The recent balanced approach adopted by the Canadian Copyright office to recognize AI as a co-author, helps promotes such development and help in fixing liabilities by keeping the human agent. Although, after assessing legal framework across countries, it can be said that it is not adequate enough to regulate AI created works without any human intervention which seems like next steppingstone for AI software.

As highlighted in the initial part of the paper, the advent of AI is pushing legislators worldwide to modify the existing laws as the emergence of AI and its complexities cannot be dealt with the traditional legal framework. Lack of transparency and ambiguous guidelines for AI functioning makes it more difficult to address various underlying concerns. The lingering privacy concerns have made Italy ban Chat GPT. It is pertinent to understand the complexities of AI and how it impacts privacy and copyright issues to enact suitable legislation. The government should attempt to strike a balance between boosting innovative technology and protecting the rights of individuals.

Recommendations

Chat GPT has shown remarkable technological progress by exhibiting human-like intelligence, but it raises serious legal issues mainly privacy and copyright challenges. It is imperative to understand the technology and determine accountability. Such technologies should be used with extra caution. Forming a robust regulatory framework to address legal and ethical challenges is the need of the hour.[49]

- To regulate functioning of ever-evolving Chat GPT, it is important to establish clear guidelines on using and regulating such technology.

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[49] SpicyIP, 'An IP-Centric Approach towards AI Regulation in India- Part I' (*Spicyip*, 1 May 2023) <https://spicyip.com/2023/05/an-ip-centric-approach-towards-ai-regulation-in-india-part-i.html> accessed 20 May 2023.

- To counter the authorship and rights issues, some changes need to be reflected in copyright law to address the authorship issues of literary works created by AI. Canada's balanced approach of recognising AI as a co-author could be taken as a reference, for which Indian laws are sufficient enough. Some changes requiring for separate co-authorship requirements only need to be updated.

- To counter the ethical concerns, it is imperative to propose some ethical standards and regulations to deter the misuse of such technology by reducing bias, misinformation and plagiarism. Disclosure of training data sources is very essential to understand the authenticity of results produced by these AIs.

- Artificial intelligence operates on a complex level; it is important to exhibit transparency and well-defined rules of use, which helps the users to use it more effectively. EU's proposed AI Act could be seen as a reference.

- To boost public trust, the government should form a committee which includes members of digital developers, officials from the information and technology department and other experts in the field to understand the use and the potential risks it can cause to the public. The government should supervise and monitor the growth of such technology to keep it at par with the regulatory framework and make suitable amendments to the law to mitigate risks.

- Countries like U.S. and U.K., have already started their process of discussion over laws. The EU has proposed an AI Act for regulating development and working of AIs. The President of U.S. has also been holding various committees for urgent regulation in this space. India, being one of the major players also need to buckle up its laws to make it more balanced, for not letting these AI start-ups away from the country and also to give push to creativity.

- To address the privacy issues, it is important to pass data protection legislation focusing on the control over personal data, data minimalization principle, storage limitation and purpose limitation to avoid data leaks and misuse.[50]

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[50] Subramanian (n 11).

- To address the accountability issues, it is imperative to hold open AI and digital developers responsible for the output generated, as it is not entirely the creation of the user. In such cases, the liability should also be shared among other stakeholders. Some amendments need to occur in the Information technology Act 2000 and Copyright Act, 2000. Exploring the possibility of including the AI tools within the scope of intermediaries may help in bringing them within the radar and pushing them for compliances and disclosures.