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Challenges of Copyright and Artificial Intelligence in India: A Legal Analysis

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SASTRA DEEMED TO BE UNIVERSITY

***Abstract*-- Generative AI integration into India's creative sector challenges the Copyright Act, 1957, leading to debates on authorship, training data usage, and platform liability. This paper looks at significant judicial rulings relating to these challenges, specifically Rupendra Kashyap v. Jiwan Publishing House, which restricts authorship to natural persons, prohibiting AI as an author and Eastern Book Company v. D.B. Modak, which uses a "skill and judgement" originality test to determine if prompt engineering is a human or AI contribution. The input vector does not meet the TDM exception because it relies primarily on the idea-expression dichotomy (R.G. Anand v. Delux Films) and transformative use (Oxford v. Narendra Publishing), therefore, it must be tested using the ANI v. OpenAI case. Liability precedent (MySpace, Christian Louboutin) establishes the distinction between passive and active intermediary parties, exposing AI platforms to liability. Personality rights jurisprudence (Titan Industries, Anil Kapoor, Jackie Shroff) weighs the protection of deepfakes from free speech.India's policy shift (DPIIT's 2025 committee and "One Nation, One License") indicates the need for reform. The paper recommends combined licensing and statutory remuneration as a viable solution to encourage innovation while at the same time preserving the rights of human creators.**

I. Introduction

Incorporation of Artificial Intelligence (AI) into the creative economy represents a paradigm shift of historic proportions, analogous only to the invention of the printing press in terms of its interference with the distribution of information, but being unique in terms of its interference with the creative process itself. Generative AI systems, often known as Large Language Models (LLMs), like ChatGPT by OpenAI, and generative image-making systems like Midjourney, have become more than just tools of analytic power, as they can generate poetry, code, and visual art to rival human work. This technological innovation has exerted such pressure on the Indian Copyright Act, 1957 the act that was based on the post-independence period and the Romantic ideal of the isolated human author.In India, the issue of law is posed as a high-stakes choice.

On the one hand is a flourishing AIs start-up system which capitalized on more than US 1.5billion in investments in 2024 alone because of the sight of innovation and economic advantages. There is a healthy creative industry on the other end, with the prolific production of the Bollywood to the varied publishing industry, which views the use of their unpaid work to train AI as an existential threat. The legal issues can be found in three main vectors, namely, the Input Vector that is related to the legality of scraping copyrighted information to train AI-based models; the Output Vector that is concerned with the copyright ability of computer-generated artworks; the Liability Vector that is addressed with the responsibilities of platforms regarding the deep fakes and infringement. The policy reaction of the Indian government has been moving towards the passivity stage to active deliberation. The creation in 2025 of a special committee by the DPIIT and the publication of the paper, One Nation, One License, One Payment, is a sign of acknowledgement of the fact that the empty regulatory system that existed was no longer viable. The report finds its way through these complications and reflects on how Indian courts are trying to retrofit analog era precedents so as to fit the new digital reality and as whether the existing legal infrastructure is strong enough to cope with the tectonic shenanigans of the AI era without burying the very innovation it is supposed to regulate.

II. Authorship And Ownership: The Ontological Crisis Of The 'Machine Author'

The paradigm of the issue that is facing the copyright jurisprudence in India is an ontological paradigm that is whether a non-human being is capable of being recognised as a writer. The Copyright Act, 1957[1], has its focus on this question and its inception had been to compensate human intellectual work. Section 2 (d)(vi) of the Act in 1994 defined an author as the individual who leads to a creation of any literary, dramatic, musical or artistic work even those that are created by computer generation.

[1] Copyrights Act 1957

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Even though this clause was to apply to works which could be computer-assisted, including those created using CAD software, the independent functioning of the modern-day generative artificial intelligence, which means that the machine is the one that decides what the final manifestation of a high-level prompt should be, poses a serious challenge to the traditional conceptualization of causation in the generation. The current trend of India, similar to that of the United States and the European Union, is a statutory framework that is highly anthropocentric. Nevertheless, the vagueness of Section 2(d)(vi) has created the problems of administrative inconsistency, with the highest profile example of this in the recent case, the Suryast scandal in 2008, where an AI was formally co-authored until the registration application was appealed. To deal with this problem, the case law underlying the formulation of the concept legal personhood and the setting of the necessary standard of originality need to be examined.

The decision of the Delhi High Court in the case of a decision entitled *Rupendra Kashyap v Jiwan publishning House Pvt Ltd*.[2] The Indian rule was set to protect writers of artificial intelligence by the court on Jiwan Publishing House Pvt. Ltd. It was ruled in the case of examination papers; however, its hierarchy of ratio in reference to the definition of a writer has had a binding precedent that limited the pursuit of copyright to the natural persons. The case was brought about a conflict over a draft of examination questions drafted by the Central Board of Secondary Education (CBSE). It was the reproduction of these papers by the publisher that the plaintiff, Rupendra Kashyap alleges to have infringed the copyright laws upon the publisher. The legal issue was whether the CBSE as a statutory body and as an artificial legal person could be perceived as the author of the examination papers under the copyright Act or the authorship was limited to human beings only. A decisive judgment by the Delhi High Court in terms of authorship, has remarkable reverberations in the modern condition of the AI debate. The Court ruled that an author of a work should be a natural person in the sense that he or she should be a human being with intellect and judgment. It helped to identify an important difference between the authorship and ownership. Although a artificial person (corporation or the CBSE) can hold the right of copyright, in a service contract or in an assignment in accordance with Section 17, they cannot be regarded as the author. The Court based its arguments on the fact that the process of creation is intellectual and that it needs a human mind. As a legal fiction, a statutory body does not have the biological ability of being creative.

Therefore, the authors were the real human paper-setters and the CBSE would be entitled to take the copyright only in case of an effective assignment or employment agreement with them.

This precedent is a potent, almost impossible, obstacle to the re-embodiment of AI systems in India as a beneficiary of the copyright. Relevance of Rupendra Kashyap played out in the scandal of the artwork of Suryast.

The author of the AI tool RAGHAVAnkit Sahni, was first successful in registering the work with the AI as a co-author. Nonetheless, Indian Copyright office later withdrew this and explained the withdrawal as due to Sections 2(d) (iii) and (vi). The reasoning was similar to that of Rupendra Kashyap: since a statutory body cannot be a person because it lacks sentience, an AI system as well, despite its level of computational capability, can not pass the natural person test. Advocates of AI copyright regularly compare AI to the employee of a corporation, generating work on behalf of the client. On this, Rupendra Kashyap counters that it is the doctrine of work-for-hire and not authorship that defines ownership. As an AI cannot sign any employment contract or designate any rights, the chain of title is disrupted at the origin.

In the event that Rupendra Kashyap lays down the conditions of authorship that a human can have, the historic ruling by the Supreme Court in *Eastern Book Company v. D.B. Modak*[3] states the extent to which the work by an author needs to be substantially undertaken. The so-called Originality test that will be covered in that judgement is the most important criterion of whether the interaction of a human subject with an AI tool, namely prompt engineering, qualifies one to assert that the interaction is substantial enough to meet the copyright threshold. The case was against the Eastern Book Company (EBC) which publishes the cases of the Supreme Court (SCC) law reports. EBC claimed that its editors had performed some work in cross-referencing, headnotes, paragraph formatting and corrections, thus they owned copyright to their version of judicial decisions as issued by the Supreme Court. D.B. Modak, the defendant, had included the raw text of those judgments in a competing software product. When issuing its judgement, the Court was requested to establish the originality standard of the derivative works. It looked at international criteria and denounced the British doctrine of Sweat of the Brow that only recompenses hard work and the strained American, Modicum of Creativity, criterion that appeared in Feist Publications, that demanded a flash of novelty.

[2] 1996 (38) DRJ 81 (Del)

[3] AIR 2008 SC 809

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As an alternative, it took a moderate course: the Skill and Judgement test that requires the minimum level of creativity. The Court determined that a work need not be a simple mechanical reproduction, but must have the talent and judgement of the author and add a flavour of creativity to it. Although mechanical manipulation of the text, e.g. correction of spelling, was not considered acceptable enough, human thinking was essential in response to the development of headnotes and organisation of paragraphs and thus was safeguarded.

EBC v. Modak thus acts as the test case to the HL argument of Human in the Loop argument in the context of generative AI. Advocates of AI applications argue that the procedure of designing elaborated and trial-and-error prompts is still a skill and judgement intensive process. Supposed an end-user invests hours in customising a prompt to generate a certain aesthetic, parameter selection and content curation, it is contended that this meets the criteria of a minimal level of creativity as asked by Modak. There is however, a dilemma when it comes to an uncompromising application of Modak. In the cases where the AI infers the actual expression, the specific arrangement of pixels, the brushstrokes or words, by some general idea that the prompt gives, the human input can be considered as having just provided an idea, which is not copyrightable. The AI process of creating the final artefact through mechanical means (which is usually finished in a few seconds) may then be perceived as a failure to fulfil the need to have the human intellectual effort involved in the execution stage. The decision of the U.S. Copyright Office to reject a work named Suryast, upheld by the Review Board, was based on similar grounds: even though the input was provided by Sahni, the AI decided the manner in which style was used and the Office judged that AI provided the primary creative act. To that end, when it comes to algorithmic composition (as seen in the final form of expression of work of creator, flavour) as opposed to the manipulative efforts of the user, it is probable that the algorithm-driven flavour will not pass the test to become a human work.

The divergence in jurisdiction in copyright protection is indicated by the registration status of an AI-generated piece of art, Suryast. The first registration contained the AI as a co-author along with the title of RAGHAV in India, although this was revoked by the Copyright Office under Sections 2(d)(iii) and 2(d)(vi) which specify that the author must be human.

The Copyright Office of the United States refused to grant the registration with the bottom line that the visual implementation of the AI overshadowed the human cues. In comparison, the work was registered in Canada, where the efforts of a human being and AI are so inseparable. The Indian jurisprudence as manifested in the decision of Rupendra Kashyap on Indian subject (the human soul) and of Eastern Book Company v. Modak in regards to human control, does not protect pure AI works which are distributed in the wider market with the protection bestowed only to the individual works.

The second significant issue related to the legal sphere is the so-called input aspect of the generative-AI ecosystem which is the unauthorised gathering of enormous amounts of copyrighted content to train the large language models (LLMs). This is what is referred to as text-and-data mining (TDM) and is still legally a shaky area in India. However, in contrast to the European Union, which offers a particular TDM exception (Article 4 of DSM Directive) or Japan (Article 30 -4), the Copyright Act of India is silent on any statutory safe harbour to machine learning. The main point of contention in the court cases is whether the machine learning process qualifies as a reproduction under the means of the 14 th or a non infringing transformative use.

This was pronounced by the Supreme Court in *R.G. Anand v. Delux Films*[4] forms the principle basis of the copyright infringement deliberation in India that sets the Idea-Expression Dichotomy. This doctrine is the main justification that artificial intelligence companies use in defence of model training based on a copyrighted material. R.G. Anand, the plaintiff, is a writer, and his play Hum Hindustani addressed the issues of provincialism and marriage among the castes. He claimed that the defendants had infringed his copyright in a movie titled New Delhi because it was duplicating his plot and characters. The Supreme Court had the responsibility of deciding whether the movie was a duplicate of the play bearing in mind that the main theme was similar. The Supreme Court decided that copyright did not shield ideas but only the expression of an idea. Themes, historical facts or general points in plot are probably similar and do not constitute grounds of action. The Court has introduced the so-called "Lay Observer Test, according to which infringement exists only upon a finding by the spectator of both pieces that, upon viewing the latter, he forms an unmistakable perception that the latter is the copy of the former. Infringement was not established because the film treated the theme differently in the manner it was done and presented.

[4]AIR 2008 SC 809

Developers of artificial-intelligence argue that, in the process of training a large language model, the patterns, facts, syntax, and statistical relationships, which are considered an idea, are gleaned out of the data set, rather than the replication of expressive content, which is supposed to be consumed by humans. The R.G. Anand principle represents the removal of the style of an artist or even the rules of language in a novel as the extraction of an idea and it is thus not likened to the violation of copyright laws.

The R.G. Anand test puts a lot of emphasis on the similarity of the output as perceived by human viewer. In case an artificial-intelligence model is trained on millions of books and it produces a new narrative that it does not replicate an individual expression in the training set, it can be said that such an outcome would be not a substantial part of a separate expression according to the R.G. Anand standard.

However, the technical set of actions of training requires production of the digital copies, i.e. the reproductions, of the works to convert the latter into the tokens and vectors. The author has a right to reproduce the work in any material form as found in the copyright act of section 14(a)(i) which says that he/she has the exclusive right to reproduce the work in any material form and this includes storing the work in any medium through electronic means. Here is this kind of intermediate copying which though not felt by the final user, the R.G. Anand defence is put to the test. Storage is also a prima facie violation of infringement even where the output is not similar.

At *Chancellor, Masters and Scholars of the University of Oxford v.Narendra Publishing House (2008)*[5]Promuters of artificial intelligence at Narendra Publishing House have attempted to cross the intermediary barrier of copying, through the doctrine of Transformative use who were on the one hand serviced by this seminal ruling in the Delhi High court. University Press of Oxford (OUP) filed a legal suit against a publishing house that had printed guides that copied questions in the textbooks in mathematics offered by OUP. The defendant argued that in their publications, it provided step by step solutions not found in the original writings and thus served not solely the duplication purpose but an alternative educational purpose.

With a lot of dependence on the jurisprudence of fair use in the U.S., especially the Campbellcase, the Delhi High Court. AcuffRose Music- affirmed in favour of the defendants. It believed that the guide books were transformative, since they had new meaning, purpose and utility in the form of instruction and education.

They were not the mere substitutes but rather the complementary works which played with the original material to create a new piece of work. To this effect, the Court interpreted Section 52(1)a(2) of the Copyright Act in a broad way in that the transformative relevance of the use is a determining element of analysing fairness.

This ruling forms the strongest judicial precedent of artificial-intelligence businesses in India. These kinds of companies argue that the translation of photographs into numerical vectors in order to train models that would in turn produce new photographs creates a classic example of a use that is transformative in nature. The original intent is shifted to aesthetics consumption, which is the original role of the work, to computer calculations and creating patterns that are part of AI training. However, the court ruling in Oxford emphasised that the work of derivative cannot be a mere substitute of the original. This is the major weakness of generative AI. In the event that an AI, which has been trained on the data of a voice actor, generates voiceovers that reduce the need to hire that voice actor, or in the event that an AI news summarizer replaces the need to read the original news source, this use becomes substitutive as opposed to transformative. In that case, fair dealing defence will fail because the AI will be competing directly in the main market of the author.

In the pending *ANI v. The Delhi High Court* is strictly reviewing these boundaries, OpenAI (2025) litigation. ANI argues that the use of its news by OpenAI is not fair dealing, since it is clearly in the same market as ANI. The court has noted that storage of data to train is an independent infringement act thus overturning the feasibility of the transformative defence over commercial mass-copying of data.

The Delhi High Court's Division Bench decision is now the landmark case establishing the legal precedent on the Safe Harbor type of protection provided for internet service providers, or intermediaries in copyright law, and established what is required to prove that an intermediary had "Actual Knowledge." Super Cassettes (T-Series), the plaintiff, sued MySpace, the defendant, as a social networking system, for listing music or videos that infringed on T-Series' copyright because users uploaded them onto the MySpace site. T-Series claimed that because MySpace profited from the infringing material by selling advertising, then it should be liable for the infringement. MySpace contended that it was entitled to the protections of being an intermediary under Section 79 of the Information Technology Act[6], as it acted merely as a passive host.

[5]2008 (38) PTC 385 (Del)

[6]Infromation Technology Act 2000

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The court overturned the decision of a single judge that imposed a general obligation to monitor for infringing content. The court concluded that because there is simply too much content uploaded to a social networking site for intermediaries to monitor all potential infringing activity, they should be able to comply with the Safe Harbor provisions, unless they had "Actual Knowledge" of a specific instance of infringing content (e.g. by way of a specific URL or by having a court order), and did not remove the content in a timely manner. General knowledge by an intermediary of copyright infringement, because it may be occurring at some level or at all, does not create liability for an intermediary under the Safe Harbor.

MySpace offers good legal protections to platforms that only host AI user content (like an art sharing website). They will only be held responsible for infringement if they are specifically notified of infringing images. It gets much more complicated trying to apply MySpace to the creators of the tools (like OpenAI). When ChatGPT creates text from its internal model weights, it isn't just "hosting" user content; it is creating new content based on its own model. The AI model itself creates an output, which is why MySpace protects "passive" channels, rather than active creators of the output. Therefore, since the platform developed the tool that produced any infringing outputs (like a perfect copy of a paywall protected article), it can't be classified as a passive host.

The judgment of *Christian Louboutin SAS v. Nakul Bajaj (2018)*[7] is a major blow to the Safe Harbor doctrine, and it introduces the notion of the "Active Intermediary," which is extremely harmful to the defense of Generative AI platforms. Christian Louboutin, the premium footwear brand, sued an e-commerce website (Darveys.com) for selling counterfeit products. The e-commerce website argued that it was only an intermediary between the seller and the buyer and was therefore protected under Section 79. The Delhi High Court made a distinction between "passive" and "active" intermediaries. The Court stated that an intermediary would cease to be protected under Safe Harbor if it "actively participates" in the transaction. The following are the criteria for active participation: identifying the sellers, advertising the products, ensuring authenticity, or controlling the supply chain.It can be argued that generative artificial intelligence platforms are the ultimate example of "active participants." These platforms are more than just "facilitators" in the flow of information; they also synthesize, curate and create information.

For example, an artificial intelligence model "selects" the words or pixels displayed based on the training it has received.According to the Louboutin test, an artificial intelligence company would have a considerable degree of control over the output of its model through methods such as Reinforcement Learning from Human Feedback, system prompts and safety filters. This level of control means that artificial intelligence companies have the power to actively affect the output of their models.

The European Union's AI Act (Article 53)[8] obligates General Purpose AI (GPAI) providers to be transparent with regard to the training data they use by requiring them to summarize training data. This statutory duty is consistent with the "active" role of AI companies as envisioned in the Louboutin test.In comparison, there is much less regulatory guidance in India that allows courts to use the Louboutin Test in order to pierce the corporate veil of AI platforms. If a court determines that an AI platform is an "active intermediary" as defined in Louboutin, the AI platform loses immunity under Section 79 and can be held liable directly for any copyright infringement committed by its model. This creates a significant risk of litigation for AI platforms and could force them to seek licenses for all of the training data used in order to avoid liability for output that was not legally generated, which further supports DPIIT's "One Nation, One License" rationale.

III. Personality Rights And Deepfakes: The Challenge Of The 'Digital Twin'

The emergence of generative artificial intelligence has given rise to an overwhelming number of "deep fake" (digitally-created) videos and audio files that look and sound real; therefore threatening an individual's "personality rights", specifically for one who is famous or a celebrity. Although there is no standard right of publicity statute in India, an Indian court may create a remedy for the right of publicity pursuant to common law and the constitutional right to privacy. The relationship between property rights and freedom of speech has now become very complicated because of these remedies.

The matter of *Titan Industries Ltd v/s M/s Ramkumar Jewellers*[9] was pivotal in taking the first steps towards defining the idea of personality rights as a commercial property right, rather than being simply a privacy right. The plaintiff, Titan, had a contract with Amitabh and Jaya Bachchan (the actors mentioned). The plaintiff sued a jeweller for using the images of the two in advertisements without their permission.

[7] 2018 SCC OnLine Del 12215

[8] https://artificialintelligenceact.eu/article/53/

[9] 2012 (50) PTC 486 (Del)

The issue was primarily whether there had been a commercial appropriation of the celebrity's persona. The Court acknowledged that the Right of Publicity forms part of the Right to Privacy (Article 21) but however has its own separate commercial component. The Court held that a celebrity has the right to control the commercial use of their identity (ie their name, image, voice, and likeness) and that any unauthorised commercial application constitutes the tort of "passing off" and violation of the personality rights. The Court also determined that the "identity" of a famous individual is a "quasi-property" which can be exploited commercially and is protected against any attempted dilution.

Titan has applied to companies engaged in developing AI voice avatars or AI voice clones of celebrities and as a result is infringing on the commercial property rights to one's identity established in Titan. This decision formed the basis for the recent influx of "John Doe" injunctions concerning deep fakes. This case demonstrates that a plaintiff does not require a specific statute to prevent an unauthorized AI use of their face and/or voice because they have a common law right of protection.

The court rulings in both *Anil Kapoor v. Simply Life India*[10] and *Jackie Shroff v. The Peppy Store*[11], both from 2023 and 2024 respectively, provide the first actual judicial response to the issues surrounding the use of AI deepfakes. These rulings provide a range of responses, from absolute ban to limited allowance.In Kapoor v. Simply Life India, the actor sued several companies for using AI to create deepfakes of him by morphing his facial image and also using his trademark saying of "Jhakaas" for commercial purposes. Kapoor sought an injunctive relief on a worldwide basis for his personality rights to provide protection against AI abuse.

In Shroff v. The Peppy Store, Shroff also had a legal claim against a party who used his catch phrase of "Bhidu," along with his voice and his likeness in meme and AI generated content. The defendant, The Peppy Store (which is a YouTube channel), defended itself against Shroff's claims by asserting that it had engaged in "artistic expression" and satire.

The high court of Delhi passed a wide-ranging discretionary injunction, which prevented any unauthorised commercial use of the name, likeness, voice, or other persona of Kapoor, whether artificial or not created by AI.

The Court mentioned that AI tools have the potential to transform identity theft into a harmful and fast criminal act, a threat to the right of the perpetrator to livelihood.

This decision was quite liberal, practically banning all non-consensual AI mimicry. However, the Court in the Jackie Shroff case did not grant a blanket injunction. It broke down commercial use like selling mugs with the face of the actor and artistic expression, which includes GIFs, memes, and satire. The Court upheld the right of the defendant to free speech in Article 19(1) (a), and accepted satire and parody as legitimate purposes. The case noteworthy is that it used the right to livelihood rationale in favour of the content creator, as the YouTuber actually made a living out of his or her creative work.

The two scenarios demonstrate the conflict between the rights of property and freedom of expression in the AI age. The detractors mention the inconsistent application of the concept of right to livelihood: in the Kapoor case it is applied to the celebrity, in the Shroff case they are protecting the creator, which has shown to be inconsistent with judicial logic. Courts follow the Kapoor method of the more stringent approach in cases of harmful deepfakes (e.g., pornography or scams), and the more liberal Shroff precedent in cases of creative uses (e.g. satire or art). In conclusion, the jurisprudence indicates that even though non-commercial copying of politicians or actors should not be allowed in artistic behind-the-scenes AI clones, unauthorised commercial copying of a blank must still be banned or face a total freeze on AI-generated creativity.

IV. Conclusion

AI's introduction into India's creative scene has uncovered significant shortcomings in the Copyright Act 1957, which was designed to protect rights in the creation of works by humans. The Act is based on a "human-centric" approach, as supported by the Rupendra Kashyap v Jiwan Publishing House and Eastern Book Company v D B Modak decisions, and will not apply to any works produced by AI without sufficient human input. Thus, there are gaps in value for AI investment in copyright protection, and there are substantial risks to AI developers when using content to train AI systems. Developers are left without an established text and data mining (TDM) exception, creating exposure to litigation for infringing copyrights and relying on a questionable transformative use standard (as established in Chancellor, Masters & Scholars of the University of Oxford v Narendra Publishing House), which is further complicated by ANI v OpenAI.

[10] 2023 SCC OnLine Del 6914
[11] 2024 SCC OnLine Del 3664

The Department for Promotion of Industry and Internal Trade (DPIIT) is attempting to address this issue through its 2025 "One Nation One License" initiative, which provides for collective licensing of works, includes author compensation, but may introduce a bureaucratic license regime that imposes unreasonable costs on new AI developers.

Three branches exist at this critical point in India's policy evolution including continued case-by-case application of prior rulings (like Christian Louboutin SAS v. Nakul Bajaj and R.G. Anand v. Delux Films) as dictated for an indefinite period (as with the 'Suryast' decisions), adapting a time-limited copyright approach (like Ukraine) that avoids allowing machines to be considered authors but accommodates the copyright recipient's needs (both for their own use and that of others); or developing an alternative hybrid approach using both centralized licensing and statutory remuneration (similar to the compulsory licensing regime found in Section 31D) which provides for access to data creators while providing them with compensation that considers all aspects of their rights as a creator. Ultimately, finding an ultimate solution to this issue requires rethinking the definition of an AI from a simple tool to a contributor to creativity, thereby finding a method to balance the need for protecting human dignity against promoting innovation resulting from machines.