

**HOW NEWLY EMERGING TECHNOLOGIES SUCH AS
ARTIFICIAL INTELLIGENCE ARE INFRINGING
INTELLECTUAL PROPERTY RIGHTS**

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ABSTRACT: -

Artificial intelligence and intellectual property rights majorly copyright and patent being one of the debatable concerns. The IPR laws are a platform through which various inventions, secrets of various companies, thoughts, publishing, and many more get safeguarded and nobody else would utilize them for their profit and indirectly will cause damage to the person's creation. Whereas the artificial intelligence term was coined by John McCarthy who was the winner of the Turing Prize in 1971 he defined it as "making a machine behave in ways that would be called intelligent if a human were so behaving". The court held that innovation can be done by human beings not by artificial intelligence, whereas some experts argue that intellectual property rights need to reckon with artificial intelligence sooner than later. Today's situation is somewhat where the need and use of artificial intelligence are growing and have exponential development. This works precisely, with the usage of logic, and reduces human intervention by benefitting with low cost or one-time investment of a scientist. Over the past century, there were lots of development where the set of algorithms are induced in computer systems with such software to ease the work faster than human beings. With the development phase in artificial intelligence society also comes with intellectual property rights getting infringed. In this whole essay, we will look forward to how the AI act to cause harm to the rights of another.

INTRODUCTION: -

AI can be a challenge because it can collect information on specific products and then use it in a personalized way. For example, the customer is frequently targeted when they search for things online which are not sometimes cookies but also machine learning which is AI generated, understands what they would like to buy, and what they are interested in.

The facilities and easiness provided by artificial intelligence are very much known to every human being. We do have several artificial intelligences of which we are so prone to day-to-day life and how generously they became a crucial part of our life. For example Siri, Alexa, and Cortana (recognition of voice by using ML and AI to intimate human interplay), Google Maps (analyses numbers of smartphones of data points to suggest locations, to enable travel routes), UBER (ML is a way to determine arrival times, pick-up locations, and UberEATS deliveries), Facebook (ML image recognition algorithms used to automatically tag your friends in photos), Gmail (mines email text to provide automatic responses to your emails), and Spotify (recommends related songs of your choice based on the music you have liked and disliked and you searched while scrolling). Artificial intelligence is the intelligence revealed by machines, whereby the type of device or machine understands its environment and takes an action mimicking 'cognitive' functions that humans associate like 'problem-solving'.

DEVELOPMENT OF AI IN IPR: -

Intellectual property rights were enumerated under the law to protect and enhance the creativity and inventions of several people in several sectors too. The issues between artificial intelligence and intellectual property rights were patents, trademarks, registered designs, copyright, confidentiality, trade secrets, and plant varieties. The artificial intelligence named IBM Watson is fully and carefully developed and not at all a fictional information technology to detect any type of cancer inside the human body within a span of ten minutes. There were several artificial intelligence-made things one of them was the Tesla company made an automated car where the codes and algorithms are so encrypted in car that can fully functional and abide by all the traffic rules that any normal human being follows, to follow traffic rules to make precautions of safe driving or look upon the obstruction to reduce the speed limit. Hence the time the country is moving towards is more inclined toward such development in the field of artificial intelligence. The development of artificial intelligence is commonly seen by everyone when in the year 2019

when the judge of a beauty contest was the AI where the algorithms encrypted inside it to remove the dark shade girl out of the other facial color. Yes, it sounds discriminating. But the fact is that the issue is not with the artificial intelligence, it just obeys and functions according to the algorithms set inside it. All actions performed by artificial intelligence were the algorithms encrypted that can be used to replicate activities typically that require human cognition. The advancement of artificial intelligence can be identified in any field, especially in the automobile industry. Though the demonstration of artificial intelligence in the Android phone is Google Lens, this sort of thing added lots of value and ease in performing the work easily and fast forward. The innovation of artificial intelligence to translate written text, and sound in the word text and can translate the content from any language to any preferred language of the individual. Not just ease and help in the field of data or translation artificial intelligence are so useful to detect spam emails by spam filter app identify spam email like a human being can easily identify in such circumstances where large baskets of techniques were used and are called machine learning models.

CURRENT SITUATION: -

Artificial intelligence is the ability of a computer program or a machine to think or learn, there is a field that makes computers work smartly. Artificial intelligence aims to work, think logically, and solve problems. Artificial intelligence is useful and being used almost in every field, it serves in the field of computer science, neuroscience, mathematics, linguistics, psychology, philosophy, and many other fields too. Currently, artificial intelligence has taken its place and spread its usage almost in every industry majorly automobile machines, processes of factories, civilization of ships, and aircraft with reducing human intervention. The cognitive self-learning skills of artificial intelligence were:

1. Big data: -

Capable of processing massive amounts of structured and unstructured data which can change constantly.

2. Reasoning: -

Ability to reason (deductive or inductive) and to draw inferences based on situation context-driven awareness of systems.

3. Learning: -

Ability to learn based on historical patterns, expert input, and feedback loop.

4. Problem-solving: -

Capable of examining and solving complex problems in special-purpose and general-purpose domains.

- **USA: -**

US law states that under their law regime, the innovation made by human beings is copyrightable not the innovation which is the output of the algorithms encrypted to artificial intelligence. Patent laws prohibited using the development methods of an individual by another for a definite period, whereas the patent law has exclusion where the innovation of artificial intelligence can be patented, such as software, algorithms, business methods, and mathematical methods.

- **UK: -**

The main conflict that arises is of giving authorship to the programmer this approach is evident in a few countries such as Hong Kong, (SAR), India, Ireland, New Zealand, and the UK. In the United Kingdom with its copyright law, section 9(3) of the Copyright, designs, and patents act (CDPA) states: in the case of literary, dramatic, musical, and artistic work by artificial intelligence the authorship will be of the person of whose necessary arrangements creation of the work are undertaken. Furthermore, section 178 of the CDPA defines computer-generated work means that work generated by the computer system with no interference from human beings.

AI AND IPR IN INDIA: -

Intellectual property rights are useful for an individual creation, artistic work, dramatic work, or other to make the innovation identical, the tool of incentivizing the creation, whereas the creation by human beings and creation by artificial intelligence is the hot talk and debatable nowadays. The WIPO (World Intellectual Property Organization) is constantly finding a solution arising from the innovation of artificial intelligence. The work or innovation made by a human being can be provided copyright ownership but the work done by artificial intelligence without human intervention is not eligible for copyright ownership.

The regulation of a country like India section 13 of the copyright act 1957 “copyright of any artistic work, dramatic, musical or artistic work should be original”. As the act does not define the original, the Honourable Supreme Court of India in the case of Eastern Book co v D.B Modak adopted the ‘Modicum of creativity’ standard for determining whether the work will be awarded copyright protection. The original definition was that the work should fulfill certain requirements or criteria and the work should not be the result of labor and skill. Especially the work done by artificial intelligence was several types of original work. Whereas there is a country like Saudi Arabia that granted the robot its citizenship. Sophia is granted citizenship and is called a marvelous AI creation. She demonstrated how she can change her facial expression to show any human being’s actions like crying, anger, sadness, and sad, etc. which clearly emphasizes how technological innovation always precedes legislative amendment. It’s questionable whether the current legal regime is capable of answering the potential legal question arising out of artificial intelligence development, but in reality, each industry had embraced artificial intelligence to different degrees to a different extent which is part of everyone’s daily life.

RELATION OF AI WITH IPR: -

The use of artificial intelligence help to reduce the need and energies of human being, it cannot take away jobs rather it will supplement and help with the quality of existing domain. Artificial intelligence is risky at the civilization level, not merely at the individual risk level, and that is why it demands a lot of safety research. The right depends on the specific circumstances and legal jurisdictions in which the content was created. In some cases, the creator of the artificial intelligence system may be considered the owner of the content it generates. In other cases, the person or entity who commissioned the content may be seen as the owner. If a human played a significant role in the creation of the content, they may have a claim to ownership. For example, if a human artist worked with an AI system to create a piece of art, the human artist may have a claim to ownership of that artist. In the meantime, it is important for creators and commissioners of AI-generated content they create or commission. There are questions surrounding the potential of AI-generated content to be protected by copyright. In some cases, AI-generated content may be seen as a “work for hire” meaning that the person or entity commissioning the content is the owner. In other cases, the AI system itself may be seen as the creator and therefore the owner of the copyright.

Nevertheless, the idea of inventors of their art, dance, and creation never gets infringed by the act of artificial intelligence because the act of copy and pasting or imitation of the creativity of the act was different in every perspective so we should not consider or can stipulates that the creation of the artificial intelligence is an infringement of the right of others. So, a wide aspect of creation we should look forward to seeing other aspects as well and make a conclusion out of the same. So, the work done under the specialization of the act of the robots or any artificial intelligence can never invoke the rights of another individual. And for better legislation, we should compare each edge of their style of work. Because as we all knew society is so dynamic and at a competitive edge, they never want that their competitor will profit by causing loss to them in this competitive world. The act of one was to create such beautiful art which can make the life of human very easy on another hand the human need to put; lots of effort. Consequently, the act should be separately decided based on merits. The IP laws will decrease development and will degrade the use and advancement of artificial intelligence. Further, to notice that in the parallel universe of competition, all we need is free of restrictions imposed on artificial intelligence-produced work.

WHAT IF AI OWNS IPR?

By analyzing the laws governing IPR, one could see the intent of the legislature. In India, intellectual property rights could only be owned by a human being (either as an organization or as an individual) as the legislature with a vision, has drafted laws in a manner that there exists a possibility only for a legal personality to become the owner of such rights. This has been done to avoid any ambiguity concerning advancement in machines or AI owing IP as a right available in India. But has anyone ever thought that how drastically the situation would change if the AI systems such as robots and other similar technologies are granted citizenship? If this is done, then the AI would become eligible to own and enforce its rights legally which would eventually lead to many implications in the legal world of the IPR. The whole dynamics of the ownership of IP rights will change which will give rise to several questions related to the infringement.

if AI is made eligible for a particular invention or creation just like an individual, then it should also hold other liabilities such as infringement and enforcement, where it will be sued for the infringement and made to enter with any legal contracts by itself, which seems more like an imaginary situation rather than a practical situation. Moreover, a normal human being would

never find it appropriate to trust technology for the same. Thus, it is proved that AI can never become a legal entity.

Secondly, the infringement of the rights of the third party by AI would raise the question of accountability, especially in the cases of copyright. Now, since most of the sources are easily available on the internet, then it would become very easy for him to prove that there has been an infringement in the protected work.

Thirdly, with time, much more understanding is required to understand the integrity and transparency of essential decision-making. Thus, giving AI systems protection under trade secrets could become an obstacle to its transparency, which would further create controversies regarding the manner holding of IP rights by the AI systems. the question of the hour is “How to deal with transparency in cases where a machine learning process involves multiple data sources, dynamic development, and elements that are opaque, whether for technological or legal reasons?”

In 2017, Hanson Robotics give birth creation of a robot named Sophia was the first ever robot to be given the status of a ‘person’ in the whole world after Saudi Arabia, the Parliament of India also decided to develop and boost technology as well as the laws in India. Seeing the progress of India in the field of technology, it becomes hard to predict what will India experience in the coming years; a bright future for the entire mankind.

INFRINGEMENT OF AI WITH IPR AND THE CHALLENGES AHEAD:

The past years of rapid development and complex discoveries in the field of technology have allowed artificial intelligence to perform all human functions and to even act to compete with the wholesome capacity of human beings. Though artificial intelligence has numerous advantages, its advent also raises several issues which are needed to be tackled soon.

- “The first and foremost thing is that if artificial intelligence is allowed to own the IP rights, then the question arises whether it can infringe the rights of the third party or not”
 - “The second question which pops up is that if the AI systems are allowed to create or produce the same subject matter which already exists, then who would be held liable in such cases if the subject matter created is infringing the intellectual property of the third party (especially in the cases of copyright)”
- Thus, a large no. of questions emerges concerning AI systems: -

- (i) Whether or not the question regards to the sufficient personality of AI to own intellectual property.
- (ii) Whether one can be sued before a court of law for infringement of legal rights.
- (iii) If The infringement or violation of legal rights is infringed by the action then who will be responsible by law of court for the infringement?

Thus, the threat which remains ahead are: -

1. Ownership Challenge: -

The systems advanced by AI are now sufficient to develop or create new inventions or subject matters which will be protected under IP laws. The machines can easily produce any object within a limited time on their own and are even capable of launching these with a new brand name. But now the question arises “whether an AI system deserves a status under IPR or not.”

To answer this question, firstly, we must understand the relationship between the owner and the object created. So, let us take an example- “For seeking protection under copyright law, the work must have originated from the labor of the author himself, which means that the first owner of such an original work is the author himself. Similarly, in the case of a patent, the first proprietor is the inventor and holds all the rights as he is the first owner of the design he had created.”

Thus, we can see that the owner is directly related to the subject matter created. Therefore, IPR can only be claimed by legal entities such as humans and by companies as separate legal entities. Further, if an AI system is allowed to protect its invention, there will surely be the infringement of IP rights and it would become difficult to find out the first owner of the intellectual property in the cases where an object is generated by an AI machine.

2. Liability Challenges: -

If an AI system is eligible for creating a subject matter, then it must also be held liable for the violation of copyright, trade secrets, data privacy, patent, or even with a trademark infringement if it uses the intellectual property of others without requesting authorization, whether knowingly or unknowingly. But there might be cases where AI creates something which is completely against the betterment of human lives; then in such cases, liability rests upon the AI users who are responsible for managing and caring

for AI as their job was to foresee the results and outcomes of the creation beforehand. But in the cases where AI could function without any direction and develop something unpredictable, then the liability will fall upon the system itself.

3. Legislative and Policy Challenges: -

The laws related to IPR face challenges when the legislature tries to answer the questions which rest upon its ownership, liability, or creation. There is no doubt that the laws under IPR have changed and modified as per the need of the time. But still, there remains a requirement for amendments in the existing IPR laws to regulate the sole creation of an AI machine and to decide which work should be given the chance to remain in the public domain. Also, the laws must be enacted in such a way that helps in deciding the party which should be entitled and acknowledged as the owner of such IP creation by an AI system.

Further, the data privacy of an individual and the risk to human beings in the future from the highly advanced AI machines remains a much bigger challenge for lawmakers and regulators of AI. Thus, we can conclude that the only way to resolve the disputes related to AI and IPR is the recognition of the same fundamentals regarding the regulation of AI by all countries and the legislation created must cover the remedies and regulatory framework of each country.

SCOPE OF IMPROVEMENT IN IP LAW CONCERNING AI:

The rights of an AI system under the IP law come to highlight only when such issues knock on the door of the courts as a dispute. Some common or the most frequently asked questions in such disputes are: -

1. Whether artificial intelligence will be identified under the law of intellectual property rights?
2. Whether artificial intelligence would have taken any steps for the invention of any piece of research work?
3. Whether the ownership was given only to human-made inventions?
4. Whether artificial intelligence can infringe any legal right of a third party under the law of intellectual property?

Without the proper rules and legislation, it becomes difficult for our judiciary to answer such questions but gives our legislature the challenge to improve and amend the intellectual property laws as per the need of the time. Thus, to analyze the rights

available to the AI system as well as a natural human being, there should be reasonable legislation and the proper interpretation of intellectual property laws. But at the end of the day, the laws must favor the public interest.

POSSIBLE SOLUTIONS TO OVERCOME THESE CHALLENGES: -

To deal with the present scenario, we also need some practical solutions apart from these controversies and challenges. When a piece of creation by artificial intelligence is put to test, the outcome we get is either the result of its intelligence or an algorithm. An AI system is said to have no creativity if its function is mechanical, rather than inventive. The IP law of most countries requires that a person must have a legal personality for becoming a right holder, which an AI system lacks. Therefore, at present, no country recognizes AI as an owner of IP. Thus, for becoming a right holder in the field of IP law, AI must achieve the status of that of a legal personality.

But what if an AI system created a subject matter which is extremely harmful to human life? Then in such cases, the AI users must take responsibility for the actions of the system as being a user, they can foresee the result beforehand. Thus, legislation granting rights to an AI system must be drafted in a way that the power to control and function the AI must be in the hands of a human being and they must also hold the right to override the decision of the AI, if not satisfied.

THE WAY FORWARD: -

Seeing the present, a near future can be predicted, where AI seems to be leading society with discoveries and creations by surpassing human intelligence. Thus, to achieve such goals, it becomes necessary for any country to recognize the interest of artificial intelligence in its laws governing intellectual property rights. If an AI system can create its innovation, it must be recognized as a potential author, and like a natural human being, an AI system should also be given rights such as claiming copyright, patents, trademarks, etc.

If we try to look at the key objectives of the IP law, then we could see that their main aim is to grant sole rights to the creators so that they could enjoy the benefits of their creations. If an AI system is granted such rights, then it could also enjoy the privileges it achieved from its creation. However, the fundamental goal of IP law is to give value to creations that benefit the general, and excluding such creations and innovations from rights would contradict the

fundamentals of IP law. Thus, if a legislator values creativity and innovation over a person's betterment, then it would be inconsistent with the provisions of the IP law. Therefore, there must be a reasonable balance between the two scenarios.

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