THE LIABILITY GAP: ASSIGNING LEGAL RESPONSIBILITY FOR AI- COPYRIGHT INFRINGEMENT- DEVELOPER, USER OR AI

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ABSTRACT:

This rapid development of AI technology has resulted in a liability gap in copyright infringement, and it is now necessary to determine between the developer and the end-user is liable in such cases. The main focus of this paper is to determine whether the liability of copyright infringement of AI-generated content rests with the developer or with the end-user of the technology. The main issues in this regard are the use of copyrighted materials in the training data of the AI technology, which is not licensed, and the issue of unauthorized reproduction of materials under the Copyright Act of 1957, which is complicated by the fact that it is not possible to determine whether the output of the technology is derived from copyrighted materials or not. Different jurisdictions have different legal perspectives on this issue and different solutions, prevention techniques to overcome it and how to effectively use of it. In this paper I will discuss how various countries approach this artificial intelligence and how to tolerate its liability and copyrighted works and suggest solutions.

This paper aims to analyse on whom such liabilities shift and how to implement legal remedies to it and with on-going issues and debates with landmark judgements. This paper will provide an in-depth analysis of the facts and reports along with the strategies and recommendations for elucidating the concept of artificial intelligence liabilities in this era.

Keywords: copyright, artificial intelligence, liability, technology, developer

INTRODUCTION:

"***The development of full artificial intelligence could spell the end of the human race."***

- Stephen Hawking

AI (Artificial intelligence) is under the rapid growth revolutionizing era in which the way businesses operate, content is created, and software is designed. Programmers and content creators have been witnessing rapid advancements in their processes, thanks to innovative technologies such as AI code assistants, text generators, and image design tools. Nevertheless, the fast-paced evolution of AI technologies has prompted a series of ethical and legal issues known as the 'AI copyright issue'. The main parties involved include governments, programmers, IT companies, and law experts, all interested in finding solutions to pertinent queries concerning intellectual property rights, ownership, and accountability. for example, there are many open- ended questions which were concerning whether ownership of an image or computer code belongs to the AI model, the organization behind its development, or the programmer using the AI technology? Another key issue concerns developer liability, that is, who should be held accountable for the production of any illegal or copyrighted content? The ability of AI to create original-looking material in fields like music, literature, and the arts has led to reconsideration of the basic concepts of creativity. For years, copyright law has been based on an underlying premise: there is always a person behind every creation, who has the ability to think, has feelings, and has an intention. However, machines do not qualify for all these traits. Thus, when an AI generates something similar to copyright-protected material, the questions arising outnumber the answers. This paper presents the key aspects of the AI copyright debate, explains the concept of developer liability, AI accountability & user prompts which results to the output and analyses its impact on modern software development results in growth of for a regulatory environment that supports its development.

RESEARCH OBJECTIVES:

1. To examine the existing copyright framework.

2. To analyse whether the copyright vests upon the AI or with the developer who used the AI.

3. To adjudicate what sort of liability doctrine would be suitable for AI?

4. To determine whether the model developer and the user is jointly liable for direct infringement.

5. To explore ethical, legal, practical arguments surrounding the liabilities around the artificial intelligence

RESEARCH METHODOLOGY:

The research adopts a **Doctrinal Research Methodology**, which focuses on analysing existing laws, legal doctrines, judicial pronouncements, and academic literature. By utilizing this doctrinal research methodology with a focus on primary sources (statutes like The Information Technology Act, 2000 (IT Act), Copyright Act 1957 and intellectual Property laws, case laws, and reports) and secondary sources (books, journals, and scholarly articles), the research will offer a comprehensive analysis of the Liability Gap: Assigning Legal Responsibility for AI Copyright Infringement- Developer, User or AI.

LITERATURE REVIEW:

(**Thamminana R, Harihararao M; 2025**)[1]. This paper discusses on the liability of copyright infringement and the legal framework existing in India right now and the lacuna in the copyright act 1957 and also in US, UK and EU. How far the laws pertaining to the copyright protection protects the persons work from copyright infringement. Most importantly about the term "persons" in various legal frameworks present in other countries as stated above. But the paper has failed to address how far our indian copyright act 1957 lacks behind in addressing this issue of liability gap.

(**Apoorva verma, 2023**)[2] This paper discusses on what is generative AI and how its training has been modelled using the tools and the usage of Generative AI. This paper has also discussed on ownership of the output produced by the AI and the challenges posed by the GAI in the intellectual property. This paper does not discuss with specific to who will be liable for the copyright infringement either it will be the developer of the AI or the user of the AI or both?

[1] Thamminana Ramu, Harihararao Mojjada, Generative -AI and Copyright Law Practices: Indian Perspective, Volume 11 Issue 10, ISSN: 2349-6002 (2025)
[2] Apoorva verma, The Copyright Problem with Emerging Generative AI, Vol. VII (2), pp.69-84, 2023

(**Asmi V Kedare)**[3] This paper deals with Generative Ai and has also stated that human intellectual is the prerequisite for the copyright claims. And has proposed reforms recommending to adapt the copyright act in India to be amended with respect to the Ai's Era. But this also failed to address question of who is liable for the copyright infringement caused by the Ai developer and the User of the Ai.

As a whole our paper has discussed the necessity of a legislation to address the copyright infringement that arises in the usage of Ai by the user as well when the Ai is trained by the developer. This will also discuss that whether the accountability will lie on the Developer of the Ai trained or with the user of the Ai.

IDENTIFYING THE ACCOUNTABILITY & LIABILITY IN AI:

The current legal applicability of India's regulatory framework surrounding in India only offers a narrow coverage for the day to day issues arises with the AI (Artificial intelligence). **The Digital Personal Data Protection (DPDP) Act, 2023** provides safety for the privacy concerns and also the misuse of personal data, but didn't directly addresses the liability of the AI which acts independently. **The information technology Act, 2000** and the rules and regulations including the Indian Computer Emergency Response Team (CERT-In), are designed to address cybersecurity breaches and its mechanisms, but it doesn't regulate any of the AI- misuses or harms occurred from it which acts independently without human intervention and makes decisions on its own. **The Consumer Protection Act, 2019** addresses claims related to defects in product and services, but in principle, this Act can only apply to AI technologies but, yet it doesn't address a key issue regarding where the responsibility for such technologies lies. However, within certain sectors and industries, in those healthcare sectors, the **Medical Device Rules, 2017** regulate AI-based diagnostic systems, but these rules do not define liability for any injuries caused by such technology either. Concisely, the India still depends on the use of legal tools that were formulated with the intention of regulating human-operated or constant systems, and such legal measures fall short when it comes to handling unidentified and unique AI systems.

Under contract law, there will be some obligations between both parties upon entering into an agreement which allots the risks and responsibilities between the parties to the contract. Unlike

[3] Asmi V Kedare, the impact of generative ai on copyright law in india: who owns ai-created works, Volume V Issue III, ISSN: 2583-0538

contract, there is predefined responsibility under the concept of negligence. The AI's supply chain is fragmented which involves developer, deployer and users. As a result of this becomes difficult to identify who is owes the liability when a harm is caused. The liability gap arises a query of whether the legislatures intervention is needed. There is a possibility where strict liability can be imposed on the AI causing harm. However there arises a issue that such liability may impose a burden on the smaller developers who may lack financial capacity to owe the liability. Vesting a legal liability for the AI driven harm is difficult when dealing with such legal actions which involves mental state like intention. When the victim is affected by the harm, the victim has the onus of proof to prove the infringement of his own copyrighted works. And this creates a liability gap in AI systems in which the victim could find difficult to prove the Assigning of liability[4].

The most difficult question arises is governing the liability to AI. For instance, lets decode a scenario When an AI-powered diagnostic system generates a faulty medical outcome that causes harm to a patient, the question of legal responsibility becomes complex. Should accountability fall on the software engineer who built the algorithm, the healthcare institution that adopted it, or the medical professional who depended on its output? This challenge is made even more difficult by the Vague inner workings of AI systems, where even those who engineered the technology may be unable to explain the reasoning behind a specific decision it made. India faces a crucial choice in deciding on which system would allocate the legal responsibility in which harm caused by AI. India faces a crucial choice in deciding on which system would allocate the legal responsibility in which harm caused by AI. Below is one of such choices that are provided to India[5].

Regime of Strict Liability: According to strict liability, an entity can be held legally responsible for any damages that their product caused despite them being negligent or committing no wrongdoing. Put simply, if your artificial intelligence created problems – you will have to pay for them without questioning if there was any malicious intent behind. In this system, victims come first, thus making sure that the patient, consumer, user – everyone gets

[4] Shraddha korekar,sep 19, AI On Trial: Rethinking Liability In India's Current Legal Framework, available at https://www.legacylawoffices.com/ai-on-trial-rethinking-liability-in-indias-current-legal-framework/

[5] Anna Sophia Oberschelp De Meneses Et Al, European Parliament Study Recommends Strict Liability Regime for High-Risk Ai Systems, available at https://www.insideprivacy.com/liability/european-parliament-study-recommends-strict-liability-regime-for-high-risk-ai-systems/#:~:text=What%20does%20the%20study%20propose,reducing%20litigation%20and%20transaction%20costs

compensated for whatever harm that may happen. This makes every individual feel safer since the responsibility increases the level of care developers put into their software.

Fault-Based Approach: When applying the fault-based approach, one would need to prove that the developer/company was negligent, in other words, did not take appropriate measures and committed some errors or omissions that led to damages caused to it. In these cases, the developers should take all necessary steps and precautions to it, in which there were no mistakes were made therefore they cannot be blamed. One can say that this system favours innovation as start-up or newly founded companies are not under the pressure of lawsuits all the time. However, the downfall is that to victims may struggle to get justice, especially when AI decision-making is complex and difficult to prove as negligent.

LEGAL CHALLENGES:

- Accountability - The legal challenge that arise during the use of AI is whether the developer of AI should be made accountable for the malfunction that occurs in their product?

- Insufficient legal frameworks in India addressing the accountability of the copyright infringement that arises from the AI as the Indian copyright act is only for the humans, companies and other associations.

- The most major legal challenge is the jurisdictional issues that where did the infringement took place, which court has the jurisdiction and where should this issue be resolved will be the major concern when comes to legal challenge under this issue.

AI AND INTELLECTUAL PROPERTY: A GROWING CONFLICT

Generative AI models is used in various places, its applications comprise,

1. **Image generator/creator**: Generative Adversarial Networks (GANs) can generate

   realistic images from top to bottom also can start from scratch, based on the styles and pattern which it learns from its training data.

2. **Text Generator/Creator:** Language models, such as GPT (Generative Pre-trained Transformer) also can generate systematic and contextually relevant text, mimicking

human-like language styles and pattern similarities.

3. **Music Composition:** Generative Al models can generate original music pieces, imitating different genres or even compose unique melodies based on the styles and pattern which it learns from its training data.

4. **Video Synthesis:** This AI models are more Advanced generative Al models which can generate video sequences, altering combining existing video content to create new, realistic videos which also create deep originalities which is a serious threat to the AI development in which it creates the output, more than the human thinking capabilities.

Input data refers to the information that is used to train the AI system. It can be in text form, image form, video, or any other form. Input copyright refers to the ownership of the data, together with its respective rights when used for training the AI system. When the input data is copyrighted, the rights associated with the copyrighted data will be applicable. Unauthorized use of copyrighted input data during the training of the AI system may result in infringement of copyrights of the content owner(s). AI systems are trained through large datasets consisting of copyrighted works such as texts and images downloaded from the internet. Training AI software involves reproduction of the content used for training, which might amount to copyright infringement. Some organizations like Open- AI have admitted that their products are trained with the help of datasets with copyrighted content where some works are copied for analysis. Reproduction of copyrighted works without permission amounts to copyright infringement since it violates the exclusive rights of copyright holders.

Fair Use and Copyright Infringement arises legal questions are raised regarding the right to use the content in AI-generated works, ownership of generated works, and copyright concerns related to unauthorized content in training data. Concerns have emerged over whether incorporating legally protected or branded material into an AI tool as an instructional input should be necessary to advance authorization from the respective rights holders. Fair use defence raised by the AI companies states that training of AI software is transformative, non-commercial, and educational or research-oriented. Four factors determine fair use and include:

1) Purpose and character of the use,

2) Nature of the copyrighted work,

3) Extent of use taken,

4) Effect on the market value of the work[6].

CONTEMPORARY ISSUES IN INDIAN SYSTEM REGULATING AI:

Indian courts have not yet arrived at a firm conclusion regarding generative AI and copyright entitlement, yet recent advancements in legal and policy circles point toward a growing recognition of the urgency surrounding this subject.

In the landmark suit before the Delhi high court, ***ani Media Private ltd. V. open AI inc,2024 SCC Online del 8120***[7], ani reportedly alleged the Open-AI's LLM(large language models used ANI's copyrighted news content for training without getting any proper licenses or consent from them. ANI's petition invoked Sections 51 related to Infringement and Section 55 related to civil remedies regarding the incident of the Copyright Act resulting the copyrighted material violates the exclusive right of the them. Although the court admitted the matter and issued notice to the respondents and addressed that the copyright law currently does not provide any safety and explicit training exemptions for the developers of the Gen AI. The case is now under the court and it has been a major concern in the Indian copyright Jurisprudence[8].

In ***RG Anand v. Deluxe Films***, the Supreme Court laid down a seven-point test to determine copyright infringement which revolved broadly around the idea expression dichotomy. The Court clarifies that copyright does not insists in ideas, plots, or themes in it but in their original expression, form, manner, or arrangement in which they are conveyed. When the source is common, parallels or similarities have a high tendency to happen. If the way of expressing the idea is literally or substantially imitated, it is a copyright violation. The standard of a reasonable layman is considered and if the person is of the impression that the work appears to be a copy of the original work, then it would be a copyright infringement[9].

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[6] Legal Accountability for Artificial Intelligence Driven Intellectual Property Infringements, July 3, 2025 available at https://juriscentre.com/2025/07/03/legal-accountability-for-artificial-intelligence-driven-intellectual-property-infringements/

[7] Ayushi Kar,June 24 2025, ANI Shares with Court: It Has Taken up to Rs 45 Lakh from YouTubers available at https://www.reporters-collective.in/trc/ani-shares-with-court-taken-up-to-45-lakh-from-youtubers

[8] 2024 SCC Online Del 8120

[9] Aayushman Gaikwad & Smruti Mishra, Three Hours To Comply: India's New Rules For AI-Generated Content And Deepfakes,21 feb,2026 available at https://www.livelaw.in/articles/ai-generated-content-deepfakes-524064

Suryast- AI generated painting copyright case (2023), in which the ankit sahni created a painting called "suryast" using an AI tool RAGHAV which is a graphics and art visualize AI-based tool that generates artistic works and he registers it copyright in multiple countries. Ankit captures a digital photograph in his phone and along with the Vincent van Gogh's "the starry night" and he made some prompts to AI, then blended both images into together, creating a new output called suryast. The following were happened in various countries, when he tried to register a copyright claim, Firstly the USA rejected stating the insufficient human authorship is lagging to claim authorship, Secondly, India initially registered, then questioned about the legal status of the AI- tool. At last, the copyright authority does not have any legal right to review its own decision, so there was no action been taken, surprisingly the work remains listed in the copyright registry. Thirdly, Canada accepts the registry as human and AI as co- authors, lastly, China accepts the copyright registration and treated the AI.as a tool and Human as author. The major question is about how human creativity end and AI creativity begins and who owns the copyright. Alike USA, the India should also adapt the human intervention and authorship. When a person gave inputs to AI and got the following output, whether he claim copyright for himself and the AI. This is considered as the world's first and India's major AI copyright case which influences how countries think about AI authorship and intellectual property law.

INTERNATIONAL APPROACHES TO AI LIABILITY:

In India, the copyright is governed by the copyright act,1957. This act protects the original, literary, artistic, musical and cinematographic works. It gives exclusive rights to the creator right to reproduce, distribute and publicly perform their works. International intellectual property frameworks provide valuable lessons in tackling the question of AI-generated works, yet no country has arrived at a complete resolution of the matter.

1. European union: The copyright Directive (2019) act features the human intellectual creation which constructively excludes AI authorship. Member states like Germany has also allowed human authors to avail their rights over the AI-intervened Works if they cultivate innovation and control. Its main focus is on the human supervision which can guide India in defining the roles of the users.

2. United States: The U.S. Copyright Office preserves and records only the human-

authored works that qualifies for the protection, as reaffirmed in Thaler vs. Perlmutter[10]. AI-generated works are here considered to be public domains unless any human intervention is occurred. This strict liability creates a legal clarity but it discourages creativity in artificial intelligence.

3. United Kingdom: under section 9(3) of the Copyright, Designs and patents act, 1988 it recognizes the works generated by the computer, by vesting ownership is in the person who made the creation. Despite being rarely challenged in courts, this provision offers India a workable and sensible model by Navigating the unresolved controversies surrounded in the Authorship of artificial intelligence[11].

TOP-LEVEL AI FRAUD STATISTICS[12]:

Metric	**Value**	**Source**
Total US cybercrime losses (2024)	$16.6 billion (↑33% YoY)	FBI IC3
Projected AI-enabled fraud losses by 2027	$40 billion (32% CAGR from $12.3B in 2023)	Deloitte
AI-enabled fraud growth vs traditional fraud	1,210% vs 195%	Pindrop
Organizations affected by cyber-enabled fraud	73%	WEF 2026
Global scam losses (all types, 2025)	$442 billion	GASA
Adults surveyed who were scammed (2025)	57%	GASA
Leaders reporting rising AI vulnerabilities	87%	WEF 2026
Companies reporting increased fraud losses	~60%	Experian

[10] Wipo, Available at https://www.wipo.int/wipolex/en/judgments/details/1840
[11] Asmi Vikas Kedare, the impact of generative ai on copyright law in india: who owns ai-created works?, Volume V Issue III | ISSN: 2583-0538,Pg.no.1917
[12] Oct 10, 2024,Jacob fox,Top 40 AI Cybersecurity Statistics available at https://www.cobalt.io/blog/top-40-ai-cybersecurity-statistics#:~:text=FAQs,for%20AI%20cybersecurity%20in%202025?

AI SCAM TYPE STATISTICS[13]:

Scam Type	**Key Statistic**	**Source**
Deep fake video scams	↑700% surge in 2025	Scam Watch HQ
Deep fake scam instances (Q4 2025 alone)	159,378 unique instances	Gen Threat Labs
Deep fake incident damages (Q2 2025)	$350 million	Group-IB
Deep fakes online (2025)	~8 million (↑from ~500K in 2023)	Deep Strike
AI voice scam victims	1 in 4 people; 77% lost money	McAfee
AI scam calls at major retailers	1,000+ per day	Fortune
BEC(Business Email Compromise**)** losses (2024)	$2.77 billion across 21,442 incidents	FBI IC3
Crypto scam losses (2025)	$14 billion	Chainalysis
AI-enabled crypto scams vs traditional	4.5x more profitable	Chainalysis
Contact center fraud exposure	$44.5 billion	Pindrop

[13] AI scams explained: how AI-powered fraud works and how enterprises detect it available at https://www.vectra.ai/topics/ai-scams

SUGGESTIONS & RECOMMENDATIONS:

- We suggest to establish a strict liability depending upon the degree of involvement as to liability would fall upon both AI developer as well on the User. By which they would not be able to escape from the liability arguing that they acted with due diligence or that the harm was caused by an autonomous activity by their Ai system except in cases of any force majeure.

- The companies and individuals who provide or deploy high-risk AI systems which are used in sensitive areas like medical care, finance, law should be the ones held legally liable when something goes wrong because they are the professionals dealing with many users at once and it will be the best position to investigate when something goes wrong and also, they have the resources, knowledge upon the ai capacity and errors to fix the recurring problems.

- In order to reduce legal chaos not only by filing separate lawsuits by the hundreds of individual victims, they can investigate the incidents behalf of them and Fix repeated problems through contracts or market-based solutions. Claims can be consolidated and can group together multiple complaints and sue the original manufacturer under existing product liability laws, which saves time. Under a strict liability company is automatically responsible for the harm and companies don't need to be forced to reveal internal detail.

- We recommend to enact an AI liability act to address the copyright infringement through the usage of AI. This legal framework may include a provision for strict liability in the above said cases.

CONCLUSION:

Indian copyright act 1957 acts as a junction for the protection human creativity. It is designed for such purpose is facing various challenges in this modern era and this legal framework struggles to accommodate the creations of AI as our copyright act provides authorship only for the human centric works. We hereby conclude that the liability of copyright infringement should vests upon the Developer of Ai, as the major issue of copyright infringement originates right from the developer itself knowingly. There is a necessity of a legal framework, judicial guidelines, governing the copyright infringement and While deciding upon the accountability of such infringement, the judges should consider the degrees of involvement of the Developer

and deployer. As Ai is a tool, not a human, we cannot make the AI accountable since the Developers of the Ai are humans. So, it is important to note that developers of Ai, who are humans logically are to held accountable based on the strict liability.