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Who owns AI generated works?

A worldwide legal analysis

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CONTENTS

Artificial intelligence has moved from an experimental curiosity to a routine feature of the creative and professional process – drafting text, generating images, assisting research, and increasingly co authoring the very works that copyright law was designed to protect. Yet the question at the heart of this article remains strikingly unsettled: when a work is created with, or by, an AI system, who actually owns it?

This is not a marginal or theoretical question. It sits at the intersection of authorship, originality, and economic exploitation, and the answer varies significantly depending on where a business, creator, or client happens to be operating. Some jurisdictions insist on a human author as a precondition for protection; others have carved out statutory space for computer generated works with no human author at all; others still are actively rewriting their rules in real time as generative AI reshapes the creative economy. For any organisation operating across borders, this divergence is a genuine commercial and legal risk – content that is protectable in one market may fall into the public domain in another.

To make sense of this landscape, I asked my colleagues across the AEA network, to which Studio Peluso Avvocati belongs, to help me address the same five questions for their respective jurisdictions: the national copyright framework and how AI generated works are currently treated; the relevant legislation and case law shaping authorship and originality; the jurisdiction's overall approach to ownership; the practical implications for companies, individuals, and clients; and the direction of future reform.

Opening with Italy, my own jurisdiction, the article travels through my colleagues' contributions, moving continent by continent from Europe to Asia to North America, alphabetically within each. I am grateful to our colleagues across the world for lending their expertise to this comparative exercise.

Avv. S. Giulia Peluso

A comparative view across eight jurisdictions

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1. Summary Overview

Italy has recently become one of the first EU Member States to legislate expressly on AI and copyright authorship. Italian copyright law is grounded in Law No. 633/1941 (Legge sul Diritto d'Autore, the "LDA"), which has historically protected "opere dell'ingegno di carattere creativo" (creative works of intellect) without expressly requiring a human author, leaving that requirement to be read into the law by courts. Law No. 132/2025, Italy's first comprehensive national AI framework law, closed that gap directly: it amended Article 1 of the LDA to specify that copyright protects "works of human creativity," including those created with the assistance of AI tools, provided they are the result of the author's own intellectual effort. Italy's approach is therefore now explicitly humancentred by statute, consistent with a January 2023 Court of Cassation ruling that had already confirmed copyright can subsist in a digitally assisted work where a human's creative choices are identifiable, and firmly rejects independent AI authorship of purely autonomous output.

2. Relevant Legislation and Case Law

National legislation

The foundational statute is Law No. 633/1941, Article 1 of which historically protected "creative works of intellect" in literature, music, the visual arts, architecture, theatre, and cinematography, regardless of the mode or form of expression, without an explicit requirement that the author be human. Law No. 132/2025 ("Provisions and Delegations to the Government on Artificial Intelligence"), enacted 23 September 2025 and in force from 10 October 2025, is Italy's first comprehensive national AI law and the first of its kind among EU Member States. Chapter IV of the law, titled "Provisions for the Protection of Users and Copyright," amends Article 1 of the LDA to read that the law protects "works of human creativity... even when created with the assistance of artificial intelligence tools, provided they are the result of the author's intellectual effort." The amendment does not define a precise threshold of human involvement required, leaving courts to assess this on a case-by-case basis, but it makes clear that AI is treated as a technical tool available to a human author, and that authorship and eligibility for protection depend on the sufficiency of that author's creative contribution to the final result.

Law 132/2025 also introduces a new Article 70septies into the LDA, addressing the input side of AI training. It permits reproductions and extractions from works or other materials available online or in databases to which a person has lawful access, for the purposes of text and data mining (TDM) by AI systems, including generative AI, provided this complies with the existing TDM exceptions under Articles 70ter and 70quater of the LDA (Italy's implementation of Articles 3 and 4 of the EU DSM Directive). This confirms that TDM for AI training is permitted only where access to source material is lawful and where rights holders have not exercised an opt-out under the

commercial TDM exception. The law also introduces a new criminal offence under Article 171ter, penalising unauthorised reproduction or extraction of text or data from online works or databases in breach of Articles 70ter and 70quater, including through AI systems.

Case law

The most significant judicial precedent is the Italian Court of Cassation's decision No. 1107 of 16 January 2023, which arose from a dispute over a digital floral-themed image used as stage design for the 2016 Sanremo Festival. The image had been created using software that processed colours, forms, and details via mathematical algorithms, and the defendant argued that it could not constitute a protectable work because it was not the product of the claimed author's creative idea. The Court upheld copyright protection, confirming that a work created with the assistance of software can qualify for protection where it reflects the personal and individual expression of the author's free and creative choices — applying the same "individual and creative expression" standard used generally under Italian and EU copyright law, rather than requiring the work to be entirely novel in a technical sense. While the case predates the generative AI wave and 2025 legislation, it is widely cited as consistent groundwork for Italy's subsequent statutory clarification, since it confirms that software-assisted creation does not, by itself, disqualify a work from protection provided a human's creative choices can be identified in the result.

No Italian court has yet ruled directly on a generative AI system (of the kind now in mainstream use) under the amended Article 1 LDA, since the amendment only entered into force in October 2025. Academic commentary notes that future disputes will likely focus on assessing the creative contribution of a user's prompts to the final AI-generated output, and on the extent to which the contribution of other parties — such as the providers of training data or the designers of the AI model — might bear on that assessment.

3. Approach to Ownership

Italy applies an express human authorship approach, now codified directly in the LDA following Law 132/2025. Authorship of copyright-protected works belongs exclusively to a natural person, even where that person uses AI tools, provided the work still derives from the author's own intellectual effort. Artificial intelligence itself cannot be an author; it is treated in law as a technical instrument available to a human creator.

For AI-assisted works, protection is available where a human's creative contribution is identifiable in the output. Legal commentary interpreting the new provision identifies several factors relevant to that assessment: whether the human guided the creative process, selected and configured specific parameters, reworked or edited the generative output, imprinted a personal style, or integrated the AI-generated content into a larger original work. On this basis, an illustrator who generates an image with an AI tool and publishes the unedited output, without any of these forms of creative intervention, is unlikely to hold copyright in that image, whereas an author who exercises documented and substantial creative control over the process and result may do so.

For purely AI-generated works, where no human creative effort can be identified, the prevailing interpretation is that no copyright protection arises. Content generated entirely by an AI system without meaningful human involvement can, in principle, be used freely, since there is no rights holder to enforce a claim over it — though other legal constraints (contractual restrictions, personality rights, trade mark rights, trade secrets, unfair competition rules) may still be relevant even where copyright does not apply.

On the input side, Italy's approach to AI training on copyright-protected works follows the EU model: TDM for AI training purposes is lawful only where access to the source material is lawful and rights holders have not exercised their opt-out rights under the commercial TDM exception; unauthorised extraction in breach of those rules is now a specific criminal offence as well as a civil infringement.

4. Practical Implications

For companies and creators, the practical consequence of Law 132/2025 is that a documented, demonstrable human creative contribution is now central to establishing and defending copyright in AI-assisted output under Italian law. Businesses producing commercially significant content with AI assistance should document the human creative process — concept development, prompt design and iteration, parameter selection, editing and reworking of outputs, and integration into a broader creative work — since this evidence will likely be decisive in any future dispute over authorship or infringement, consistent with the reasoning in Cassazione No. 1107/2023 and the criteria emerging from commentary on the new Article 1 LDA.

Businesses should not assume that content generated by AI with minimal human intervention (for example, publishing an unedited AI output) will be protected by copyright, since the prevailing view is that no rights arise in such content; this creates both a risk (no exclusivity to enforce against copying) and, conversely, a freedom (such content may generally be reused by others without infringing copyright, subject to other legal constraints).

For businesses developing or deploying AI models in Italy, the new Article 70septies LDA means that text and data mining for AI training purposes must be based on lawful access to source materials and must respect any opt-out exercised by rights holders under the commercial TDM exception; unauthorised extraction now carries criminal as well as civil exposure under the new Article 171ter offence, raising the stakes of noncompliance materially compared with the position before Law 132/2025.

Contracts with employees, contractors, and AI vendors should clearly address the ownership of AI-assisted output, require documentation of the human creative process behind commercially significant content, and allocate responsibility for ensuring that any AI tools used were trained on lawfully accessed data. Given the criminal law dimension introduced by the new law, businesses using AI tools for content generation should also seek assurances from AI vendors regarding the lawful basis for their training data.

5. Future Direction

Italy has moved further and faster than many EU Member States by directly legislating on AI authorship, and Law 132/2025 is likely to be a reference point for other Member States grappling with the same questions, particularly given its status as the first comprehensive national AI law within the EU. However, significant open questions remain for future clarification. The threshold of human creative contribution required to sustain copyright in an AI-assisted work is not defined by the statute and has been left to case-by-case judicial assessment; this is likely to generate the first wave of litigation testing the new Article 1 LDA, probably examining factors such as the complexity and specificity of prompts, the extent of post-generation editing, and the degree of creative control exercised by the human author, in a manner consistent with the reasoning already applied in Cassazione No. 1107/2023.

On the input side, the interaction between the new Article 70septies LDA and the underlying EU TDM exceptions (Articles 70ter and 70quater LDA, transposing DSM Directive Articles 3 and 4) will continue to be shaped by the same unresolved EU-level questions affecting other Member States: how rights holders can effectively exercise the opt-out in a way that is both legally sufficient and technically actionable by AI developers, and how enforcement authorities will apply the new Article 171ter criminal offence in practice.

Italy's collecting society, SIAE, has also become an active voice in this debate, launching a public awareness campaign in 2025 highlighting concerns that generative AI threatens the value of human creativity and calling for stronger transparency obligations and protections for authors, alongside estimates from international bodies of substantial economic losses to music and audiovisual creators from unlicensed AI use of their works. This suggests continuing pressure from creative industry stakeholders for further legislative and regulatory attention, including on transparency of AI training data and stronger enforcement mechanisms, even as the core authorship question has now been addressed by statute. Implementing decrees anticipated under Law 132/2025's broader delegation to the Government, together with the first wave of case law interpreting the amended Article 1 and new Article 70septies LDA, are likely to be the main vehicles for further clarification of Italy's AI and copyright framework in the near term.



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1. Summary Overview

French copyright law does not, as of today, contain any provisions specific to creations generated or assisted by artificial intelligence (AI). Such creations are therefore subject to the general provisions of the Intellectual Property Code (Code de la Propriété Intellectuelle, CPI).

The CPI protects, under the French system of *droit d'auteur* (“the author’s right”), «works of the mind» (œuvres de l’esprit, Art. L. 1121 and L. 1124 CPI), provided that they are « original »; that is, they must « bear the imprint of their author’s personality » and result from free and creative choices. This criterion was established in particular by the Pachot decision (Cass., Ass. plén., 7 March 1986) concerning software, but it applies irrespective of the medium or creative tool, including technical or automated tools.

The CPI referring to « works of the mind » and settled case law requiring that such works express the author’s « personality », French law adopts a personalist conception of copyright, reserving authorship to natural persons. The Court of Cassation has reaffirmed that « a legal entity cannot be an author » (Civ. 1ère, 15 January 2015, n° 1323.566). A fortiori, a machine or AI system, lacking legal personality, is even less capable of claiming authorship.

According to these fundamental principles, content produced autonomously by a generative AI system without identifiable human creative intervention would not qualify as « work of the mind » under French law and would therefore fall outside copyright protection.

2. Relevant Legislation and Case Law

AI-assisted creations

However, when AI is used as a tool within a creative process controlled by a human (selection and refinement of input data or prompts, iterative choices, manual adjustments, editing, combination with other elements), the AI-assisted creation might be eligible for copyright protection, provided that the result bears the imprint of the human user’s personality. Judges would then assess the degree of human intervention on a case-by-case basis.

French copyright law does not require any registration system; the protectability of a creation is usually assessed by the courts when disputed. No French court has yet ruled on the merits regarding the copyright protectability of an AI-generated or AI-assisted creation. An analogy can however be drawn with the protectability of photographs: French case law has long protected photographs produced using a largely automated camera, provided the photographer retains a degree of creative control. A technical or functional constraint therefore does not preclude protection as long as there remains freedom of choice expressing the author’s personality.

Institutional developments

The final report of the CSPLA mission “Artificial Intelligence and Culture” (A. Bensamoun and J. Farchy, 27 January 2020) remains a key reference. For AI-assisted creations, the report concludes the existing framework is adequate: authorship remains vested in the human who makes free and personal creative choices when using AI as a tool. For creations generated autonomously by AI, the report tests several titularity options, its preferred solution being to designate the AI’s designer/developer as author, alongside alternative regimes (a special copyright regime, a related right modeled on posthumous works, or a *sui generis* database-style right).

Since 2020, the CSPLA has continued its work, including a report on Article 53 AI Act transparency obligations (December 2024) and, most relevantly, a new mission launched in April 2025 specifically on “the protection of content generated using generative AI,” entrusted to Alexandra Bensamoun. Conclusions were expected in June 2026 but, as of 15 July 2026, no report has yet been published.

Parliamentary initiatives

Two parliamentary initiatives have addressed aspects of AI and copyright. A 2023 National Assembly bill (No. 1630) proposed vesting rights in AI-generated works collectively in the authors of the works used to train the AI system, but lapsed with the 2024 dissolution of the Assembly. A second, pending initiative (Senate, December 2025) addresses the input side: it would create a rebuttable presumption that protected content was used to train an AI system wherever plausible indicia exist, shifting the burden of proof onto AI providers. The Conseil d’État issued a favourable opinion in March 2026, and the Senate adopted the bill in April 2026; it remains pending before the National Assembly.

3. Approach to Ownership

French law adopts a human authorship approach in principle, but the treatment of purely AI-generated content (with no identifiable human creative intervention) remains legally untested and unresolved by any binding French court decision, leaving the CSPLA’s proposed titularity models (designer, user, or statutory fiction) as academic and policy options rather than settled law.

For AI-assisted creations, protection depends on whether the result bears the imprint of the human user’s personality through free and creative choices in the process (prompting, selection, editing). For purely autonomous AI output, no clear rule currently exists, and the question is treated as open pending the CSPLA’s ongoing dedicated mission and any future legislative intervention.

4. Practical Implications

French law leaves two separate questions open, and both matter for anyone using generative AI commercially. The first is whether the output itself can be protected, and by whom, which depends on documenting creative choices: prompt drafts and iterations, selection among generated options, subsequent edits and combination with other elements. For outputs with little or no human input, protection remains uncertain.

The second question is whether the output was built from someone else's protected work; an AI output could count as a derivative work if it reproduces recognizable, original elements of a specific prior work, and unauthorized use of protected works to train the underlying model is its own potential issue.

Given this uncertainty, users of AI systems should carefully review the terms of use of the AI model or platform before relying on it commercially: who is granted rights over outputs, whether commercial use is permitted, whether the provider offers any indemnity against thirdparty infringement claims, and whether the provider discloses anything about its training data.

5. Future Direction

Three developments are especially worth watching from a French perspective: the CSPLA's pending mission on output protection (expected but not yet published), which should clarify titularity and protectability questions left open since 2020; the presumption of use bill, which has passed the Senate and Assembly committee and awaits a floor vote; and developments at EU level, including the AI Act's Article 53 transparency rule and the European Parliament's endorsement of a presumption of use approach at EU level in March 2026.

For now, French law on AI-generated works remains studied but unsettled: well-mapped since 2020, but still without a statutory framework, making contractual precautions and careful documentation of human input the main practical safeguards in the meantime.



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1. Summary Overview

Hungarian copyright law is built around the human creator: for a work to qualify for protection, it must be a literary, scientific, or artistic creation possessing an individual and original character arising from the author's intellectual activity, and the author may only be a natural person. As a rule, AI output generated autonomously and without meaningful human creative involvement does not enjoy traditional copyright protection in Hungary, a view largely shared by Hungarian academic and expert commentary, and there is currently no separate EU rule on authorship for AI-generated works. However, where AI is used merely as a tool by a human, protection is not excluded — the decisive question is whether the human's contribution (concept development, selection, editing, iterative guidance, postproduction, stylistic choices) reaches the threshold of individual and original creative expression under the EU originality test.

2. Relevant Legislation and Case Law

The foundation is Act LXXVI of 1999 on Copyright (the “Szjt.”), protecting individual and original works in literature, science and art. Section 4(1) provides that “the author is the person who created the work”; Hungarian scholarship consistently limits this to natural persons, so an AI system cannot qualify as an author or hold copyright. The Act contains no express AI provision, and no aesthetic quality is required — only creative individuality. Protection arises automatically on creation, and the author holds both moral and economic rights, with economic rights generally licensable rather than assignable, subject to exceptions such as employment-created works.

At EU level, the DSM Directive (2019/790) governs the training “input side”: Article 3 provides a TDM exception for research organisations, and Article 4 a broader TDM exception for lawfully accessible works unless rightholders expressly reserve their rights. The AI Act (Regulation (EU) 2024/1689) does not regulate copyright authorship, but requires GPAI model providers to adopt a copyright compliance policy, respect rights reservations under DSM Article 4(3), publish a training content summary, and comply with transparency obligations such as labelling synthetic content.

Key CJEU case law sets the originality test: *Infopaq* (C5/08) held protection requires the author's “own intellectual creation”; *Painer* (C145/10) held originality requires “free and creative choices” reflecting the author's personality — particularly relevant to AI-assisted works; and *Football Dataco* (C604/10) held that results determined purely by technical or functional considerations are unprotected. No Hungarian court or Copyright Expert Board (SZJSZT) opinion has yet directly ruled on AI-generated output, though the Board's practice and the Hungarian IP Office's guidance both link protection to human creative activity. A 2025 EPRS briefing confirms there is no explicit EU rule on AI output copyrightability, and Member State developments continue to require substantial human creativity.

3. Approach to Ownership

Hungary applies a human authorship-based approach: only a natural person can be an author, and an AI system cannot itself hold copyright, with no special category recognising protection for fully autonomous AI output.

Purely AI-generated works: where content is created entirely by AI without meaningful human creative involvement, the prevailing view is that no copyright protection arises, and Hungary does not vest rights automatically in the AI's developer, operator, or user. Such output may still infringe thirdparty copyright, trademark, personality, or data protection rights on other legal grounds.

AI-assisted works: where a human uses AI merely as a tool and the final work reflects identifiable human creative, free, and individual decisions (concept development, selection, editing, adaptation), the work may qualify for protection, with copyright vesting in the human rather than the AI. Economic rights may pass to an employer or client by contract or by operation of law (e.g., Section 30(1) for employment-created works), but authorship remains tied to the natural person. Mere prompting or training is unlikely, by itself, to suffice; courts will assess whether the human's creative activity is dominant, not the number of prompts used. An AI developer does not automatically become an author of its output absent a causal link to the specific creative decisions behind that output.

Key uncertainty remains around the threshold of human involvement — whether mere prompting, selecting among AI-generated alternatives, iterative instructions, or minimal editing suffice — a question left to future judicial and expert practice.

4. Practical Implications

Companies, individuals, and clients should assume that the copyright status of AI-generated content depends on the extent of human involvement, and should document the human creative contribution to support any claim to protection.

Companies should not assume automatic exclusive copyright in AI-generated content, and should document the creative process (concept, instructions, selection, editing) for commercially valuable output. Employment, service, and licence agreements should address use of AI tools, ownership of any resulting copyright, transfer or licensing of economic rights, and liability for thirdparty infringement, alongside AI Act transparency and training data obligations.

Individuals and creators should retain records of prompts, generated versions, editing steps, and creative decisions as evidence of their own intellectual contribution, and remain aware that using AI does not exempt them from liability for infringing thirdparty rights.

Clients commissioning AI-assisted content should not assume they will receive a fully protected work, and should clarify in advance the extent of human involvement, whether a protectable work arises, who holds economic rights, and what usage rights and warranties they receive — particularly in advertising, marketing, and software development contracts.

Principal risks include: loss of exclusive market position where no copyright arises; uncertain authorship where human involvement is insufficient; exposure to thirdparty infringement claims; AI Act transparency compliance risk; and GDPR or trade secret exposure. The safest approach is to treat AI as a tool supporting human creativity, documenting human creative decisions, allocating rights contractually, and conducting human review to reduce copyright and compliance risk.

5. Future Direction

Hungary's approach is likely to be shaped mainly by EU developments, judicial interpretation, and compliance practice rather than a standalone domestic "AI authorship" rule; in 2025 Hungary focused on AI Act implementation rather than amending the Copyright Act's authorship concept.

On the input side, a 2025 JURI Committee study identifies a "mismatch" between generative AI training and existing TDM exceptions, calling for clearer input/output distinctions and fair licensing models, while a 2025 EUIPO study notes a licensing market is already emerging. The AI Act functions as a transparency and compliance catalyst, with GPAI copyright and training summary obligations applying from August 2025 and content labelling obligations from August 2026.

On the output side, human centred authorship is expected to remain dominant, with the key open question being what level of human contribution suffices for individual and original character. The pending CJEU reference C250/25 (Like Company v Google Ireland), from a Hungarian court, will be significant, addressing whether LLM training and chatbot outputs reproducing press content engage reproduction rights, the TDM exception, and communication to the public. Domestically, Act LXXV of 2025 establishes Hungary's AI Act institutional framework.

A new sui generis right for machine generated output is considered unlikely at EU level, with the more probable trend being strengthened licensing, rights reservation, and transparency infrastructure. Overall, Hungary's human centred approach is expected to persist, with future clarity coming from the EU TDM/optout framework, GPAI compliance obligations, content labelling rules, and case law from the CJEU and Hungarian courts.



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IRELAND

1. Summary Overview of the Jurisdiction

Copyright is protected and enforced in Ireland through the Copyright and Related Rights Act, 2000 ('CRRRA'). Under Section 21(f) CRRRA, the author of a computer generated work is defined as the person by whom the arrangements necessary for the creation of the work are undertaken. A computer generated work is defined under the CRRRA as a work generated by computer in circumstances where the author of the work is not an individual. Under the Irish Interpretation Act, 2005, a person is deemed to be a natural person (i.e. a human being) or a body corporate (e.g. a limited company). Irish law does not currently treat a person as including a computer or an AI tool.

However, it would appear that there is no legal provision which would prevent a person from being able to claim copyright in a work even if there was no human input. This creates a divergence from EU law, which, through the case law of the Court of Justice of the European Union, requires a work to be its author's own intellectual creation, reflecting free and creative choices, in order to attract copyright protection. Ireland's statutory model, by contrast, was not drafted with this humancentred originality standard in mind, and instead reflects an older, technologydriven legislative approach aimed at ensuring that investment in computergenerated output would not go unprotected, regardless of whether a human's creative choices could be identified in the final result.

This divergence means that, on a strict reading of the CRRRA, a work produced entirely by an AI system, without any identifiable human creative contribution, could still in principle be attributed an author and thereby attract copyright protection in Ireland, in circumstances where the equivalent work would very likely fail to meet the EU's harmonised originality threshold. This creates a degree of legal uncertainty for businesses and creators operating across the Irish and wider EU markets, since the same AIgenerated content could be treated differently depending on where protection is sought or where a dispute is litigated.

2. Relevant Legislation and/or Case Law

The principal legislative provision is Section 21(f) CRRRA, which attributes authorship of a computergenerated work to the person by whom the arrangements necessary for its creation are undertaken. This is complemented by the definition of "computergenerated work" under the CRRRA, which turns on the absence of an individual author, and by the general definition of "person" under the Interpretation Act, 2005, which is limited to natural persons and bodies corporate.

There is not yet a developed body of Irish case law applying these provisions to generative AI output specifically, and the courts have not yet had the opportunity to consider how Section 21(f) should be applied to modern generative AI tools, as opposed to the more limited computergenerated outputs that the provision was originally designed to address decades ago.

In the absence of case law, the principal source of regulatory guidance is Ireland's independent AI Advisory Council. The AI Council has called on the Irish Government to bring Irish law into line with EU law by making human creativity the basis for protection of a work created through AI, rather than continuing to rely on the CRRRA's computergenerated work provision, which the Council considers to be out of step with the EU's harmonised approach to originality.

3. Approach to Ownership

As it currently stands, the CRRRA does not specifically require human authorship for copyright to subsist. Likewise, Irish law does not currently provide for the protection of AIgenerated works as a distinct category, meaning that AIgenerated content is left to be addressed under the existing computergenerated work provision rather than through any bespoke legal regime designed specifically for the outputs of modern generative AI systems.

The AI Council has called for the creation of a sui generis right for AIgenerated works, specifically targeted at situations where substantial investment has been made in producing such works. This proposal reflects a recognition that the current CRRRA framework, while technically capable of extending protection to AIgenerated content, was not designed with the scale, sophistication, or investmentintensity of contemporary generative AI systems in mind, and that a more tailored form of protection may better serve the interests of both AI developers and the wider creative economy than continued reliance on the existing, broadlydrafted computergenerated work provision.

4. Practical Implications

It is vitally important that certain professions and sectors (e.g. legal and accountancy) exercise caution in using GenAI to produce output, especially where such output can produce false case citations or hallucinations. Potential consequences of doing so can lead to losing the right to practise and/or potential fines or imprisonment for contempt of court.

Beyond the specific risks facing regulated professions, businesses more generally should be mindful that the divergence between Irish and EU copyright law creates practical uncertainty when it comes to enforcing rights in AIgenerated content, or relying on such content commercially, across multiple markets. A business that successfully claims copyright in AIgenerated output in Ireland cannot assume that the same content will be protected, or protected on the same basis, in other EU Member States, given the EU's stricter, humanauthorshipbased originality standard. Businesses should therefore continue to document any human creative contribution to AIassisted content wherever possible, so as to support a copyright claim under conventional authorship principles that would hold up across jurisdictions, rather than relying solely on the more permissive, but jurisdictionspecific, protection potentially available under the CRRRA's computergenerated work provision.

5. Future Direction

As an EU Member State, Ireland must follow and comply with the EU AI Act. In this regard, the Irish Government is currently progressing the Regulation of Artificial Intelligence Bill 2026 through the Irish Parliament. The proposed legislation is likely to ban the use of AI for social scoring, credit scoring or access to healthcare. The proposed law is also likely to introduce a transparency requirement so that developers using GenAI must label such output so that users know they are interacting with or viewing machinegenerated content.

While the Regulation of Artificial Intelligence Bill 2026 is primarily concerned with implementing the EU AI Act's riskbased regulatory framework rather than reforming copyright law directly, its progress through the Oireachtas may provide a legislative opportunity to address the AI Council's recommendations regarding authorship and ownership of AIgenerated works. Whether the Irish Government chooses to use this, or a separate legislative vehicle, to reconcile the CRRRA's computergenerated work provision with the EU's humanauthorshipbased approach remains to be seen, but the direction of policy travel, as signalled by the AI Council, points toward closer alignment with the EU position over time.



Barrister Niall Tierney

Director

UNITED KINGDOM

1. Summary Overview

The UK occupies a distinctive position in global copyright law. Unlike most jurisdictions, the Copyright, Designs and Patents Act 1988 (CDPA) expressly contemplates copyright in works with no human author: section 9(3) attributes authorship of a “computer-generated work” (CGW) to “the person by whom the arrangements necessary for the creation of the work are undertaken.” This was, at the time, described as the first copyright legislation anywhere to attempt to deal with the advent of artificial intelligence. However, for authorial works generally, UK courts continue to apply the EU-derived originality standard (the author’s “own intellectual creation,” expressed through “free and creative choices”), which sits awkwardly alongside a provision built for works with no human creative input at all. The result is a hybrid, unsettled position: purely autonomous AI output may, in principle, attract copyright under section 9(3), but the scope, authorship attribution, and even the continued survival of that provision are all under active review, while separately, a wave of litigation and a government policy process are reshaping the rules on using copyright works to train AI systems.

2. Relevant Legislation and Case Law

Legislation

The core statute is the Copyright, Designs and Patents Act 1988. Section 178 defines a “computer-generated” work as one “generated by computer in circumstances such that there is no human author of the work.” Section 9(3) then deems the author of such a work to be “the person by whom the arrangements necessary for the creation of the work are undertaken.” Where these provisions apply, copyright subsists for 50 years from the end of the year the work was made, and the deemed author does not receive moral rights. On the input side, section 29A CDPA provides a text and data mining (TDM) exception, but it is limited to noncommercial research purposes — there is currently no UK exception permitting commercial AI training on copyright works without a licence.

Case law on originality

UK courts continue to apply the CJEU-derived originality standard even after Brexit. In *Infopaq International A/S v Danske Dagblades Forening* (C5/08), the CJEU held that copyright protection requires the author’s “own intellectual creation.” This was extended in *Painer v Standard VerlagsGmbH* (C145/10), which held that originality exists where the author has made “free and creative choices” reflecting their personality, and reinforced in *Football Dataco Ltd v Yahoo! UK Ltd* (C604/10), which held that outcomes dictated purely by technical or functional constraints are not original. The England and Wales Court of Appeal confirmed in *THJ Systems Ltd v Sheridan* [2023] EWCA Civ 1354 that this “own intellectual creation” test — not the older domestic “skill, labour and effort” test — remains the correct standard for originality in the UK, notwithstanding that UK courts are no longer bound by CJEU rulings post-Brexit.

Case law on AI training and outputs

The most significant UK decision to date is *Getty Images v Stability AI* [2025] EWHC 2863 (Ch), handed down by the High Court on 4 November 2025. Getty alleged that Stability AI’s Stable Diffusion model had been trained on millions of Getty’s copyrighted images without a licence. Getty abandoned its primary copyright infringement and database right claims before the end of trial because there was no evidence that the training and development of Stable Diffusion had taken place in the UK — leaving the critical question of whether AI training on copyright works constitutes UK infringement undecided. The remaining secondary infringement claim asked whether the trained model itself was an “infringing copy” unlawfully imported into the UK; the Court held that it was not, because the model’s weights encode statistical parameters rather than storing or reproducing the underlying images. Getty succeeded only narrowly and on a historic, limited basis in relation to trade mark infringement. Getty has been granted permission to appeal the secondary infringement finding.

3. Approach to Ownership

The UK’s approach is best described as hybrid and currently under reconsideration, rather than firmly settled in either direction. For AI-assisted works with identifiable human creative input, ordinary authorial copyright rules apply: if a human has exercised free and creative choices that determine the original character of the final output, that human is the author in the usual way. This mirrors the position in most jurisdictions.

For purely autonomous AI output with no identifiable human author, the UK is unusual in having a specific statutory mechanism — section 9(3) CDPA — that can, in principle, extend copyright protection by attributing authorship to “the person by whom the arrangements necessary for the creation of the work are undertaken.” However, the identity of that person is genuinely unresolved: it could be the developer of the AI system, the operator of the platform, or the end user who provided the prompts, and no binding UK case law has yet decided the point. Commentators note the further, more fundamental problem that section 9(3) sits uneasily alongside the CJEU-derived originality requirement: if originality itself requires free and creative human choices, it is doctrinally unclear how a work with “no human author” can be original at all.

This dual-track uncertainty means that, in practice, purely AI-generated content in the UK sits in a genuinely grey zone: it might attract copyright under section 9(3), but who owns it, and whether the provision even survives contact with a generative AI fact pattern, remains untested by the courts and is currently the subject of live government reform proposals recommending its removal for AI-generated works with no human author, while preserving protection for AI-assisted works where a human makes the creative choices.

4. Practical Implications

For companies deploying or building on generative AI, the single most important practical takeaway from *Getty Images v Stability AI* is that territoriality is central to UK copyright risk: whether AI training or use of a model infringes UK copyright can turn on where the training or relevant acts actually took place, which is often difficult to establish for cloudhosted, crossborder AI services.

For rights owners and licensors, the current absence of a commercial TDM exception in UK law means AI developers training models in the UK are, in principle, expected to obtain licences unless a narrow exception applies; this is likely to support the continued development of direct licensing arrangements between rights holders and AI developers.

For businesses relying on purely AIgenerated output, the availability and scope of copyright protection is uncertain under section 9(3). Given the government's stated direction of travel toward removing section 9(3) protection for fully autonomous AI output, businesses should not build commercial strategies on the assumption that such content will remain protectable, and should instead prioritise demonstrable human creative involvement where exclusivity matters commercially.

For all users of AI tools, liability for AI outputs that reproduce or closely resemble thirdparty copyright works, trade marks, or recognisable fictional characters remains a live risk regardless of the authorship question. Contracts with employees, contractors, and AI vendors should clearly address ownership of AIassisted and AIgenerated output, the permitted use of AI tools, and allocation of liability for thirdparty infringement claims.

5. Future Direction

UK policy is in active flux on both the input (training) and output (authorship) sides. On 18 March 2026, the UK government published its statutory Report on Copyright and Artificial Intelligence, mandated by the Data (Use and Access) Act 2025. The Report's central conclusion is that the optout exception model has been abandoned: the government confirmed it will not introduce a broad copyright exception for AI training, meaning the existing licensingbased framework continues to apply.

On the output side, the Report recommends removing section 9(3) CDPA specifically for AIgenerated works that have no human author, while confirming that AIassisted works continue to attract protection in the ordinary way where a human makes the relevant creative choices. This recommendation has not yet been implemented in legislation, but it significantly narrows the likely direction of travel toward a position that ties copyright protection to identifiable human creativity.

On the litigation side, Getty Images' appeal of the secondary infringement ruling is expected to test whether an intangible "article" (such as a set of model weights) can be an "infringing copy" under UK law without reproducing the underlying work. The core UKspecific question of who would author a purely AIgenerated work under section 9(3) remains untested and, if the government's recommendation is enacted, may become moot for future works.



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1. Summary Overview

China has developed one of the most permissive judicial approaches to AI-generated content of any major jurisdiction, while simultaneously imposing one of the most extensive regulatory frameworks on generative AI service providers. The Copyright Law of the People's Republic of China does not expressly address AI-generated content, and formally requires a work to be created by a "natural person" to qualify as authorship. However, in a series of landmark rulings beginning in 2019, Chinese courts (particularly the specialised Internet Courts in Shenzhen and Beijing) have held that AI-assisted content can attract copyright protection where a human's intellectual investment and original choices can be identified in the generative process, even where the final expression is produced by software or a generative AI model. China's approach is therefore hybrid in doctrine but has proven notably favourable to protection in practice: courts have repeatedly found sufficient human input in prompting, parameter-setting, and selection processes to sustain copyright claims, a markedly more permissive outcome than in the US on broadly similar facts. In parallel, China has built a dense administrative framework specifically regulating generative AI services, covering training data legality, content labelling, and algorithm registration, making Chinese AI governance a combination of a claimant-friendly judicial posture on output ownership and a strict administrative regime on service providers.

2. Relevant Legislation and Case Law

National legislation

The foundational statute is the Copyright Law of the People's Republic of China, most recently amended in 2020 (effective 1 June 2021). Article 3 defines "works" as intellectual achievements in the fields of literature, art, and science that are original and can be expressed in a certain form. Article 11 provides that "the author of a work is a natural person who creates the work," though a legal person or unincorporated organisation can be deemed the author of works created at its initiative, under its direction, and for which it bears responsibility (a "work for hire"-like provision distinct from Western employment-work rules). The 2020 amendment replaced the term "citizen" with "natural person" throughout, aligning the statute with the Berne Convention's national treatment principle, but did not add any provision addressing AI-generated content specifically, leaving that question to judicial interpretation.

AI-specific regulation

China has adopted a distinct, service-provider-focused regulatory track running alongside the copyright law framework. The Cyberspace Administration of China (CAC), together with six other national authorities, issued the Interim Measures for the Management of Generative AI Services, effective 15 August 2023

— the first binding regulation targeting generative AI in China and among the earliest such regulations globally. The Measures require providers of public-facing generative AI services in China to: ensure training data and foundation models are drawn from lawful sources and do not infringe third-party intellectual property rights; ensure training data quality, authenticity, accuracy, objectivity, and diversity; label AI-generated content in a manner allowing users and regulators to identify it as machine-generated; complete algorithm registration and security assessment with the CAC before public launch; and maintain content moderation systems consistent with Chinese law, including obligations tied to the Cybersecurity Law, Data Security Law, and Personal Information Protection Law. The Measures apply extraterritorially to overseas providers offering generative AI services to the Chinese public. A further set of Measures for Identifying AI-Generated Synthetic Content, requiring labelling of AI-generated synthetic content, took effect on 1 September 2025, concurrently, the mandatory national standard GB 45438-2025, Cybersecurity Technology—Methods for Labelling AI-Generated Synthetic Content, took effect on the same date, providing technical specifications for labelling activities, reflecting continued regulatory deepening in this area.

Case law

The starting point was the Beijing Internet Court's 2019 decision in *Beijing Feilin Law Firm v. Baidu*, the first Chinese case to consider AI-generated output, which held that a report automatically generated by computer software (Wolters Kluwer's legal analytics tool) lacked copyright protection because it was not created by a natural person, notwithstanding that it possessed originality — an early, more restrictive position closer to the traditional human-authorship model.

The position shifted decisively in *Shenzhen Tencent Computer System Co., Ltd. v. Shanghai Yingxun Technology Co., Ltd.* (Shenzhen Nanshan District People's Court, 25 November 2019), which concerned a financial news article generated by Tencent's "Dreamwriter" AI writing system. The court held that the article's expression reflected the individual arrangements and selections of Tencent's development team — including data entry arrangement, trigger settings, template choice, and language choice — which constituted intellectual activity directly connected to the resulting article. On this basis, the article satisfied the originality requirement and was found to be a copyrighted work, with rights vesting in Tencent as the entity responsible for the software's design and operation. This was the first Chinese decision to recognise copyright in AI-generated content.

The most significant recent authority is *Li v. Liu* (Beijing Internet Court, 27 November 2023), which directly addressed content generated using consumer-facing generative AI (Stable Diffusion). The plaintiff had generated an image of a young woman by inputting detailed text prompts (specifying art style, subject characteristics, environment, lighting, and pose) and iteratively refining parameters and selecting among generated outputs; the defendant later republished the image without authorisation. Applying a four-element test for a protectable "work" under Article 3 (belonging to literature, art, or science; possessing originality; having a form of expression; and being the result of "intellectual achievement"), the court held that the plaintiff's process of designing the prompts,

arranging their order, setting parameters, and selecting the final image from among the AI's outputs reflected the plaintiff's own aesthetic choices and original judgment, and thus met both the originality and "intellectual achievement" requirements. The court expressly reasoned that copyright law should evolve to incentivise creativity using new tools, and that a person providing sufficient intellectual investment in directing a generative AI tool is analogous to a photographer who manually adjusts a camera to achieve a desired result. The court awarded the plaintiff compensation for economic losses of 500 yuan and ordered a public apology, and the decision has not been appealed. In September 2025, the Beijing Internet Court released a set of "Typical Cases" involving AI, reaffirming the principle from *Li v. Liu* that content generated by humans using AI, if it meets the statutory definition of a "work," should be protected by copyright, and that ownership can be allocated among developer, user, and other participants based on their respective original intellectual contributions. In May 2026, the Guangzhou Huangpu District People's Court decided the first criminal case involving AI-generated short films, holding that AI-generated short films reflecting human "strong guidance" and original expression are protected by copyright law, and convicted two defendants for unauthorised reproduction and sale of over 1,700 such works. This represents the first instance of criminal liability being imposed for infringement of AI-generated content in China.

Chinese courts have also addressed AI-related copyright infringement from the output-liability angle. In a case brought by Shanghai Character License Administrative Co., Ltd. (holding Ultraman licensing rights in China), the Guangzhou Internet Court held that an AI-powered text-to-image generator that produced images substantially similar to the copyrighted Ultraman character in response to user prompts infringed the underlying copyright, illustrating that Chinese courts will impose infringement liability on AI service providers whose tools reproduce identifiable copyrighted characters or works, separate from the question of who owns rights in non-infringing AI-generated output.

3. Approach to Ownership

China's approach can be characterised as human-centred in doctrine but AI-friendly in practical outcome, and it applies a lower threshold for finding qualifying human input than several other major jurisdictions, including the US. The Copyright Law requires a natural person (or, for certain works, a legal person exercising the requisite direction and responsibility) to be recognised as the author or rights holder; a fully autonomous AI system cannot be an author under Chinese law, and no court has held otherwise. However, in determining whether sufficient human involvement exists in a given case, Chinese courts, as illustrated in *Li v. Liu*, have taken an expansive view of what qualifies as sufficient "intellectual investment": designing a character's appearance and pose through detailed and iterative prompting, arranging the sequence of prompt words, setting technical parameters (art style, lighting, camera angle), and selecting a final image from among multiple AI-generated outputs were together held sufficient to establish originality and authorship in the resulting image, notwithstanding that the plaintiff never physically drew or painted the work. This stands in notable contrast to the US Copyright Office's position that prompts alone, however detailed, do not establish sufficient human authorial

control, since the AI (not the user) is said to determine the specific expressive elements of the output.

Where copyright is found to subsist, ownership follows the identity of the human (or legal person) whose intellectual contribution produced the qualifying originality: in *Li v. Liu*, this was the individual user who crafted and refined the prompts; in *Tencent v. Yingxun*, this was the corporate developer whose team designed the software's operating logic, template choices, and data arrangement rules that determined the AI-generated article's expression. Chinese courts have signalled that ownership of AI-generated content should be assessed case-by-case according to the original intellectual contribution of each participant in the generative process, including the developer, the user, and potentially the owner of the AI system, rather than by a fixed rule. Where no identifiable human intellectual investment exists in the generative process — as in the earlier *Feilin v. Baidu* decision, where a report was produced by automated data processing without meaningful human authorial choices — Chinese courts have declined to find copyright protection, consistent with the general principle that purely mechanical, automatic AI output does not qualify.

4. Practical Implications

For companies deploying generative AI tools in China, both to create content and to offer AI services to the public, two distinct compliance tracks apply and must be managed separately: copyright ownership of AI-generated output (a private-law question resolved through the courts on a case-by-case, fact-specific basis) and regulatory compliance as a generative AI service provider (a public-law question governed by the CAC's Interim Measures and related regulations). On ownership, given the Chinese courts' relatively favourable stance toward finding protectable originality in AI-assisted content, businesses seeking to establish and defend copyright in AI-generated output should document the human intellectual process behind it: the specificity and design of prompts, the rationale for parameter choices, and the basis for selecting a final output from among multiple AI-generated alternatives, mirroring the evidentiary factors that proved decisive in *Li v. Liu*. This documentation is likely to carry more evidentiary weight in China than in some other jurisdictions, given the demonstrated judicial receptiveness to prompting and curation as forms of "intellectual achievement."

For companies operating or relying on AI writing, image, or content-generation tools developed in-house (in the manner of Tencent's Dreamwriter), the *Tencent v. Yingxun* precedent indicates that the entity responsible for designing the tool's underlying logic, templates, and data-processing rules may itself hold copyright in the resulting output as a form of corporate authorship, distinct from any individual end-user's prompting activity; businesses should clarify, by internal policy or contract, whether ownership in such cases is intended to rest with the software developer, the operating business unit, or individual employees who operate the tool.

For businesses developing or offering generative AI services to users in mainland China, compliance with the Interim Measures for the Management of Generative AI Services is mandatory and carries extraterritorial reach: training data must be lawfully sourced and must not infringe third-party intellectual property, content must be labelled as AI-generated in accordance with the Measures for

Identifying AI-Generated Synthetic Content (effective September 2025), and providers must complete algorithm registration and security assessment with the CAC before public launch. These obligations apply irrespective of where the AI model was developed, if the service is offered to the Chinese public, making this a distinct compliance workstream from the copyright ownership analysis.

For rights holders whose copyrighted works or characters may be reproduced by generative AI tools (as in the Ultraman case), China's courts have shown willingness to impose infringement liability directly on AI service providers whose outputs substantially reproduce protected content, providing a further enforcement avenue distinct from training-data disputes seen in other jurisdictions.

5. Future Direction

China's dual-track approach — judicially permissive on output ownership, administratively strict on service provision — is likely to continue evolving along both tracks rather than converging into a single, codified position in the near term. On the judicial side, Chinese courts have explicitly stated that the copyrightability of AI-generated content should be assessed on a case-by-case basis, and although *Li v. Liu* and the Beijing Internet Court's 2025 collection of "Typical Cases" provide meaningful guidance, China's civil law system does not apply binding *stare decisis*, meaning future courts retain flexibility to reach different conclusions on different facts, particularly regarding the degree of human intellectual investment required and how competing claims among developers, platform operators, and end users should be resolved.

On the regulatory side, China's approach continues to deepen: the Interim Measures for the Management of Generative AI Services (2023) were followed by the Measures for Identifying AI-Generated Synthetic Content (effective September 2025), and China's broader AI governance architecture continues to expand through sector-specific rules (following earlier measures on algorithmic recommendation and deep synthesis technology). In October 2025, the Cybersecurity Law was amended to add a dedicated provision

on artificial intelligence, explicitly supporting the development of AI technologies while emphasising AI ethics, risk monitoring, and security assessment. The amended law will take effect on 1 January 2026. This marks Chinese legislation at the national law level has addressed AI governance. In parallel, the 2026 legislative work plans of both the State Council and Standing Committee of the National People's Congress having included "comprehensive legislation for the healthy development of artificial intelligence" as a preparatory legislative item. The State Council's 2026 Legislative Work Plan specifically calls for accelerating comprehensive legislation on AI healthy development and improving legislation on data, computing power, algorithms, property rights, cybersecurity, and supply chain security. Given the pace of this regulatory activity, businesses should expect continued refinement of training-data legality standards, labelling requirements, and algorithm registration obligations.

More broadly, China's comparatively AI-friendly judicial posture on output-side authorship has been read by commentators as reflecting a deliberate policy choice to support the growth of its domestic AI industry by offering a more predictable and accommodating path to protectable rights in AI-assisted content, in contrast to the more restrictive US approach. Given China's status as a major AI development hub and its explicit judicial emphasis on incentivising the use of AI tools for creative production, further cases addressing the boundaries of "intellectual achievement" in more complex, multi-party generative AI workflows (for example, involving both a platform developer and an individual end-user, or content produced through multi-step agentic AI systems) are likely in the coming years, and may further refine how rights are allocated among the various contributors to AI-generated content.



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1. Summary Overview

India's first statutory recognition of copyright was the Indian Copyright Act, 1914, primarily a mechanical adoption of the English Copyright Act, 1911. After independence, Parliament enacted the Copyright Act 1957, built on Berne Convention principles and later molded to meet India's TRIPS obligations. The 1957 Act significantly widened the ambit of copyright law, extending protection to musical works, cinematograph films, and sound recordings, extending the duration of protection to the author's lifetime plus sixty years, and introducing moral rights. At its core, the 1957 Act confers automatic protection on original literary, dramatic, musical, and artistic works, cinematograph films, and sound recordings. Ownership vests in the author, who is granted exclusive economic rights alongside inalienable moral rights. The Act does not define "originality", leaving its interpretation to the courts; India moved from the UK's "sweat of the brow" standard toward a "modicum of creativity" and "skill and judgment" test in *Eastern Book Co. v. D.B. Modak* (2008). As the 1957 Act contains no explicit provisions on authorship, ownership, or infringement relating to AI generated works, India has recognised the need to adapt its framework. The central statutory anchor is Section 2(d)(vi), defining the "author" of a "computer generated work" as the "person" who causes the work to be created — a formulation presupposing a natural person, to the exclusion of AI systems. This came into sharp focus in the widely discussed 'RAGHAV AI' case, where the Copyright Office initially granted registration recognising the AI system RAGHAV as a coauthor alongside the human applicant, before later issuing a withdrawal notice questioning the AI's legal status.

2. Relevant Legislation and Case Law

Key statutory provisions

Section 2(d)(vi) recognizes computer generated works and attributes authorship to the person causing the work to be created. Section 16 makes personhood the foundation of copyright entitlement, meaning AI systems, lacking legal personality, fall outside entities capable of holding copyright. Sections 13 and 14 govern originality, protectability, and the scope of exclusive rights; Section 17 governs first ownership; Section 52 provides fair dealing exceptions relevant to AI training; and Section 65A addresses circumvention of technological protection measures, relevant where AI systems bypass paywalls or access controls.

Regulatory guidance

In 2021, the Parliamentary Standing Committee's 161st Report recommended a separate category of rights for AI related inventions. In February 2024, the Ministry of Commerce and Industry clarified that the existing IPR regime is adequate and no AI specific rights are required, while confirming that commercial use of copyrighted works in generative AI requires authorisation absent a fair dealing

exception. In 2025, MeitY's Report on AI Governance identified training data use and output copyrightability as the two central concerns, treating unlicensed training data use as presumptively infringing. The DPIIT's 2025 Working Paper on Generative AI and Copyright proposed a "Hybrid Model": a blanket licence for lawfully accessed training content, with royalties payable only upon commercialisation, administered through a proposed Copyright Royalties Collective for AI Training.

Landmark decisions

On authorship, *Camlin Pvt. Ltd. v. National Pencil Industries* (1985) held that a mechanically reproduced design with no identifiable human author could not be copyrighted, an early authority for the natural person requirement; *Tech Plus Media v. Jyoti Janda* (2014) distinguished authorship (requiring a human) from ownership (which a company may acquire contractually). On originality, *Eastern Book Co. v. D.B. Modak* (2008) held that mechanical or algorithmic application of pre established rules, without independent human judgment, does not meet the originality threshold. On AI assisted creation, *Stephen Thaler v. Union of India* (Delhi High Court, W.P.(C) IPD 15/2026) concerns an American inventor's attempt to register AI generated artwork under Section 2(d)(vi) without naming a human author; the Court directed the Copyright Office to decide the application within eight weeks, without resolving the substantive authorship question. On infringement, *ANI Media (P) Ltd. v. Open AI Inc* (2024, pending) is India's first major AI copyright dispute, wherein the Delhi High Court has recently held that OpenAI's use of ANI's copyrighted works for training its LLMs constitutes fair dealing under Section 52(1)(a) of the Copyright Act and does not amount to copyright infringement. The Court also found no evidence of memorisation and held that ANI had failed to establish a prima facie case, balance of convenience or irreparable injury warranting an interim injunction.

3. India's Approach to Authorship of AI Generated Works

India has not yet adopted a definitive position on the ownership of AI generated works. Neither the Copyright Act 1957 nor judicial precedent expressly addresses whether autonomously AI generated works qualify for protection. Although Section 2(d)(vi) recognizes authorship in computer generated works by deeming the author to be "the person who causes the work to be created", the provision predates modern generative AI, and its application to contemporary systems remains uncertain — as illustrated by the ongoing Thaler proceedings, where the Copyright Office required a natural person to be named as author.

Until a definitive determination emerges, it is likely that if a user's prompts embody sufficient intellectual creation and materially contribute to the final output, the prompt giver may be treated as author under the existing statutory framework. Further clarity is anticipated through the forthcoming second part of the DPIIT Working Paper, expected to specifically address the copyrightability and ownership of AI generated outputs.

4. Emerging Policy Perspectives and Practical Implications

Justice Prathiba M. Singh of the Delhi High Court has publicly called for a rethinking of copyright law given the rise of “artificial intellect”, raising questions on whether AI generated works should be accorded joint authorship. Union Minister Ashwini Vaishnaw (MeitY) has acknowledged legitimate copyright concerns around AI training and emphasised an internationally harmonised, technolegal approach, linking creator protection to India’s “Create in India” mission. A Parliamentary Standing Committee has separately recommended mandatory labelling of AI generated content and stronger safeguards against deepfakes.

A review of judicial observations, official communications, and policy discussions confirms that human authorship remains central to copyright protection in India: a natural person should exercise some “originality” and “creativity” in the work for which protection is sought, and the application of substantial human skill and judgment while using an AI tool assists in securing protection. Purely AI generated, unedited works should be avoided where copyright protection may later be sought, and reliance on copyrighted works when using AI tools may itself give rise to infringement liability, unless the AI tool has used content solely for training and not engaged in reproduction (as held in ANI). Contemporaneous documentation of human contribution is accordingly prudent practice pending concrete judicial pronouncements or statutory amendments.



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UNITED STATES

1. Summary Overview

US copyright law, as interpreted by the US courts and applied by the US Copyright Office, imposes a strict human authorship requirement. The human authorship requirement predates the generative AI era. The Copyright Act protects “original works of authorship,” and both the US Copyright Office and federal courts have interpreted “author” to mean a human being; a work produced solely by an AI system, with no human creative contribution, cannot be copyrighted under current law. At the same time, works created using AI as a tool can be protected, but only to the extent a human author has contributed sufficient creative expression, and merely typing prompts does not by itself make the prompter an “author” of the output. The US has not introduced special statutory categories for computer-generated works and has declined to legislate a new *sui generis* right, leaving the framework to evolve through Copyright Office guidance and case law. Separately, and of major economic significance, US courts are actively deliberating whether training generative AI models on copyrighted works without a license qualifies as “fair use,” a question that remains unresolved at the appellate level and is shaping the AI industry’s approach to data acquisition.

2. Relevant Legislation and Case Law

Statutory framework

The Copyright Act of 1976 (Title 17, US Code) protects “original works of authorship fixed in any tangible medium of expression” under 17 U.S.C. § 102, but does not define “author.” Courts have long read a human authorship requirement into this term, tracing back to the Supreme Court’s decision in *BurrowGiles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884), which held that a photograph could be copyrighted because it reflected the photographer’s own original intellectual conception. The Compendium of US Copyright Office Practices has long stated that the Office will not register works produced “by a machine or mere mechanical process that operates randomly or automatically without any creative input or intervention from a human author.”

US Copyright Office guidance and reports

The Copyright Office launched an AI initiative in early 2023 and, on March 16, 2023, issued formal registration guidance confirming that copyright protects only material that is the product of human creativity, and that applicants must disclose the inclusion of AI-generated content and explain the human author’s contribution. The guidance draws an analogy between AI prompts and instructions given to a commissioned artist: a prompt identifies what the user wants depicted, but the AI system itself determines the expressive elements of the output, meaning that when an AI technology determines those expressive elements, the resulting material is not the product of human authorship and must be disclaimed.

The Office has since issued a multipart Report on Copyright and Artificial Intelligence. Part 1 (July 2024) addressed digital replicas and recommended federal legislation on unauthorized digital replicas. Part 2 (January 29, 2025) addressed the copyrightability of generative AI outputs, reaffirming that human authorship remains essential, that assistive use of AI tools does not defeat copyrightability of the resulting work, that a sufficiently creative human selection, arrangement, or modification of AI output can be copyrightable, that prompts alone do not provide sufficient human control to make a user the author of AI output, and that no case has been made for new legislation to grant additional protection to purely AI-generated content. A prepublication version of Part 3 (Generative AI Training) was released on May 9, 2025, focusing on whether using copyrighted works to train generative AI models without a license constitutes fair use; the Office concluded that some such training may qualify as fair use and some may not, and that this must be assessed casebycase. The Register of Copyrights was dismissed shortly after releasing the Part 3 prepublication version, and its final publication and any prospective Part 4 remain uncertain.

Key case law on authorship

The leading modern case law authority is *Thaler v. Perlmutter*, in which Dr Stephen Thaler sought to register an image titled “A Recent Entrance to Paradise,” listing his AI system (“the Creativity Machine”) as the sole author and himself as claimant via a work-made-for-hire theory based on his ownership of the machine. The Copyright Office refused registration, the US District Court for the District of Columbia affirmed in 2023 that “human authorship is a bedrock requirement of copyright,” and the US Court of Appeals for the DC Circuit affirmed again on March 18, 2025, holding that the Copyright Act’s text, taken as a whole, makes humanity a necessary condition for authorship. On March 2, 2026, the US Supreme Court denied certiorari, leaving the DC Circuit’s ruling as the governing nationwide precedent.

The Copyright Office’s decision in the *Zarya of the Dawn* matter illustrates how the human authorship requirement applies to hybrid, AI-assisted works. Artist Kris Kashtanova registered a graphic novel combining her own text with images generated using the Midjourney AI tool via text prompts. When the Office learned that Midjourney had been used, it reconsidered the registration and, in a letter dated February 21, 2023, concluded that Kashtanova was the author of the text and of the overall selection, coordination, and arrangement of the work as a compilation, but that the individual Midjourney-generated images were not the product of human authorship and had to be disclaimed.

Key case law on AI training (fair use)

Separately from the authorship question, a large and rapidly developing body of litigation addresses whether using copyrighted works to train generative AI models, without a license, is protected by the fair use doctrine under 17 U.S.C. § 107. In *Thomson Reuters Enterprise Centre GmbH v. Ross Intelligence Inc.* (D. Del. Feb. 11, 2025), the court held that training a non-generative AI legal research tool on Westlaw headnotes to build a directly competing product was not fair use. By contrast, in *Bartz v. Anthropic PBC and Kadrey v.*

Meta Platforms, Inc. (both N.D. Cal. 2025), the courts held that training generalpurpose generative AI models on copyrighted books was “highly transformative” fair use. However, both courts drew a distinction regarding the sourcing of training data: Anthropic could rely on fair use for its use of digitized copies of physical books it had purchased, but not for books sourced from pirated “shadow libraries,” a distinction that contributed to Anthropic’s subsequent settlement, agreeing to pay at least 1.5 billion USD in damages. No US appellate court has yet ruled on liability for AI training on the merits, and the next major fair use hearing, *Concord v. Anthropic PBC* (N.D. Cal.), was scheduled for October 2026.

3. Approach to Ownership

The US applies a strict humanauthorship requirement: authorship is legally impossible for any entity other than a natural person, and this has now been confirmed at every level of adjudication, from the Copyright Office through to the Supreme Court’s denial of certiorari in *Thaler*.

For purely AI-generated works, with no meaningful human creative contribution, no copyright protection is available under US law, and no rights vest in the AI developer, the platform operator, or the prompting user merely by virtue of their role in the process. There is no US equivalent of other jurisdictions’ mechanisms for computer-generated works. The US standard for authorship is human-centered.

For AI-assisted works, protection depends on whether sufficient human creative control has been exercised over the expressive elements of the final output. The Copyright Office’s Part 2 report identifies several categories of human contribution that may support authorship: where a human’s own copyrightable work is perceptible in the output; where a human selects, coordinates, or arranges AI-generated elements in a sufficiently creative way; and where a human modifies AI output to a sufficient degree. Conversely, prompts alone, however detailed, iterative, or numerous, are not currently treated as sufficient to establish authorship over the resulting output, because the AI system, not the user, determines the specific expressive elements of what is generated.

The Copyright Office has explicitly declined to recommend new legislation creating additional protection for AI-generated content or a new sui generis right, concluding that existing copyright principles are flexible enough to handle these cases and that extending protection to content whose expressive elements are determined by a machine would undermine, rather than serve, the constitutional purpose of copyright, i.e., “securing for limited times to authors ... the exclusive right to their respective writings” (Article 1, Section 8 of the US Constitution).

4. Practical Implications

For companies and creators producing content with AI assistance, documentation of the human input to the creative process is now essential to establishing and defending any copyright claim. Businesses should retain records of prompt development, iteration history, human edits, and the rationale for creative choices made during and after AI generation.

Based on the Copyright Office’s guidelines, businesses seeking copyright registration for AI-assisted works must disclose the use of AI-generated content in their registration applications and describe the human author’s contribution; failure to do so risks cancellation of a granted registration, as occurred in *Zarya of the Dawn*.

Businesses should not assume that content generated with minimal human involvement is protectable, since prompts alone do not establish authorship under current Copyright Office and judicial guidance. Such content may be freely used and copied by others without infringing any copyright, which may be either a risk or an opportunity, depending on the business context. However, the selection and arrangement of such content may still be protectable.

For businesses developing, deploying, or relying on generative AI tools, the unresolved state of fair use litigation around AI training creates material legal uncertainty and risk exposure. Businesses procuring or building on thirdparty AI models should seek contractual assurances and indemnities regarding the lawful basis of training data, and should closely monitor further developments including the pending TRAIN Act and the CLEAR Act.

5. Future Direction

US policy on AI and copyright is being shaped simultaneously by the legislative, judicial, and executive branches of government, with the courts likely to remain the primary forum for the training/fair use question in the near term. Further firstinstance decisions, including the scheduled *Concord v. Anthropic* fair use hearing (October 2026), are expected to refine the fair use analysis, particularly around the fourth factor (market effect and market dilution).

On the authorship question, the Supreme Court’s March 2026 denial of certiorari in *Thaler v. Perlmutter* effectively forecloses, for now, a judicial expansion of authorship to AI or AI developers, and the DC Circuit was explicit that any change to the human authorship requirement is a matter for Congress rather than the courts.

On the input/training side, the political and policy debate remains highly contested. In March 2026, the White House’s National Policy Framework for Artificial Intelligence took the position that training AI models on copyrighted material does not violate copyright law, recommending that Congress refrain from legislating on the fair use question. This sits in tension with the Copyright Office’s own Part 3 report. Meanwhile, bipartisan legislative proposals are advancing on transparency rather than liability: the CLEAR Act (introduced February 2026) and the TRAIN Act, though neither resolves the underlying fair use question.



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