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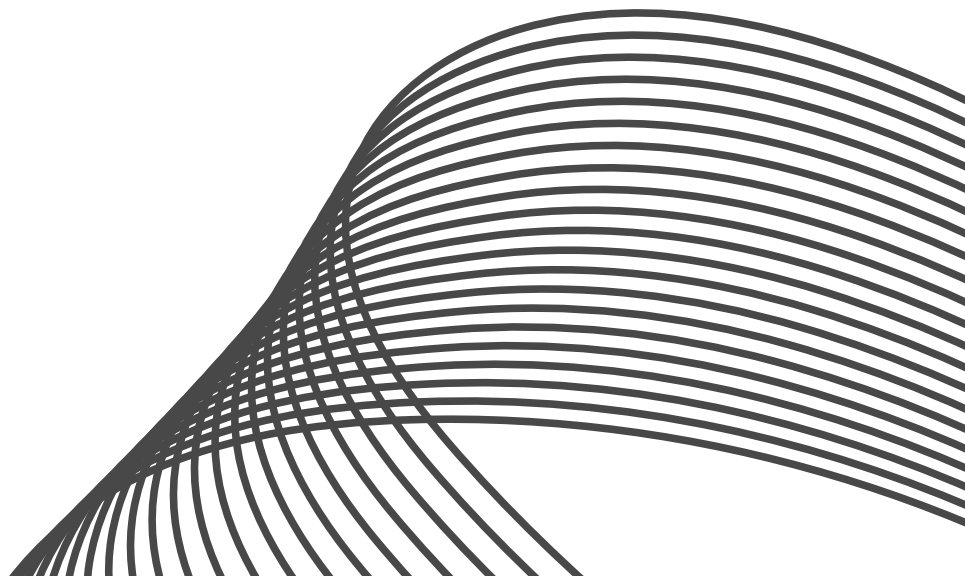
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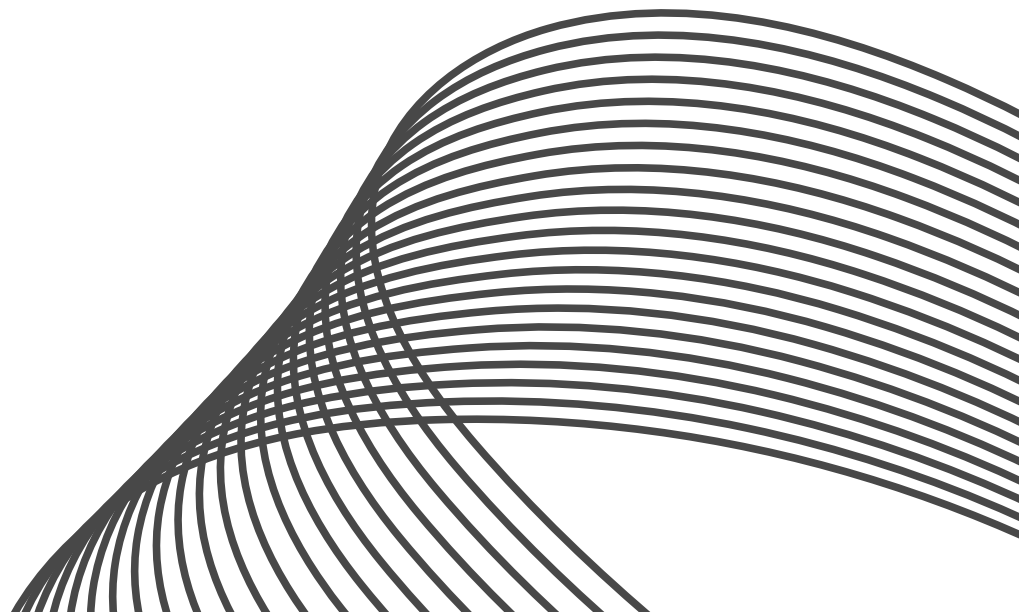
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**EXPLORING THE INTERSECTION OF INTELLECTUAL PROPERTY RIGHTS,  
ARTIFICIAL INTELLIGENCE, AND GLOBALIZATION: LEGAL CONSEQUENCES  
AND DEVELOPING STRUCTURES**

~ Sarah Garima Tigga <sup>1</sup>

**Abstract**

*This research article explores the evolution and history of intellectual property rights and their relevance in the economy. With the increasing role of Artificial Intelligence (AI) in various fields, such as healthcare and legal, the article examines how AI affects intellectual property rights (IPRs). The article also examines the effects of the internet and globalization on intellectual property, highlighting its pros and cons. It evaluates the legal implications and changes brought about to safeguard IPRs from AI and the internet to prevent IPR violation. The article examines laws from both the Indian and EU perspectives, analyzing changes at the international level to safeguard IPRs. It discusses relevant cases and precedents set at both national and international levels to balance IP owners' interests with public interests. The article uses qualitative analysis as a methodology to achieve its aims and objectives.*

**Keywords**

*Intellectual Property, AI, Infringement, Intellectual Property Rights, Fairness.*

**INTRODUCTION**

Intellectual property or IP refers to any construction formulated from human intellect, such as artistic works, inventions, literary, names, designs and symbols, images used in commerce. Simply put, the term intellectual property is formed by two words: “intellectual” and “property”. Property is an asset which can be immovable or movable. Intellect is something which has involvement of

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human mind. So in short anything which is valuable and is intangible creation of mind such as trademarks, trade secrets, geographical indication, patents etc. In general the property is bifurcated into two sets movable and immovable but for the purpose of analysing IPs there is another parameter for bifurcating property which is tangible and intangible with IPs falling under intangible category.

Intellectual property is nothing more than the products of thought or human intellect, and these products, services, commodities or goods that are so generated give some exclusive rights to the creator, inventor, manufacturer or artist. As Salmond defined IPR (intellectual property rights) are statutory rights which are propertorial in nature. There are various kinds of IPs: patents, trademarks, trade secrets, designs, semiconductor integrated circuits, copyrights, industrial designs, geographical indications, traditional knowledge and so on. There is dynamicity in IPs for instance even in a single can of bottle we have logo which is protected by trademark, the beverage is protected by trade secret, the design of the bottle is safeguarded by design act, the label is protected by copyright and so on...

A century ago or more, individuals such as Pullman, Carnegie, and Morgan established their legacies in a physical-driven economy by accumulating money through material assets like real estate, railroads, and oil. But there has been a discernible change in the economy lately toward one that is knowledge-driven and where inventions and intangible assets are increasingly the source of wealth. The speed at which technology is developing, the burgeoning innovation in entertainment, and the evolution of marketing tactics all attest to this shift. For instance, OTT platforms and social media are now the main ways to reach audiences, whereas conventional media like television and newspapers used to control advertising.

This change is mostly the result of innovation, which is the constant generation of new concepts, procedures, goods, and services that improve productivity, cater to social demands, and advance the economy. This trend is best shown by artificial intelligence (AI), the cornerstone of contemporary innovation that is transforming industries by utilizing data-driven insights and automating tasks to previously unheard-of levels of efficacy and efficiency. AI thus serves as a monument to humanity's continuous drive for growth and improvement in the welfare and economic structures of society as the economy shifts towards favoring knowledge and creativity.

In the present age and time AI is across the field, be it deep learning, autonomous systems, neural networking, machine learning, patterns recognition, real time emotion analytics, chat bots, natural language processing, virtual companions, real time universal transformation, thought controlled gaming, Night gen Cloud robotics, autonomous signal robotics, robotic personal assistance , cognitive cyber security , neuromorphic computing for instance Barodra Police station uses facial recognition AI this also leads to various new concerns for instance zero privacy with respect to images that are uploaded on social media and even pictures which are scanned. AI also aids in healthcare where it aids in early diagnosis of diseases and even in legal field where it helps in form of smart contracts which are AI driven contracts using block chain system

The ever-growing significance of innovation in the field of AI has impacted various fields be it healthcare, legal system, impacted various concepts including the concept of welfare state as well as the implication of IPRs.

### **HISTORY OF IP DEVELOPMENT AS A CONCEPT ALONG WITH ITS VARIOUS FORMS**

As mentioned earlier Intellectual Property (herein after referred as IP) is the product of mental acts and creative labour. The product is the result of the intellectual effort of a person and includes the tangible representation of a mental idea created through both thought and manual work.

Example Mr. X made a painting now IPR comes into picture but it's up to Mr. X to commercialize it or not. Also IP has to be expressed it's the expression of idea. In idea form it cannot be protected or safeguarded. For example, "a story" can be protected in expression form. Why not the idea of a story because the mind will keep amending, altering and changing it.

Let us delve into the historical development of the concept of IP and how it evolved. *Within different legal systems, intellectual property rights have been acknowledged for centuries. In the 15th century, for instance, patents were issued in Venice to safeguard inventions. Even during the ancient times during Harappa Civilization there were presence of special marks in the form of engravings done on the potteries and stones indicating as trademarks.*<sup>2</sup>

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<sup>2</sup> Madhavi Sunder, IP3, 59 Stan. L. Rev. 257 (2006)

During the 1300s, individuals discovering mines in the Alps mountains would exert influence over the nearby natural resources such as water and wood for the first time.

*Around 500 B.C., Sybaris, a Greek state, allowed citizens to obtain a one-year patent for any new luxury refinement. In 1623, British law established the concept of monopolies, guaranteeing inventors a 14-year exclusive right to control the use of their inventions. Another important law, the Statute of Anne, was enacted in 1710, mainly focused on copyrights. This law granted authors the right to control the reproduction and distribution of their work, providing a 14-year period of protection with the option for a 14-year renewal term.*<sup>3</sup>

The importance of international protection for intellectual property became apparent when in 1873 in Vienna, Austria an international exhibition of invention many overseas countries refused to partake due to concerns about their ideas being stolen and exploited for commercial purposes in other nations. In 1867, Germany gained official recognition as an industrialized country during an exhibition in Paris, prompting the setting up of 1883 Paris Convention for the protection of industrial property.

The protection of intellectual property (IP) through international law began with the Paris Convention in 1883 for safeguarding industrial property and the Berne Convention in 1886 for protecting literary and artistic work. Currently, World Intellectual Property Organisation (WIPO) administers more than 25 international treaties on IP. WIPO aims to safeguard the rights of IP owners globally. Furthermore, IP rights are protected by Article 27 of the Universal Declaration of Human Rights.

*Article 27 of Universal Declaration of Human Rights*<sup>4</sup> (henceforth UDHR) provides for the right to benefit from the protection of moral and material interests resulting from authorship/ creator of scientific, literary or artistic production. *Article 27(2) of UDHR states*<sup>5</sup> that everyone has the right to the safeguard of interests both moral and material resulting from any scientific, literary or artistic work of which he/she is the author.

The Paris Convention of 1883 was established to safeguard intellectual property rights, marking a significant milestone in providing protection for creators' works in foreign nations. The convention

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<sup>3</sup> Madhavi Sunder, IP3, 59 Stan. L. Rev. 257 (2006)

<sup>4</sup> Universal Declaration of Human Rights art 27.

<sup>5</sup> Universal Declaration of Human Rights art 27, para 2.

encompasses inventions, patents, trademarks, and industrial designs. After three years, the Berne Convention for the protection of Literary and Artistic Works was ratified in Switzerland, following a campaign led by French Writer Victor Hugo. This agreement aimed to grant creators the authority to control and receive compensation for their creative work on an international scale. The convention covers protection for literary and artistic works such as novels, short stories, poems, plays, songs, operas, musicals, sonatas, drawings, paintings, sculptures, and architectural works. *The first worldwide intellectual property filing service, the Madrid System for the worldwide Registration of Marks, was introduced in 1891 with the ratification of the Madrid Agreement (Spain). The United International Bureau for the Protection of IP in short known as BIRPI, often known as the WIPO's direct predecessor, was founded in 1893 when the two secretariats intended to oversee the Paris and Berne Conventions came together. 1970 sees BIRPI renamed as WIPO - In 1960, as awareness of intellectual property rights (IPRs) grew, BIRPI was moved closer to the UN, to Geneva, Switzerland; in 1967, in an effort to modernize and improve the Unions' handling of IPRs, the organization's name was changed to WIPO. WIPO's goal is to safeguard the intellectual property rights of owners globally and foster international collaboration among countries regarding intellectual property rights.*<sup>6</sup>

After World War II the UNO was founded and three bodies were created as a result of the same these are: - International Trade Organisation (ITO), International Monetary Fund (IMF) and World Bank,

The first law in India regarding licensing was Act VI of 1856, which aimed to promote inventions and encourage inventors to disclose the secrets of their creations. *Subsequently, Act XV of 1859 was introduced to provide exclusive benefits. In 1872, the act was renamed the Patterns and Designs Protection Act and remained in force for many years with only one amendment in 1883. The Indian Patents and Design Act replaced all previous laws in India and focused on provisions related to granting patents. It also introduced patents for extension and an increase in the patent term from 14 to 16 years. Following the establishment of autonomy, various panels were created to review the law amendments. As a result, a bill was introduced in the Lok Sabha in 1965. Although it was overlooked in that year, a revised bill was presented in 1967. Eventually, based*

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<sup>6</sup> Gerald J. Mossinghoff & Ralph Oman, *The World Intellectual Property Organization: A United Nations Success Story*, 160 *World Aff.* 104 (1997).



on the committee's final recommendations, the Patent Act of 1970 was enacted and is currently in use in India.

To sum- up previously the patents were assigned by monarchs for instance John of Utynam was the recipient of the first known English patent granted in the year 1449 by King Henry VI for stained glass windows he built for Eton College in England. Patent granted was for 20 years term to the present scenario where there are so many laws and treaties at national and international level respectively for the safeguard of IPs.

Now the question arises that what is the Need to safeguard of IPs in general IPRs reward creativity and human endeavours which fuel the progress of humankind. For Example – without the reward provided by patent system, researchers and inventors would have little incentive to continue providing/ producing better and more efficient products for consumers another example can be the multi-million dollar film recording; publishing and software industries which bring pleasure to millions of people worldwide would not exist without copy right protection. Also the consumers would have no means to confidently buy products or avail services without reliable international trademark protection and enforcement mechanism to discourage counterfeiting and piracy.

IP as mentioned earlier plays a crucial role in present day economic system which is knowledge driven.

**THERE ARE TWO CENTRAL ECONOMIC OBJECTIVES OF ANY IP PROTECTION SYSTEM THESE ARE: -**

- Promote investments in knowledge creation and business innovation by establishing exclusive rights to use and sell newly created goods and services without such a protection in place valuable information would have been used by competitive rivals without compensation.
- Promote widespread decimation of new knowledge by encouraging right holders to place their innovations / ideas in market.

IPRs crucial for economic growth and development strong IPRs promote technical change and development. Patent rights strength depends on GDP per Capita, Research and development; international trade openness and market freedom. IPRs stimulate economic growth by encouraging innovation, product development and technical change. Developing countries often favour low –



cost imitation of foreign products indicating insufficient domestic invention and innovation. IPRs can reward creativity and risk-taking among new – enterprises; improving productivity in countries with lagging technologies. *Muskus and McDaniel's 1999 study examined the impact of the Japanese Patent system on post-war Japanese technical progress. IPRs stimulate decimation of new information; allowing rival firms to develop further inventions.*<sup>7</sup>

*There are numerous kinds of IPs for instance we have copyrights, trademarks, patents, geographical indications, traditional knowledge, semiconductor integrated circuits, designs and so on... Some of the Acts pertaining to the IPs in India are given below in gist:-*

**Patents Act Overview:-** Exclusive right granted to inventors to make use, manufacture and market inventions. First promulgated in 1856, amended multiple times to comply with TRIPS provisions. Inventiveness determined by complexity of inventive step and utility. Non patentable inventions may not qualify for a patent. TRIPS system mandates countries not provided products in pharmaceuticals and chemical inventions to implement a “mail – box” mechanism for accepting applications. The *BAJAJ Auto Ltd*<sup>8</sup> case focuses on the infringement of patents and the prompt resolution of intellectual property rights disputes. This case concerns TVS Motor Company's unauthorized utilization of BAJAJ Auto's patented Digital Twin Spark Ignition (DTSi) technology. The Madras HC ruled that BAJAJ Auto had the patent and used it for five years. Similarly, the Supreme Court of India (SC) has held several landmark cases in patent law. In the case of *Bayer Corp. v. U.O.I*, a petition was rejected by the HC which contended that public interest should be given precedence at all times. The HC determined that the main goal of the Patent Act is to encourage innovation and safeguard creators from violations. Furthermore, it specified that the DGCI has the authority to potentially permit the marketing of generic medications, even if they are currently under patent, in the interest of the public.

In *Novartis v. Cipla*,<sup>9</sup> the Delhi High court barred the defendant from making or selling generic copies of the plaintiff's drug. The court found that the defendant had a strong prima facie case and that the patent's validity was not seriously questioned. In *Ericsson v Xiaomi*,<sup>10</sup> In 2014, Ericsson sued Xiaomi in India for patent infringement, leading to an ex-parte injunction on Xiaomi's

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<sup>7</sup> Muskus & McDaniel, *The Impact of the Japanese Patent System on Post-War Japanese Technical Progress*, 1999.

<sup>8</sup> *BAJAJ Auto Limited vs. TVS Motor Company Limited*, [2009] SCC OnLine Mad 3842

<sup>9</sup> *Novartis v. Cipla*, [2011] SCC OnLine Del 591

<sup>10</sup> *Ericsson v Xiaomi*, [2018] SCC OnLine Del 12198

smartphones. Xiaomi stated their devices, including the Mi3, Redmi1S, and Redmi Note 4G, contained Qualcomm CPUs. The Delhi High Court temporarily authorized Xiaomi to resume sales, but required only selling Qualcomm chips and depositing Rs. 100 in royalties for imported devices.

**Varno Infrastructure Inc. & Ors.**<sup>11</sup> here Vringo Infrastructure Incorporation, a subsidiary of Vringo Incorporation, initiated legal proceedings against plaintiff No.1, alleging that they submitted more than 25 patent applications in 2013 related to telecommunication technologies and intellectual property. The plaintiffs maintain that these applications were either created in-house or acquired from third parties. The injunction was lifted by the court, which then selected experts to aid in assessing the infringement. In **Aloys case**<sup>12</sup> the S.C. examined the Act Section 25 (2) and 64 (I)<sup>13</sup>, and indicated that it is not possible to apply both Sections at the same time. Additionally, the court ruled that if a revocation has been submitted to the IPAB, the defendant is not allowed to file a counterclaim based on the same cause of action.

The **Merck Sharpe and Dohme Corporation v. Glenmark**<sup>14</sup> Supreme Court Decision highlighted the importance of patent infringement in the pharmaceutical industry. The court stressed the significance of demonstrating the invention in the patent, affirming that it must be a novel product or process with an inventive element suitable for industrial use. The court barred the defendant from producing, utilizing, vending, disseminating, promoting, exporting, presenting for sale, or transacting with Sitagliptin Phosphate Monohydrate or any other form of Sitagliptin salt, either alone or in conjunction with any other medication.

The case of **Ravi Kamal Bali**<sup>15</sup> Court's ruling utilized the Doctrine of Equivalents, asserting that a product's different design and structure does not necessarily indicate a new invention. The court applied *the Patents Act*<sup>16</sup> Section 54, which the patent law stipulates that only the person or entity holding the patent has the right to enhance and alter a patented product and seek a patent for those modifications. The **Indoco Remedies Ltd Case**,<sup>17</sup> during the COVID-19 pandemic, a recent argument stated that public interest is not the top priority in patent infringement cases. The court

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<sup>11</sup> Varno Infrastructure Inc. & Anr. v. Indiamart Indermesh Ltd. & Ors., [2019] SCC OnLine Del 9028

<sup>12</sup> Aloys Wobben vs Enercon (India) Limited, [2014] SCC OnLine Del 6887.

<sup>13</sup> Patent Act, 1970, § 25(2) §64(I) (India).

<sup>14</sup> Merck Sharpe and Dohme Corporation v. Glenmark [2016] SCC OnLine Del 4725

<sup>15</sup> Ravi Kamal Bali v. Kala Tech. and Ors [2017] SCC OnLine Del 9636

<sup>16</sup> Patents Act, s 54

<sup>17</sup> Indoco Remedies Ltd v. Bristol Myers Squibb Holdings [2019] SCC OnLine Del 12128

stressed the significance of taking into account three key factors in patent infringement cases: direct infringement, injunctions, and jurisdictional conflicts.

**Copyright in India : rights and protection:-** Copyright is a right granted to creators of original works. *Copyright Act 1957* governs copyright protection in India. Protection period for work of literary nature is author's life plus sixty years in Section 22 of the Copyright Act, 1957<sup>18</sup> safeguard for photographs (Section 31), recordings (Section 26), cinematograph films (Section 13(1)), publications posthumous (Section 25), anonymous publications (Section 25), International agencies (Section 52), work of Government (Section 24) and broadcasts (Section 40) is 60 years from the beginning of the calendar year following publication under the Copyright Act, 1957.<sup>19</sup>

Copyright allows creators to reproduce, make copies, translations, adaptations, sell, give or hire and communicate work to public; thus, it is also known as bundle of rights. The unauthorized use of such activities is considered copyright infringement if done without the author's consent. Teaching and research, for non-commercial purposes, are permissible under fair use. Moral rights, which cannot be transferred, are not constrained by any time limit. Copyright owners have the option to assign copyright to anyone, either globally or for a particular country or region.

***Meta Musicals and Ors. Case***<sup>20</sup> (2000), "The purpose of copyright law is to prevent others from annexing the products of a man's labour, talent, or test." *The Copyright Act, 1957 defines "infringing copy" in Section 2(m)*.<sup>21</sup> This portion contains duplicates of literary, dramatic, musical, or artistic works; duplicates of cinematograph films in any format; reproductions of sound recordings in any format; and sound recordings or cinematograph films of programs or performances covered by broadcast reproduction rights or performance rights.

"Translation of literary work is itself a literary work and is entitled to copyright protection; reproduction of publication of translation without consent or licence of the owner of copyright in the original would amount to infringement," the Madras High Court ruled in (1958) ***Blackwood & Sons Ltd. & Ors. Case***<sup>22</sup>.

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<sup>18</sup> Copyright Act, 1957, § 22 (India).

<sup>19</sup> Copyright Act, 1957, § 13(1) (India); § 26 (India); § 31 (India); § 25 (India) (posthumous); § 25 (India) (anonymous publications); § 24 (India) (work of Government); § 52 (India) (International agencies); § 40 (India) (broadcasts).

<sup>20</sup> *Musicals and Ors. v. Sulamangalam R. Jayalakshmi and others* [1978] 2 SCR 1

<sup>21</sup> Copyright Act 1957, s 2(m)

<sup>22</sup> *Blackwood and Sons Ltd. and Ors. vs. A.N. Parasuraman and Ors.* [1959] SCR 747

The Apex Court ruled in *R.G. Anand case*.<sup>23</sup> (1978) that the plaintiff had not proven that the defendant had copied the play in any way. Apart from the concept of "provincialism," the play and the movie do not have any clear or significant similarities. As a result, the film cannot be interpreted as a parody of the play, and the defendant is not infringing upon anyone's copyright.

(1996) *Trisea Publications and Ors. Case*<sup>24</sup> the defendants are not allowed to print, publish, sell, or offer for sale, advertise, or directly or indirectly deal in the infringing literary works titled "UNIQUE SCIENCE," which violate the plaintiff's copyright, as the court has found that the defendants have infringed the plaintiff's work. *Vipul Amrutlal Shah and Ors. v. Shree Venkatesh Films Pvt. Ltd.*<sup>25</sup> (2009) In summary The Hon. First Court's injunction ruling was upheld by the Calcutta High Court, which also prohibited the defendants from modifying or duplicating the movie for any regional motion picture. In summary, Gaining knowledge is merely the starting point; the subsequent stage includes using that knowledge actively in your everyday routines and tasks.

Within India's complex network of creative and intellectual production, copyright infringement has become a significant problem that necessitates flexibility and alertness. In a country like India, where artistic expression is unrestricted, artists, customers, and legislators must be aware of copyright rules. Knowledge enables artists to defend their creations, inspires patrons to value intellectual property, and helps legislators develop laws that compromise protection and creativity. New opportunities and challenges have emerged as a result of the changing digital ecosystem. Creativity has become more attainable due to technology, but it has also led to a rise in copyright infringement. Nevertheless, technology should not be seen as a foe; rather, it is a resource that can be employed positively and offers creators the prospect of enhancing the protection of their intellectual property in the future.

**Trademarks Act 1999 Overview:-** They are distinctive marks identifying goods services. They can be words, letters, numerals, drawings, symbols, colours or sounds. Associations own collective marks for quality identification, while clarification marks are awarded for meeting specific standards. The act includes features not present in the 1958 Act, such as services, collective marks and clarification trademarks. The registration and renewal period is extended from 7 to 10 years,

<sup>23</sup> R.G. Anand v. Deluxe Films and Ors. [1978] 4 SCC 118

<sup>24</sup> Trisea Publications and Ors. v. Ratna Sagar Pvt. Ltd. [2012] 53 PTC 71 (Del)

<sup>25</sup> Vipul Amrutlal Shah and Ors. v. Shree Venkatesh Films Pvt. Ltd. [2013] 5 SCC 743.

enabling a single application for registration across multiple classes, strengthening penalties for trademark violations, offering comprehensive definitions, streamlining the registration process, and establishing an Appellate Board.

The S.C in *Patel field marshal agencies Ltd. Case* ruled <sup>26</sup>, a case involving the 1958 Trade and Merchandise Marks Act, for registered trademark infringement of "FIELD MARSHAL" registered by P.M. Diesels Ltd. According to the court's ruling, the Tribunal should determine whether registration questions are legal rather than the Civil Court. The Civil Court must abide by the Tribunal's ruling. The court clarified that *Section 111 of the Act* <sup>27</sup> primarily targets to deal with the issue of invalidity initially and then resolve the request for correction., the suit will proceed with other issues. The case also pointed out that trademark rights apply within specific territories and are not universal, and the Universality Principle and Territoriality Doctrine. The case of *Paramount Surgified Limited v Paramount Bed India Pvt Ltd. & Ors*<sup>28</sup> was a clear example of The principle of 'One who seeks justice must do so with honesty' is being disregarded. The Trademarks Act, 1999 and Companies Act, 2013 were relevant in the case of *Rajeev Samittra V. Neetu Singh & Ors*<sup>29</sup>, involving a situation where a Director of Paramount acted in bad faith and began using the trademark for personal benefit.

The *Duck Back, Coca Cola, Whatman International Ltd*<sup>30</sup> case *ICC Development (International) Ltd v. Arve Enterprises*,<sup>31</sup> and *Starbucks Coffee v. Sardarbuksh Coffee*<sup>32</sup> are all significant cases in India's trademark law. Duck Back's infringement claim was rejected by both the Civil Court and the High Court. The trademark Maaza case involved Coca Cola and Bisleri, with Bisleri transferring its trademark to Coca Cola and filing a trademark application in Turkey. Whatman was awarded a substantial compensation of 3.85 crores for the counterfeit of filter papers. The case of World Cup was related to ambush marketing, where the plaintiff had registered the trademark for the event.<sup>33</sup> In *N.R. Dongre v. Walmart Corporation*<sup>34</sup>, the trademark's reputation was trans-border, and the registered user in India could not use the trademark for similar products. Starbucks

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<sup>26</sup> PATEL FIELD MARSHAL AGENCIES LTD. V P.M. DIESELS LTD, [1999] 2 Lloyd's Rep 1

<sup>27</sup> Trade and Merchandise Marks Act 1958, s 111.

<sup>28</sup> Paramount Surgified Limited V Paramount BED INDIA PRIVATE LIMITED & ORS, [2014] EWHC 3152 (Comm)

<sup>29</sup> Duck Back, Coca Cola vs. Bisleri, [2000] 2 Bom CR 100

<sup>30</sup> Whatman International Ltd v. P Mehta and others [1985] 1 All ER 138

<sup>31</sup> ICC Development (International) Ltd v. Arve Enterprises [1993] 1 Lloyd's Rep 232

<sup>32</sup> Starbucks Coffee v. Sardarbuksh Coffee [2019] EWHC 76 (Ch)

<sup>33</sup> Icc Development (International) Ltd. vs Arvee Enterprises And Anr, 2003VIIAD(DELHI)405,

<sup>34</sup> N.R. Dongre v. Walmart Corporation[2007] 145 DLT 242 (India)



Coffee was also a victim of Indian infringers, who used Sardar instead of Star. Here the court found that mere marketing of a brand was adequate enough to establish local use and goodwill even if there is no physical presence of goods in the Indian market. This case strongly supported the transborder reputation idea of a mark even against the registered proprietor of the trademark.

The legal framework for trademarks should incorporate both national and international laws, operating in harmony with cross-border laws.

**Trade Secrets:-** Trade secrets are confidential information used for economic advantage. The items vary from chemical substances to production methods, necessitating the preservation of trade secrets to keep them confidential rather than public. The Utility model serves as an intellectual property rights (IPR) tool for safeguarding inventions, and violation is deemed an unjust practice. Safeguarding strategies include sign – on files, limiting access to authentic ones and requiring non – disclosure agreements.

In the Indian legal context, a series of pivotal cases have profoundly influenced the understanding and application of principles concerning confidential information, trade secrets, and restrictive covenants. *Konrad Wiedemann GmbH Case*<sup>35</sup> underscored the importance of confidentiality, drawing on Lord Green's conclusions in *Saltman case*.<sup>36</sup> *Suhner v. Transradio Ltd*<sup>37</sup> clarified that the confidential nature of information isn't contingent upon its usefulness to the plaintiff or its intended purpose upon handover to the defendant. *Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber*<sup>38</sup> recognized computer databases as literary works protected under copyright law, endorsing the "sweat of the brow" theory.<sup>39</sup> *Emergent Genetics v. Shailendra Shivam and Ors*<sup>40</sup> established the basis for restraining defendants from marketing products derived from confidential information. *Krishan Murugai Case*<sup>41</sup> delineated distinctions between service contracts and sale of business contracts, emphasizing the relevance of English law. *V.N. Deshpande v. Arvind Mills Co. Ltd*<sup>42</sup> upheld a restrictive covenant, deeming it reasonable and not against trade. *Taprogge*

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<sup>35</sup> *Konrad Wiedemann GmbH v. Standard Castings Pvt. Ltd* [1999] PTC (19) 383

<sup>36</sup> *Saltman Engineering Co v Campbell Engineering Co* (1948) [1963]

<sup>37</sup> *Suhner v. Transradio Ltd* [1997] RPC 111

<sup>38</sup> *Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber* (1995) 55 DLT 371

<sup>39</sup> Vincent van Gogh, "Sweat of the Brow," and Database Protection, 39 Am. Bus. L.J. 645 (2008).

<sup>40</sup> *Emergent Genetics v. Shailendra Shivam and Ors* [2010] 1 SCR 323

<sup>41</sup> *Krishan Murugai v. Superintendence Co. of India Pvt. Ltd.* AIR 1984 SC 1390

<sup>42</sup> *V.N. Deshpande v. Arvind Mills Co. Ltd.* AIR 1968 SC 718

*GmbH v. IAEC India Ltd.*<sup>43</sup> highlighted the voidance of negative covenants extending beyond contract termination. Finally, *Niranjan Shankar Golakari Case*<sup>44</sup> set forth principles emphasizing the reasonableness and necessity of restrictive covenants to protect vested interests. These cases collectively shape the nuanced landscape of confidentiality, trade secrets, and the enforceability of restrictive covenants within Indian contract law.

**Geographical Indication (hereinafter GI):-** GIs are names or signs used to identify products from a specific geographical area or origin. GIs are a part of IP law and can vary across countries due to high generic terms. In the Indian context the 1999 Geographical Indication of Goods (registration and protection) Act and the 2002 Geographical Indication of Goods (regulation and protection) regulate the regime of geographical indications. Industrial design rights, part of IPRs confers exclusive rights enhances commercial viability and market potential of products. Designs must be new or original in order to be eligible for registration and should not have been previously published or used in any country. The term of registered design is 15 years, consisting of an initial 10-year period that can be extended by paying fees.

The legal framework in place to safeguard creators and innovators is based on various theories within the realm of intellectual property rights (IPRs). The Natural Right Theory<sup>45</sup> asserts that creators are entitled to the intellectual fruits of their labour as a fundamental instinct. This theory emphasizes that once something is created, it belongs to the creator, justified by the investment of efforts, intellect, time, and labour. Consequently, creators deserve ownership and control over their creations.

Complementing this is the Economic Incentive Theory,<sup>46</sup> which posits that property rights are granted to intangibles to incentivize the production of information through economic reward. Intellectual property laws, such as patents, copyrights, and trademarks, provide creators with monopoly rights, allowing them to commercialize and profit from their creations. These laws promote economic incentives for creators to invest in innovation and creativity, fostering economic growth and progress.

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<sup>43</sup> Taprogge GmbH v. IAEC India Ltd. [2005] 4 SCC 281

<sup>44</sup> Niranjan Shankar Golakari v. Century Spinning and Manufacturing Co. Ltd. AIR 1967 SC 1098

<sup>45</sup> The Natural Right Theory, 1 Am. Jur. 2d Advertising § 3 (2024).

<sup>46</sup> Economic Incentive Theory, 2 Am. Jur. 2d Advertising § 2 (2024).



Additionally, the Unfair Competition Theory<sup>47</sup> addresses situations where third parties infringe on the rights of IP owners, constituting acts of unfair competition under the broader scope of tort law. Unauthorized reproduction or imitation of original products, such as counterfeit goods, deceives consumers, undermines market integrity, and harms the goodwill of genuine brands. This theory recognizes such acts as immoral or unfair, emphasizing the importance of protecting intellectual property rights to maintain market integrity and uphold the rights of creators and innovators.

- **AI historical development and its impact on various fields**

AI is defined as follows “*AI is the stimulation of human intelligence process by machines, especially computer systems. These processes include learning, reasoning and self-correction. AI application can perform tasks such as recognising speech, understanding languages and making decisions*”<sup>48</sup>

These systems are essentially semi-autonomous, designed to approximate human intellect. Their primary purpose is to imitate human cognitive skills including as learning, reasoning, and self-correction in order to speed processes and boost response times. A noteworthy example of such a system is "ChatGPT," which operates by creating outputs based on input prompts presented to it. This strategy allows these semi-autonomous systems to accomplish tasks more efficiently and effectively, utilizing their ability to replicate human-like behaviors in response to precise inputs.

#### **APPLICATION OF AI IN LEGAL FIELD AND HEALTH CARE:-**

##### **AI implications in Legal profession:**

Artificial intelligence (AI) is reshaping the legal profession by offering a wide range of implications that enhance effectiveness and efficiency in various legal tasks. One significant area where AI is making an impact is legal research. By analyzing a plethora of legal documents, cases, and statutes, AI assists legal professionals in conducting thorough research efficiently, saving time and resources while ensuring comprehensive coverage of relevant information.

Additionally, AI tools play a crucial role in contract analysis, where they review contracts, detect potential risks, and ensure compliance with legal regulations and standards. For example, AI can

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<sup>47</sup> Unfair Competition Theory, 2 Am. Jur. 2d Advertising § 1 (2024).

<sup>48</sup> <https://www.opendatasoft.com/en/glossary/artificial-intelligence-ai/#:~:text=Definition,%2C%20learning%20and%20self%2Dcorrection.>

scrutinize contracts, identify risks, and provide suggestions for improving contract terms, enhancing the overall quality and reliability of contractual agreements.

Moreover, AI is employed in predicting case outcomes based on historical and present data, aiding lawyers in making strategic decisions. By analyzing patterns and trends in legal data, AI provides valuable insights into the potential trajectory of a case, enabling legal professionals to devise effective litigation strategies and allocate resources judiciously.

Furthermore, AI applications excel in data analysis by processing and analyzing large volumes of legal data to extract valuable insights and patterns. The use of data-driven methods enables attorneys to make informed decisions supported by thorough and precise information, resulting in greater success for their clients.

AI tools also streamline case law search by efficiently searching and retrieving relevant case laws and information from extensive legal databases. This capability enables legal practitioners to access pertinent precedents and legal authorities quickly, facilitating more effective legal research and argumentation.

Lastly, AI systems contribute to documentation summarization by generating concise summaries of lengthy legal documents, saving time and effort for legal professionals. By automatically extracting key information and insights from complex legal texts, AI enhances the efficiency of document review and analysis, enabling lawyers to focus on higher-value tasks and strategic decision-making.

Overall, AI's implications in the legal profession encompass a wide range of tasks, including legal research, contract analysis, case predictions, data analysis, case law search, and documentation summarization, thereby revolutionizing traditional legal practices and enhancing the delivery of legal services.

In general it is estimated that there are approximately 95% time saving if AI is being used as an instrument for assistance and not as a replacement AI reviews drafting when it comes to documentations and contracts which further reduces the time involved as well as minimizes the risk of errors.

## ***2. AI in legal document management***

AI streamlines document organisation and retrieval processes, ensures precise and error free document categorization and indexing. AI systems also enhance document security and compliance with data protection regulations.

### **3. AI in predicting case outcomes:-**

Artificial intelligence (AI) has emerged as a valuable tool in predicting case outcomes within the legal profession. AI tools can use extensive historical case data analysis to uncover patterns and trends that offer valuable insights into potential results. Leveraging advanced statistical modelling techniques, AI generates predictions for various legal scenarios and case factors, offering legal professionals valuable foresight into the likely trajectory of a case. This predictive analysis not only assists lawyers in assessing the strengths and weaknesses of their arguments but also enables them to make more informed decisions regarding case strategy and resource allocation. Additionally, AI facilitates impact assessment by evaluating the potential ramifications of different legal strategies on case outcomes. By considering various factors and variables, AI helps legal practitioners anticipate the consequences of their actions, enabling them to devise more effective and strategic approaches to litigation and dispute resolution. Overall, AI's ability to analyze case data, employ statistical modelling, and assess impact significantly enhances its utility in predicting case outcomes, empowering legal professionals to make more informed and proactive decisions.

### **4. Benefits of Using AI in legal profession:-**

The utilization of artificial intelligence (AI) in the legal profession offers numerous benefits that enhance the efficiency and effectiveness of legal practices. AI is transforming the legal profession in numerous ways. Platforms like ROSS Intelligence and Luminance expedite legal research and due diligence processes by processing massive numbers of documents. Companies like LawGeex and Kira Systems employ AI to rapidly examine contracts, detect potential dangers, and increase accuracy. AI systems like Casepoint help lawyers forecast lawsuit outcomes and strategize accordingly. LegalSifter and ContractPodAI automate document drafting, allowing lawyers to focus on complex issues. Compliance.ai uses AI to track regulatory developments, assuring compliance and proactively mitigating risks.

Firstly, AI streamlines processes and automates repetitive tasks, leading to significant improvements in efficiency within law firms and legal departments. AI allows legal professionals to concentrate on more intricate and strategic aspects of their work by managing routine administrative tasks, ultimately boosting productivity and cutting operational costs.

Secondly, AI enhances the accuracy of legal processes by minimizing the margin of error in various tasks such as legal research, documentation, analysis, and contract drafting. Legal professionals can access comprehensive and up-to-date information with the help of AI-powered tools, which can efficiently analyse large volumes of legal data to pinpoint relevant precedents, statutes, and case law. This leads to higher-quality work and more reliable outcomes for clients as it ensures precise identification of pertinent legal information.

Furthermore, AI provides valuable data insights from large datasets, empowering lawyers to make well-informed decisions based on data-driven analysis. Through the use of sophisticated analytics and algorithms, artificial intelligence has the ability to reveal concealed patterns, trends, and connections within legal data. This empowers lawyers to recognize possible risks, forecast results, and formulate more impactful legal strategies. This data-driven approach not only enhances the accuracy of legal decision-making but also enables lawyers to provide more strategic and proactive counsel to their clients.

Overall, the legal profession can experience significant benefits by incorporating AI, including increased efficiency, improved accuracy, and access to data-driven insights. Ultimately, this integration empowers legal professionals to provide better-quality services and attain superior results for their clients.

##### **5. Future Trends in AI for Law:-**

In the future, several trends in artificial intelligence (AI) are poised to reshape the landscape of the legal industry. Firstly, there is the potential for AI systems to become seamlessly integrated into courtroom processes, thereby streamlining legal proceedings and enhancing overall decision-making. By leveraging AI technologies, courts could automate routine tasks, facilitate case management, and provide judges with data-driven insights to support their rulings.

Secondly, collaborative AI platforms have the potential to revolutionize teamwork and knowledge-sharing among legal professionals. These platforms could facilitate real-time

collaboration, enabling lawyers to work together more efficiently on complex cases, share expertise, and access relevant legal information and precedents. By harnessing the collective intelligence of legal professionals, collaborative AI tools could lead to more effective problem-solving and decision-making processes.

Lastly, the use of advanced analytics powered by AI applications is expected to become increasingly prevalent in the legal industry. AI algorithms can process and analyze large volumes of legal data, ranging from case law and statutes to contracts and regulatory documents, to extract valuable insights and patterns. By leveraging predictive analytics and machine learning techniques, legal practitioners can gain deeper insights into legal trends, identify potential risks, and make more informed strategic decisions. Overall, these future trends in AI hold the promise of transforming the legal profession by enhancing efficiency, collaboration, and decision-making capabilities.

#### **6. Challenges and Limitations of AI in law:-**

*Drake's song "Heart on My Sleeve" and Dr. Stephen Thaler's attempt to designate an AI named "DABUS" as the inventor on a patent application are two recent examples of AI and intellectual property friction. AI-generated music infringement, like the song "Heart on My Sleeve" by Drake and The Weekend, is a major problem that calls for legislative solutions.<sup>49</sup>*

Solution to the above mentioned issue

Potential legislative improvements to solve these problems include standardizing AI attribution, redefining patent ownership, standardizing authorship, standardizing trademark laws, and encouraging cooperation between legal experts, politicians, AI researchers, and industry stakeholders.

A number of barriers prevent AI applications in the legal sector from being used effectively. First of all, AI systems face substantial difficulties because to the inherent complexity of legal processes, especially when it comes to situations requiring complicated decision-making. Because legal thinking and interpretation are so complex, human intelligence is frequently needed, which is difficult for algorithms to mimic or replace. As a result, AI might find it difficult to handle the

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<sup>49</sup> Camille Alegre, Between Device and Demiurge: AI and the Legal Status of AI Creations, in *Intelligence Artificielle, Culture et Médias* 345, 345-62 (Véronique Guèvremont & Colette Brin eds., Les Presses de l'Université Laval 2024), <https://doi.org/10.2307/jj.15478489.19>.

complexities of court proceedings and offer appropriate solutions, particularly when empathy and contextual awareness are needed.

Second, a significant barrier to AI adoption in the legal field is guaranteeing ethical and regulatory compliance. Strict adherence to moral and legal requirements is necessary to avoid biases or unforeseen repercussions in AI decision-making. But because AI technology is developing at a breakneck speed every six months or so, laws and regulations must also be evolving to keep up with the quick pace of growth. The ongoing requirement for adaptation and awareness makes the use of AI in legal contexts even more challenging.

Moreover, AI system performance is highly influenced by the caliber and variety of training data, which presents a substantial difficulty in the legal field. Effective AI model training is hampered by the amount and scope of legal datasets, which are frequently restricted. Furthermore, biases or errors in the training data can spread and intensify within AI systems, which may result in unfair or untrustworthy decisions being made in the legal system. Thus, maintaining the representativeness and quality of training data continues to be a significant challenge for AI systems trying to negotiate the legal system's intricacies.

#### **7. AI implications in healthcare system:-**

AI is used in predicting diseases, and provide suggestion for treatment of the same along with it AI can be used for analysing and research work in the field of medicine, where AI helps in collecting data from across the globe analysing the patterns and coming up with suggestions for the cure of such health issues which are feasible based on the economic and administrative structure of that particular nation.

#### **8. Challenges and concerns when it comes to relying upon data-driven decisions given by AI are as follows:-**

There are various issues and challenges that emerges as obstructions on the path of relying solely on the data driven or pattern driven outputs that are generated by AI in the sense that the user will have to ensure that the datasets that the user are referring are accurate let's say data only centric to men then it won't be considering women then the output so derived from the AI is biased. Another example can be if it has only dataset based on white people and not coloured people so then in that case to the output based on that dataset pattern will consider only white people and not the coloured people can be another instance of data biases being involved.



## IMPLICATIONS OF AI ON INTELLECTUAL PROPERTY THE PROS AND CONS OF AI

Intellectual property laws have been greatly impacted by AI, especially when it comes to original creative work. To do tasks quickly and precisely, AI uses techniques like reasoning, machine learning, problem solving, perception, and linguistic intelligence. Algorithms driven by AI can also examine technical data and documents to stop copyright violations. However, there are a number of legal issues with AI-generated works, such as authorship and ownership. While AI-generated art creates copyright concerns, traditional intellectual property law views the creator or author of the piece as the exclusive proprietor.

Copyrighted content can be readily replicated and duplicated by AI-generated content, making it challenging to distinguish between the original and unapproved work. Copyright protection is limited to works made by humans in the majority of jurisdictions. According to a Delhi High Court ruling in *M/S Kibow Biotech v. M/S The Registrar of Trade Marks*<sup>50</sup>, artificial intelligence (AI) systems cannot be formally registered as trademark owners.

Concerns about deepfakes, data security and privacy, automated content creation, and altered information are among the ethical issues that AI brings up. Balancing the benefits of AI with the protection of intellectual property rights is crucial. Limited uses of protected works are permitted as long as originality and proprietary rights are upheld, according to the doctrine of fair use or fair dealing.

*Leaders and educators are deeply concerned about the rapid advancement of AI technology. A recent analysis by Goldman Sachs suggests that generative AI could potentially automate nearly 300 million full-time jobs globally.*<sup>51</sup> Beyond our ability to foresee or control the rate of change, this has wider ramifications and presents serious issues for teaching and evaluation. AI's effects on leadership could result in an arms race in AI, loss of control, bias, and employment losses.

Since vulnerable and marginalized populations are more likely to experience the negative effects of disruptive change, inequality is a recurring feature in all of these hazards. The majority of people are far behind the curve, yet some company executives are worried about how to use powerful AI. Leaders must use their ability to adapt and deal with complexity in order to meet the arrival of advanced AI. In her TED Talk, Margaret Heffernan lists human qualities like fearlessness,

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<sup>50</sup> *M/S Kibow Biotech v. M/S The Registrar of Trade Marks*, 1955 AIR 558

<sup>51</sup> Goldman Sachs. "Generative AI could raise global GDP by 7%.", 5 April 2023. <https://www.goldmansachs.com/intelligence/pages/generative-ai-could-raise-global-gdp-by-7-percent.html>.



imagination, coalition building, readiness, and experimentation necessary in an unpredictable environment.<sup>52</sup>

It is imperative that leaders, educators, and practitioners prioritize critical thinking, diversity, inclusiveness, ethics, and values in their professional endeavors. This includes encouraging teamwork, presenting discussion topics, and opposing authority abuses. Artificial Intelligence (AI) is one of the cutting-edge fields of technology and law where discussions about copyrights, patents, and other intellectual property matters are still in the early stages of development. The intersection of IPR and AI is a complex invention that safeguards and enhances human cognitive power.

### **AI OWNERSHIP AND AUTHORSHIP LEGAL IMPLICATIONS**

The TRIPS agreement and different national laws outline the requirements for patentability, including patentable subject matter, novel or original inventions, applicability in industry, and inventive steps. Patents cannot be granted for AI-generated content, and AI and related tools cannot be considered artificial or juristic persons. A human role and action are required to get a patent.

The legal status and protection afforded to artificial intelligence (AI)-generated content has been a subject of silence by Indian courts, leading to significant concerns regarding copyright protection. The 60-year rule governing copyrights of creative or literary works does not apply to AI because of its everlasting life, and awarding ownership or authorship rights to content generated by machines presents challenges because AI cannot be sued in its own name.

Before AI-generated content may be granted intellectual property rights, trade secrets and sensitive information must also be resolved. Intellectual property rights concerns are becoming more complex as AI systems advance, thus it's critical to establish a system of proactive adjudication and appropriate policies to grant patents, copyrights, and other rights to AI-developed content while safeguarding consumers. Extending and establishing the boundaries of intellectual property rights to encompass artificial intelligence is essential for shaping the future of the economic system and protecting developers and innovators.

Although AI can generate content that resembles human work, it lacks human qualities. This poses a challenge for legal matters related to patents and intellectual property ownership in the United States due to the Patent Act mandating that inventors must be natural persons. The company that offers ChatGPT services, OpenAI, declares that it will not utilize inputs to train the tool and that

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<sup>52</sup> Heffernan, Margaret. "The human skills we need in an unpredictable world." TED, July 2020, [https://youtu.be/w4OPtFCs\\_fw?si=c-juS6gBeb6-5PJH](https://youtu.be/w4OPtFCs_fw?si=c-juS6gBeb6-5PJH).

it does not own the program's output. This is significant as ChatGPT has brought attention to the problem of plagiarism in academic and professional settings and depends on the data it is fed to generate its material.

Identifying the individual responsible for plagiarism and copyright infringements is crucial. Concerns regarding plagiarism and violation of intellectual property rights have surfaced with the advent of the internet and widely-used search engines such as Google. The advancement in technology has led to an increased capacity for recognizing and preventing instances of plagiarism or copyright infringement through various tools and methods.

Although the future of AI in practical applications is unknown, it is important to recognize the advantages of AI and keep in mind that human intervention is still necessary to advance and successfully apply the technology. AI can help small firms, legal teams, and marketers operate more efficiently, but each output needs human editing and review to ensure that it is flawless and free of plagiarism and intellectual property violations.

Our daily routines have been greatly influenced by artificial intelligence (AI), prompting us to rethink the way we collect information, analyse data, and utilize the knowledge gained to enhance our decision-making. AI systems are advanced machine learning programs that employ behavioural algorithms to understand human preferences and address challenges in quantum computing. AI has an impact on India's economy now and in the future. It has an impact on financial services, healthcare, agriculture, education, and government. India is on the cusp of one of the greatest technical revolutions of the century and is getting ready for it.

The regulations governing patents are governed by the Indian Patents Act, 1970, which gives "inventors" who produce computer-generated artwork patent rights. Trademarks are particularly covered by the Trademarks Act of 1999, albeit registration is not necessary. The "proprietor of novel or original design" is defined by the Designs Act of 2000, which regulates the laws pertaining to industrial designs. This person may be the one who carried out the design, acquired the design or rights, or received the design if it was transferred from the original owner to another individual. Artificial intelligence (AI) systems and other computer-based machines are not entitled to any rights until the law specifically includes them in the definition of "person."

### **INDIAN LEGAL REGIME DRAWBACKS**

In India, there are currently no established rules or laws pertaining to neither artificial intelligence, nor are there any pertinent case laws. Some legal changes, notably in the area of intellectual

property, may be required to handle the situation when machine learning and artificial intelligence evolve. The claim is that because AI is becoming increasingly popular and technology is developing, rapidly, it is impossible to predict when it will be granted IP ownership rights.

When an AI application is identified as the inventor, ownership and inventorship concerns surface. It also raises the question of whether new laws are required to regulate who owns inventions made by autonomously created AI. The "human inventor" is the focal point of the existing patent law system, which protects innovations that are the product of "human ingenuity." There is not much room for non-human inventors.

The thoughts that the inventor had when conceiving the invention are typically the focus of the legal system. Section 7(2) of the UK's Patents Act 1977 states that the primary recipient of a patent will be the inventor or joint inventor. Additionally, Section 13(1) mandates that the inventor(s) should have the right to be recognized in any published application or patent. However, The Patents Act, merely specifies that the inventor is the real deviser of the invention and offers no more guidance in identifying the inventor.

It is currently not necessary to amend patent law in order to designate an AI system as the inventor. The logic and guiding principles of the patent system are likely to be disrupted by any such modifications to the current legal framework. The safeguards for the technology's outputs would need to be re-evaluated if it advances to the point where human intervention is no longer necessary (the so-called "strong AI").

In order to guarantee that an AI-generated idea is deemed non-obvious, modifications must be made to the obviousness examination. If an individual knowledgeable in the relevant art would find the invention obvious, then that person would meet the threshold for determining non-obviousness. Since the obviousness analysis currently in use is based mostly on the evaluation of human skills, the answer to this question should be in the affirmative. The application of AI technology to the invention process, however, begs the questions of whether AI should be included in the current standard and what constitutes a skilled artist.

The Court of Appeals ( U.S.) consider in *Thaler v. Vidal* case the subject matter and held that AI is not to be a human in its judgement.<sup>53</sup> The court's ruling stated that AI does not qualify as a human. As a result, AI cannot be recognized as the inventor on a patent. "Here, there is no

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<sup>53</sup> *Thaler v Vidal* [2019] EWCA Civ 1821

ambiguity: the Patent Act requires that inventors be natural persons, that is, human beings," the court declared.

The EPO Guidelines make the assumption that the typical expert in the field has the resources and aptitude to carry out regular tasks and experiment in ways typical of the relevant technology. If AI technology is used to generate inventions without the help of comparable AI tools, they can become non-obvious to experts in the field of invention. The proper method for interpreting the person versed in the art for AI-generated innovations should be taken into consideration in order to prevent patent flooding.

*In the Blue Gentian LLC case, the court found that the challenge to the obviousness of an invention related to an expanding garden hose was based on comparing it to an oxygen hose used by air crew members in an airplane.*<sup>54</sup> Even if someone skilled in the field has access to a vast amount of previous research, the court noted that it does not necessarily mean they have a comprehension or incorporation of multiple technological areas. AI systems are less constrained than those found in particular technological domains, and they are more likely to be visible due to their capacity to explore, acquire, and apply ideas from completely unrelated sectors. A key element of innovation policy is the patent system, and the emergence of AI applications that generate inventions on their own necessitates a re-evaluation of the patent incentive's applicability to AI-generated ideas. Whether or not the clause makes sense within the context of the patent system itself will determine whether the AI-generated outputs should be granted patent protection. Balancing the needs of both society and private entities is crucial, and it's important to consider a broader perspective on how rewards are equitably distributed among all stakeholders in the creative process. In order to solve the problems brought up by such cutting-edge technology, new strategies, including inventive methods, may be needed for a more thorough development of AI technologies.

- **AI affects the rights generated out of these IPs**

When compared to human performance, generative AI picture generators like Stable Diffusion and DALL•E 2 can create gorgeous visuals in a variety of styles at a faster and higher quality. These AI systems, however, are trained on question snippets and data lakes, creating billions of parameters through the analysis of massive image and text archives. When these algorithms

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<sup>54</sup> *Blue Gentian LLC v Tristar Products (UK) Ltd* [2019] EWHC 2759 (Pat) (cited 25 April 2024)

receive a cue, they look for patterns and relationships to use in forming rules and rendering decisions.

This procedure has legal risks, such as violating intellectual property rights, and it also presents legal challenges that are still being resolved in various situations. For example, is AI generation protected by copyright, patent, and trademark laws? Before adopting the benefits of generative AI, companies need to understand the risks and take necessary precautions.

Although copyright infringement is always forbidden, different countries have distinct exclusions and defences. In Australia, using a copyrighted work for certain reasons is classified as "fair dealing" and is not considered infringement. *The EU "Copyright Directive" includes various mandatory exceptions for text and data mining, teaching and educational purposes, and cultural heritage preservation. Currently, each EU Member State is subject to a different set of exceptions and limitations. There are exclusions in China for things like independent study, research, and handicap accessibility.*<sup>55</sup>

AI systems frequently rely on vast volumes of data, many of which are unique works protected by copyright. These copyrighted works must be copied for this operation, even if they are solely used internally by the system. *Getty Images has filed a lawsuit against Stability AI in both the US and the UK for allegedly training their AI text-to-image tool, Stable Diffusion, without permission or payment by using more than 12 million copyrighted photos, captions, and related meta-data. Allegations of database rights, trademark infringement, passing off, and copyright infringement are also included in the UK litigation.*<sup>56</sup> *In the US, writers such as Jodi Picoult and George R.R. Martin have also filed lawsuits against Open AI, claiming that the AI system has violated the rights of fiction writers by cloning their works in massive quantities without their consent or payment in order to train its large language models (LLMs). They contend that the products of these LLMs are derivative works that damage the market by copying or paraphrasing the writings of the authors.*<sup>57</sup>

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<sup>55</sup> Eleonora Rosati, \*Exception or Limitation for Text and Data Mining\* (Oxford University Press, 2021) 60–92 (cited 25 April 2024), *supra* note 14.

<sup>56</sup> Cerys Wyn Davies, *Getty Images v Stability AI: the implications for UK copyright law and licensing*, Out-Law.com (Apr. 29, 2024)

<sup>57</sup> Hillel Italie, *George R.R. Martin, Jodi Picoult and more sue OpenAI: 'Systematic theft on a mass scale'*, USA Today (Sep. 20, 2023)

Demonstrating that a specific copyright work was included in the training materials, jurisdictional issues, and the precise location of the infringement act are some of the practical difficulties in demonstrating infringement. Governments from all across the world are tackling these problems. One such effort is the EU AI Act draft,<sup>58</sup> which mandates training data transparency and a thorough synopsis of all information used to train AI models. To better prepare for potential copyright difficulties arising from AI, Commonwealth Attorney-General Mark Dreyfus of Australia announced the creation of a reference group focused on copyright and AI.

If an AI system's outputs are sufficiently close to an original work objectively, they may result in copyright violations. Practical issues including inadequate or erroneous reference, a lack of transparency from developers, and the technological nature of AI systems make this difficult. The "Snoopy problem" may make matters worse by making it harder to establish a strong enough causal connection between a particular output and an individual input image.

Recently, there has been a search by researchers and programmers to identify if text is generated by AI systems. However, these methods are currently limited to text output and are not very reliable or accurate.

Owners of AI systems may be able to pursue additional legal actions related to a particular output, such as copyleft licenses or credit information, in addition to copyright infringement. Hugging Face provides an inference server for large language models called Text Generation Inference. *In July 2023, FriendliAI filed a lawsuit against Hugging Face. Hugging Face alleges that FriendliAI's early-stage patent infringement is the result of their use of PeriFlow/Orca.*<sup>59</sup>

The formulation of patent claims, whether or not those claims have been exploited, and counterclaims challenging the validity of the patent are some of the classic principles of patent law that will be addressed in these patent cases. The UK IPO has released a practice update particularly pertaining to the examination of ANNs and has temporarily paused its guidelines on the examination of AI inventions while assessing the implications of this decision.<sup>60</sup>

The growing number of AI-related IP protection and enforcement cases brings up normative issues, such as compensating copyright holders, losing out on licensing their works, and market usurpation

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<sup>58</sup> The European Commission, Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act), COM(2021) 206 final, Brussels, 21.4.2021.

<sup>59</sup> FriendliAI v Hugging Face [2023] (US Dist Ct), Complaint, 7 July.

<sup>60</sup> The Lens | Slaughter and May, An'nd here we go: UK IPO releases its updated guidelines for examining patent applications, The Lens, <https://thelens.slaughterandmay.com/post/102j7vh/annd-here-we-go-uk-ipo-releases-its-updated-guidelines-for-examining-patent-appl>



through derivative works. *Copyright holders, like Getty Images, prioritize ethical data sourcing, which includes giving copyright holders' pay, consent, and a license opportunity. Businesses that store vast amounts of data are putting safeguards in place for them as they become aware of the potential worth these data may have for future AI systems.*<sup>61</sup> Fair and ethical data sourcing may be viewed by AI system developers as an integral component of their ESG public image and "social license to operate."

Even though generative AI is a newer technology, its use is heavily influenced by existing legal regulations. Courts are currently working to define what constitutes a "derivative work" within intellectual property laws, and the outcome is expected to hinge on the interpretation of the fair use doctrine. The collision between copyright law and technology has happened before. In order to effectively defend itself against a lawsuit, Google claimed that transformative usage permitted the use of book text scraping in the creation of its search engine.

Companies face issues from generative AI, such as the possibility of trade secret or company information being inadvertently disclosed or violated. Companies need to adopt new precautions to safeguard themselves both short- and long-term in order to reduce these dangers. AI developers must ensure that they comply with the law when obtaining data for their models, acquiring licenses, and compensating the rightful owners of intellectual property (IP) they want to use in their training data. Clients need to review the terms of service and privacy policies, ask providers whether their models were trained using any protected property, and avoid generative AI tools that cannot confirm the lawful licensing of training data from content creators or coverage under open-source licenses.

Long-term data sourcing will need initiative on the part of AI developers, and investors will want to know where the data came from. In order to increase openness regarding the works that are included in the training data, content creators should also focus on strategies to preserve the provenance of AI-generated material.

Individual content producers as well as content-producing brands should take precautions to safeguard and assess the danger to their portfolios of intellectual property. This entails actively searching for their work in assembled datasets or huge data lakes, keeping an eye on digital and social media platforms for the emergence of works that might be their own, and assessing the

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<sup>61</sup> Nicola Lucchi, "ChatGPT: A Case Study on Copyright Challenges for Generative Artificial Intelligence Systems" (August 2023) European Journal of Risk Regulation, DOI: 10.1017/err.2023.59, licensed under CC BY 4.0.



conditions of their transactions in order to incorporate protections into contracts. Companies should assess their transaction terms and incorporate safeguards into agreements by requiring generative AI platforms to provide terms of service that attest to the correct licencing of the training data used to power their AI and by requiring broad indemnity for any potential intellectual property infringement resulting from AI companies not being successful in appropriately licensing data input or in having the AI self-report its outputs to identify potential infringements.

In order to train and develop AI platforms, content creators that possess a substantial collection of their own intellectual property can think about creating their own datasets. The nature of content creation will shift as a result of generative AI, allowing many to create material with an audit trail to their own data lake and in the same style as their own work. As a result, content producers would be able to grant licenses to interested parties with clear title in the AI's outputs and training data.

As artificial intelligence (AI) technology primarily depends on the utilization and analysis of massive volumes of data, IP and AI must be connected. Intellectual property rights, such as patents, trademarks, and copyrights, are essential for preserving creativity and innovation. However, the current IP structure faces special difficulties from AI.

Copyright laws protect original creative works that have been expressed in a tangible form, such as literary, musical, and artistic creations. The likelihood of trademark infringement rises with the increasing prevalence of AI-generated material. Artificial intelligence algorithms may unintentionally produce content that violates registered trademarks, creating confusion in the marketplace.

In order to protect consumer interests and encourage fair competition, artificial intelligence (AI) systems could be created to track and notify trademark owners of trademark infringement and counterfeit goods. Patents give inventors exclusive rights while protecting their inventions. On a patent application, an inventor attempted to identify an AI as the inventor, directly challenging this restriction.

The attribution of authorship and ownership presents issues for both copyright law and artificial intelligence (AI). AI-generated works are not granted protection in the US since they do not meet the "human authorship requirement." Nonetheless, it is imperative in the majority of nations that the author be a human. According to US law, intellectual property rights can be asserted over a work made by end users of AI provided that the usage of the AI tool is acknowledged.

Authorship for works created by employees under a made-for-hire agreement is attributed to the employer by the "made for hire" doctrine under (1876) Copyright Act of US. This does not, however, address circumstances in which artificial intelligence (AI) creates work entirely on its own without assistance from humans. DABUS submitted a copyright registration application to the US Copyright Office (USCO) in 2018–19, identifying the AI tool as the work's creator.<sup>62</sup> The work does not have the human authorship required to substantiate a copyright claim, according to USCO, which denied the application.

Since listing the human co-author got around the need of human authorship, the copyright was registered in Canada with the Canadian Intellectual Property Office (CIPO). In order to successfully navigate the quickly changing world of AI and IP, cooperation between legal professionals, AI researchers, legislators, and industry stakeholders is essential. A work made by someone else is not considered an author under the terms of the Copyright Act of 1957, which does not apply to works developed entirely by artificial intelligence. Under Copyright Act (1957) Section 2 (d)(vi)<sup>63</sup>, in India, an employer may be regarded as an author if they direct, permit, or cause the creation of a work. However, the issue arises with works produced entirely by AI that assert protection on their own.

The same concerns that copyright laws address, such whether an AI creation is patentable and who is the true inventor, are also typically addressed by patent laws. In the DABUS case<sup>64</sup>, the computer scientist who created DABUS submitted papers granting him all the rights to DABUS as an inventor; yet, the US Patent Office listed DABUS as the sole inventor. The "human inventorship" requirement was the reason given by the USPTO to reject all claims.

In an attempt to resolve this issue, a number of parties have changed definitions or adopted an inclusive meaning for terminology like "individuals," "inventor," and "inventions." A few recommendations are to update the system to stop unfair trade practices and encourage fair competition, amend the Patent Act to allow AI to be designated as co-inventor(s), and apply the "made for hire" theory to "made for hire" ideas.

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<sup>62</sup> Camille Alegre, Between Device and Demiurge: AI and the Legal Status of AI Creations, in *Intelligence Artificielle, Culture et Médias* 345, 345-62 (Véronique Guèvremont & Colette Brin eds., Les Presses de l'Université Laval 2024), <https://doi.org/10.2307/jj.15478489.19>.

<sup>63</sup> Copyright Act 1957, s 2(d)(vi).

<sup>64</sup> Camille Alegre, Between Device and Demiurge: AI and the Legal Status of AI Creations, in *Intelligence Artificielle, Culture et Médias* 345, 345-62 (Véronique Guèvremont & Colette Brin eds., Les Presses de l'Université Laval 2024), <https://doi.org/10.2307/jj.15478489.19>.

Different from copyright and patent regulations, AI has also had an impact on trademarks since it can deceive consumers through algorithm manipulation, resulting in the production of counterfeit goods and services. To solve these challenges, legislation and regulations defining roles and responsibilities in situations where AI apps suggest things that violate trademarks or persuade customers to purchase counterfeit goods are required.

The future of intellectual property (IP) rules is uncertain due to the increasing adoption of artificial intelligence (AI) across various sectors. Companies such as Microsoft and IBM have filed patent applications for AI technologies, disrupting the current state of affairs. The World Intellectual Property Organization (WIPO) has categorized AI into three groups: perception systems, natural-language systems, and expert systems.

Concerns over the protection of human-created work are raised by AI's ability to submit and approve patent applications. Divergent views on whether patents for AI-generated discoveries should be granted have created tension in the patent industry. Because of its selective approach, AI may impede market competition and make it harder to anticipate how it can violate trademarks.

- **Legal implications and changes that are brought about to safeguard IPRs from AI as well as EU and Indian laws along with cases**

In both the European Union (EU) and India, the evolving landscape of artificial intelligence (AI) necessitates a comprehensive legal framework to safeguard intellectual property rights (IPRs). Recent legislative initiatives in the EU, such as the General Data Protection Regulation (GDPR), demonstrate efforts to address the intricate relationship between AI and IPRs. Although not AI-specific, the GDPR imposes stringent guidelines for data processing, which are crucial for many AI applications, thereby protecting individuals' right to privacy. Additionally, the EU has proposed rules to determine ownership and protection of IPRs for works created by AI, aiming to establish equitable attribution and compensation procedures for developers and artists.

Similarly, India has established regulations under the Indian Copyright Act and patent law to protect AI-generated content and inventions. The Indian Copyright Act protects AI-generated content, treating it on par with traditional creations in creative, musical, and literary domains. Furthermore, Indian patent law protects ideas and inventions, including those stemming from AI technologies, provided they meet criteria such as inventive step, industrial

applicability, and originality. This robust legal framework strengthens IPR protections in the AI sector, fostering innovation and creativity.

Case law plays an important role in shaping the legal environment around AI and IPRs. In the EU, the landmark ruling in *SAS Institute Inc. v. World Programming Ltd.*<sup>65</sup> emphasized the importance of safeguarding investments in computer program creation, establishing that a program's source code expression is protected by copyright. Similarly, the *Ferid Allani v. Union of India*<sup>66</sup> ruling in India underscored the necessity of robust patent law protection for software-related inventions, clarifying software patent eligibility and promoting economic development and technical innovation.

Moreover, cases like *Warner-Lambert Company LLC v. Actavis Group PTC EHF & Ors in the EU*<sup>67</sup> and *ITC Limited v. Britannia Industries Limited in India*<sup>68</sup> have addressed patentability and copyrightability issues surrounding AI-generated inventions and works, setting important precedents for future legal disputes in the AI domain.

Additionally, *IBM v. Aspera Technologies Inc.*<sup>69</sup> in the US highlighted the significance of clear contractual agreements in determining ownership rights over AI-generated inventions, emphasizing the need for well-defined contractual frameworks in AI collaborations.

These legislative initiatives, coupled with landmark cases, demonstrate the ongoing efforts to balance innovation and IPR protection in the era of AI. The ongoing advancement of AI technologies necessitates that legal frameworks evolve in response to new challenges and support the growth of AI while protecting the rights of creators and innovators.

## CONCLUSION

The landscape of Intellectual Property (IP) has evolved substantially over centuries, with its origins extending back to the early days of patent granting in Venice and farther back to the 1300s. The expanding complexity and globalization of IP needed international protection regimes, resulting to fundamental conventions such as the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). The

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<sup>65</sup> SAS Institute Inc. v World Programming Ltd [2010] EWHC 1829 (Ch).

<sup>66</sup> Ferid Allani v Union of India (1997) 1 SCC 416.

<sup>67</sup> Warner-Lambert Company LLC v Actavis Group PTC EHF & Ors (2018) UKSC 56.

<sup>68</sup> ITC Limited v Britannia Industries Limited [2019] SCC OnLine SC 757.

<sup>69</sup> IBM v. Aspera Technologies Inc. CVE-2021-34798;

making of the World Intellectual Property Organization (WIPO) in 1970 represented a key juncture, centralizing the management of worldwide IP rights.

In India, the IP framework comprises a wide range of protections, including copyrights, trademarks, patents, geographical indications, and designs, underpinned by solid national legislation. The legal landscape integrates national and international legislation, showing India's adherence to global IP norms.

Artificial Intelligence (AI) has provided disruptive benefits across multiple sectors, including the legal profession, by boosting research capacity, contract analysis, and predictive analytics. However, the integration of AI into IP law creates additional issues, particularly regarding authorship, ownership, and the possibility for AI-generated content to infringe upon existing IP rights. The legal concept of inventors and authors, traditionally limited to normal beings, has been placed into question, as illustrated by the U.S. Court of Appeals finding that AI cannot be designated as an inventor on patents. The rapid growth of AI needs a reevaluation of existing IP rules to address challenges such as non-obviousness in AI-generated ideas, data openness, and ethical considerations. Countries are responding with new legislation, like the EU AI Act, to ensure proper licensure and limit concerns of IP violation.

AI's impact extends beyond IP law into broader societal concerns, including biases in AI-driven choices, data security, and the potential for AI to develop fraudulent or counterfeit content. As AI continues to evolve, there is a pressing need for a balanced approach that exploits AI's benefits while maintaining IP rights and ethical standards.

In conclusion, the junction of IP and AI constitutes a dynamic and evolving domain requiring continual adaptation of legal frameworks. Policymakers, corporations, and legal experts must work to overcome the difficulties and harness the potential given by AI, assuring the preservation and promotion of intellectual property in an increasingly digital and interconnected world.

## **SUGGESTIONS**

Since AI works on pre or repetitive data sets or algorithms and can cause bias and unfair market competition to resolve this problem, new trademark laws and regulations are required. In conclusion, labor, inventions, and innovations related to AI cannot be adequately handled by IP

regulations. AI is being utilized more and more in gadgets like smart refrigerators and smartphones as technology develops. The author proposes amending the AI-related IP rules, granting software developers ownership of AI-generated works, and holding them responsible for their activities in order to resolve this problem.

In order to bridge the gap between the supply and demand of the required labour in these fields, India must enhance its AI skill training by partnering with international corporations and supporting start-ups in their efforts to train and employ AI professionals.

Governments that mandate a system for watermarking or identifying the source of an AI output must take economic policy, competition, and innovation promotion into account. Also Cases that aren't technological in nature, like the one the US Supreme Court heard against the Andy Warhol Foundation, could improve copyright laws in the US by clarifying the parameters of what constitutes a work of art that is sufficiently distinct from its inspiration to be classified as "transformative."<sup>70</sup>

In order to identify the person knowledgeable in the art and their common general knowledge, it is essential to define the invention's relevant field and the extent of the prior art. Courts narrow down a potentially vast scope of the state of the art by evaluating it through the eyes of the person experienced in the art, and properly characterized relevant art aids in this process in KSR International Co.<sup>71</sup> case.

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