SOUTHVIEWS NO. 314

WWW.SOUTHCENTRE.INT
@SOUTH_CENTRE



6 November 2026

Artificial Intelligence and Intellectual Property Rights: Preserving the Sanctity of Human Creativity

By Kishore Singh

Rapidly developing Artificial Intelligence (AI) is bringing human creativity into the virtual realm. This has far-reaching repercussions on intellectual property rights. Even as digital technologies are becoming ubiquitous, so-called creativity by AI is becoming juxtaposed with, even overshadowing human creativity. Upsurge in digital technologies and AI owes a lot to misappropriating copyright protected works and plundering knowledge in ways which are devoid of legitimacy and fair play. Protecting intellectual property rights of natural persons in their literary and artistic works in the face of widespread misappropriation and gross violations of these rights by AI tech giants has become a global moral issue and a legal battle. This calls for taking a legal and public policy approach aimed at maintaining the system of intellectual property rights and protecting literary and artistic works created by a human mind, both as a moral claim and as a legal title. Evolving jurisprudence which seeks by and large to protect creative works of the human mind from their unauthorized use by AI tech firms provides a laudable perspective.

Le développement rapide de l'intelligence artificielle (IA) transpose la créativité humaine dans le domaine virtuel. Cela a des répercussions considérables sur les droits de propriété intellectuelle. Alors même que les technologies numériques se généralisent, la soi-disant « créativité » de l'IA vient se juxtaposer à la créativité humaine, voire la reléguer au second plan. L'essor des technologies numériques et de l'IA repose en grande partie sur l'appropriation illicite d'œuvres protégées par le droit d'auteur et le pillage des connaissances, au mépris de toute légitimité et de toute équité. La protection des droits de propriété intellectuelle des personnes physiques sur leurs œuvres littéraires et artistiques, face à l'appropriation abusive généralisée et aux violations flagrantes de ces droits par les géants des technologies d'IA, est devenue un enjeu moral mondial et un combat juridique. Cela nécessite d'adopter une approche juridique et de politique publique visant à préserver le système des droits de propriété intellectuelle et à protéger les œuvres littéraires et artistiques issues de l'esprit humain, tant au titre d'une revendication morale que d'un titre juridique. L'évolution de la jurisprudence, qui vise globalement à protéger les œuvres créatives de l'esprit humain contre leur utilisation non autorisée par les entreprises spécialisées dans les technologies d'IA, offre une perspective louable.

SOUTH CENTRE

El rápido desarrollo de la inteligencia artificial (IA) está trasladando la creatividad humana al ámbito virtual, con importantes consecuencias para los derechos de propiedad intelectual. A medida que las tecnologías digitales se vuelven omnipresentes, la denominada creatividad generada por la IA comienza a coexistir con la creatividad humana e incluso a eclipsarla. El auge de las tecnologías digitales y de la IA se debe, en gran medida, a la apropiación indebida de obras protegidas por derechos de autor y a la explotación del conocimiento mediante prácticas carentes de legitimidad y equidad. La protección de los derechos de propiedad intelectual de las personas físicas sobre sus obras literarias y artísticas, frente a la apropiación indebida generalizada y las graves vulneraciones de estos derechos por parte de los gigantes tecnológicos de la IA, se ha convertido en una cuestión moral de alcance mundial y en objeto de controversias jurídicas. Esta situación exige adoptar un enfoque jurídico y de políticas públicas orientado a preservar el sistema de derechos de propiedad intelectual y proteger las obras literarias y artísticas creadas por la mente humana, tanto desde el punto de vista moral como jurídico. La jurisprudencia emergente, que busca proteger las obras creativas del intelecto humano frente a su utilización no autorizada por parte de las empresas tecnológicas de IA, representa un avance positivo.

快速发展的人工智能（*AI*）正将人类的创造力带入虚拟领域。这给知识产权带来了深远的影响。随着数字技术日益普及，所谓的人工智能"创造力"正与人类创造力并存，甚至开始盖过人类创造力的光芒。数字技术和人工智能的迅猛发展，很大程度上归因于以缺乏合法性和公平性为手段，对受版权保护的作品进行盗用以及对知识的掠夺。面对人工智能科技巨头对自然人文学和艺术作品知识产权的普遍侵占和严重侵犯，保护这些权利已成为一个全球性的道德问题和法律斗争。这要求采取法律和公共政策措施，旨在维护知识产权体系，并保护由人类思维创造的文学和艺术作品——这既是一种道德诉求，也是一种法律权利。不断发展的判例法总体上致力于保护人类智慧的创作成果免受人工智能科技公司的未经授权使用，这提供了一个值得称道的视角。

Introduction

Fast developing Artificial Intelligence (henceforth referred to as AI) at the cutting edge of digital technologies has given rise to a global debate on the opportunities it offers but also huge risks it carries. The main challenge is to ensure that AI remains subservient to the interest of humanity rather than subjugating humanity. Even as digital technologies are becoming ubiquitous, so-called creativity by AI is becoming juxtaposed with, even overshadowing human creativity. As a result, human creativity as a key attribute of the copyright system is being confronted by automated AI-produced outputs. The numeric model as the emerging system of AI[1] is making it possible to compute the decision from the vast data-bases. A computer programme developed for machine learning purposes has a built-in algorithm that allows it to learn from data input, and to evolve and make decisions *autonomously*. While programmers can set parameters, the neural network makes it possible to generate the work actually by the *computer programme* itself – projected as being analogous to the thought processes of human beings. The computer programme is no longer a tool; it can make decisions autonomously without human intervention. In other words, Machine Learning Software as a subset of AI can produce autonomous systems which are capable of 'learning' without being specifically programmed by a human person. By way of permutations and combinations, it creates patterns by rearranging the resourced information and data in a desired way but does not in fact generate anything *original and creative*. AI can create seemingly original works, which, in fact, are a unique arrangement of keywords and phrases, with a pattern drawing upon their big data base, where the 'creative' input is only that of push-button action. Machine-led creation is not 'sweat of human brow' and therefore, à priori, not entitled to copyright protection, when human intervention for all practical purposes is non-existent. Today, by way of push-button operation on an AI device, one can produce an AI-generated Ph. D. thesis in less than an hour.

[1] European Commission, Independent High-Level Expert Group on Artificial Intelligence, "A definition of Artificial Intelligence: main capabilities and scientific disciplines", 8 April 2019. Available from https://digital-strategy.ec.europa.eu/en/library/definition-artificial-intelligence-main-capabilities-and-scientific-disciplines.

AI with several kinds of neural networks and machine learning is submerging literary and artistic works into a virtual world, blurring the distinction between works created by a human being and those created by AI, on the one hand, and supplanting human creativity, on the other. Owing to gigantic advances in computing, and algorithms with little or no human intervention, machines have become capable of mimicking human intelligence. '*Virtual*' is becoming *real* and may make us far removed, even immune, from the reality. Already, due to computing power and AI, it is becoming difficult to be able to distinguish between human-generated and machine-produced contents.

Neural networks and machine learning impinge upon the copyright system in a number of ways. As a result of fast developing AI, creative processes today are characterized by novel ways. Drawing upon a vast stock of information stored in Large Language Models, AI devices can scan an entire subject or given area with the speed of light, creating new patterns and images or texts. Its impact on art and culture is evidenced by the upsurge of so-called 'creative culture', where computer software and AI are becoming useful instrumentality for artists and designers to generate initial concepts for developing their literary and artistic work. This can expand their artistic horizons. A photographer, for example, "may choose from a variety of developing techniques the one he or she wishes to adopt or, where appropriate, use computer software."[2] Recourse to AI and their impact in the field of culture and education impinges upon works covered by copyright, ranging from books, music, paintings, sculpture, and films to computer programs, databases, advertisements, maps, and technical drawings.[3]

Digital revolution is not only bringing human creation into the virtual realm. Its far-reaching repercussions on the intellectual property rights system raise several questions. Can any virtual creation resulting from AI automated processes be *human* when AI in itself is *unhuman*?

Rationale behind the Intellectual Property Rights System

Human beings are endowed with the intellectual faculty and the creative power of the mind. A work created by a natural person reflects 'the author's personality' and his/her 'creative abilities'. The system of intellectual property rights enables the authors of the work, which must be humans, to enjoy the fruits of intellectual labour and human creation. It bestows upon them legal recognition and title of their intellectual creation in the literary and artistic works in the form of copyright. Protecting creative work by a natural person, both as a moral claim and as a legal title, is the raisin d'être of the system of intellectual property rights.

Copyright claims pose no issue so long as the computer-generated works of art rely heavily on the creative input of a human programmer and as such, can be deemed to be creative work of the programmer.[4] AI-assisted works are even published online whether on a web page or on a social media platform. They can generally be protected as literary works for copyright purposes by copyright and/or related laws so long as they are *essentially* human creations. In this respect, it is important to bear in mind that the author's rights grant (subject to some exceptions) the benefice of the right to natural persons (the author and his or her heirs).

[2] Court of Justice of the European Union, "Judgment in Case C-145/10 Eva-Maria Painer v Standard VerlagsGmbH and others", Press Release No. 132/11, Luxembourg, 1 December 2011. Available from https://curia.europa.eu/jcms/upload/docs/application/pdf/2011-12/cp110132en.pdf.

[3] World Intellectual Property Organization (WIPO), "Copyright in the Digital World". Available from https://www.wipo.int/ip-outreach/en/ipday/2016/ip_digital.html#:~:text=Can%20I%20copyright%20my%20software,literary%20works%20for%20copyright%20purposes.

[4] "Computer programs are protected as literary works within the meaning of Article 2 of the Berne Convention. Such protection applies to computer programmes, whatever may be the mode or form of their expression."
WIPO Copyright Treaty, adopted 20 December 1996, art. 4.

Copyright issues arising from AI also relate to neighbouring rights ('droits voisins') - rights related to copyright, granted to natural or legal persons who play a role in the creation of the intellectual work, without being directly the author. Those who benefit from neighbouring rights can receive economic rights when the work is used, and have a moral right to respect the work. Such rights, for example, already exist in music for performers and producers. 'Neighbouring rights' also arise when the press companies allow journalists to publish press articles, without being the direct author – for instance, granting by a copyright holder the rights to the editor or the producer.

Upsurge in digital technologies and AI owes a lot to plundering knowledge and misappropriating copyright protected works in ways which are devoid of legitimacy and of fair play. Can an AI produced work be original when the genesis of such automated processes is massive appropriation or rather misappropriation of existing data and information for training the Large Language Models for giving instantaneously a pattern to such data and information, even though these are already protected by copyright laws?

Protecting intellectual property rights of natural persons in their literary and artistic works in the face of widespread misappropriation and gross violations of these rights by AI tech giants has become a global moral issue and a legal battle. Digital revolution is not only bringing human creation into the virtual realm, with its far-reaching repercussions on the intellectual property rights system. It also raises a more serious issue of the massive violations and infringements of intellectual property rights by AI tech-giants.

Misappropriation of Copyright Protected Works by AI Tech Giants, Lawsuits and Evolving Jurisprudence

Upsurge in digital technologies and AI owes a lot to plundering knowledge and copyright protected works in ways which are devoid of legitimacy and of fair play. In training Large Language Models, vast quantities of protected works and data, whether music, photographs, literary, audiovisual, cinematographic or press content, are used in a manner which is neither transparent nor respectful of intellectual property rights. For-profit reproductions of recent architectural works by photographers, filmmakers, graphic artists, or other third-party users without permission are instances of copyright infringements. All-pervasive misappropriation of creative works by AI tech giants is illegitimate and unethical.

Infringements of intellectual property rights on a large scale have given rise to several lawsuits. An outstanding example is that of the New York Times, suing ChatGPT-maker OpenAI for billions of dollars in statutory and actual damages for unauthorized use of its articles for training Large Language Models. *Anderson v. Stability AI, Getty Images v. Stability A*I over unauthorized photo use and *Author's Guild v. Google*, in the field of copyright is another instance. Yet another case in point is the lawsuit from a group of authors - Grady Hendrix and Jennifer Roberson - lodged on 5 September 2025 in the federal court in Northern California (U.S.A), claiming that Apple used, without permission, acknowledgement or compensation, millions of books over which they have copyright for training its "Open LLM" large language models on a dataset of pirated material.[5] A lawsuit filed by the news agency ANI in 2025 in India, alleging OpenAI for copyright infringement, is another glaring example. Following this lawsuit, the Delhi High Court issued summons to OpenAI in the beginning of this year.[6] Sanctioning the unauthorized use of material by AI tech companies flouting copyrights is indeed imperative.

The above highlighted cases relating to the infringements of copyrights show the evolving jurisprudence which by and large seeks to preserve the copyright system for protecting creative works of human mind from their unauthorized use by AI tech firms. In this respect, it is important to address certain legal issues involved in copyright protection and AI.

(i) Dilemma of 'fair-use' vs. 'unfair use'

[5] Govind Choudhary, "Anthropic settles, Apple sued: Tech giant faces lawsuit over AI copyright dispute", *Mint*, 6 September 2025. Available from https://www.livemint.com/technology/tech-news/anthropic-settles-apple-sued-tech-giant-faces-lawsuit-over-ai-copyright-dispute-tim-cook-11757122635374.html.

[6] OpenTools, " Delhi High Court calls on OpenAI to respond to ANI in landmark copyright case ", 17 February 2025. Available from https://opentools.ai/news/delhi-high-court-calls-on-openai-to-respond-to-ani-in-landmark-copyright-case.

Copyright law in the United States and other countries admits the 'fair-use' of copyrighted material, while in other jurisdictions there are specific exceptions and limitations to maintain the balance between the rights of authors and the public interest, for instance, in research and intellectual work when such use is duly acknowledged. *A contrario*, using a copyrighted work for commercial purposes without authorisation by the right-holder is 'unfair use' as it is an act of misappropriation of copyrighted material. Tech giants like OpenAI contend that tracing the origin of data and material and their authors is a complicated task since the AI systems do not save copies while generating new content. Foundation models, according to them, do not have access to training information after they have learned from it. This issue came into the spotlight during the writers' and actors' recent strikes in Hollywood that shut down the industry for months in 2023.

Furthermore, AI-system operations as devised by AI tech companies are characterized by a constant systemic evolution and the AI model uses its net-worked data-base to come out with a new response each time it is prompted. Thus, an AI device such as GPT-5 can produce a different text each time it is asked. Even if theoretically, one were to concede to the protagonist of AI for granting copyright to AI-produced texts and material, that will make the system of copyright highly volatile, random and untenable with its so-called novel products constantly upsurging and shifting, besides not always being trustworthy. Hence, the importance of a European framework on the use of algorithms which guarantees the principle of transparency as regards the contents used in training Large Language models.

(ii) Online Infringements

Online infringements of copyrights raise the questions relating to the legal and moral responsibility of the proprietors of the online platforms and their liability to pay publishers, broadcasters and artists - victims of online infringement - a fair share of revenues. This is reflected, for instance, in the European Union's common stand on copyright reforms, introduced in 2018 to force Google, Facebook and other AI tech giants to share revenues more fairly with Europe's creative industries. As such, the underlying idea of the Directive adopted by the European Parliament on 12 September 2019 is to ensure better remuneration for creators and publishers in the face of digitalizing the economy and encroachments on intellectual property rights.[7] The Directive provides a more specific clause about "text and data mining," the automated process of combing through large quantities of content to find patterns.

In this context, an important perspective is provided by the Artificial Intelligence Act adopted by the European Union in 2023 as part of its digital strategy for regulating AI. This Act shows that it is possible to enjoin upon AI companies the obligation to be transparent and to place the onus on them as regards acts of infringement and misappropriation. Such a way forward is implicit in the Act which introduces the full prohibition of particular public and real-time cases of biometrics and emotion recognition systems. In particular, it prohibits the use of emotion recognition in four public cases: workplaces and educational institutions, law enforcement and migration. The Act carries provisions on transparency, obliging companies to disclose summaries about "content used for training" machine learning models, such as emotion recognition, eye-tracking, biometrics systems and law-enforcement. Under the Act, AI-generated content will have to be labelled as such, and users need to be informed when biometric categorisation or emotion recognition systems are being used. In a similar vein, it would be possible to oblige AI companies to disclose summaries about copyrighted "content used for training" of their machine learning models. Enjoining upon AI tech firms the legal obligation to become transparent and trustworthy, thus, underlies the spirit of the Act.

(iii) Unauthorized Appropriation of Copyright Protected Material by AI Tech Firms and Questions Related to Remuneration *à Posteriori* to Copyright Holders

[7] For more details, see European Union, Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC. Available from https://www.wipo.int/wipolex/en/legislation/details/18927.

The structural impact of the digital transformation on societies and the cultural sector in particular, has brought into the spotlight increasing risks of the impoverishment of cultural and linguistic diversity online, linked to AI systems, the insufficient regulation of algorithms and "the unfair remuneration of artists, cultural professionals and practitioners", as well as "the unequal concentration of global cultural platforms."[8]

The issue of remunerating creators and publishers adequately in cases of unauthorized use of their work is a burning legal and policy question. This is because so-called 'generative' AI produces content by drawing upon the vast troves of existing copyrighted works, taking undue advantage of "the insufficient regulation of algorithms."[9] Microsoft, for instance, developed the Word computer program but it does not own every piece of work produced using that software.

A trend is emerging for remunerating or compensating the authors *à posteriori* in cases of infringement and misappropriation of their intellectual property rights. A lawsuit filed by a group of U.S. authors alleging that AI company Anthropic used copies of their works to train its chatbot is reported to be settled as the company has agreed to pay authors or publishers about $3,000 for each of an estimated 500,000 books covered by the settlement.[10] Whether such settlements are fully fair is a legal and moral issue. A more important question relates to imposing a ban on AI firms for using materials which are protected by copyright without prior authorization by the right-holders. This was not the case in agreements of AI tech companies with Hollywood in 2023, mentioned above.

These legal issues make it imperative to revamp mechanisms for safeguarding intellectual property rights from their infringements and misappropriation by AI tech giants.

Safeguarding Intellectual Property Rights against Infringement and Misappropriation by AI Tech Giants

As already mentioned, upsurge in digital technologies and AI owes a lot to plundering knowledge and copyright protected works by AI tech giants in ways which are devoid of legitimacy and of fair play. Ability of AI to autonomously produce a range of material that is potentially subject to copyright (music, blogs, poetry, images, and technical papers) or other intellectual property rights (such as patents and design rights) poses an unprecedented challenge to existing intellectual property regimes: how to protect copyrights in the literary and artistic works created by human beings in the face of massive incursions by automated AI systems? This is reflected in the international community's concern for AI and its incidence on intellectual property rights, expressed by the United Nations General Assembly resolution on "Culture and sustainable development" (2023) in order "to support national legal frameworks and policies to enable intellectual property rights to sustain those involved in cultural creativity, including by promoting international cooperation to prevent the misappropriation of creative works."[11]

In this context, it is pertinent to mention a Consultation on Copyright and AI, conducted in the United Kingdom in December 2024, and presented to Parliament by the Secretary of State for Science, Innovation and Technology by Command of His Majesty, which sets out a plan "to deliver a copyright and AI framework that rewards human creativity, incentivises innovation and

[8] United Nations Educational, Scientific and Cultural Organization (UNESCO), Final Declaration, UNESCO World Conference on Cultural Policies and Sustainable Development – MONDIACULT 2022, Mexico City, 28-30 September 2022, document MONDIACULT-2022/CPD/6, para. 8. Available from https://www.unesco.org/sites/default/files/medias/fichiers/2022/10/6.MONDIACULT_EN_DRAFT%20FINAL%20DECLARATION_FINAL_1.pdf.

[9] *Ibid*., para. 10 (ii).

[10] Matt O' Brien, "Anthropic to pay authors $1.5 billion to settle lawsuit over pirated books used to train AI chatbots", Associated Press, 6 September 2025. Available from https://apnews.com/article/anthropic-copyright-authors-settlement-training-f294266bc79a16ec90d2ddccdf435164.

[11] United Nations General Assembly, Culture and sustainable development, resolution 78/161 adopted on 19 December 2023 (A/RES/78/161), Para. 17, (l). Available from https://documents.un.org/doc/undoc/gen/n23/417/30/pdf/n2341730.pdf.

provides the legal certainty required for long-term growth in both sectors."[12] Its objectives are:

1. Supporting right holders' control of their content and ability to be remunerated for its use;

2. Supporting the development of world-leading AI models in the UK by ensuring wide and lawful access to high-quality data; and,

3. Promoting greater trust and transparency between the sectors.[13]

In this respect, due cognizance needs to be taken of the fact that in addition to 'proprietary rights', '*moral rights*' are central to the continental European system: 'author's rights' ('*droit d'auteur*'). As such, both these facets of the system of copyrights - proprietary as well as moral rights - must be protected against any act of their infringement or violation. Thus, in all cases of misappropriation of intellectual property rights and their infringements, it is of fundamental importance to bear in mind that the intellectual property rights are both proprietary *and* moral rights. In lawsuits and decisions pertaining to remuneration or compensation to the authors in cases of infringement and misappropriation of their intellectual property rights, full consideration should be given to *both* these key pillars of intellectual property rights. This can even be seen in its nexus with counterfeiting, since based upon an existing art work, the AI can produce its virtually adjusted or modified images which could be eventually tantamount to acts of counterfeiting - fake or unauthorized replica of a preexisting original work. In this respect, it is noteworthy that in the French system of copyright protection, such counterfeiting (contrefaçon) is a criminal offense.

In the public debate over AI and intellectual property rights, deleterious effects of AI leading to the erosion of the creative power of the mind deserve special consideration.

Artificial Intelligence: Seedbed of Erosion of the Creative Power of the Human Mind

Developments of AI devices like Machine Learning and the neural network entail not only massive infringements of intellectual property rights. They are a seedbed for the erosion of the creative power of the mind. Usage of AI erodes *per se* the intellectual faculty - capacity to think, reason and reflect - thereby diminishing the creative faculty with which human beings are innately endowed. This can be witnessed, consequent upon introduction of AI in education, reducing it to mere technicity: skills for working on apps and platforms, making education servile to the stronghold of the digital and AI. We are living in a world dominated by "platform imperialism", to borrow the term expressed in the United Nations Educational, Scientific and Cultural Organization (UNESCO)'s work *Reimagining Our Futures Together*.[14]

The main issue relates not only to the protection of copyrighted works. It also involves questions of preserving human creative faculty as AI has a devastating effect on the faculty of critical thinking and analysis. The Internet which is a major source of AI for 'generating' texts and images, fosters compliant thinking and impoverishes scholarship. Roberto Calasso has thrown light most insightfully on the pernicious effects of 'generative AI' on our mind and on knowledge generation: "If intelligence is what is found in algorithms, then its place of preference will no longer be the mind. Indeed, the mind will tend to become the material on which those algorithms are applied. Information tends to replace not only knowledge, but thought in general, relieving it of the burden of having to continuously rework and govern itself."[15] AI's pervasive reliance on recursive AI systems could lead to "knowledge collapse"[16], and could harm innovation and the richness of human understanding and culture, making human beings devoid of their faculty of

[12] United Kingdom, Department for Science, Innovation and Technology, Department for Culture, Media and Sport and Intellectual Property Office, "Copyright and AI: Consultation", presented to Parliament by the Secretary of State for Science, Innovation and Technology by Command of His Majesty, CP 1205 (December 2024). Available from https://www.gov.uk/government/consultations/copyright-and-artificial-intelligence/copyright-and-artificial-intelligence.

[13] *Ibid*.

[14] International Commission on the Futures of Education, *Reimagining Our Futures Together: A New Social Contract for Education* (Paris, UNESCO, 2021), p. 36.

[15] Roberto Calasso, *The Unnamable Present* (London, Allen Lane, 2019), pp. 71-72.

[16] Andrew J. Peterson, "AI and the problem of knowledge collapse", *AI & Society*, vol. 40 (2025). Available from https://link.springer.com/article/10.1007/s00146-024-02173-x.

thinking, of reflection and imagination which are the bedrock of the creation of scientific and literary works. This is corroborated by the phenomenon of 'brain-rot' – harmful psychological and cognitive effects and deterioration of a person's mental or intellectual level, caused by the use of AI and the Internet. We must take full heed of the call given by His Holiness Pope Leo XIV in his Encyclical letter *Magnifica Humanitas*, for "breaking the chains of new forms of slavery" – servitude "fuelled by economic chains and digital infrastructures."[17] The question is: how to protect our young people from that subtle temptation and use of AI "which renders human thought seemingly superfluous precisely when it is most needed."[18]

Such pernicious effects of AI on human creativity could become accentuated with the emergence of AI instruments which could be susceptible to hacking and manipulation of thoughts, voice mimicry and mind control by way of implants and wearables that wire computers to brains. Such developments would be a fatal blow to "cognitive liberty" as a fundamental human right[19] and to the human creative faculty. The rise of techniques and software capable of decoding part of human brain activity by way of neurotechnologies[20] calls for serious consideration to prevent AI devices from reading our thoughts and analyzing the neurological activity of our brain in ways which are inherently dehumanizing. Observations by the member of the Académie Francaise, Daniel Andler, are very pertinent for providing guidance as regards operations of AI devices: Humanity needs docile, powerful, and versatile tools, not pseudo-persons with an inhuman form of cognition.[21]

A regulatory framework governing AI and preserving intellectual property rights is a key issue which has pertinence in the current debate over AI governance to ensure that AI advancements serve humanity. This is reflected in the UNESCO Recommendation on Ethics of Artificial Intelligence, adopted in November 2021. The Recommendation states that AI has "profound and dynamic positive and negative impacts on societies, environment, ecosystems and human lives, including the human mind, in part because of the new ways in which its use influences human thinking."[22] Minimizing risks in AI is one of the main objectives of the Pact for the Future, adopted by the United Nations Summit for the Future (October 2024) which lays down the moral obligation of governments for designing legal and policy frameworks on AI to "address the potential risks posed by their misuse."[23]

One can hope that the human-centric approach to AI will be the leitmotif of the newly launched Global Dialogue on AI Governance at the United Nations which seeks to ensure that AI governance reflects the priorities of all nations, not just the most technologically advanced and that the benefits of AI are shared by all. The challenge of fostering human creativity and preserving the intellectual property rights system is pertinent in such a global debate.

In this respect, the World Intellectual Property Organization (WIPO)'s ongoing Conversation on "Generative AI-IP and Outputs" is especially important as it offers a platform for stakeholders to explore the critical issues[24] involved in intellectual property rights in its interface with AI. It raises debates about the impact of AI on human creativity, especially the AI tools

[17] Pope Leo XIV, "*Magnifica Humanitas*: On Safeguarding the Human Person in the Time of Artificial Intelligence", encyclical letter, 15 May 2026, para. 179. Available from https://www.vatican.va/content/leo-xiv/en/encyclicals/documents/20260515-magnifica-humanitas.html.

[18] *Ibid.*, para. 140.

[19] Nita Farahany, *The Battle for Your Brain: Defending the Right to Think Freely in the Age of Neurotechnology* (New York City, St. Martin's Press, 2023).

[20] Alexandre Piquard, "Intelligence artificielle : « Demain, faudra-t-il protéger nos "neuro-droits ? »", *Le Monde*, 26 October 2023. Available from https://www.lemonde.fr/idees/article/2023/10/26/intelligence-artificielle-demain-faudra-t-il-proteger-nos-neuro-droits_6196574_3232.html.

[21]"L'humanité a besoin d'outils dociles, puissant et versatiles, et non de pseudo-personnes d'une forme inhumaine de cognition". Daniel Andler, who in his monumental work « *Intelligence Artificielle, Intelligence Humaine: la double énigme* » (Paris, Galimard, 2023), has developed this idea most cogently.

[22] UNESCO Recommendation on the Ethics of Artificial Intelligence, adopted on 23 November 2021, preamble. Available from https://unesdoc.unesco.org/ark:/48223/pf0000381137.

[23] United Nations, *Summit of the Future Outcome Documents: Pact for the Future, Global Digital Compact and Declaration on Future Generations* (September 2024), Action 27. Available from https://unsdg.un.org/sites/default/files/2025-03/sotf-pact_for_the_future_adopted.pdf.

[24] World Intellectual Property Organization (WIPO), "Artificial Intelligence and Intellectual Property". Available from https://www.wipo.int/en/web/frontier-technologies/artificial-intelligence/index.

which become increasingly adept at generating content. It addresses a key question: whether AI poses a threat to human creators or serves as a valuable collaborator, including the question of eligibility of AI-generated content for copyright protection, the rise in AI-generated deepfakes and broader intellectual property questions around voice and image rights.[25]

Preserving intellectual property rights deserve full consideration in the global debate over AI governance.

Preserving the Copyright System as Established by International Conventions

In considerations pertaining to repercussions of AI on the copyrights system, it is important to be guided by the rationale and genesis of intellectual property rights. The system of intellectual property rights and protecting literary and artistic works created by the human mind has its genesis in the human rights conceptual framework, and as such, pertains to the realm of human rights. It is, therefore, always important to bear in mind that intellectual rights are basically human rights as established by the Universal Declaration of Human Rights. The Universal Declaration provides that, "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."[26]

Edifying this conceptual framework further, the Universal Copyright Convention, adopted by UNESCO in 1952, stipulates that rights of creators of literary, scientific and artistic works must be fostered *as their human right*.[27] Copyrights as human rights are, by definition, moral rights as well.

Developing and maintaining "the protection of the rights of authors in their literary scientific and artistic works in a manner as effective and uniform as possible" is also the main objective of the WIPO Copyright Treaty (1996).[28] As stated in this Treaty, "Copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such."[29] A noteworthy feature of the WIPO Copyright Treaty is that 'mathematical concepts' do not fall within the realm of copyright. This is highly significant as 'mathematical concepts' are core to AI.

(i) Proprietary rights

The author possesses proprietary rights of his/her literary, scientific and artistic creative work - the exclusive right to exploit the work and to the material benefits accruing therefrom, the right to reproduce the work as well as the right to distribute it to others via a license, sale or other means, and the right to display or perform it publicly.

By virtue of proprietary rights over the work, the author has the right to authorize or prohibit the reproduction of the work (*droit de reproduction*) and to allow or not to allow its *public* performance (*droit de représentation*). When the author assigns his/her proprietary rights to the producer, their contractual relationship is formalized in a legal document. The author may transfer his or her proprietary rights to a third party. Some websites are covered by a general license that outlines the terms under which 'creative' works featured on it may be used.[30] If a sound recording, or any other work resulting from human creativity and protected by copyright is downloaded for commercial purposes, for example, a marketing or political campaign, the authorization from the right holder(s) is required before using it, except when a work falls in the public domain upon the expiry of the period of copyright protection, in which case, it can be used freely without permission.

[25] *Ibid*.

[26] United Nations, Universal Declaration of Human Rights, General Assembly resolution 217 A (III) of 10 December 1948, art. 27 (2).

[27] The Convention encourages the international circulation of such intellectual creation in a simple and ingenious manner by devising a legal common denominator as a common ground of the world's different legal systems for the sake of recognition and protection of copyright universally. It prescribes that the formalities required by the national law of a contracting State shall be considered to be satisfied if all the copies of a work originating in another contracting State carry the symbol ©, accompanied by the name of the copyright owner and the year of first publication.

[28] WIPO Copyright Treaty, adopted in Geneva on 20 December 1996, preamble. The Treaty entered into force on 6 March 2002.

[29] *Ibid.*, art. 2.

[30] One is, however, not required to obtain permission to use a work if its use falls under an exception or limitation to copyright law, for example, for the purposes of a quotation, news reporting or teaching. See WIPO, "Copyright in the digital world". Available from https://www.wipo.int/ip-outreach/en/ipday/2016/ip_digital.html#:~:text=Can%20I%20copyright%20my%20software,literary%20works%20for%20copyright%20purposes.

Besides proprietary rights, the use of digital technologies for producing artistic work also raises questions of moral propriety. For example, claiming intellectual property rights *in* a photograph taken of the Da Vinci's Mona Lisa which is in the public domain and posting it online. Here, the intention could be to profit from the famed Da Vinci's Mona Lisa rather than to create an original work.

(ii) Moral Rights

The concept of moral rights is best illustrated by the French system of copyright laws (*droit d'auteur*): authors' rights vest in a work which is the emanation of the human spirit - an '*œuvre de l'esprit*' - original in form. As such, moral rights - a token of the respect of the work's integrity - are inalienable, perpetual and inviolable.[31] The author can prevent any modification to the work or oppose its unathorized use as being prejudicial to his/her honour and reputation.

Even when a work falls in the public domain, the author's moral rights, being perpetual, subsist and must be respected. In using the work, the name of the author and the original title of the work must be cited.

Contrary to the continental European 'author's rights' ('*droit d'auteur*') system, the American system of copyright law, based primarily on an economic philosophy, does not in general grant moral rights to the authors. However, some rights related to moral and proprietary rights can be negotiated. Divergent philosophic systems underlying the continental European 'author's rights' ('*droit d'auteur*') system and the Anglo-Saxon or Anglo-American 'copyright system' with respect to moral rights of the author has repercussions on the author's ability to license or assign the works to others, and can result in potentially differing approaches.

Being moral rights, copyrights cannot be granted to a work of which a human being is not the author. Granting a copyright to a work which is mechanical and which is deprived of all qualities of the creative power of the human mind would be an anomaly and an act of disrespect for the fundamental tenet of the copyright system, as established by international conventions. Human beings are endowed with mind but also heart – font of feelings and of empathy and love and affection, of emotions, and sentiments – which are the bedrock of human creative power, and which will remain always alien to AI devices. Functions of AI devices, while appearing like that of a human mind, are in fact derivative from neural networks – it is the virtual functioning of machine-driven processes and patterns, without ethics, without a sense of right or wrong. The joy of intellectual pursuits, of intellectual creation is an invaluable gift with which human beings are endowed with. An AI device cannot imagine or dream like human beings, nor can a machine feel sorrowful or joyful in its operations as these are only mechanical.

Giving primacy to 'human creativity' as being indispensable to copyrights seems to be an article of faith in some judgements delivered by law courts. Already, in its judgment delivered on 22 May 2001, the Court of Justice of the European Union declared that "copyright protects only original subject matter, that is to say its author's own intellectual creation."[32] This is even more plausibly articulated by the US District Court for the District of Columbia (the Court) which ruled on 18 August 2023 in *Thaler v. Register of Copyrights* that an AI-generated work in the absence of "any guiding human hand" is not protected by copyright. The Court explained further that "[h]uman authorship is a bedrock requirement of copyright." This is indeed plausible. The Court's ruling affirmed the US Copyright Office's decision that artwork created solely by the "Creativity Machine," an artificial intelligence computer system, is not eligible for copyright protection.[33]

[31] The moral rights pass to the author's heirs or executor on the author's death, but may not be otherwise transferred or sold by the author or legal successors.

[32] Court of Justice of the European Union, "Judgment in Case C-145/10 Eva-Maria Painer v Standard VerlagsGmbH and others", Press Release No 132/11 Luxembourg, 1 December 2011. Available from https://curia.europa.eu/jcms/upload/docs/application/pdf/2011-12/cp110132en.pdf.

[33] Jennifer Fagan and others, "The Art of AI: Protected by Copyright Law or Up for Grabs?" , JD Supra, 25 August 2023. Available from https://www.jdsupra.com/legalnews/the-art-of-ai-protected-by-copyright-2873513/.

In March 2023, the US Copyright Office issued a statement of policy "to clarify its practices for examining and registering works that contain material generated by the use of artificial intelligence technology." The position taken by the Office brings forth noteworthy parameters and principles:

- Works made "without any creative contribution from a human actor" are not copyrightable
- A work including "human-authored elements combined with AI-generated images" is copyrightable, although the individual AI-generated images are not
- When an AI "receives solely a prompt from a human and produces complex written, visual, or musical works in response, … users do not exercise ultimate creative control" and the resulting work is not copyrightable
- When a human selects, arranges, or modifies AI generated material in a sufficiently creative way, the work may be copyrightable
- A user can use technology to recast, transform, or adapt their otherwise expressive authorship without necessarily negating a human-driven creative process.[34]

Clearly, human creativity-based approach is of paramount importance.

Concluding Remarks

In reflections over questions regarding the interface between the system of copyrights and AI, the overarching issue is not as to how to adjust or adapt the intellectual property rights to AI. Rather, it is how to regulate and adapt AI and make it attuned to the system of intellectual property rights as established by international conventions, and this with full respect for the rationale of intellectual property rights – recognition and protection of literary and artistic creative works, generated by the human mind. This requires vigorous legal measures aimed at preserving human creativity from the surging acts of misappropriation by AI tech giants of works protected by copyrights. What is needed is to bring into being an AI ecosystem, grounded in the concept of a human centric approach to AI – to the clamour for AI for Humanity.

The challenge is: (i) how to counter the dehumanizing impact of AI and impoverishment of human creativity so that it is not wracked by AI; and (ii) how to preserve and foster the innate capacity of human beings, their creative mind, imagination, intellectual and creative faculties which are font of scientific and literary creative works, protected by the system of intellectual property rights.

As already mentioned, AI and intellectual property rights are global issues which require a global response. Widespread concern articulated in several international instances, already mentioned, is propitious for harmonizing the two main systems of intellectual property rights – the Anglo-Saxon or Anglo-American 'copyright system' and the continental 'author's rights' ('*droit d'auteur*') system. This will be an asset in responding globally to the issues involved in AI and intellectual property rights. In such endeavours, entitlement of a natural person in contradistinction with the legal person as the author of literary and artistic creative work, as reflected in the continental 'author's rights' ('*droit d'auteur*') system and in the international conventions on intellectual property system, deserves to be upheld as a central concept. Such an approach would be better attuned to safeguarding the copyright system from incursions of AI. It can enable more judiciously to grapple with the core issues in AI in its interface with the copyright system, guided by a human-centred approach.

In this respect, it will be propitious to revive erstwhile the Intergovernmental Copyright Committee, with the representatives of the Director-General of UNESCO and of the Director-General of the WIPO, for tackling the issues involved in copyrights and AI in our digital age. Inclusion of the representative of the Office of the High Commissioner for Human Rights would further valorise the work of such institutional mechanism by making it more human-rights oriented in line with the underlying thrust of the system of copyrights.

[34] Jennifer Fagan and others, "The Art of AI: Protected by Copyright Law or Up for Grabs?" , JD Supra, 25 August 2023. Available from https://www.jdsupra.com/legalnews/the-art-of-ai-protected-by-copyright-2873513/.

Keeping in view the above, some general principles can be formulated:

1. In case of AI-assisted work, it is pertinent to bear in mind the general principle adopted by the European Union: "what is prohibited in the real world is also prohibited in the virtual world."[35] In the real world, only a creative work of a natural person which is original is entitled to copyright protection. Even so, in a virtual world, the same principle should be upheld so that an entirely automated AI generated work is precluded from copyright protection.

2. Conceptual foundation of the copyright law as established in the international conventions is of paramount importance. Copyright should be granted to only the natural person who has created an original work and is entitled to copyright protection and to the enjoyment of rights that go with it.

3. In order to prevent misappropriation of copyrighted works, it should be made mandatory for the AI Apps or software developers to seek the rightsholder's "prior consent" before using copyright-protected works for training Large Language Models and AI systems, and in case these are in the public domain, to acknowledge the moral rights subsisting by virtue of the copyright system.

4. Digital technologies and AI are only supplementary tools and cannot be allowed to supplant the preserve of the human mind for literary and artistic creation.

5. Virtual is also vicious. The dehumanizing impact of AI on human intellectual faculty is an insidious blow to the creative power of the human mind, and such dark side of the digital requires to be addressed by laws and policies in a bid to forestall the erosion of human creativity wrought by AI. Maintaining the sanctity of human creativity is of paramount importance.

Sanctity of the creative power of the human mind as the kernel of intellectual property rights will become robust in the face of challenges posed by AI if States were to consolidate national legislation in keeping with their legal obligations under the international conventions in the field of copyrights. The system of copyrights as established by the international conventions will also be better safeguarded if, in continuity with the case law and evolving jurisprudence, the judiciary were to assume its role as the guardian of copyrights to ward off misappropriation of material by AI tech firms, flouting the copyright system. That would go a long way in upholding copyright law and the cause of the creative power of the human mind in our digital age.

Author: Kishore Singh, Former United Nations Special Rapporteur on the Right to Education

[35] European Parliament, "EU AI Act: first regulation on artificial intelligence", 8 June 2023. Available from https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence.
The Act builds upon important laws adopted by the European Union, notably, the General Data Protection Regulation (GDPR), Digital Services Act (DSA) and the Digital Markets Act (DMA), with a view to effectively regulating major digital platforms, their content and practices.

Recent SouthViews:

Promoting a Symbiotic Relationship Between Trade Policy and Climate Action (SouthViews No. 300, 21 November 2025) by Vahini Naidu

Brazil's challenges in implementing the highest attainable standard in Sexual and Reproductive Health and Rights (SouthViews No. 301, 16 December 2025) by Camila C. Gasparro

Promoting Health Equity and Reproductive Rights in Angola (SouthViews No. 302, 17 December 2025) by Sandra Benge Neto

Experiences and Challenges Faced by Sri Lanka in Implementing the Highest Attainable Standard of Health, Including Health Equity and Sexual and Reproductive Health and Rights (SouthViews No. 303, 22 December 2025) by Janani Sivapakthan

Trade Policy Uncertainty and Impacts on Developing Countries' Exporters: The Case of Sri Lanka (SouthViews No. 304, 21 January 2026) by Anushka Wijesinha and Senith Abeyanayake

Taxation of digital services – A Domestic Law Solution for Overcoming Tax Treaty Barriers (SouthViews No. 305, 23 February 2026) by Radhakishan Rawal

G20 Critical Minerals Deal: A Step Toward Equity or a New Extractive Frontier? (SouthViews No. 306, 26 February 2026) by Touba Esfahani Nejad

Engaging the UN Scientific Panel on Artificial Intelligence for the Global South (SouthViews No. 307, 16 April 2026) by Danish

Evidence of Partnerships in the Cuban Pharmaceutical Sector (SouthViews No. 308, 30 April 2026) by Graziela Ferrero Zucoloto

No Country Can Cruise Past Collective Responsibility: The Hantavirus Outbreak (SouthViews No. 309, 11 May 2026) by Dr. Viviana Munoz Tellez

Decolonising Intellectual Property Law: An Afrocentric Approach. A book review (SouthViews No. 310, 30 June 2026) by Nkem Itanyi

Grappling with Biofraud: Decision 16/2 Disenfranchises UNCBD Parties of Justifiable Rents for Genetic Resources (SouthViews No. 311, 22 July 2026) by Joseph Henry Vogel and Pallavi Mishra

The Growing Centrality of UNDROP in the International Governance of the Rights of Peasants and Other People Working in Rural Areas (SouthViews No. 312, 27 August 2026) by Raffaele Morgantini

The WIPO Negotiations on the Protection of Traditional Knowledge and Traditional Cultural Expressions Move Towards Clearer Objectives for the International Instrument (SouthViews No. 313, 1 October 2026) by Dr. Viviana Munoz Tellez

This work is available through open access, by complying with the Creative Commons licence Deed - Attribution-NonCommercial-ShareAlike 4.0 International - Creative Commons.

SOUTHVIEWS is a service of the South Centre providing opinions and analysis of topical issues from a South perspective.

The views contained in this article are attributable to the author(s) and do not represent the institutional views of the South Centre or its Member States.

For more information, please contact Anna Bernardo of the South Centre:
Email abernardo@southcentre.int, or telephone +41 22 791 8050.

Front cover photo: Placidplace from pixabay