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In This Issue

- NAVIGATING THE INTERSECTION OF INDIAN COPYRIGHT LAW AND GENERATIVE AI
- IP UPDATES



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NAVIGATING THE INTERSECTION OF INDIAN COPYRIGHT LAW AND GENERATIVE AI

Introduction

The realm of generative artificial intelligence (AI) poses intriguing challenges at the crossroads of copyright law and technological innovation. As AI produces art that closely resembles human creations, questions arise regarding copyright ownership, fair use, and the implications of using training data. This article explores the Indian Copyright Act of 1972 and its relevance in addressing the complex issues surrounding generative AI.



Image Courtesy: freepik/vecstock

Copyright Ownership and AI-generated Art

Under the Indian Copyright Act, copyright ownership traditionally vests with human authors as the creators of original works. However, the advent of AI raises questions about the eligibility of AI itself as a copyright holder. Currently, Indian copyright law does not explicitly address AI-generated works. The Act grants copyright protection to literary, dramatic, musical, and artistic works, which are defined as creations of human intellect. The absence of specific provisions regarding AI ownership creates ambiguity in determining the rightful copyright holder.

Training Data and Copyright Infringement

Generative AI relies on training data, often comprising pre-existing artworks protected by copyright law. In the Indian legal framework, the reproduction, adaptation, and distribution of copyrighted works without authorization constitute copyright infringement. Therefore, utilizing copyrighted material in AI training data may potentially infringe upon the rights of original artists. The use of training data without the consent or awareness of the artists involved raises ethical concerns and calls for a careful examination of copyright principles.

Fair Dealing and Fair Use

The Indian Copyright Act provides for fair dealing, which allows for the limited use of copyrighted material for specific purposes such as criticism, review, research, and education. However, fair dealing provisions in India are narrower compared to fair use doctrines in some other jurisdictions. The Act sets out specific limitations on fair dealing, including the requirement that the use must be for a specific purpose and not unduly prejudice the rights of the copyright owner. The application of fair dealing to AI-generated works warrants clarification and consideration within the Indian copyright context.

Protecting Artists' Rights and Consent

In the discourse surrounding generative AI, concerns have emerged regarding artists' rights and consent. Indian copyright law recognizes the moral rights of authors, including the right of attribution and the right to

integrity of the work. Artists may argue that their works should not be used as training data without their consent, as it could compromise the integrity or reputation of their creations. Considering the ethical implications, there is a need to ensure that artists' rights are protected while fostering technological advancement.



Image Courtesy: Boris Eldagsen - Award Winning Picture by AI by Boris

Compensation and Joint Ownership

A potential solution to address the challenges posed by generative AI involves exploring compensation models or joint ownership arrangements between artists and AI-generated works. Indian copyright law does not currently provide explicit provisions for joint ownership in the context of AI-generated works. However, legislative reforms or contractual agreements could establish mechanisms to ensure fair compensation or shared ownership between artists and AI.

The Need for Legislative Adaptation

As technology rapidly evolves, copyright law often struggles to keep pace. The Indian Copyright Act, enacted in 1972, predates the emergence of AI and its creative capabilities. In order to effectively address the challenges presented by generative

AI, Indian lawmakers must consider amending and updating the copyright framework to explicitly recognize and regulate AI-generated works. This would involve deliberations on defining AI as a potential copyright holder, clarifying fair dealing provisions, and addressing the ethical concerns surrounding training data usage.

Conclusion

The intersection of Indian copyright law and generative AI presents a complex landscape that demands thoughtful analysis and legal adaptation. Accordingly, the emergence of generative AI challenges traditional notions of copyright ownership and raises pertinent questions about fair use, artists' rights, and the ethical implications of using training data. As technology progresses, policymakers and legal systems must adapt copyright laws to address the unique challenges posed by AI-generated works. Striking a balance between fostering innovation and protecting creators' rights will be essential in shaping a harmonious coexistence between copyright law and generative AI in the future.

About the Author:

Adv. Divyendu Verma is the Global Head of Patent Practice at Audiri Vox, Dubai, and holds the esteemed position of Copyright Standing Committee Member at APAA (Asian Patent Attorney Association). Furthermore, Divyendu represents India within the AIPPI Standing Committee of Internet and Information Technology. He also holds the role of National Chair for the Trademark, Design, and Merchandise committee at LES (Licensing Executive Society) India.

A prolific writer, Divyendu consistently delves into the realm of cutting-edge technology and its intersection with Patent Law across South East Asia, including India, the Middle East, and the United States of America. He has notably co-authored an Indian Chapter within the forthcoming AI & Patents Law book, scheduled to be launched during the AIPPI Annual Congress in October 2023 in Istanbul, Turkey. With his extensive expertise and dynamic contributions, Divyendu continues to shape and influence the field of Intellectual Property on a global scale.

IP UPDATES

EGYPT: Establishing the IPR Agency



The Egyptian parliament approved a draft law, establishing the Egyptian Agency for Intellectual Property Rights (EAIPR). The agency will administer Intellectual Property (IP) in Egypt. Sami Hashem, head of the Education Committee stated that, “the agency will also make sure that intellectual property rights are regulated to mainly serve the country's socioeconomic development plans and achieve the knowledge economy. This economy refers to the ability to capitalize on scientific discoveries and applied research and we hope that the new legislation will help achieve this objective in Egypt.”

GHANA: A New IP Office



The Ghanaian authorities introduced the Ghana Industrial Property Office Bill 2023, for the purpose of establishing the Ghana Intellectual Industrial Property Office (GHIPO). The use and protection of trademarks, geographical indications, patents, industrial designs, and plant varieties in Ghana, will be administered by GHIPO. However, copyright has been excluded from being administered by GHIPO as it falls under the wings of the Copyright Office.

ISRAEL: Welcomes the Madrid e-Filing System



The Israel Patent Office (ILPO) becomes the 20th Intellectual Property Office of the Madrid System. ILPO has made available the Madrid e-Filing System services, which would bring an ease in filing an application for international trademark registration. The Madrid e-Filing Systems benefits in a lot of ways, from reducing irregularities to direct compilation of goods and services. Most importantly this system reduces the processing time of the application, and through this system the status of the application can be checked anywhere and at any time.

KENYA: Revocation of Practice Note 4A



Pursuant to the Rule 14(2) of the Trademarks Act, CAP 506 of the Laws of Kenya, the Industrial Property Institute of Kenya had published a

Practice Note 4A (regulation) on 31st May 2023. The regulation was circulated in respect to filing of Form TM1 (the “Form”) which dealt with the appointment of an Agent. This amendment replaced Practice Note 4.3 which was published on 31st July 2007. The regulation was revoked after a few months of its publication. Highlights of Practice Note 4A were:

Any person (proprietor or registered user), who appointed an agent to act on his/her behalf, in any proceedings or matter before the Registrar under the Trademarks Act and the Trademarks Rules, had to send an executed and duly stamped letter of authorization in favor of the Agent. The Registrar had the power to invalidate all the applications and authorizations that did not fulfil the requirements. Any application or authorization filed before the publication of the amended regulation fell under the category of defective applications & authorizations, which were to be regularized by all applicants and agents within a specified time frame.

SAUDI ARABIA: Copyright and Intellectual Property Rights for audio material



AlMashtal (translated as incubator in Arabic) Community House, held a meeting themed “Your Voice, Your Right,” on the 26th of July in Riyadh.

AlMashtal fosters talent and cultivates creativity in Saudi Arabia and also across the Arab world. The sole purpose of the meeting was to raise awareness regarding copyright and intellectual property rights for audio material among artists in the music industry. Speaker Asif Iqbal stated, “If you create music, for example, in a final form, that is what copyrights are protecting.” He also explained how trademarks, and not ideas are protected under the copyright laws.

SAUDI ARABIA (KSA): Interesting Regulation on Artificial Intelligence



KSA has drafted a new Intellectual Property (IP) law, which is one of the first IP laws in the Middle East that covers IP created by Artificial Intelligence (AI). KSA has started its journey towards becoming the leader in the world of Artificial Intelligence (AI). One of the chapters of the new IP law discusses IP associated with AI, and Emerging Technologies. It states that the IP created using AI technology will be protectable, and the IP would belong to the natural person who contributed to its creation. The Law states that, “In the event that the contribution of the

natural person was insignificant or that the IP was generated by artificial intelligence independently of the person", the IP will enter the public domain. The question as to what qualifies as "significant" requires more clarity.

TURKEY & PALESTINE: Cooperating in the field of Geographical Indication



The Palestinian delegation headed by Raaja A.M. Director General of Intellectual Property at the Ministry of Economy of Palestine, paid a visit to the Turkish Patent and Trademark

Office. Turk Patent hosted a three-day program where the Palestinian delegation was trained and informed about the practices followed by Turkey in the field of Geographical Indications.

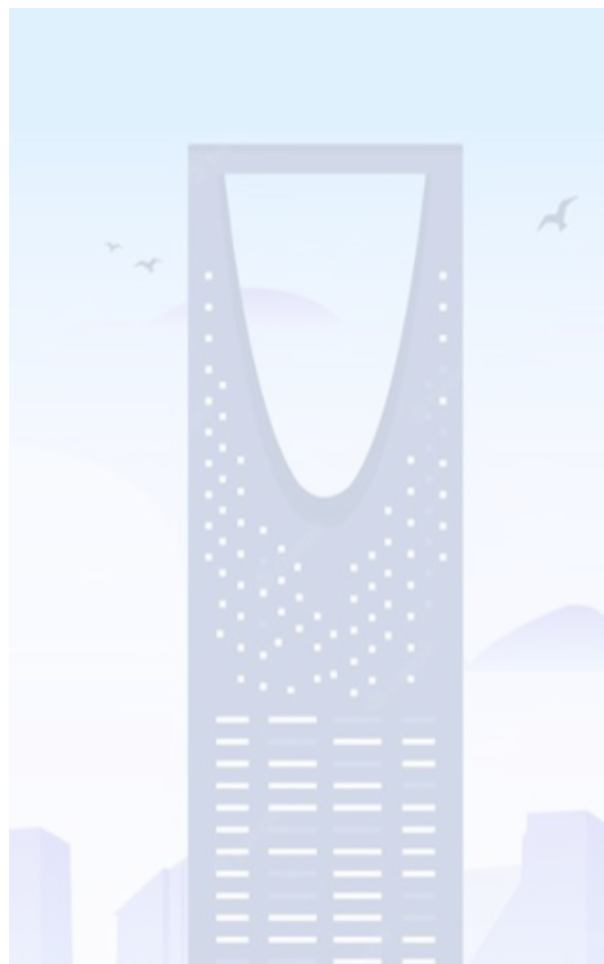
UNITED ARAB EMIRATES: Modern Technology and Intellectual Property Rights



At the 7th Edition of the WIPO Conversation, H.E. Abdulla Al Saleh, Undersecretary at the Ministry of Economy, had represented UAE at the WIPO

headquarters in Geneva, Switzerland. He spoke about how the modern technology had an impact on intellectual property. The discussion revolved around the impact of metaverse on IP management and Artificial Intelligence.

H.E. Al Saleh quoted: "The metaverse holds many promising opportunities, including the possibility to launch a unified global digital economy comprising all global markets and diverse business models. This in turn could create new opportunities in various vital sectors such as real estate, virtual advertising, digital fashion, and other new economy fields." The Undersecretary had also shed light on the UAE's initiatives regarding the developments of the metaverse ecosystem, and Dubai's metaverse strategy which aims to be one of the top 10 cities in the field of metaverse. A very interesting initiative is the launch of UAE's "Global Cooperation Village" in the metaverse with the support of World Economic Forum Davos and several other international organizations and governments.





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