

PRIMER 1

What Counts as an “AI Output”?

Defining AI Outputs for Copyright Law in India



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What Counts as an “AI Output”?

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About This Series

This primer is the first in a multi-part series examining the intersection of artificial intelligence and copyright law, with specific attention to the Indian legislative and judicial context. The series is intended for policymakers, legal practitioners, think-tank researchers, and industry stakeholders engaged in/contributing to shaping India's regulatory response to generative AI. Each primer is self-contained but designed to build upon the others.

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Executive Summary

The emergence of large-scale generative artificial intelligence (AI) systems, capable of producing text, images, music, software code, and audiovisual content at industrial scale, has precipitated a foundational challenge to copyright law worldwide. Before any jurisdiction can determine whether AI-generated content is protectable, the threshold question must be answered: what, precisely, is an “AI output” for purposes of copyright analysis?

This primer establishes the definitional and taxonomic vocabulary necessary for that inquiry. It identifies three primary categories of AI output, purely machine-generated content, AI-assisted output, and human-directed output, and examines each stage of the AI content pipeline (training, prompting, generation, and post-editing) to map where human creative agency may enter the process. The primer then situates this taxonomy within the Indian copyright framework under the Copyright Act, 1957¹ (hereinafter referred to as the “Copyright Act”, including the contested “computer-generated work” provision in Section 2(d)(vi)².

¹ Copyright Act, 1957 (as amended by Copyright (Amendment) Act 2012) <<https://www.copyright.gov.in/Documents/Copyrightrules1957.pdf>> last accessed on 13th April, 2026

² Copyright Act, 1957, s. 2(d)(vi)

1. Introduction | Why Definitions matter

Copyright law enables human creativity. Its doctrinal architecture, originality, authorship, fixation, expression, has been developed over centuries with human creators in mind. It is to address the vulnerability that human creators face in a market society, of not being able to sustain professing the creative arts as a matter of their life’s vocation, due to the non-rivalrous nature of the intangible expression. The arrival of generative AI systems that can autonomously produce outputs indistinguishable in form from human-created works, has however, forced a re-examination of this architecture at its most basic level.

The question “what is an AI output?” is not merely semantic. Its answer determines the very object that copyright law is asked to evaluate. Depending on how the question is answered, the same piece of content may be treated as an unprotectable public domain artefact, a work protected by virtue of human authorship in the prompting process, a work owned by the AI developer, or a work owned by the deploying operator. Each answer carries distinct distributional consequences for creators, platforms, investors, and the public, as well as brings a distinct existential crisis for copyright law.

For India, the stakes are particularly high. India is among the world’s largest producers and consumers of creative content, hosts a rapidly growing AI-services sector, and has not yet undertaken a comprehensive legislative reform of its copyright framework in response to AI. The Copyright Act contains a provision, Section 2(d)(vi)³, that purports to address computer-generated works, but its adequacy for the generative AI era is deeply contested.

³ *Ibid*

2. The Generative AI Content Pipeline | Four Stages

To understand what an AI output is, one must first understand how it comes to exist. The production of AI-generated content involves at least four analytically distinct stages, each with a different cast of human and machine actors. Identifying where human creativity enters the pipeline is central to the copyright analysis.

2.1 Stage 1 | Training

Modern generative AI systems such as large language models (LLMs) for text, diffusion models for images, and transformer-based architectures for music and code, are trained on a vast corpora of pre-existing human-created content. The training process involves the system learning statistical patterns, relationships, and representations from this data, encoding them into billions of numerical parameters (the model “weights”)⁴.

The training stage involves significant human decision-making: choices about dataset composition, model architecture, training objectives, and fine-tuning approaches. However, this human creativity is directed at constructing the tool, not at producing any specific output.

2.2 Stage 2 | Prompting

A prompt is the human-provided input that directs a generative AI system towards a specific output. Prompts can range from a single word (“cat”) to multi-paragraph detailed specifications describing subject matter, style, structure, tone, narrative arc, compositional choices, and constraints. In agentic AI systems, the prompting stage may involve multiple rounds of human-AI interaction.

The prompting stage is where much of the contemporary copyright debate is concentrated. The critical question is whether, and to what degree, the craft, specificity, and creative investment embedded in a prompt constitutes sufficient human authorship to vest copyright in the resulting output.

Key legal issue at this stage: Does the creative investment in prompt-crafting constitute “author’s own intellectual creation” sufficient to ground copyright protection? The answer may depend on the degree of specificity, the iterative nature of the prompting process, and whether the prompt is treated as the expression or merely as instructions.

2.3 Stage 3 | Generation

Generation is the process by which the AI model, conditioned on the prompt and the patterns learned during training, produces an output through a stochastic (probabilistic) computation. This process is not deterministic: the same prompt will typically produce different outputs on repeated runs, because modern generative models incorporate randomness (temperature, sampling parameters) into their output process.

The generative stage is performed entirely by the model. No human is present in, or directing, the individual inferential steps that produce the output. This is the core feature that distinguishes generative AI outputs from, say, word-processed text (where the tool executes

⁴ What are Large Language Models (LLMs)? <<https://www.ibm.com/think/topics/large-language-models>> last accessed on 13th April, 2026

the author’s precise keystrokes) or even from digital art tools (which execute specific brush strokes applied by a human hand).

Key legal issue at this stage: The stochastic, autonomous nature of the generation process is the primary reason why courts and copyright offices have been reluctant to attribute authorship to either the machine or the human prompter.

2.4 Stage 4 | Post-Editing and Curation

After generation, a human may intervene to select, arrange, modify, or augment the AI-generated content. This post-editing stage can range from trivial (selecting one output from three generated options) to substantial (rewriting large portions of a generated text, rearranging compositional elements of a generated image, layering AI-generated music with human-performed tracks).

Post-editing is, in principle, the clearest site of human authorship in the AI content pipeline. When a human author makes sufficiently creative and original choices in selecting, arranging, or modifying AI-generated material, those choices may attract copyright protection, not in the underlying AI-generated content, but in the human contribution to the final work. This is the reasoning underlying the US Copyright Office’s partial registration of Kristina Kashtanova’s comic “Zarya of the Dawn” (2023)⁵, where protection was granted for human-authored text and selection/arrangement, but not for the AI-generated images themselves.

Key legal issue at this stage: How substantial must post-editing be to vest copyright in the final work? Is selection and arrangement of AI outputs sufficient? Does the threshold for “originality” change when the base material is AI-generated rather than a pre-existing human work?

⁵ United States Copyright Office, Zarya of the Dawn <<https://copyright.gov/docs/zarya-of-the-dawn.pdf>> last accessed on 13th April, 2026

3. A Taxonomy of AI Outputs | Three Categories

Building on the pipeline analysis above, we can identify three analytically distinct categories of AI output. This taxonomy is not exhaustive, real-world outputs will often fall between categories, but it provides the conceptual scaffolding for copyright analysis.

3.1 Category A | Purely Machine-Generated Content

Purely machine-generated content is produced by an AI system operating autonomously, without meaningful human creative direction at the prompting stage and without post-editing. Examples include:

- Financial summaries automatically generated from structured data feeds
- Sports match reports generated without human editorial input
- Scientific abstracts generated from structured datasets
- A purely AI-generated video with every element, including script, visuals, voices, music, and editing created by AI systems without human inputs.
- Background music generated by AI for ambient commercial use without human curation
- Synthetic training data generated by one AI model to train another

In this category, no identifiable human author makes creative choices about the content, style, or form of the output. The system operates according to its training and, at most, a minimal functional instruction (“generate a 200-word summary of this data”).

Copyright status: The global consensus, including under US law (Thaler v. Perlmutter, D.D.C. 2023)⁶, UK law (Nova Productions v. Mazooma Games [2007])⁷, and the EU AI Act⁸ framework, is that purely machine-generated content does not attract copyright protection as such. In the US, the Copyright Office⁹ has repeatedly held that copyright “requires human authorship” and will not register works produced without creative human control. India’s Section 2(d)(vi) is an outlier, as discussed below.

India’s Distinctive Position

Section 2(d)(vi) of the Copyright Act, 1957 defines the ‘author’ of a ‘computer-generated work’ as ‘the person who causes the work to be created.’

⁶ Thaler v. Perlmutter, D.D.C. 2023 <<https://media.cadc.uscourts.gov/opinions/docs/2025/03/23-5233.pdf>> last accessed on 13th April, 2026

⁷ Nova Productions Ltd v Mazooma Games Ltd & Ors (CA) <<https://www.5rb.com/case/nova-productions-ltd-v-mazooma-games-ltd-ors-ca/>> last accessed on 13th April, 2026

⁸ EU AI Act <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1689>> last accessed on 13th April, 2026

⁹ US Copyright Office, Copyright and Artificial Intelligence Part 2: Copyrightability <<https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf>> last accessed 13th April, 2026

3.2 Category B | AI-Assisted Output

AI-assisted output results from a collaborative process in which a human author uses AI tools as instruments in their creative workflow, while retaining meaningful authorial control over the final work. Examples include:

- A novelist using an AI writing assistant to suggest phrases, which she selects, modifies, and integrates into her prose
- A graphic designer using an AI image tool to generate compositional options, which she then extensively edits, colours, and arranges
- A software engineer using GitHub Copilot to suggest code snippets, which she reviews, adapts, and integrates into a larger architecture of her own design
- A film composer using AI to generate melodic motifs, which she orchestrates, harmonises, and arranges

In this category, the AI operates as a sophisticated creative tool, more capable than a word processor or Photoshop, but functionally similar in the sense that it extends rather than replaces human creative agency. The human author’s creative choices, what to prompt, what to accept, what to reject, how to combine, how to modify, are sufficiently present and sufficiently expressive to ground copyright protection.

Copyright status: Most jurisdictions, including India under the existing framework, would recognise copyright protection for AI-assisted outputs where the human contribution satisfies the originality threshold¹⁰. Why? Because humans need to be enabled to use AI to produce such outputs, that *but for* those human inputs wouldn’t exist, and are thus, a non-mechanical exercise of cognition. The contested question is how to demarcate AI-assisted output from purely machine-generated content: the degree of human creative investment required is not yet settled.¹¹¹²

3.3 Category C | Human-Directed Output

Human-directed output occupies the far end of the spectrum, where the human’s creative direction is so specific, detailed, and iterative that the AI functions essentially as an advanced execution tool, and the output closely corresponds to the human’s pre-existing creative vision. Examples include:

- A prompt engineer who provides a 500-word detailed specification of a scene, including specific compositional elements, colour palette, lighting conditions, stylistic references, and emotional tone, and iteratively refines the output through dozens of revision cycles
- A screenwriter who uses an AI to transcribe and format a detailed scene-by-scene outline he has already authored
- A poet who uses AI autocomplete to fill in syntactically constrained positions within a form (such as a sonnet) where the meter and rhyme scheme leave little room for AI creative variance

In this category, the argument for human authorship is strongest: the human’s creative decisions substantially determine the output. However, even here, the stochastic nature of

¹⁰ IJPREMS, Copyright Protection for AI-generated works in India <<https://www.ijprems.com/ijprems-paper/copyright-protection-for-ai-generated-works-in-india>> last accessed on 13th April, 2026

¹¹ IJLT, Balancing Indian Copyright Law with AI-Generated Content: The ‘Significant Human Input’ Approach <<https://forum.nls.ac.in/ijlt-blog-post/balancing-indian-copyright-law-with-ai-generated-content-the-significant-human-input-approach/>> last accessed on 15th April, 2026

¹² WIPO, Conversation on Intellectual Property in Artificial Intelligence <https://www.wipo.int/export/sites/www/about-ip/en/artificial_intelligence/conversation_ip_ai/pdf/ind_simone2.pdf> last accessed on 15th April, 2026

generative AI means that the system is always making choices not fully specified by the human, and the output is never entirely predictable from the input.

Copyright status: Likely protectable, subject to satisfying the originality threshold. The human author’s extensive creative direction would, in most analytical frameworks, satisfy the requirement of “author’s own intellectual creation” (the standard adopted by the European Court of Justice in *Infopaq International A/S v. Danske Dagblades Forening* [2009]¹³) or “skill and judgment” (the Canadian standard from *CCH Canadian Ltd v. Law Society of Upper Canada* [2004]¹⁴).

¹³ *Infopaq International A/S v Danske Dagblades Forening* (2009) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62008CJ0005_SUM> last accessed on 13th April, 2026

¹⁴ *CCH Canadian Ltd. v. Law Society of Upper Canada* <<https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/2125/index.do>> last accessed on 13th April, 2026

4. Comparative Overview | AI Output Categories and Copyright Status

Based on the analysis above, the following table summarises the three categories¹⁵ against key analytical dimensions:

| Sr. No. | Dimension | Category A: Purely Machine-Generated | Category B: AI-Assisted | Category C: Human-Directed |
|---------|---|--|-----------------------------------|---|
| 1. | Human creative input at prompting | Minimal/none | Moderate-substantial | Substantial-extensive |
| 2. | Human creative input at post-editing | None | Variable | Typically significant |
| 3. | AI autonomy in generation | High | Moderate | Low-moderate |
| 4. | Predictability of output from input | Low | Moderate | Higher |
| 5. | Copyright protection (global consensus) | None | Likely, for human contribution | Yes, subject to originality |
| 6. | Copyright protection (India - current law) | Possible under S.2(d)(vi) | Yes | Yes |
| 7. | Primary copyright beneficiary | AI developer / operator (if protected) | Human prompter / editor | Human prompter / director |
| 8. | Key doctrinal test | Non-human authorship / computer-generated work | Originality of human contribution | Effective authorship / human creative control |

¹⁵ Ownership and Authorship of AI- Generated Works under Indian Copyright law: A Regulatory Gap Analysis <<https://www.vintagelegalvl.com/post/ownership-and-authorship-of-ai-generated-works-under-indian-copyright-law-a-regulatory-gap-analysis>> last accessed on 13th April, 2026

5. The Indian Legal Framework | Current Position and Gaps

5.1 The Copyright Act | Core Framework

The Copyright Act defines “copyright” as a bundle of exclusive rights attaching to “original literary, dramatic, musical and artistic works; cinematograph films; and sound recordings” (Section 13)¹⁶. The Act does not define “originality,” but Indian courts have adopted a standard broadly consistent with “skill and judgment” or “minimal degree of creativity,” following the Supreme Court’s reasoning in *Eastern Book Company v. D.B. Modak* (2008)¹⁷, which required “skill, labour and judgment” amounting to more than mere mechanical effort.

The Act requires that a “work” be made by an “author.” The definition of “author” in Section 2(d)¹⁸ lists different categories: the author of a literary, dramatic, or musical work is the person who creates it; for artistic works, the artist; for sound recordings, the producer; and for computer-generated works, as discussed below.

5.2 Section 2(d)(vi): The Computer-Generated Work Provision

Section 2(d)(vi)¹⁹ of the Copyright Act provides that in relation to “any literary, dramatic, musical or artistic work which is computer-generated, ‘author’ means the person who causes the work to be created.” This provision, introduced by the Copyright (Amendment) Act, 1994, was intended to address the status of content generated by early computer programs, such as automated report-writing software.

The provision is significant for two reasons. First, it signals a legislative intent to protect computer-generated works. Second, by vesting authorship in “the person who causes the work to be created,” it raises the question of who that person is in the context of generative AI: the AI developer who trained the model, the operator who deployed the system, or the end user who provided the prompt?

5.3 Does Section 2(d)(vi) Apply to Generative AI Outputs?

This question has not yet been adjudicated by any Indian court. Several interpretive positions are possible:

- **Broad application:** Section 2(d)(vi) applies to any work generated by a computer program, including outputs of LLMs and diffusion models, with copyright vesting in whoever “causes” the work to be created.
- **Narrow application:** Section 2(d)(vi) was intended for deterministic programs that produce specific, pre-specified outputs, not for stochastic generative models. The latter’s outputs are not “caused” by any human in the relevant sense.

¹⁶ Copyright Act, 1957, s. 13

¹⁷ *Eastern Book Company v. D.B. Modak* (2008) <<https://indiankanoon.org/doc/1062099/>> last accessed on 13th April, 2026

¹⁸ Copyright Act, 1957, s. 2(d)

¹⁹ Copyright Act, 1957, s. 2(d)(vi)

- **TRIPS compliance:** India’s obligations under the TRIPS Agreement (Article 9)²⁰ incorporate the Berne Convention’s requirement of “intellectual creation” which may, on some readings, require a human author.

The academic consensus among Indian IP scholars (see Prashant Reddy and Sumathi Chandrashekar, “Create, Copy, Disrupt” [OUP India, 2017]²¹; and Arul George Scaria, “Striking the Right Balance”²² [2017]) is that Section 2(d)(vi), while textually broad, requires purposive interpretation in light of the overall scheme of the Act, which contemplates human creative labour as the basis for protection.

5.4 The Eastern Book Company Standard and AI

In *Eastern Book Company v. D.B. Modak* (2008)²³, the Supreme Court of India held that for copyright to subsist in a work, it must reflect “skill, labour and judgment” of a “minimal degree of creativity” that is the “author’s own intellectual creation”, adopting language from the ECJ’s *Infopaq* standard. This formulation strongly implies that the requisite intellectual creation must originate in a human author. The Court’s repeated use of “author” in the sense of a human exercising judgment makes it difficult to apply the Eastern Book Company standard to purely machine-generated content without significant doctrinal extension.

²⁰ TRIPS Agreement, Article 9 <https://www.wto.org/english/res_e/publications_e/ai17_e/trips_art9_jur.pdf> last accessed on 13th April, 2026

²¹ Reddy T., Prashant, and Sumathi Chandrashekar, *Create, Copy, Disrupt: India's Intellectual Property Dilemmas* <<https://doi.org/10.1093/acprof:oso/9780199470662.001.0001>> last accessed on 13th April, 2026

²² Scaria, Arul George and Jhavar, Varsha, *Striking the Balance: Adapting Indian Copyright Law for GenAI and Beyond* <<https://ssrn.com/abstract=5115655>> last accessed on 13th April, 2026

²³ *Eastern Book Company v. D.B. Modak* (2008) <<https://indiankanoon.org/doc/1062099/>> last accessed on 13th April, 2026

6. Key Contested Concepts

The following definitional distinctions are essential to any informed policy discussion on AI outputs and copyright.

6.1 “Originality” in the AI Context

Originality, in copyright law, refers to the requirement that a work originate from the author and reflect a minimal degree of creative effort. It has two components: independent creation (the work was not copied) and minimal creativity. In the AI context, both components are problematic:

- AI outputs are not “copied” in the conventional sense, but they are statistically derived from training data, which may itself be copyrighted. Whether this constitutes “independent creation” is contested.
- The “creative choices” in an AI output are made by the model’s stochastic process, not by a human exercising judgment. The question is whether those choices can be attributed to the human who prompted or directed the system.

Indian courts apply the Eastern Book Company standard: originality requires the “author’s own intellectual creation,” implying a human intellectual effort. This standard would be difficult to satisfy for purely machine-generated content.

6.2 “Authorship” vs. “Ownership”

A critical distinction that is often conflated in AI copyright debates is between authorship and ownership. In copyright law:

- Authorship determines who created the work and is the basis for the vesting of copyright.
- Ownership determines who holds the copyright, which may differ from the author (e.g., an employer under a work-for-hire doctrine, or an assignee under a contract).

For AI-generated content, it is theoretically possible to deny authorship to the AI system while still vesting ownership in a human party (the developer, operator, or user) through a statutory deeming provision, as Section 2(d)(vi) attempts to do. The policy question is whether this is desirable.

6.3 “Tool” vs. “Co-Author”

A central conceptual question for AI-assisted outputs is whether the AI system is more accurately characterised as a tool used by a human author or as a co-author in its own right. This is not merely a metaphysical question: it has direct consequences for who holds copyright, what moral rights attach, and how joint authorship rules apply.

The “tool” characterisation is currently dominant in legal discourse and is supported by the analogy to prior creative technologies (cameras, word processors, digital audio workstations). The “co-author” characterisation is advanced by some AI researchers and legal theorists as a more accurate description of the collaborative, generative nature of LLM interactions²⁴. Neither characterisation fully resolves the legal questions.

²⁴ Which Contributions Deserve Credit? Perceptions of Attribution in Human-AI Co-Creation <<https://arxiv.org/pdf/2502.18357>> last accessed on 13th April, 2026

6.4 “Prompt Engineering” as Creative Authorship

Prompt engineering refers to the practice of crafting detailed, iterative prompts to elicit specific outputs from generative AI systems. The question of whether prompt engineering constitutes creative authorship sufficient to ground copyright in the resulting output is among the most actively debated in contemporary AI copyright scholarship.

Arguments in favour: A sophisticated prompt may embody significant creative choices, the selection of subject matter, the specification of style, the articulation of narrative structure, the exclusion of unwanted elements. These choices are analogous to the choices a director makes in specifying a scene to a cinematographer, or a composer in specifying instrumentation to a music engraver.

Arguments against: The prompt is the instruction, not the expression. Copyright protects expression, not ideas or instructions (the idea-expression dichotomy, codified in Article 9(2) of TRIPS²⁵ and implicit in Indian copyright law). The output produced by the AI, however sophisticated the prompt, is the expression of the model’s learned patterns, not of the prompter’s creative vision.

²⁵ TRIPS Agreement, Article 9 <https://www.wto.org/english/res_e/publications_e/ai17_e/trips_art9_jur.pdf> last accessed on 13th April, 2026

7. Questions for Indian Policymakers and Lawmakers

Based on the definitional analysis above, the following questions require resolution by Indian policymakers, legislators, and courts. These questions are presented not as a checklist but as a structured agenda for further policy deliberation.

7.1 Legislative Questions

- Should Section 2(d)(vi) of the Copyright Act be retained, amended, or repealed in the context of generative AI?
- If retained, should “the person who causes the work to be created” be defined with greater specificity to identify the relevant human actor (developer, operator, or end user)?
- Should India adopt a tiered statutory framework that separately addresses purely machine-generated content, AI-assisted content, and human-directed content?
- Should a sui generis right (analogous to the EU Database Directive’s investment protection right) be created for AI-generated content that does not qualify for copyright, to protect the economic interests of those who invest in AI content generation?

7.2 Judicial Questions

- In the absence of legislative clarification, how should courts interpret Section 2(d)(vi) in relation to LLM outputs: narrowly (applying only to rule-based programs) or broadly (applying to all computer programs)?
- What evidentiary standards should courts apply to assess the degree of human creative contribution in AI-assisted works?
- How should the idea-expression dichotomy be applied to prompts: are detailed prompts protectable expression or unprotectable instructions?

8. Conclusion

Defining the object of copyright analysis, what counts as an “AI output” for legal purposes, is the threshold step in any coherent regulatory response to generative AI and copyright. This primer has argued for a three-category taxonomy (purely machine-generated, AI-assisted, and human-directed outputs), grounded in an analysis of the four-stage AI content pipeline, and has situated this taxonomy within the Indian legal framework.

The central finding is that India’s existing framework, anchored in Section 2(d)(vi) of the Copyright Act, contains a potentially distinctive mechanism for addressing computer-generated works, but that mechanism was designed for a fundamentally different technological era and has not been tested against the outputs of modern generative AI. Without legislative clarification or judicial guidance, Section 2(d)(vi) creates legal uncertainty that is harmful to both the creative industries and the AI sector.

The definitional work done in this primer is a prerequisite for the substantive debates that follow in the remainder of this series. Indian policymakers who engage with those debates without first resolving the definitional question will find themselves repeatedly returning to the same foundational uncertainties.

It is important to work towards definitional clarity now, before the volume of AI-generated content in circulation, and the volume of litigation it generates, makes the task of legislative calibration politically and practically intractable.

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