

PRIMER 3

# Creativity and Originality in the Age of Generative AI

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Prompting as Creative Input



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# Creativity and Originality in the Age of Generative AI | *Prompting as Creative Input*

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**The Dialogue** is a public policy think tank with a vision to drive a progressive narrative in India's policy discourse. Founded in 2017, we believe in facilitating well-researched policy debates at various levels to help develop a more informed citizenry, on areas around technology and development issues. The Dialogue has been ranked as the world's Top 10 think tanks to watch out for, by the Think Tank and Civil Societies Programme (TTCSP), University of Pennsylvania in their 2020 and 2021 rankings.

#### **About This Series**

This primer is the third 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 shaping India's regulatory response to generative AI. Each primer is self-contained but builds upon the others.

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## Executive Summary

The requirement of originality is copyright law's threshold gate. In an era of generative artificial intelligence, the doctrinal tests that operationalise that requirement such as the 'modicum of creativity,' 'skill and judgment,' or the 'author's own intellectual creation', are confronted with outputs produced through a fundamentally new mode of creation: the human-machine prompt cycle. This primer examines how those tests apply, or fail to apply, to AI-generated content; analyses whether the act of prompting, from a bare keyword to a densely specified creative direction, can constitute protectable authorial expression; and assesses how courts across jurisdictions are beginning to evaluate the sufficiency of human creative control exercised through prompting, model configuration, and post-generation editing. The primer situates these questions within the Indian doctrinal framework and draws on comparative jurisprudence from the United States, the United Kingdom, the European Union, India, Canada, Australia, China, and Japan to identify the analytical axes on which originality determinations will turn. The primer's central argument is that originality analysis for AI-assisted works must be disaggregated across three sites, the prompt, the output, and any post-generation editing, and applied to the specific creative choices a human can be shown to have made at each stage.

# 1. Introduction | The Originality Problem Reframed

Originality, as a term of copyright art, has never been a single thing. It is the aggregated output of different doctrinal traditions, common law and civil, Lockean and Kantian, utilitarian and romantic, each of which has generated its own test for what quantum and quality of human effort or personality suffices to make a work protectable. What those traditions share, until very recently, is the assumption that the entity whose effort or personality is at issue is a human being.

GenAI disrupts that assumption structurally. When a human issues a prompt to a large language model or a diffusion model and the model returns text, an image, or music, the resulting output is the product of two distinct processes: the human's linguistic or conceptual instruction, and the model's stochastic inference over learned statistical distributions derived from its training corpus. The question that originality doctrine must now answer is this: in that bifurcated creative process, at what point and in what form does sufficient human creative contribution enter to ground copyright protection?

Primers 1 and 2 in this series established the definitional taxonomy of AI outputs and the doctrinal foundations of the human authorship requirement respectively. This primer takes both as given and proceeds to the next analytical layer: the content of originality doctrine itself, and the specific problem of whether, and how, prompting can constitute the kind of human creative contribution that originality doctrine requires. It addresses three nested questions: first, what originality requires as a doctrinal matter across key jurisdictions; second, whether AI-generated outputs can satisfy those requirements, and how post-generation human editing affects the analysis; and third, whether prompts, as the primary site of human creative input in the generative cycle, can constitute protectable expression or sufficient authorial control.

## 2. Doctrinal Tests for Originality | A Comparative Map

### 2.1 The United States: 'Modicum of Creativity'

In *Feist Publications, Inc. v. Rural Telephone Service Co.* (1991),<sup>1</sup> the U.S. Supreme Court authoritatively settled U.S. originality doctrine. The Court rejected the 'sweat of the brow' theory, under which effort alone sufficed for copyright, and held that copyright requires both independent creation (the work was not copied from another) and a 'modicum of creativity.' The threshold is described as 'extremely low,' but it is not zero: pure facts, mechanical reproductions, and works in which the author had no creative choices to make do not qualify. The relevant inquiry is whether the human author exercised, however minimally, creative judgment in the work's selection, arrangement, or expression.

The 'modicum' formulation is deliberately permissive. It was designed to enable protection for works of modest creative ambition, a simple commercial label, a short advertising jingle, without imposing quality judgments. Its consequence, in the AI context, is that the relevant question is not whether the human's contribution was sophisticated, but whether it was present at all: whether any creative choice was made by the human that is expressed in the final work.

### 2.2 The United Kingdom: 'Skill and Labour', the CDPA, and the Post-Brexit Convergence with EU Law

The English originality requirement is older than the statutory word 'original' itself. Its foundational expression is *Walter v. Lane* (1900)<sup>2</sup>, in which the House of Lords held, by a majority, that reporters for *The Times* who took down shorthand notes of Lord Rosebery's public speeches and transcribed them were 'authors' of the resulting reports, even though the words spoken were not their own. What grounded authorship was the skill, effort, and time expended in producing an accurate verbatim record, work that Lord Brampton described as involving 'considerable intellectual skill and brain labour beyond the mere mechanical operation of writing'. The case was decided under the Copyright Act 1842, before the Copyright Act 1911 introduced the word 'original' into the statute, and *Walter v. Lane* became the high-water mark of the 'skill and labour' tradition; the Court of Appeal in *Sawkins v. Hyperion Records* (2005) confirmed that it survived the 1911 reform<sup>3</sup>. On this lineage the United Kingdom threshold was effort-based and materially lower than the Feist requirement of a creative choice: it rewarded the labour of production, not only originality in the form of expression.

The foundational English statement is *University of London Press Ltd. v. University Tutorial Press Ltd.* (1916),<sup>4</sup> in which Peterson J articulated the originality standard as requiring that 'the work should

<sup>1</sup>Feist Publications, Inc. v. Rural Telephone Service Co., 499 U.S. 340, 345 (1991).  
<<https://supreme.justia.com/cases/federal/us/499/340/>>

<sup>2</sup>Walter v. Lane [1900] AC 539 (House of Lords).

<sup>3</sup>Sawkins v. Hyperion Records Ltd [2005] EWCA Civ 565 (Court of Appeal), confirming that *Walter v. Lane* survived the introduction of the 'original' requirement by the Copyright Act 1911.

<sup>4</sup>University of London Press Ltd. v. University Tutorial Press Ltd. [1916] 2 Ch. 601, 608 (Peterson J).  
<<https://www.civil.law.cam.ac.uk/virtual-museum/university-london-press-v-university-tutorial-1916-2-ch-601>>

originate from the author', in the sense that it was not copied, and that some 'skill, labour and judgment' was expended in its production. The formulation is broader than *Feist* in that it retains 'labour' as a relevant consideration, though subsequent cases have made clear that pure mechanical reproduction without intellectual effort does not suffice.

That labour-based reading did not survive the United Kingdom's membership of the European Union. After the Court of Justice's decision in *Infopaq* (2009), which required that a work be its author's 'own intellectual creation', the English courts accepted that the domestic 'skill and labour' test had been displaced, or at least recalibrated, by a standard centered on the author's free and creative choices. The Court of Appeal applied that standard in *Newspaper Licensing Agency v. Meltwater* (2011) and in *SAS Institute v. World Programming* (2013), and the Patents County Court treated a photograph as protected by the photographer's creative choices in *Temple Island Collections v. New English Teas* (2012)<sup>5</sup>. The practical effect was to raise the threshold: industrious effort no longer sufficed unless it was directed to original expression reflecting the author's personality.

For AI-generated works specifically, the Copyright, Designs and Patents Act 1988 (CDPA)<sup>6</sup>, Section 9(3), provides a statutory deeming provision: in a computer-generated work where there is no human author, 'the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.'

The CDPA provision was applied in *Nova Productions Ltd v. Mazooma Games Ltd* (2007),<sup>7</sup> where the Court of Appeal located authorship of dynamically generated video-game frames in the game designer. The provision has been criticised as inconsistent with the Berne Convention's implicit human authorship requirement, and its practical application to large language model outputs remains deeply contested.

Brexit did not reverse this convergence. The 'author's own intellectual creation' standard entered domestic law as retained EU law, re-designated 'assimilated law' by the Retained EU Law (Revocation and Reform) Act 2023, and the principal Court of Justice authorities on originality continue to bind United Kingdom courts unless a higher court departs from them. In *THJ Systems Ltd v. Sheridan* (2023), Arnold LJ confirmed, after the United Kingdom's departure from the Union, that the test for originality remains whether the author was able to express their creative abilities by making free and creative choices so as to stamp the work with their personal touch, and held that the court below had erred in applying the older 'skill and labour' formula<sup>8</sup>. For AI-generated works the consequence is significant. The operative United Kingdom standard is the demanding creative-choice test, not the effort-based *Walter v. Lane* lineage; and Section 9(3) resolves only who is to be treated as author where there is no human author, not the anterior question whether the originality requirement is satisfied at all, a tension already visible in *Nova Productions*.

<sup>5</sup> *Newspaper Licensing Agency Ltd v. Meltwater Holding BV* [2011] EWCA Civ 890; *SAS Institute Inc. v. World Programming Ltd* [2013] EWCA Civ 1482; *Temple Island Collections Ltd v. New English Teas Ltd* [2012] EWPC 1.

<sup>6</sup> Copyright, Designs and Patents Act 1988 (CDPA) <<https://www.legislation.gov.uk/ukpga/1988/48/section/9>>

<sup>7</sup> *Nova Productions Ltd v. Mazooma Games Ltd* [2007] EWCA Civ 219 (English Court of Appeal). <<https://www.5rb.com/case/nova-productions-ltd-v-mazooma-games-ltd-ors-ca/>>

<sup>8</sup> *THJ Systems Ltd v. Sheridan* [2023] EWCA Civ 1354, paras 16 to 24 (Arnold LJ); see also the Retained EU Law (Revocation and Reform) Act 2023, re-designating retained EU law as 'assimilated law' from 31 December 2023.

## 2.3 India: 'Skill and Judgment' and the Eastern Book Company Standard

The Indian originality standard was authoritatively settled by the Supreme Court in *Eastern Book Company v. D.B. Modak* (2008),<sup>9</sup> which adopted the language of the Canadian Supreme Court in *CCH Canadian Ltd. v. Law Society of Upper Canada* (2004)<sup>10</sup> and the European Court of Justice in *Infopaq International A/S v. Danske Dagblades Forening* (2009),<sup>11</sup> requiring 'skill and judgment' amounting to the 'author's own intellectual creation.' The Court explicitly rejected the pure 'sweat of the brow' doctrine and required some minimal but genuine intellectual effort reflecting the author's creative choices. The formulation is broadly equivalent to the *Feist* modicum standard, with the additional Continental gloss that the creation must bear the author's personal stamp.

The Copyright Act, 1957<sup>12</sup> does not define originality, but Section 13(1) requires that copyright subsist in 'original' literary, dramatic, musical, and artistic works. The Eastern Book Company standard is thus the operative doctrinal test in India, and it is a test that, by its terms, locates the required intellectual creation in an author, a formulation that, as both Primers 1 and 2 observed, strongly implies a human author exercising genuine creative judgment.

## 2.4 The European Union: 'Author's Own Intellectual Creation'

The EU standard, developed through *Infopaq*<sup>13</sup> and elaborated in *Painer v. Standard VerlagsGmbH* (2011),<sup>14</sup> requires that the work reflect 'free and creative choices' made by a human author. In *Painer*, the CJEU held that a portrait photograph attracted copyright because the photographer exercised 'creative freedom' in composing the shot. The 'free and creative choices' formulation is arguably the most demanding of the four, in that it requires not merely the presence of creative decisions but that those decisions be sufficiently unconstrained by external imperatives such as technical requirements, functional constraints, exhaustion of available alternatives to reflect the author's personality.

The intersection between the United Kingdom and the European Union on this point is close, and it merits a precise statement. The 'author's own intellectual creation' standard is not confined to *Infopaq* and *Painer*; the Court of Justice has consolidated it across successive decisions, holding in *Football Dataco* (2012) that labour and skill are irrelevant where the choices they produce are dictated by technical rules that leave no room for creative freedom, and confirming in *Cofemel* (2019) and *Funke Medien* (2019) that a single, autonomous concept of originality, free and creative choices stamped with

<sup>9</sup>*Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1 (Supreme Court of India) <<https://indiankanoon.org/doc/1062099/>>

<sup>10</sup>*CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, [2004] 1 SCR 339, para. 16 (McLachlin CJ). <<https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/2125/index.do>>

<sup>11</sup>*Infopaq International A/S v. Danske Dagblades Forening*, Case C-5/08 [2009] (CJEU). <<https://infocuria.curia.europa.eu/tabs/affair?>>

<sup>12</sup> Copyright Act, 1957 <<https://www.copyright.gov.in/Documents/Copyrightrules1957.pdf>>

<sup>13</sup> *Infopaq International A/S v. Danske Dagblades Forening*, Case C-5/08 [2009] (CJEU). <<https://infocuria.curia.europa.eu/tabs/affair?>>

<sup>14</sup>*Eva-Maria Painer v. Standard VerlagsGmbH and Others*, Case C-145/10 [2011] (CJEU). <<https://infocuria.curia.europa.eu/tabs/affair?>>

the author's personal touch, governs every category of work and admits no separate aesthetic or merit threshold<sup>15</sup>. While a member, the United Kingdom was bound by this jurisprudence, which displaced the older 'skill and labour' reading set out above. As Part 2.2 explains, that convergence has outlived Brexit: the standard survives as assimilated law and was reaffirmed in *THJ Systems v. Sheridan* (2023). For AI-generated outputs the upshot is that the United Kingdom and the European Union apply, in substance, the same demanding originality test, one materially more exacting than the United States 'modicum' standard or the low Chinese threshold, so that prompting which merely constrains a model's output without dictating its expressive content is unlikely to reflect the free and creative choices the test requires.

## 2.5 Canada: 'Skill and Judgment' and the CCH Middle Ground

The Supreme Court of Canada's decision in *CCH Canadian Ltd v. Law Society of Upper Canada* (2004) supplies the standard that the Indian Supreme Court later adopted in *Eastern Book Company*. McLachlin CJ rejected both the 'sweat of the brow' approach, under which industrious effort alone sufficed, and the higher United States requirement of 'creativity', settling on a middle ground: an original work must be the product of an exercise of skill and judgment that is 'not so trivial that it could be characterized as a purely mechanical exercise'<sup>16</sup>. Skill means the use of knowledge, developed aptitude, or practised ability, and judgment means the use of the capacity for discernment in evaluating different options. Applied to the generative cycle, the Canadian test asks whether the human exercised discernment in evaluating options that shaped the expressive content of the output. Selecting among model outputs may involve such judgment; the purely mechanical acceptance of whatever the model returns, however many times the process is repeated, will not.

## 2.6 Australia: 'Independent Intellectual Effort' Directed to Expression

Australian law sets one of the most exacting human-authorship thresholds among the major jurisdictions. In *IceTV Pty Ltd v. Nine Network Australia* (2009) the High Court moved decisively away from 'sweat of the brow' protection for compilations, holding that the relevant skill and labour must be directed to the originality of the particular form of expression, not merely to the gathering of information. The Full Federal Court in *Telstra Corporation v. Phone Directories Co.* (2010) applied that principle to a substantially computer-generated telephone directory and found no copyright, because no identifiable human author had exercised the requisite 'independent intellectual effort' in the form of expression; the work was produced by the operation of software, and the human contributions were either too remote or not of a literary character<sup>17</sup>. *Acohs v. Ucorp* (2012) reinforced the point for material generated by computer code. For AI-generated outputs this lineage is directly adverse to authorship

<sup>15</sup> *Football Dataco Ltd v. Yahoo! UK Ltd*, Case C-604/10 [2012] (CJEU); *Cofemel v. G-Star Raw*, Case C-683/17 [2019] (CJEU); *Funke Medien NRW v. Bundesrepublik Deutschland*, Case C-469/17 [2019] (CJEU).

<sup>16</sup> *CCH Canadian Ltd v. Law Society of Upper Canada*, 2004 SCC 13, [2004] 1 SCR 339, paras 16 and 25 (McLachlin CJ).

<sup>17</sup> *IceTV Pty Ltd v. Nine Network Australia Pty Ltd* [2009] HCA 14; *Telstra Corporation Ltd v. Phone Directories Co. Pty Ltd* [2010] FCAFC 149; *Acohs Pty Ltd v. Ucorp Pty Ltd* [2012] FCAFC 16.

claims: where the expressive content is produced by the model rather than by an identifiable human exercising independent intellectual effort, the Australian threshold will not be met by prompting alone.

## 2.7 China: 'Independent Creation' and a Low Originality Threshold

Chinese copyright law protects intellectual achievements that are original, the requirement of originality being understood as independent creation coupled with a minimal degree of intellectual input, a threshold lower than the European free-and-creative-choices standard and applied generously in practice. The doctrinal standard is set out in Article 3 of the Copyright Law and Article 2 of its Implementing Regulations<sup>18</sup>. As Part 6.2 below discusses, the Chinese courts have applied this low threshold to AI-assisted works with notable liberality: in the Tencent Dreamwriter decision (2019) the selection and arrangement choices of a human team were enough to make an automatically generated news article original, and in *Li v. Liu* (2023) the Beijing Internet Court found that a user's selection and ordering of more than one hundred and fifty prompts, together with parameter settings and iterative adjustment, reflected sufficient personalised intellectual investment to make a Stable Diffusion image original. The Chinese position is best understood as a policy-driven application of a deliberately low originality bar, not a doctrinal departure from the requirement of human intellectual contribution.

## 2.8 Japan: 'Creative Expression of Thoughts or Sentiments'

Japanese law defines a protected work, in Article 2(1)(i) of the Copyright Act, as 'a production in which thoughts or sentiments are expressed in a creative way'<sup>19</sup>. The threshold of creative expression is modest but real: it excludes mere facts, dead-copy reproduction, and short conventional phrases, and it requires that the work manifest some expression of the author's individuality. In May 2024 the Agency for Cultural Affairs published a General Understanding on AI and Copyright in Japan, which treats AI-assisted outputs as protectable only where there is a human creative contribution, assessed holistically from the quantity and content of the instructions and the number of generation and selection cycles. Detailed instructions that themselves specify creative expression may count; lengthy prompts that merely communicate an idea, and a large number of undirected generation attempts, will not. The Japanese approach thus converges, in substance, with the creative-choice jurisdictions: what matters is the creative direction of the expression, not the volume of prompting or output.

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<sup>18</sup> Copyright Law of the People's Republic of China, Art 3, read with the Regulations for the Implementation of the Copyright Law, Art 2 (originality, 独创性); for application to AI-assisted outputs see the Dreamwriter and *Li v. Liu* decisions discussed in Part 6.2 below.

<sup>19</sup> Copyright Act (Act No. 48 of 1970, Japan), Art 2(1)(i) (a work is 'a production in which thoughts or sentiments are expressed in a creative way'); Agency for Cultural Affairs, General Understanding on AI and Copyright in Japan (May 2024).

**Table 1: Comparative Originality Standards Across Major Jurisdictions**

<b>Jurisdiction</b>	<b>Governing originality standard</b>	<b>Leading authority</b>	<b>Implication for output of prompting alone</b>
United States	Modicum of creativity (independent creation plus minimal creativity)	Feist (1991); Thaler (2025)	Low bar, yet output of prompting alone is unprotected; sufficient human control required
United Kingdom	Author's own intellectual creation (free and creative choices); historic skill and labour displaced	Walter v. Lane (1900); Infopaq (2009); THJ v. Sheridan (2023)	Demanding; prompting alone unlikely to suffice; CDPA s.9(3) goes to authorship, not originality
European Union	Author's own intellectual creation bearing the author's personal touch	Infopaq (2009); Painer (2011); Cofemel (2019)	Demanding; protection only where human choices dictate the expressive content
India	Skill and judgment amounting to the author's own intellectual creation	Eastern Book Company (2008), adopting CCH	Mainstream; locates creation in a human author; not yet tested on prompting
Canada	Skill and judgment, not a purely mechanical exercise (a middle ground)	CCH Canadian (2004)	Discernment shaping expression required; mechanical acceptance of outputs insufficient
Australia	Independent intellectual effort directed to the form of expression	IceTV (2009); Telstra (2010)	Most demanding; computer-generated output with no human author fails
China	Independent creation plus a minimal degree of originality	Dreamwriter (2019); Li v. Liu (2023)	Low bar applied liberally; prompting with iteration has been held sufficient
Japan	Creative expression of thoughts or sentiments	Copyright Act Art 2(1)(i); 2024 ACA Guidance	Modest bar; protection needs a human creative contribution to the expression

## 3. Can AI-Generated Outputs Satisfy Originality Tests?

### 3.1 The Structural Problem: Locating the Creative Agent

All four originality tests i.e. Feist, Eastern Book Company, CDPA skill and judgment, and Painer, share a structural feature: they locate the required creative input in an agent who made choices. The doctrinal question for AI-generated outputs is whether the choices made by the generative model during inference can be attributed to any human agent, or whether the probabilistic selection of tokens, pixels, or sonic frequencies by the model constitutes an autonomous creative act that interposes an unaccountable intermediary between human input and expressive output.

The leading U.S. authority is *Thaler v. Perlmutter* (D.D.C. 2023, aff'd D.C. Cir. 2025),<sup>20</sup> in which the courts held that an image titled 'A Recent Entrance to Paradise' autonomously generated by Dr. Stephen Thaler's 'Creativity Machine' system, without human prompting or direction, was not eligible for copyright protection. The decision is notable not merely for its holding, but for its reasoning: the Court of Appeals located the deficiency at the level of creative agency, observing that copyright requires an identifiable human author who made the creative choices expressed in the work. Where no human made such choices, there is no copyright.

The U.S. Copyright Office's January 2025 Report<sup>21</sup> elaborates the same principle: the Office will not register works 'produced by a machine without any creative input or intervention from a human author,' and will evaluate, case by case, whether the human contribution in a given AI-assisted work is sufficient to ground protection for the human-authored elements.

### 3.2 The Role of Post-Generation Editing

The registration decision in the *Zarya of the Dawn* matter (2023)<sup>22</sup> provides the clearest judicial illustration of the post-editing analysis. The U.S. Copyright Office partially cancelled the registration of Kristina Kashtanova's graphic novel, which combined human-authored text with AI-generated images created using Midjourney. The Office held that Kashtanova was entitled to copyright in her written text and in her selection and arrangement of the visual elements, but not in the AI-generated images themselves, because the images were the output of the model's inference process, not the expression of Kashtanova's creative choices.

The *Zarya* analysis instantiates a principle of considerable importance: post-generation editing by a human author can attract copyright, but only in relation to the human-authored elements of the final work. The underlying AI-generated material remains unprotected. The corollary is that the quantum of

<sup>20</sup>Thaler v. Perlmutter (D.C. Cir.) <<https://media.cadc.uscourts.gov/opinions/docs/2025/03/23-5233.pdf>>

<sup>21</sup> Copyright and Artificial Intelligence | Part 2 on Copyrightability <<https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf>>

<sup>22</sup>United States Copyright Office, *Zarya of the Dawn* <<https://www.copyright.gov/docs/zarya-of-the-dawn.pdf>>

human creative contribution in post-editing must itself satisfy the relevant originality threshold ie. selection and arrangement of AI outputs is protectable only if the selection and arrangement reflect sufficient creative judgment. Mechanical selection (choosing the first output, selecting from a pre-set list without creativity) is unlikely to qualify.

In the EU context, the *Painer* formulation supports a similar analysis: post-generation editing is protectable to the extent that it involves 'free and creative choices' by the human editor. The more the human edits, revises, restructures, or augments the AI-generated content with her own expressive material, the stronger the claim for copyright in the resulting composite work, though only the human contribution is protected.

The Indian position is analytically equivalent. Under *Eastern Book Company*, post-generation editing must reflect 'skill and judgment' amounting to the author's own intellectual creation. Trivial editing like correcting a spelling error, adjusting punctuation, formatting output for publication, will not suffice. Substantial creative engagement with the AI-generated material, of the kind that impresses the human author's own creative personality on the final work, is required.

### 3.3 The *Théâtre D'Opéra Spatial* Problem: When Prompting Alone Is Insufficient

The *Théâtre D'Opéra Spatial* case (2023)<sup>23</sup> presents the hardest version of the originality problem. Jason Allen's AI-generated image, produced using Midjourney after what he described as extensive iterative prompting and model refinement, won the 2022 Colorado State Fair fine art competition. The U.S. Copyright Office Review Board nonetheless refused registration, holding that Allen's prompting and iterative refinement, while elaborate, did not constitute sufficient human authorship over the expressive elements of the final image. The model's stochastic generation of pixels was not sufficiently controlled by Allen's inputs to ground authorship in him.

The *Théâtre D'Opéra Spatial* decision is controversial among commentators. Critics argue that it fails to give adequate weight to the creative investment in sophisticated prompt engineering and iterative refinement; defenders argue that the decision correctly identifies the irreducible gap between human direction and machine execution in generative AI systems. The decision is, in any event, the most authoritative U.S. statement on the specific question of whether elaborate prompting suffices for copyright, and its answer 'not without more' has significant implications for the analysis that follows.

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<sup>23</sup>United States Copyright Office Review Board, Re: Second Request for Reconsideration for Refusal to Register 'Théâtre D'Opéra Spatial' (September 5, 2023) <<https://www.copyright.gov/rulings-filings/review-board/docs/Theatre-Dopera-Spatial.pdf>>

## 4. Prompts as Creative Input | The Central Doctrinal Question

### 4.1 The Nature of Prompts: A Spectrum

The term 'prompt' encompasses a spectrum of human inputs of radically different character. At one end sits the bare keyword like a 'cat,' 'sunset,' 'war', which provides a subject-matter specification and nothing more. At the other end sits the exhaustive creative direction: a multi-paragraph specification that designates subject matter, compositional structure, colour palette, stylistic references, emotional register, lighting conditions, narrative arc, tonal constraints, and iterative revision instructions, followed by cycles of model refinement guided by the human's aesthetic judgments at each step.

Between these poles lies a continuous gradation of prompt complexity. The originality analysis must be sensitive to this gradation: a legal rule that treats all prompts as equivalent, either as all sufficient or as all insufficient for copyright, will misallocate protection in a large proportion of cases. The doctrinal question is whether, and at what point on the spectrum, the creative investment in a prompt is sufficient to ground copyright in the resulting output, or in the prompt itself as a distinct work.

### 4.2 The Idea-Expression Distinction Applied to Prompts

The threshold doctrinal obstacle to recognising prompts as copyrightable expression is the idea-expression distinction, codified in Article 9(2) of the TRIPS Agreement<sup>24</sup> and operative in all major copyright systems. Copyright protects expression, not ideas, instructions, methods, or functional directions. As formulated in *Baker v. Selden* (1879),<sup>25</sup> instructions for performing an operation are not protectable as expression even when set out in literary form.

This distinction is equally foundational in Indian law, which reaches that result through judicial doctrine rather than an express statutory exclusion of procedures and methods of operation. In *R.G. Anand v. Delux Films* (1978)<sup>26</sup> the Supreme Court held that there can be no copyright in an idea, subject matter, theme, or plot, and that protection extends only to the form and manner in which an idea is expressed. The Delhi High Court in *Chancellor Masters of Oxford v. Narendera Publishing House* (2008)<sup>27</sup> applied the merger doctrine to the same end, refusing protection where an idea can be expressed in only one or a few ways, because to protect the expression in such a case would confer a monopoly on the idea itself. A functional prompt, which states a desired result in the obvious or only practical way of asking for it, sits on the unprotected side of that line; and for the barest prompts the Supreme Court's holding in *Krishika Lulla v. Shyam Vithalrao Devkatta* (2016)<sup>28</sup>, that a title formed by combining common words is not an original literary work, applies with equal force to a one-word or formulaic prompt.

<sup>24</sup>TRIPS Agreement, Article 9 <[https://www.wto.org/english/res\\_e/publications\\_e/ai17\\_e/trips\\_art9\\_jur.pdf](https://www.wto.org/english/res_e/publications_e/ai17_e/trips_art9_jur.pdf)>

<sup>25</sup>*Baker v. Selden*, 101 U.S. 99 (1879). <<https://supreme.justia.com/cases/federal/us/101/99/>>

<sup>26</sup> *R.G. Anand v. Delux Films*, (1978) 4 SCC 118 (Supreme Court of India).

<sup>27</sup> *The Chancellor, Masters & Scholars of the University of Oxford v. Narendera Publishing House*, 2008 SCC OnLine Del 1058 (Delhi High Court), applying the merger doctrine and *Baker v. Selden*.

<sup>28</sup> *Krishika Lulla v. Shyam Vithalrao Devkatta*, (2016) 2 SCC 521 (Supreme Court of India).

The application of this principle to prompts depends critically on the functional character of the prompt. A simple prompt that specifies a subject matter or output type ('generate a 500-word summary of this article') is, on any analysis, a functional instruction: it directs the model toward a defined output, exercising no expressive creativity of its own. The prompt-as-instruction falls squarely within the unprotectable side of the idea-expression distinction.

The analysis becomes more complex for prompts that are themselves expressive, that describe a creative vision in language that is itself literary or artistically crafted, that contain metaphors, unexpected juxtapositions, or aesthetic specifications that could only have been formulated by an author with a particular creative sensibility. Such prompts may qualify for copyright as original literary works in their own right, independently of the AI-generated output they produce. The protection would attach to the textual expression of the prompt, not to the output.

This distinction, between the prompt-as-instruction and the prompt-as-expression, is the axis on which much future litigation is likely to turn. Courts will need to determine whether a given prompt is primarily functional (directing a generative process toward a specified output) or primarily expressive (communicating a creative vision in language that is itself the author's intellectual creation). Many prompts will have both characters simultaneously, and courts will need analytical tools for disaggregating them.

### 4.3 Can Prompts Ground Authorship Over AI Outputs?

Even if a prompt is itself copyrightable as expression, a distinct and harder question is whether the creative investment in the prompt is sufficient to ground copyright in the AI-generated output that the prompt produces. This is the question on which *Théâtre D'Opéra Spatial*<sup>29</sup> turned, and it is the question that divides contemporary scholarly opinion most sharply.

Three analytical positions can be identified.

The *first position*, which the U.S. Copyright Office and the D.C. Circuit in *Thaler*<sup>30</sup> have adopted, holds that prompting cannot ground authorship over AI outputs because the expressive choices in the output are made by the model, not the prompter. On this view, the causal chain from human intention to expressive output is broken by the model's autonomous inferential process: the prompter specifies constraints, but the model makes the creative choices within those constraints. The output expresses the model's learned aesthetic, not the prompter's creative vision.

The *second position*, adopted by the Beijing Internet Court in *Li v. Liu* (2023)<sup>31</sup>, holds that sufficiently specific and iterative prompting can constitute copyright-grounding authorship over the resulting output. The Beijing court reasoned that the plaintiff's selection of prompts, parameters, and iterative refinements amounted to creative choices that were expressed in the final image, that the human's direction was sufficiently granular to make the output her 'own intellectual creation.' The decision has

<sup>29</sup> United States Copyright Office Review Board, Re: Second Request for Reconsideration for Refusal to Register 'Théâtre D'Opéra Spatial' (September 5, 2023) <<https://www.copyright.gov/rulings-filings/review-board/docs/Theatre-Dopera-Spatial.pdf>>

<sup>30</sup> *Thaler v. Perlmutter* (D.C. Cir.) <<https://media.cadc.uscourts.gov/opinions/docs/2025/03/23-5233.pdf>>

<sup>31</sup> Beijing Internet Court in *Li v. Liu* (2023) <<https://english.bjinternetcourt.gov.cn/pdf/BeijingInternetCourtCivilJudgment112792023.pdf>>

been widely noted as the most permissive judicial holding on AI image authorship in any major jurisdiction.

The *third position*, which is the most doctrinally nuanced and arguably the most analytically correct, holds that the answer depends on the degree to which the specific expressive content of the output was determined by the human's prompting, as distinct from by the model's autonomous choices. On this view, copyright in an AI-generated output is possible but requires proof that the human's creative direction substantially determined the expressive character of the output; that the output would not have had its specific expressive content but for the human's creative choices. This is a fact-specific inquiry that resists categorical rules and requires courts to develop evidentiary standards for assessing the causal relationship between human input and model output.

These positions can be sharpened by attending to how generative models actually behave. The U.S. Copyright Office, in its 2025 Report, rests the first position on a technical observation: current systems do not reliably execute a user's instructions, they fill gaps that the prompt leaves open, and an identical prompt will typically yield a range of different outputs, so that prompting alone does not give the user sufficient control over the expressive result to be its author<sup>32</sup>. This has a doctrinal corollary that cuts across all three positions. Because most image and text models incorporate a random seed, the relationship between prompt and output is not deterministic: the human chooses the question but cannot dictate the answer, and the specific expressive features that make one output preferable to another, the particular word, the precise composition, originate in the model's stochastic inference rather than in the prompt. It is this feature that has led at least one prominent commentator to argue that generative AI relocates creativity from making the answer to asking the question, with the consequence that whatever protection survives for the human contribution is likely to be thin and confined to the prompt itself, and that the same inversion unsettles the idea-expression distinction itself, since the question or idea the human supplies falls on copyright's unprotected side while the expression copyright exists to reward is contributed by the model<sup>33</sup>. The analytical task for courts, then, is not to count prompts or measure effort but to identify the rare cases in which a human's creative direction can be shown to have determined the specific expressive content of the output, and not merely its subject matter or genre.

## 4.4 The Analogy to Instructed Authors and Directors

A recurring argument in the academic literature<sup>34</sup> is that prompting is analogous to other forms of instructed creativity in which courts have recognised authorship: the film director who specifies scenes to a cinematographer, the composer who specifies instrumentation to a music engraver, the architect who specifies dimensions to a draughtsman. In each case, the creative vision is articulated by one person and executed by another, and courts have consistently located copyright in the person with the creative vision.

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<sup>32</sup> U.S. Copyright Office, *Copyright and Artificial Intelligence, Part 2: Copyrightability* (2025), pp. 18 to 22 (concluding that, on currently available technology, 'prompts alone do not provide sufficient human control to make users of an AI system the authors of the output').

<sup>33</sup> Mark A. Lemley, 'How Generative AI Turns Copyright Upside Down' (2024) 25 *Columbia Science and Technology Law Review* 21.

<sup>34</sup> Jane Ginsburg and Luke Budiardjo, 'Authors and Machines' (2019) 34 *Berkeley Technology Law Journal* <[https://btlj.org/data/articles2019/34\\_2/01\\_Ginsburg\\_Web.pdf](https://btlj.org/data/articles2019/34_2/01_Ginsburg_Web.pdf)>

The analogy is instructive but imperfect. In the director-cinematographer relationship, the cinematographer is a human agent who executes the director's specific instructions; if the cinematographer departs from those instructions, she is accountable. The generative model, by contrast, does not execute the prompter's instructions: it generates outputs that are statistically consistent with the prompt's constraints but that contain expressive content like specific word choices, particular compositional decisions, precise tonal inflections, that the prompter did not specify and cannot predict. The model is not accountable for its generative choices in any meaningful sense.

A closer analogy, proposed by some scholars, is the commissioned work: an author who commissions a painter to create 'a landscape in the style of Constable' does not acquire authorship over the resulting painting merely by virtue of the commission. The creative choices that constitute the painting's expressive content are made by the painter, not the commissioning author. The commission sets parameters; the artist fills them with expression. On this analogy, the prompter is the commissioner and the model is the artist and copyright belongs to neither, since the 'artist' is not a person.

## 4.5 Model Configuration and the Extended Prompting Cycle

Contemporary practice in generative AI involves more than simple prompting. Users may also configure model parameters such as temperature (controlling the randomness of outputs), top-p sampling (controlling the diversity of token selection), style presets, negative prompts (specifying elements to exclude), and fine-tuning settings and engage in iterative refinement cycles in which they evaluate outputs, adjust prompts in light of them, and repeat the process across many iterations.

The question is whether this extended configuration and iteration cycle, considered as a whole, constitutes sufficient human creative control to ground copyright. Three considerations are relevant. First, parameter configuration operates on the statistical properties of the model's output ie. it shapes the probability distribution from which outputs are drawn but does not specify their expressive content. Second, iterative refinement involves the human making selection decisions among model outputs, and those selection decisions may involve genuine aesthetic judgment that is protectable as compilation authorship (the right in the selection and arrangement of the outputs chosen). Third, the extended cycle may, in aggregate, produce a level of human creative investment that, evaluated holistically, satisfies originality requirements, particularly in jurisdictions with lower thresholds.

Courts evaluating these claims will face the challenge of developing workable evidentiary standards. The number of prompting iterations is not, by itself, a reliable proxy for the degree of human creative control: an author who iterates a thousand times may be making genuinely creative selection judgments at each step, or may be accepting outputs mechanically. What courts require is not evidence of effort but evidence of creative choice; the kind of specific aesthetic judgment that is expressed in the final work.

## 5. The Indian Framework | Current Position and Doctrinal Gaps

### 5.1 Originality Under the Copyright Act, 1957

As noted above, the Copyright Act, 1957 does not define originality.<sup>35</sup> The Supreme Court's formulation in *Eastern Book Company* is the operative standard: copyright requires 'skill and judgment' reflecting the 'author's own intellectual creation.' Applied to AI-generated content, this formulation raises the same structural difficulties as its international equivalents: the 'author's own intellectual creation' must originate in an identifiable human author who made the relevant creative choices.

The Copyright Act's definition of 'author' in Section 2(d)(vi)<sup>36</sup> states 'the person who causes the work to be created' in the case of computer-generated works, is a partial answer to the authorship question but does not resolve the originality question. Even if a person 'causes' an AI-generated work to be created by providing a prompt, it does not follow that the work reflects that person's 'own intellectual creation' in the *Eastern Book Company* sense. The causal contribution of the prompter may be remote, in the sense that the model's stochastic generation process substantially intervenes between the prompt and the expressive output.

### 5.2 Prompts as Copyrightable Works Under Indian Law

A prompt that is itself a literary work, that expresses the author's creative vision in original language of sufficient character, can potentially attract copyright as an original literary work. The *Eastern Book Company* standard requires only that the work reflect the author's 'own intellectual creation' and be the product of 'skill and judgment.' A carefully crafted, expressive prompt, one in which the specific choice of language, metaphor, and creative specification reflects genuine aesthetic judgment, can be argued to satisfy this standard.

The difficulty is that most prompts, even sophisticated ones, are designed to be functional: their purpose is to elicit a specific output, and their language is calibrated to that purpose. The question whether a functional text can also be an original literary work is a familiar one in copyright law; advertising copy, instruction manuals, and technical specifications are all potentially copyrightable if sufficiently creative, and there is no principled reason why prompts should be categorically excluded. But courts applying *Eastern Book Company* will require that the specific language of the prompt, not merely its subject-matter specification, reflects original creative judgment.

No Indian court has yet decided whether a prompt is itself a copyrightable work. The first court anywhere to address the question directly did so in November 2025: in *Chengdu Cultural*

<sup>35</sup> Copyright Act, 1957 (India), s. 13(1): 'Copyright shall subsist throughout India in the following classes of works, that is to say — (a) original literary, dramatic, musical and artistic works...' (emphasis added). The originality requirement, though not defined in the Act, is judicially settled: *Eastern Book Company*, supra n. 3.

<sup>36</sup> Copyright Act, 1957, Sec 2(d)(vi) <<https://www.copyright.gov.in/Documents/Copyrightrules1957.pdf>>

*Communication Co. v. (Shanghai) Information Technology Co., a Shanghai court*<sup>37</sup> held that six Midjourney prompts were not protectable because they were, in the court's words, 'essentially instructions or descriptions' whose elements were 'simply listed without grammatical or logical connections, failing to form a language expression with an inherent structure', and so fell on the unprotectable idea side of the line. The court accepted, however, that prompts can be original in principle, reasoning that 'the more specific and detailed the prompt, the more fully it reflects personalized choices and aesthetic preferences, and thus the more likely it is to meet the requirements of originality'. That analysis maps closely onto the Eastern Book Company standard: a bare or mechanical prompt is an unprotectable idea or instruction, whereas a prompt of sufficient linguistic structure and personalised expression could qualify as an original literary work in India as well.

### 5.3 The RAGHAV Episode and Its Implications

The Indian Copyright Office's handling of the RAGHAV/Suryast registration<sup>38</sup>, in which the Office initially accepted a co-authorship registration listing both the human user Ankit Sahni and the AI system RAGHAV as authors, then issued a withdrawal notice questioning RAGHAV's status as an 'artist' within the meaning of Section 2(d), illustrates the institutional uncertainty that characterises the current Indian position. The withdrawal notice does not constitute a judicial determination, and its doctrinal implications are contested. What it does signal is that the Copyright Office does not regard the matter as settled and is unlikely to register AI-only authorship claims without further judicial or legislative guidance.

For originality analysis specifically, the RAGHAV episode is relevant in the following respect: the question whether the human prompter Ankit Sahni exercised sufficient 'skill and judgment' over the AI-generated image to ground copyright in him has not been adjudicated. Its resolution would require an assessment of the specific creative choices Sahni made in prompting and directing the RAGHAV system, precisely the kind of fact-specific originality inquiry that this primer has argued courts must undertake.

### 5.4 Legislative Gaps and Judicial Agenda

The Copyright Act, 1957 contains no provision specifically addressing the originality of AI-assisted works, the copyright status of prompts, or the evidentiary standards for assessing human creative control in the generative cycle. Section 2(d)(vi)<sup>39</sup> addresses authorship but not originality. The Act's silence means that courts confronting these questions will need to develop doctrine through case-by-case adjudication, drawing on the Eastern Book Company standard and, where appropriate, on comparative jurisprudence.

<sup>37</sup> Chengdu Cultural Communication Co. Ltd v. (Shanghai) Information Technology Co. Ltd, (2025) Hu 0101 Min Chu No. 14775 (Shanghai), 6 November 2025; reported as the first decision to address the copyrightability of AI prompts.

<sup>38</sup> RAGHAV / 'Suryast' Case <<https://spicyip.com/2023/12/ankit-sahnis-ai-co-authored-artwork-denied-registration-by-us-continues-to-be-registered-in-india.html>>

<sup>39</sup> Copyright Act, 1957, Sec 2(d)(vi) <<https://www.copyright.gov.in/Documents/Copyrightrules1957.pdf>>

The doctrinal agenda for Indian courts includes: whether a prompt can constitute an 'author's own intellectual creation' under *Eastern Book Company*; whether and how much post-generation editing is required to ground copyright in an AI-assisted work; how the idea-expression distinction applies to prompts of varying levels of specificity; and whether iterative refinement cycles involving model configuration can constitute sufficient 'skill and judgment' to protect the resulting output. Each of these questions is tractable within the existing doctrinal framework, but each requires judicial engagement that has not yet occurred.

## 6. Comparative Judicial Approaches | How Courts Evaluate Human Creative Control

### 6.1 United States: The 'Sufficient Human Authorship' Standard

Following the *Thaler* and *Théâtre D'Opéra Spatial* decisions, the U.S. position can be summarised as follows: (a) purely machine-generated content is not protectable; (b) AI-assisted content may be protectable to the extent the human contribution satisfies the 'modicum of creativity' threshold; (c) prompting alone, without substantial post-generation creative engagement, is insufficient; and (d) the human-authored elements of a composite work, text written by a human, selection and arrangement decisions made by a human, are protectable regardless of whether the work also contains AI-generated elements.

The U.S. Copyright Office has signalled that it will evaluate the degree of human creative control on a case-by-case basis, looking at the totality of human involvement: the specificity of the prompt, the extent of model configuration, the nature and extent of post-generation editing, and the degree to which the human's creative vision is expressed in the final work. This is a holistic inquiry that resists categorical rules and will require the Office and courts to develop working standards over time.

### 6.2 China: A Lower Threshold, Fact-Specific Application

The Beijing Internet Court's decision in *Li v. Liu* (2023)<sup>40</sup> represents the most permissive judicial approach to prompting-based authorship in any major jurisdiction. The Court held that the plaintiff's selection of prompts, parameters, and iterative refinements amounted to creative choices sufficient to ground copyright in the resulting AI-generated image. The decision applies what is in effect a lower threshold than *Feist*: it requires that the human made creative choices in the prompting process, but does not require that those choices be directly expressed in the output's specific expressive content.

The earlier *Tencent Dreamwriter* decision (2019)<sup>41</sup> established a similar principle in the text context: the human team's creative choices in selecting data sources, designing article structure, and supervising output were held sufficient to ground copyright in AI-generated financial news articles. Both decisions reflect China's pragmatic policy orientation toward enabling AI-assisted creative industries, rather than a categorical doctrinal commitment to a specific originality standard.

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<sup>40</sup>Li v. Liu, (2023) Beijing Internet Court

<<https://english.bjinternetcourt.gov.cn/pdf/BeijingInternetCourtCivilJudgment112792023.pdf>>

<sup>41</sup>Shenzhen Tencent Computer System Co., Ltd. v. Shanghai Yingxun Technology Co., Ltd., (2019)

<<https://www.wipo.int/wipolex/en/text/588678>>

## 6.3 European Union: 'Free and Creative Choices' and Functional Constraints

The EU *Painer* framework<sup>42</sup> introduces a consideration absent from U.S. and Indian doctrine: the question whether the human author's choices were sufficiently 'free', unconstrained by external technical or functional requirements, to reflect her creative personality. In the prompting context, this raises the question whether a prompter whose aesthetic choices are heavily constrained by the model's capacities and limitations (the model cannot produce certain types of outputs; the prompter must learn to work within the model's biases and tendencies) is exercising truly 'free' creative choices in the *Painer* sense.

The EU has not yet produced authoritative judicial guidance on AI-generated content, but the direction of travel in national courts suggests convergence on the position that prompting alone does not produce 'free and creative choices' sufficient to ground copyright in the output, while substantial post-generation editing that reflects the author's own aesthetic personality may do so.

## 6.4 Australia: Independent Intellectual Effort and the Telstra Standard

The Australian Full Federal Court's decision in *Telstra Corporation Ltd v. Phone Directories Co. Pty Ltd* (2010)<sup>43</sup> held that copyright requires 'independent intellectual effort' by an identifiable human author. The decision predates modern generative AI but establishes an exacting standard that, applied to the generative context, would require clear evidence of human creative engagement beyond the provision of a prompt. Australia has no statutory deeming provision equivalent to the CDPA's Section 9(3)<sup>44</sup>, and the current doctrinal position is among the most demanding of human creative contribution in any major jurisdiction.

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<sup>42</sup> Eva-Maria Painer v. Standard VerlagsGmbH and Others, Case C-145/10 [2011] (CJEU). <<https://infocuria.curia.europa.eu/tabs/affair?>>

<sup>43</sup> *Telstra Corporation Ltd v. Phone Directories Co. Pty Ltd* [2010] <<https://www.lexology.com/library/detail.aspx?g=1b46e8c7-25ea-410e-ba84-9b7b38aa4016>>

<sup>44</sup> Copyright, Designs and Patents Act 1988 (CDPA) <<https://www.legislation.gov.uk/ukpga/1988/48/section/9>>

## 7. Towards a Framework for Evaluating Prompts and Creative Control

### 7.1 A Proposed Analytical Structure

Drawing on the comparative analysis above, a workable analytical framework for evaluating originality claims in AI-assisted works might proceed along the following axes.

**First**, is the prompt itself an original literary work, independently of the output it produces? This requires asking whether the language of the prompt reflects genuine aesthetic judgment in its own right; whether it is the kind of creative text that, if published as poetry, description, or instruction, would attract copyright. If yes, the prompt is protectable as a literary work, regardless of the AI output.

**Second**, does the output contain any elements that were directly specified by the human's prompting; elements whose specific expressive content was determined by the human's creative choices rather than by the model's autonomous inference? If yes, those elements may be protectable as the human's own creative expression, on the analogy of a human directing another human artist.

**Third**, does the post-generation human engagement with the AI output like selection, editing, rearrangement, augmentation, reflect creative judgment sufficient to ground compilation or derivative work copyright in the human's contribution? If yes, the human contribution is protectable even if the underlying AI-generated content is not.

**Fourth**, considered holistically, does the totality of human involvement, prompt design, parameter configuration, iterative refinement, post-generation editing, constitute the kind of creative engagement that the applicable originality standard (modicum, skill and judgment, or author's own intellectual creation) requires? This holistic inquiry is the most difficult to apply but may be unavoidable in complex cases where human and machine contributions are deeply interwoven.

### 7.2 Evidentiary Considerations

Courts and registration authorities addressing these questions will face significant evidentiary challenges. The degree of human creative control in a generative process is not directly observable from the final output; a highly specific prompt and a minimally specific prompt may produce outputs that are indistinguishable in their expressive character. Courts will need to develop standards for documentary evidence of the prompting process such as logs of iterative prompt cycles, records of configuration settings, evidence of editorial engagement, that can ground factual findings about the degree of human creative control.

The U.S. Copyright Office has begun moving in this direction, requiring applicants to disclose AI-generated material and to describe the human contribution. The adequacy of these disclosure requirements, and the evidentiary standards that should govern disputed claims, remain to be developed through practice and litigation.

## 8. Conclusion

Originality doctrine, in its various national formulations, was developed to answer a specific question: is this work sufficiently expressive of the author's creative personality to merit the protection that copyright provides? That question presupposes a human author with a creative personality, an entity who made choices, exercised judgment, and impressed those choices on a work.

GenAI does not abolish that question; it makes it harder to answer. The prompting cycle introduces a new mode of creative agency in which human and machine contributions are intertwined in ways that existing doctrinal tests were not designed to assess. Courts and legislatures are only at the beginning of the process of developing the analytical tools required.

The analysis in this primer suggests several conclusions. Prompts can be original literary works in their own right if their language is sufficiently expressive. Post-generation human editing is protectable if it reflects genuine creative judgment. The AI-generated output itself is protectable only if the human's prompting direction was sufficiently specific and determinative of the output's expressive content; a standard that most current generative models, with their stochastic and autonomous generative processes, will be difficult to satisfy. And holistic assessment of the entire human-AI interaction cycle, while analytically demanding, is likely to become the operative standard in complex cases.

For India, the Eastern Book Company standard provides a doctrinal anchor that is broadly consistent with the international mainstream. What it does not provide is judicial guidance on how the standard applies to prompting, model configuration, and AI-assisted editing; guidance that is urgently needed as AI-assisted creation becomes ubiquitous across India's creative industries.

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


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