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Artificial Intelligence and the Evolving Notions of what constitutes Art

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ABSTRACT

Since the last couple of decades, scientists, engineers, and several artists have been exploring writing computer programmes that can generate art. It is therefore pertinent to study the integrity and reliability of this art genre along with the aspects of its creation, are still inscrutable concepts which require intensive practical and academic investigation. In the article, the author explores what constitutes “algorithmic art and what would be the implication of the same on the authorship and ownership of intellectual property among humans; this article also addresses the issue of an absence of appropriate laws and regulations which deal with and govern the realm of art, artificial intelligence, and law.

Keywords: *Art, Artificial Intelligence and Law.*

Over the last couple of decades, scientists, engineers, and several artists have been exploring writing computer programmes that can generate art. With the advent of the 21st century, new technologies, especially in the field of artificial intelligence (hereinafter referred to as “AI”) have contributed to a large extent in the development and transformation of the creative space. In today’s world, AI-enabled programs are swiftly contributing to several areas such as music, architecture, medicine, arts, science and so on.

At the outset, AI’s snowballing popularity in the artistic space highlights the birth of a new art genre. At the same time, the integrity and reliability of this art genre along with the aspects of its creation, are still inscrutable concepts which require intensive practical and academic investigation. In today’s world, certain programmes which are primarily written for other purposes but are adopted for art making come under the category of generative adversarial networks and alternatively, there are programmes, that can be written with a sole intent to make creative outputs. Algorithmic art is a broad term that points to any art that cannot be created without the use of programming. Currently, it is on the rise, and it’s expanding our conception of technology and art. Programmers are creating new programs to generate unique visual masterpieces that are beyond their own imaginations. With the use of evolutionary, mathematical, and artificial intelligence algorithms, programmers are bringing computers into

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the forefront of contemporary art. Very recently, an art sketch created with the help of “MidJourney”² won a prize in a digital art category at a competition in United States.³ Which has definitely raised many eyebrows in terms of the originality and uniqueness of the artwork along with the creative output of the artist which has went behind the conceptualization of the same.

If we look at the Merriam-Webster definition of art, we find “*the conscious use of skill and creative imagination especially in the production of aesthetic objects; the works so produced*”. How far have we come to expand the meaning of “creative imagination” and to what extent can we now rely on institutional display, artist’s intention, and audience acceptance as certain crucial defining steps to decide whether something is “art”. This also gives rise to several wide-ranging questions such as, “*To what extent can an artist claim AI art as he/his/she/hers(their) own? How does knowing an artist’s identity (human or AI) affect the idea that AI can generate an original work of art? How does knowing an artist’s identity (human or AI) affect one’s evaluation of the artwork?*”. These are certain questions to be determined by not only the entire artist community or their audience at large but also by the law and policy makers who are to determine the regulation or AI generated artwork.⁴

What cannot be ignored is that the true potential of human ability is best expressed by creativity; as creativity is an essential part of what makes us human. Especially when one tends to address the issue of “Man vs. Machine” a debate on the concept of creativity is paramount and cannot be neglected. What also cannot be ignored is the fact that several artists and even art lovers resist the penetration of AI in the art world due to technophobia. For one set of individuals, something such as technology, would have no place in the art world, but one wonders; if this perception of theirs is inspired by lack of understanding of what AI actually is, how it works, what it can achieve and what it can and cannot be made to do.⁵ We cannot ignore that there is a subtle sense of fear which is resultant of an imagined future in which AI will hijack art making and crank out masses of soulless abstract paintings.⁶

² MidJourney is a brand-new tool driven by artificial intelligence that can transform any idea into a work of art using language. It’s possible that in the past you’ve come across some messed-up examples of art made by AI.

³ He used AI art from Midjourney to win a fine-arts prize. Did he cheat? - The Washington Post accessed on 7th of October 2022 at 16:25.

⁴ Hong, J.; Curran, N.M. Artificial Intelligence, Artists, and Art: Attitudes Toward Artwork Produced by Humans vs. Artificial Intelligence. *ACM Trans. Multimed. Comput. Commun. Appl.* **2019**, *15*, 58. Available online: <https://dl.acm.org/doi/10.1145/3326337> accessed on 6th October 2022 at 12:00

⁵ Artificial intelligence in art: A simple tool or creative genius? (techxplore.com) accessed on 7th of October 2022 at 16:00.

⁶ Is Artificial Intelligence Set To Take Over The Art Industry? (forbes.com) accessed on 7th of October 2022 at 16:06.

Many artists and art historians often resist acknowledging work created with AI as “art” because for them art is resultant of a figure of a modern artist who is at the centre of art creation and creativity and to them this central figure of the artist is vital for their definition of art. Compared to which, the idea of art; as a means for the personal expression of the individual artist is relatively recent.⁷ Since many centuries, across many belief systems and cultures, art has been made under a wide range of conditions and for a variety of reasons, often by groups of people rather than an individual artist (think medieval cathedrals or guild workshops), art is often made to the specifications of patrons and donors large and small, made to order, funded by a wide variety of groups, civic organizations, or religious institutions, and made to function in an extraordinary range of situations. But at the same time, with the recent advancements and improvements in technology and the creative space as a whole, one often wonders if it is the correct time for the definition and perception of what constitutes art to evolve, as merely a different process of creation does not unilaterally disqualify the result of a process as a viable work of art.

This brings us to a fundamental question, which relates to the law and regulations which govern the work of artificial and the extent to which the Indian Copyright Office is bemused with the active advent of AI generated art. Not so long ago, the Indian copyright office recognised an artificial intelligence tool (RAGHAV Artificial Intelligence Painting App) as the co-author of a copyright-protected artistic work.⁸ It is pertinent to note that as on date, several jurisdictions all over the world still do not provide adequate copyright protection to AI generated works, whereas in certain common law nations such as the United Kingdom and India, copyright for literary, dramatic or artistic works created by AI are given to “whom the arrangements necessary for the creation of the work are undertaken”.⁹

In today’s world, AI is capable of generating and creating content at inhuman speeds, and almost five years back, the Director of Creator Technology Research Lab for Spotify, François Pachet announced that he was in the process of “the next generation of AI-assisted music composition tools”. We live in a world now where there are numerous AI music composers now¹⁰, there now

⁷ Cetinic, E.; She, J. Understanding and Creating Art with AI: Review and Outlook. **2021**, arXiv:2102.09109. Understanding and Creating Art with AI: Review and Outlook | ACM Transactions on Multimedia Computing, Communications, and Applications accessed on 7th of October 2022 at 18:00.

⁸ <https://www.managingip.com/article/2a5czmpwixyj23wyqct1c/exclusive-india-recognises-ai-as-co-author-of-copyrighted-artwork> accessed on 13th of October 2022.

⁹ https://www.wipo.int/wipo_magazine/en/2017/05/article_0003.html accessed on 13th of October 2022.

¹⁰ <https://filmora.wondershare.com/audio-editing/best-ai-music-composer.html> accessed on 23rd of October 2022, *also see* Can AI help me compose a hit song? | François Pachet | TEDxISTAlameda https://www.youtube.com/watch?v=h6m_nUnwBbA.

exists a AI robot artist¹¹, and a scriptwriter robot.¹² As on today, the Berne Convention makes it very clear that the legal protection under the convention will only be extended to authors who are nationals of countries of the European Union¹³. The primary need for a human element being present to enable protection under copyright law is also emphasized by the US copyright law which “Expressly excludes non-human authorship.”¹⁴ Similarly, in 2012, an Australian court declared that copyright law and the protection under it does not extend to works which are generated by computers.¹⁵ In India too, the basic require for copyright protection is “skill and judgement” of a natural person.¹⁶ The Indian Copyright Act, 1957 goes a step further and makes it clear that a copyright can only be infringed by a “person”.¹⁷ In light of the above, as a reader; try and analyse the extent of the gap between the current legal regime existing AI and the swiftness at which the technology around AI is developing.

At the same time, what has to be taken into consideration is that this understanding of computer generated works is to an extent limited, as it refers to computer generated works which requires human input. It is also pertinent to note that the term ‘computer generated works’ is not defined in the Indian copyright Act, 1957 and therefore has to be construed in terms of its literal meaning.¹⁸ In India, the term “author” is seldom restricted to a living person and also includes a juristic person. But what of the “author” for computer generated works, in India? To an extent, one must consider that the term “author” in this context can only denote a “natural” person, as the term of copyright for computer-generated works, is usually calculated using the age of a natural person. Till date, there is no precedent of the Indian courts which suggests that the term “author” can be interpreted in a broad manner in order to include machines, devices or even computers, and to be fair we have a lot to catch up on when we take into consideration the fact that countries like Estonia are not only drafting a very specific act regulating AI but are also ensuring that this initiative of theirs is exceptionally innovative.¹⁹

¹¹ Ai-Da, see <https://www.ai-darobot.com/> accessed on 24th of October 2022.

¹² Sunspring, the first film ever written entirely by an artificial intelligence, <https://www.thereforefilms.com/films-by-benjamin-the-ai.html>; Benjamin, <https://benjamin-ai.tumblr.com> accessed on 23rd of October 2022.

¹³ Article 3(1)(a) of the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, completed at PARIS on May 4, 1896, revised at BERLIN on November 13, 1908, completed at BERNE on March 20, 1914, and revised at ROME on June 2, 1928, at BRUSSELS on June 26, 1948, at STOCKHOLM on July 14, 1967, and at PARIS on July 24, 1971.

¹⁴ *Naruto, et al. vs. David John Slater, et. al.* Case No. 15-cv-04324-WHO Specifically, the Copyright Office will not register works produced by “nature, animals, or plants” including, by specific example, a “photograph taken by a monkey.

¹⁵ *Acohs Pty Ltd v. Ucorp Pty Ltd.*, (2012) FCAFC 16.

¹⁶ *Eastern Book Company & Ors vs. D.B. Modak & Anr* (2008) 1 SCC 1.

¹⁷ See Section 51 of the Indian Copyright Act, 1957 – When copyright infringed.

¹⁸ The Copyright, Designs and Patents Act 1988 of the UK, however, defines ‘computer generated work’ as one that “is generated by computer in circumstances such that there is no human author of the work”.

¹⁹ <https://newtech.law/en/estonia-plans-the-boldest-ai-regulations/> accessed on 15th of October 2022.

At this juncture, one must consider the several perplexing complexities which may make the “authorship” enigma more baffling. Take a piece of art created by AI as an example. One can argue that the person who chose the parameters to be fed into the AI has rights of authorship to the final artwork. One can also argue that the software programmer who developed the AI software is the author of the final artwork and there may come a time when one could be determined on securing the authorship rights of the AI itself. Should we wait for such a conundrum to arise ? Or should we rather have a systematic system of laws and regulations in place to keep a checks and balances in place for what the future holds?

In conclusion, one must consider the argument that people who are committed to AI art and are exploring the same on a daily basis are in the right place because by doing so, they have several novel opportunities to explore, not only new AI technologies but also a new genre of art, resultant of a human’s psychological process of creating art, combined with computational abstraction processes through technology and As technology advances, the boundary between considering AI as tools or as artists/creators is getting vaguer. It is pertinent for us as a society to realize that our current legal regime might not be adequate enough to reflect and comprehend the technological realities surrounding AI as copyright works can no longer to be in the singular reserve of natural persons and AI systems now are more than capable enough of generating works which are entitled to copyright protection.
