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Global Divergence in IP Protection for A.I. Generated Content

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Abstract

The rapid integration of artificial intelligence into creative industries has exposed a profound lack of uniformity in intellectual property regimes governing AI-generated works. Jurisdictions diverge sharply on questions of authorship, originality, and ownership. While the United States and European Union largely require a human author for copyright protection, countries such as India and the United Kingdom assign authorship to the arranger of computer-generated content, and Chinese jurisprudence has begun recognising hybrid approaches. These inconsistencies create significant legal uncertainty for creators, companies, and developers operating in cross-border markets. Issues such as forum shopping, where parties choose favourable jurisdictions to assert rights, and the difficulty of enforcing municipal IP laws across national boundaries exacerbate the challenges. Equally unsettled is the question of who holds rights in AI-generated content, particularly where human input is minimal.

This paper undertakes a comparative analysis of the United States, the European Union, China, and India, mapping how each legal framework approaches AI-generated works. It further examines the interplay with international conventions and treaties, including the Berne Convention, TRIPS Agreement, and WIPO-administered instruments, highlighting the absence of AI-specific provisions and the resulting regulatory gaps. By situating these national and international regimes within the broader context of global commerce, the study explores how the patchwork of laws impacts rights allocation, enforcement mechanisms, and innovation policy. The paper concludes by outlining potential pathways for harmonisation and legal reform aimed at providing coherent protection for AI-generated content while balancing the interests of human creators, developers, and society at large.

Keywords: Artificial Intelligence, Intellectual Property, AI-Generated Content, Ownership, Cross-Border Enforcement

Introduction

The rapid rise of generative artificial intelligence (AI) technologies, which can autonomously produce text, images, music, code, and other creative works, has posed novel challenges for intellectual property (IP) regimes worldwide. When an AI system generates work, questions arise: is that work copyrightable, and if so, who is the "author" or owner? How should patent law treat inventions conceived by AI? To date, countries have taken inconsistent positions. In the United States, the Copyright Act has long been interpreted to require a human author, so purely AI-generated works are not protectable.[1] The European Union (EU) does not have a special AI copyright rule. Instead, EU law broadly demands originality from an author's intellectual creation.[2] China has recently indicated it will protect AI-assisted works if a human user contributes sufficient creative input.[3] India likewise insists on a human (or legal person) author for any registered copyright.[4] These divergent approaches have major implications for creators, companies, and developers of AI-generated content. They invite forum shopping (choosing jurisdictions with favourable rules), complicate cross-border enforcement of IP rights, and leave unsettled ownership questions like, is the user, the developer, or the AI itself the "author"?. This paper analyses these issues in depth and surveys relevant international frameworks (such as the Berne Convention, TRIPS, WIPO treaties, OECD and UNESCO guidelines, and the new EU AI Act). After comparing U.S., EU, Chinese, and Indian law, we discuss the strategic and practical effects of legal inconsistencies. We then review global initiatives and treaties, identify gaps, and offer recommendations for policy and law reform. Given the evolving state of AI and IP, this study relies on the latest sources and cases, citing official guidance and scholarly analyses for all major points.[5]

Jurisdictional Approaches to AI-Generated Works

United States. The U.S. approach emphasises human authorship. By statute, the Copyright Act protects only "original works of authorship" fixed in a tangible medium,[6] And courts long have interpreted "author" to mean a human being. In Burrow-Giles (1884), the Supreme Court defined an author as "he to whom anything owes its origin" explicitly referring to a "man" and a person of genius.[7] Likewise, later cases held that neither gods nor animals can be authors.[8] In 2023, the U.S. Copyright Office codified this principle in a policy statement: it reiterated that "copyright can protect only material that is the product of human creativity," and that by law, an AI tool (being non-human) cannot be an author.[9] Its guidance declares that a work "must owe its origin to a human being" and it "will not register works produced by a machine or mere mechanical process".[10] As examples, the Office denied registration for an entirely AI-generated image (2018) and for individual Midjourney-generated pictures in a graphic novel.[11] In practice, this means an AI output can be copyrighted only if a human creator contributed sufficient expressive content (for instance, by writing detailed prompts or editing the output). Recently, the Copyright Office ruled that a novel containing human-written text interspersed with AI images could be registered as a composite work; however, the AI-generated images themselves, lacking independent human authorship, were not protected.[12] In short, U.S. law sharply limits protection for AI works, a creative "spark" from a person is required.[13]

Patent law in the U.S. similarly requires a human inventor. The U.S. Patent and

Trademark Office and courts have rejected patent applications listing AI as inventor. For example, applications naming the AI system "DABUS" have been rejected in the United States. Thus, for any invention derived from AI, a natural person must be identified as the inventor, and patent ownership typically vests in that person or entity. This parallels the human-authorship requirement in copyright and underscores the U.S. stance that AI tools are not "people" for IP purposes.

European Union. The EU has not adopted a specific rule on AI-generated works. Instead, EU member states rely on the harmonised copyright framework and directives. Under the EU Copyright Directive (2019/790) and the Berne-based underlying law, a work is protected only if it is "original" commonly interpreted to mean the author's own intellectual creation.[14] Thus, broadly speaking, an AI output would qualify only if the human who used the AI can be considered the author, i.e., provided original expression or selection. EU law does not recognise an autonomous "AI author." In practice, many European countries would likely treat an AI-generated work as non-protected unless a person made the key creative choices. The EU has also introduced limited exceptions to help with AI development. The 2019 Copyright in the Digital Single Market Directive allows text and data mining (TDM) of copyrighted works for AI training. It permits nonprofit TDM freely, and even commercial TDM when data are lawfully accessed or rightsholders have not opted out.[15] These exceptions aim to ease the creation of AI, but they do not change authorship rules for AI outputs. Significantly, the EU is addressing AI issues via the new EU AI Act (2024/1689) rather than by granting new AI-centric IP rights. The AI Act does not create copyright for AI works; instead, it focuses on how AI must respect existing IP. For example, Recital 105 explicitly notes that training AI models requires massive copyrighted data, so "any use of copyright-protected content requires the authorisation of the rightsholder, unless exceptions apply".[16] Article 53 of the AI Act imposes obligations on providers of general-purpose AI models: they must implement policies to comply with EU copyright law, including respecting TDM opt-outs, and must publicly disclose a summary of the training data used.[17] In effect, the EU Act reinforces copyright compliance in AI training and transparency, but it does not address who owns outputs or grant AI outputs new rights. Ownership of AI-generated content in the EU remains governed by general principles typically vesting in the human creator or employer, e.g., if an employee uses an AI tool for work and often depends on contracts or terms of use.[18] In practice, one analysis notes that ownership often goes "to the user of the AI tool",[19] but emphasises that this can vary by jurisdiction and contract. EU law itself does not specify an author for machine works; unlike the UK Copyright Act or Indian law, there is no explicit provision for "computer-generated" works. Thus, the EU aligns generally with the Berne Convention: only an original human-authored element enjoys copyright, and AI is a tool.

China. Chinese law is evolving but shows a tendency to protect AI-assisted creativity while still excluding the AI itself as an "author." The Chinese Copyright Law does not explicitly mention AI, but its definitions imply that only human (or legal person) creators qualify: a work's author can be a "natural person, legal person or an association",[20] and only authors own rights. Critically, Chinese courts have recently signalled that AI-generated works can be copyrightable if a person supplied sufficient creative input. In a 2024 case, a Beijing court held that an image created with Stable Diffusion (an AI art generator) was

an "original work" because the user carefully crafted detailed prompts "Japan idol", "cool pose", etc, and fine-tuned outputs. The court ruled that the user's "subjective aesthetic choice and original judgment" rendered the picture copyrightable.[21] It then decided on authorship: the user (plaintiff) was the author and copyright owner because the AI tool "cannot be an author"[22] and the plaintiff had provided the creative direction. The AI software's developer was not considered the author because the license for the AI expressly disclaimed rights in outputs.[23] In short, Chinese case law thus far suggests AI outputs can be protected, but always through a human author who guided the process. Other Chinese decisions are consistent: for example, a 2019 Shenzhen court found a news article produced by an "AI program" to be eligible for copyright.[24] Conversely, if a user does not contribute originality, Chinese courts would likely deny protection, as the Beijing ruling made clear, it assesses each case on the facts. In addition, China has moved to regulate AI service providers. New Interim Measures on Generative AI (Aug. 2023) require companies offering AI-generated text, images, or audio to ensure training data is lawfully sourced and free of IP infringement. These administrative rules (the first of their kind globally) signal China's dual approach: promote AI innovation by protecting some AI works, while also requiring respect for existing copyrights in training data. On patents, China's 2020 guidelines encourage granting patents for AI-related inventions if they meet patentability criteria, and recent comments by Chinese courts show sympathy for AI inventors. But like other systems, China has refused to recognise an AI system itself as an "inventor."[25]

India. Indian IP law currently limits ownership to humans or corporate entities. The Indian Copyright Act (amended 2012) defines "author" to exclude non-human AI. While it recognises "computer-generated works" (Sec. 2(aa)), it ascribes authorship to the person who causes creation, typically the programmer or operator, rather than to the AI itself. Legal commentators note that Indian law "only legal or natural persons can have ownership over IP created with the use of AI".[26] In practice, the Indian Copyright Office has insisted that any registered work must name a human author. In the widely cited "Suryast" case, an artist using AI to create an image had his initial copyright application rejected for lacking a human author. The office later accepted the application only after the artist was named as co-author,[27] and ultimately affirmed that authorship must be attributed solely to a human. Similar rules apply in trademarks and patents: Indian law does not recognise an AI agent as the owner of a trademark, and for patents, it requires a human inventor (computer programs per se are not patentable). Thus, India's approach is very restrictive: if an AI wholly "writes" a work, only a responsible human (programmer, operator, or legal entity behind the AI) can claim rights. The situation may change if India revises its IP laws, but for now, AI outputs with no human intervention are effectively unprotected, or the rights vest in the associated human stakeholders.[28]

Forum Shopping by AI Companies

These national divergences create incentives for forum shopping. Firms developing or using AI-generated content may choose where to domicile or file IP claims based on favourable laws. As one analyst explains, "companies may decide based on where their property will be best protected".[29] For example, a U.S.-based startup that relies on copyrighted training data might find the EU's new transparency rules burdensome, while a Chinese competitor might benefit from Chinese courts' willingness

to recognise user-controlled AI works. If a jurisdiction like China signals that it will grant copyright protection to AI-assisted creations (and vigorously enforce them), that country could attract more AI R&D and creative works. Conversely, in the U.S. (where purely AI works get no copyright), companies might base creative tasks in Europe or Asia instead. The forum-shopping dynamic is real: globally, IP is not uniform, so plaintiffs and patent applicants routinely pick courts and patent office's seen as sympathetic.[30] Even generic IP disputes show stark differences: some jurisdictions issue fast injunctions or high damages, while others have slow procedures. As one commentator notes, "IP law is not uniform across borders... choosing where to file isn't just legal, it's tactical"[31]. With AI, these disparities include fundamental questions of authorship. Companies have already moved some AI activities to nations with supportive policies. For instance, China's recent push (patent filings surged, and an AI industry park opened in Beijing)[32] suggests deliberate competition for AI leadership. This kind of "strategic choice of venue" can advantage states with generous IP rules or clearer guidance for AI. A Global Asia study explicitly warns that contrasting AI-IP policies will "Motivate forum shopping" and could distort investment flows.[33] In sum, when laws diverge, AI innovators will gravitate to jurisdictions with predictable, favourable IP protection, underscoring the patchwork problem.

Cross-Border Enforcement Challenges

Differing laws also hinder international enforcement of AI-related IP rights. Under WTO-TRIPS rules, member states must honour each other's IP to a degree, but enforcement of local rights is largely left to national courts. If an AI-generated work is protected in one country but not in another, it may be difficult to stop infringing use abroad. For example, suppose a Chinese company obtains Chinese copyright on an AI-produced film. To enforce that right in the U.S. or EU, it must meet those places' standards, which may deny such protection absent human authorship. Enforcement tools vary: some courts allow broad injunctions (e.g., in China or Germany), others are slow or limited (e.g., India). Even basic evidence rules differ from country to country,[34] Making cross-border litigation complex. A recent analysis of digital IP disputes notes that while treaties align minimum rights, "enforcement still varies" greatly.[35] For AI works, this means an infringer might escape liability simply by operating from a jurisdiction with lax laws.

Online platforms amplify the problem: AI-generated infringing content can be uploaded anywhere, and identifying jurisdiction is difficult. Global enforcement networks and coordinated takedowns for digital IP are still nascent. In the absence of a unified standard, rights holders must sue in multiple forums, a costly and slow process. For example, if an AI model trained on copyrighted music in Europe generates a hit song, the original composers could at most rely on EU law to challenge the AI, but if that song spreads on a U.S. platform, U.S. law (with its strict authorship test) might refuse to halt it.[36]

Academic commentary emphasises that such cross-border enforcement is particularly troublesome. One survey finds that only about 23% of countries even have laws dealing explicitly with digital forms of IP, and that disparities make enforcement "rather impossible" for AI-generated material.[37] The point is clear, without harmonised criteria, an AI-generated work can be simultaneously

protected and unprotected in different places. This encourages forum manipulation and frustrates consistent protection.

Ownership and Authorship Uncertainty

A third core issue is ownership, who holds IP rights in AI-created content? In principle, most legal systems concede that an AI system itself cannot own rights. The debate centres on whether the user who prompted the AI, the developer of the AI, or some other party should be deemed the "author." Our jurisdictional review showed divergence. The U.S. and India categorically require a human: no copyright if only a machine contributed.[38] China likewise bars the AI itself, but is willing to identify a human user as the author when that person supplied creative guidance.[39] In the EU's uncertain landscape, authorship likely vests in whoever supplies the creative spark (often the user or employer), but this has not been legally tested. The UK (not EU but influential) similarly designates as "author" the person who made arrangements for computer-generated works.[40] Thus, in most jurisdictions today, if an AI solely generates content with no human intellectual input, the output would be unprotectable, essentially entering the public domain. If a human intervenes (through prompts, editing, or config), that human can claim authorship.

In practice, parties often rely on contracts. AI services like Midjourney or Stable Diffusion typically include terms stating that users own the output (provided it doesn't infringe third-party rights). Organisations are advised to clarify ownership in employment or license agreements.[41] The EU IP Helpdesk explicitly lists questions companies should ask: "Who is the owner of all the generated works? The software provider? The licensee? The employees who use the software?".[42] Until laws clarify this, the default in many places is that the user/operator who supplied the prompt will own the new work (as a derivative of their input), but this depends on each country's interpretation and contractual arrangements.

Debate continues. Some have proposed creating a new "AI authorship" right, but no jurisdiction has done so. Critics worry that granting IP to purely machine output could hinder creativity and flood the market with protected works of questionable creativity. International policy so far leans the opposite way: most bodies (WIPO, WTO discussions) have not entertained an AI-owner concept. Instead, emphasis is on protecting human creators and existing rights holders (e.g., artists whose work was used to train AI).[43]

In summary, the default rule in almost all analysed jurisdictions is, AI outputs have no independent author; authorship (if any) is attributed to the human contributor or sponsor. This creates uncertainty, however, because what qualifies as a sufficient contribution is not clearly defined. If, say, an AI tool autonomously assembles an image from its learned knowledge without a detailed prompt, most countries would rule "no copyright." If a user carefully crafts a prompt or edits the result, some courts (China, likely EU/UK) will call that "original expression." Until there is more law or judicial guidance, creators of AI content face risk; they may not know whether their output can be protected or will be deemed unowned.

International Frameworks and Harmonisation Efforts

Given these divergences, one might look to international treaties for guidance or harmonisation. The Berne Convention (1886/1971), the cornerstone of international copyright, sets broad standards, but contains

no AI-specific provisions. Berne protects "literary and artistic works, whatever the mode or form of their expression"[44], suggesting that AI-generated expressions could fall within the category of protectable works. However, Berne's concept of an "author" is not explicitly defined, and all signatories assume authors are human by nature. Article 2 of Berne is largely a "menu" of protected work types (books, music, paintings, etc.), and it leaves to national law details like fixation and authorship. Thus, Berne imposes a minimum: member states must grant certain rights to authors of works, and treat foreign works as domestic. But if a country rules that an AI output has no author, that work gets no protection anywhere under Berne. In practice, Berne and its sister treaties (e.g., the WIPO Copyright Treaty) have so far accommodated new formats by extension of "works," but have not required countries to protect AI works or invent new rights.

The TRIPS Agreement (WTO) incorporates the Berne standards and mandates national treatment and enforcement of copyright, but also does not explicitly address AI. TRIPS Article 9 requires members to comply with Articles 1–21 of Berne (except moral rights provisions).[45] In effect, TRIPS holds a country to its Berne obligations: if a country insists on human authors, that stance is valid under TRIPS. Similarly, the WIPO Copyright Treaty (1996) and related WIPO treaties (like the WIPO Performances and Phonograms Treaty) expand digital protections but do not alter the basic author requirement. No WIPO-administered convention currently grants new rights to AI outputs or defines authorship rules for AI.

Beyond treaties, various international bodies have issued soft guidelines. The OECD AI Principles (2019) and the UNESCO Recommendation on the Ethics of AI (2021) endorse innovation and human-centric AI, but do not set IP rules. For example, UNESCO emphasises transparency and accountability in AI use but stops short of claiming that any AI should have IP ownership. WIPO, meanwhile, has engaged member states via discussions and reports on "Intellectual Property and AI." WIPO's 2024 "Generative AI: Navigating Intellectual Property" factsheet notes that AI raises "numerous IP uncertainties"[46] And that "international organisations, such as UNESCO and OECD, have published guidance" on responsible AI use.[47] But WIPO itself has recommended that organisations proactively establish policies; it has not proposed amending treaties. Similarly, the EU AI Act (2024) is an EU regulation (not a global treaty) and focuses on safety, transparency, and fundamental rights. It mandates, for example, that providers of foundation models disclose copyrighted content in their training sets,[48]. Yet it "does not tackle the specific issue of ownership overworks created through generative AI tools".[49]

In short, existing international frameworks exert limited harmonising force on AI-generated content. Berne/TRIPS essentially leave "author" undefined (as each country has), WIPO treaties cover traditional works, and AI-specific rules are absent. Organisations like OECD, UNESCO, and WIPO encourage sharing best practices, but their recommendations are non-binding. With most countries following the human-authorship model but implementing it differently, the global IP landscape for AI is far from coherent.[50] This fragmentation means cross-border conflict is likely to grow unless new cooperative steps are taken.

Policy and Legal Recommendations

Given the patchwork, several policy responses are advisable:

- Harmonise Authorship Standards. International dialogue (through WIPO or WTO fora) could clarify the criteria for human involvement in AI works. For example, countries could agree that only a qualifying creative contribution should attract copyright, and define what that means (perhaps a threshold of input or modification). Similarly, patent guidelines should uniformly require a human inventor designation. Explicit rules would reduce uncertainty. WIPO could consider a formal study or draft a treaty on AI-generated works.

- Clarify Contractual Ownership. Until laws catch up, companies should use contracts and licenses to allocate rights in AI outputs. For instance, AI software licenses can state that outputs are owned by the user (as many already do)[51], or by the developer if co-creation is intended. Governments could encourage standards or codes of practice (like the EU's forthcoming AI Code of Practice) to guide industry in making clear who owns what.

- Coordinate Enforcement Mechanisms. Enforcement of AI-related IP could be improved by multilateral cooperation. Existing treaties like TRIPS provide a mechanism for dispute settlement, but they are not easily invoked for fast-moving AI issues. Bilateral or regional agreements might expedite cross-border injunctive relief for online infringements. Moreover, international organisations (WIPO, the World Customs Org., INTERPOL) can develop joint training for judges and customs officials on AI IP issues, following UNESCO's lead on judicial education.[52]

- Balance Rights in Training Data. One consensus area is the need to respect original creators whose works train AI. The EU model (requiring opt-outs or licenses for scraped data[53]) could be emulated or negotiated internationally. At a minimum, nations should enforce copyright laws against unauthorised mass copying of protected works for AI training. Doing so would protect authors without creating new AI owner rights. The OECD could convene experts to draft guidelines on lawful AI training data, building on its AI Principles.

- Explore Sui Generis Rights with Caution. Some have suggested a special "AI-generated works" right, but this is controversial. If pursued, it should carefully balance innovation with the author's interests. Any such right could be limited (e.g., to computer-generated works where no person qualifies as author, vesting rights in the AI operator for a short term). Policymakers should study the economic impacts and possibly experiment with pilot schemes before wide implementation.

- Strengthen Global IP Bodies' Role. WIPO could host an international conference specifically on AI and IP, perhaps leading to a soft law instrument (an "AI and IP Model Law" or recommendations). UNESCO's ethical framework might be extended to urge that AI technologies not be granted personhood rights. The AI governance initiatives (OECD, Global Partnership on AI) should incorporate IP experts.

In sum, the goal is clearer, more consistent rules that still promote creativity and access. Uniformity of law would reduce forum shopping and make enforcement feasible. Yet, rigid uniformity may be unrealistic in the short term. A practical approach is best-practice convergence: encourage major jurisdictions to adopt similar definitions of "originality" and authorship in AI contexts, through legislation or court decisions. As long as countries publicly state their policies (as the U.S. Copyright Office and China have done), businesses can better navigate the global landscape. Over time, WTO or WIPO could consider a binding amendment or agreement once experience with AI output law grows.

Conclusion

AI-generated content sits at the intersection of technology and IP law in a way that challenges decades-old assumptions. As this survey has shown, the United States, the European Union, China, and India each take distinctive positions on whether and how AI outputs are protected. The U.S. enforces a strict human-authorship rule, the EU maintains broad Berne-based criteria (with new rules on training data), China selectively embraces AI works if a user contributed original input, and India currently permits only human ownership. These differences matter: creators and companies may favour one jurisdiction over another, leading to forum shopping and competitive shifts. They also make cross-border enforcement fragile and leave developers uncertain about the ownership of their AI-made works.

On the other hand, most systems share a common thread: AI itself is not a rights-holder, and human contribution is key. This fundamental consensus, though applied unevenly, means that AI outputs are not creating a new class of IP assets with automatic protection. Instead, existing IP law is being stretched and reinterpreted. Going forward, the challenge for policymakers is to reconcile divergent rules and address new realities (like pervasive AI training) without stifling innovation. Internationally, however, there is no binding AI-IP treaty on the horizon, only guidelines and national laws. Thus, the legal patchwork is likely to persist for some time. Observers should watch how emerging cases (like the Stability AI/Artists litigation in the U.S. or further decisions in China and India) shape practice.

Ultimately, achieving global harmony on AI-generated works will require ongoing dialogue and likely incremental steps: clarifying authorship criteria, ensuring fair use of copyrighted inputs, and potentially crafting new norms. Until then, creators will navigate a mixed regime, and global enterprises must tailor strategies to each jurisdiction's rules. The stakes are high, since AI-driven creativity affects literature, art, software, design, and beyond. A balanced solution will protect original human creators and rights holders (for their contributions to AI training and co-creation) while not unduly restraining the enormous potential of generative AI.

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