# THE IMPACT OF GENERATIVE ARTIFICIAL INTELLIGENCE ON COPYRIGHT: A LEGAL ANALYSIS OF SRI LANKAN INTELLECTUAL PROPERTY LAW

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Generative artificial intelligence (AI) is a type of AI that can create new content through a learning pattern based on existing data. These include music, images, text and videos. The introduction of generative AI has raised significant questions regarding its impact on intellectual property (IP) law, particularly about copyright. The data extracted by generative AI contain copyrighted material, to which the original authors' have exclusive rights relating to its use. However, generative AI tools utilizes this material without the authors' consent. Hence, it lays the background for the research between two conflicting interests, between authors' exclusive protection under copyrights and the existence of generative AI. This research examines the interplay between generative AI and copyright protection, focusing on Sri Lankan and international legal standards. This research aims to address key questions regarding (1) generative AI's eligibility for copyright claims and (2) its potential infringement on existing authors' copyright. Thus, the author aims to engage in an analysis of international legal standards with reference to Sri Lankan law. They are examining whether the international legal standards have met these objectives and how the IP law in Sri Lanka can improve. Methodologically, the study employs a qualitative analysis. Includes legislative enactments and case studies. The research encompasses the discussion of fair use, derivative works, and the balance between AI innovation and creator rights. The results acknowledge that within the present context, the IP law in Sri Lanka is inadequate in addressing concerns surrounding generative AI, as the current law protects the rights of human creators and not explicitly address the complexity created by generative AI. Therefore, in conclusion the author suggests that amendments to Intellectual Property Act no 36 of 2003 are needed to address this lacuna. By introducing licensing frameworks and adopting fair use provisions. Therefore, ensuring that the IP Law in Sri Lanka can better balance the conflicting interests between the authors' copyright and the legality of generative AI in the modern context.

Keywords: Generative Artificial Intelligence, copyright, fair Use.

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## INTRODUCTION

The focus on generative artificial intelligence (AI) has sparked considerable attention, impacting intellectual property (IP) law, particularly in relation to copyright. The author acknowledges potential impact on authors' copyrights protection, due to AI-generated content often utilising the authors' material without their consent. By generating new content based on the patterns it learns from existing data[1]

This research considers the conflicting interests between authors' copyrights protection and generative AI's existence. The author would like the reader to acknowledge that if the famous painter Van Gogh was alive would he have a claim for copyrights protection against generative AI relating to the use of his famous masterpiece "The Starry Night".

## OBJECTIVE

The objectives center on investigating the relationship between generative AI and copyright,
Aiming to answer question on,

(1) Whether generative AI work can have a copyright claim?
(2) Does generative AI material breach the copyright of other authors?

Therefore, the author aims to engage in an analysis of international legal standards with reference to Sri Lankan law. Through examining whether the international legal standards have met these objectives and how the IP law in Sri Lanka can improve. And this improvement is met with an urgency. Recently Rupavahni Corporation had aired a news broadcast completely through generative AI [2.]Hence, Sri Lanka's IP law needs to be better equipped to protect the rights of authors' that could be breached due to generative AI's content creation.

## METHODOLOGY

Methodologically, the study employs a qualitative analysis of legal frameworks and case studies. Through Comparative Legal Research. By comparing legal standards across different jurisdictions to understand how they address the issues relating to generative AI and to gain insights that could be applied to Sri Lanka's IP law.
Through examining relevant legal frameworks including the Intellectual Property Act no. 36 of 2003 of Sri Lanka, the United Kingdom(UK) Copyright, Designs and Patents Act 1988, the United States Copy Right Act 1976 and the European Union AI Act (Artificial Intelligence Act) also known as COM(2021) 206 final approved by the EU parliament in May 2024.

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[1] *What Is Generative AI? Definition, Applications, and Impact | Coursera - Bing*. (2023). Bing. <https://www.bing.com/search?pglt=43&q=What+Is+Generative+AI%3F+Definition%2C+Applications%2C+and+Impact+%7C+Coursera&cvid=60c2f40160a443b7a701a61188724c70&gs_lcrp=EgZjaHJvbWUyBggAEEU YOTIICAEQ6QcY_FXSAQc2ODVqMGoxqAIAsAIA&FORM=ANNAB1&PC=U531 Accessed 15.01.2024

[2] *Marking a first, Rupavahini goes for AI in news telecast, [Review of Marking a first, Rupavahini goes for AI in news telecast, ]. Dailynews. <https://www.dailynews.lk/2024/05/06/local/524937/marking-a-first-rupavahini-goes-for-ai-in-news-telecast/> Accessed 13.05.2024*

Case studies, including landmark cases like, *Getty Images v. Stability AI* and *Class Action against Stability AI,* provide insights into legal precedents and implications.

Thus, the author engages in a comparative analysis of both international and Sri Lankan contexts.

**RESULTS AND DISCUSSION**

The results and discussions shed light on several key findings. Focuses prominently in answering the research questions.

### (1) Whether generative AI work can have a copyright claim?

Firstly, it underscores the prevailing notion that copyright protection is typically afforded to human authors, not AI-generated content. This is supported by legal precedents and philosophical arguments questioning AI's capacity for independent creativity. However, AI is not conscious and depend on humans to generate new content.

Hence, AI alone cannot claim copyrights. International Business Machines Corporation (IBM) states" AI will remain tools that assist humans, rather than invent independently and autonomously"[3]

This reliance on human input is observed in content generated through Photoshop etc. However, generative-AI is different. As it produces results independent from human control.[4] Due to the lack of human control unlike content generated by photoshop, the authors cannot claim copyrights over content created by generative AI.

### (2) Does generative AI material breach copyrights of other authors?

It is alarming, relating to generative AI's ability to access vast datasets for content generation and the potential implications for copyright infringement. However, the use of generative AI is not a binary dichotomy, but a spectrum.[5]

The research addresses the difficulty in identifying parties in a claim for copyright infringement.

The research explores nuances surrounding fair use, derivative works, and the influence of prior materials on creativity.

Under the Fair Use clause in Section 107 of the Copyright Act of 1976 the USA allows Google Books project, Text and Data mining (TDM). However, content created under generative AI does not have fair use protection in utilizing material of original authors' without consent.
There is also a lack of legal precedence due to its recent nature.

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[3] Kretschmer , M., Meletti , B., & Porangaba, L. H. (22 C.E.). *Artificial intelligence and intellectual property: copyright and patents—a response by the CREATe Centre to the UK Intellectual Property Office's open consultation,* (Vol. 17, p. page 321-326) [Review of *Artificial intelligence and intellectual property: copyright and patents—a response by the CREATe Centre to the UK Intellectual Property Office's open consultation,*]. Artificial intelligence and intellectual property: copyright and patents—a response by the CREATe Centre to the UK Intellectual Property Office's open consultation

[4]  *ibid*
[5]  *A.I. Versus The Law*. (n.d.). Www.youtube.com. Retrieved March 7, 2023, from <https://www.youtube.com/watch?v=G08hY8dSrUY> Accessed 11.05.2024

However, the cases sited below are still ongoing against generative AI tools UK Getty *Images V Stability AI6* and in the USA, *Class action against Stability AI, Midjourney and Deviant Art7* citing unfair competition laws

In the former *case Getty images* argue that the use of its images in training AI models violates its copyrights. Thus, expecting legal outcome relating to how companies train their AI models in using copyrighted material and balance the rights of content creators. Later case, focuses on copyright infringement, derivative works and fair use. And expecting a similar outcome as the former case.

Based on the theoretical and practical debates surrounded by the generative AI vs copyright debate, generative AI uses copyrighted images or material to train AI models to generate content. The material used to train the AI models is copyrighted. The AI generated content is not used for fair use as the companies that train AI models derive a profit. The content generated by generative AI is identical to the authors' material. Hence the content was not influenced but derived from the original author's material. Therefore, resulting in a breach of copyrights.

**(3) Impact on Sri Lanka?**

In the Sri Lankan context, the study identifies gaps in the existing Intellectual Property Act no.36 of 2003[8] concerning AI-generated content and recommends measures such as licensing frameworks and the adoption of fair use provisions in the USA Copyrights Act 1976.

Although, copyright ownership is protected by IP law in Sri Lanka as observed in the *Inoka Udayangan case* 9. The research acknowledges the protection under Sections 06, 07 and 12 are sufficient in dealing with copyright protection in general. However, it is not exhaustive in dealing with issues specifically relating to generative AI at present.

**CONCLUSION/ RECOMMENDATION**

In conclusion, the study underscores the complex relationship between generative AI and copyright, highlighting the need for adaptive legal frameworks to address emerging challenges and appreciates the opportunities in the digital age.

Through introducing licensing frameworks adoption of fair use provisions and acknowledging the existence of generative AI in the IP law in Sri Lanka, the author recommends an amendment to the Act. Thus, ensuring that the IP Law in Sri Lanka is better able to balance the conflicting interests between the authors' copyrights and the legality of generative AI in the modern context.

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[6]    Getty Images (US), Inc. v. Stability AI, Inc., 1:23-cv-00135

[7]    LLP, J. S. L. F. (2023, January 14). *Class Action Filed Against Stability AI, Midjourney, and DeviantArt for DMCA Violations, Right of Publicity Violations, Unlawful Competition, Breach of TOS*. <Www.prnewswire.com. https://www.prnewswire.com/news-releases/class-action-filed-against-stability-ai-midjourney-and-deviantart-for-dmca-violations-right-of-publicity-violations-unlawful-competition-breach-of-tos-301721869.html>Accessed 11.05.2024

[8]    Intellectual Property Act No.36 of 2003
[9]    Inoka Udayangan V Thanuja Dilhani SC/HCCA/LA 303/2019

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