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Ai and Ip: Rethinking Ownership, Creativity and Rights

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ABSTRACT

Artificial Intelligence is transforming creative and innovative processes by improving efficiency, facilitating large-scale content generation, and making knowledge and tools more accessible. From the preparation of legal documents to the composition of music and the design of pharmaceuticals, AI is reshaping various industries. Contrastingly, it has also challenged the long-standing intellectual property (IP) law principles, which were focused on human creativity, authorship, and originality. The current IP frameworks are being tested by the advent of Generative AI technologies that can create literary pieces, music, designs, and even scientific breakthroughs. This article provides a thorough analysis of the impact of AI on fundamental intellectual property concepts, with a particular emphasis on the areas of copyright, patent, and design law. Copyright is one of the most debated subjects, with issues regarding the originality and authorship of works produced by artificial intelligence. The article examines the legal "originality" of such creations and discusses whether the developer, user, or AI itself should be recognized as the legitimate author. The article examines changing legal standards and the degree to which human participation, such as prompt engineering or design input, may meet the threshold for protection through a comparative study of jurisdictions like India, the United States, the European Union, and China. Additionally, the paper assess the debatable issue of using copyrighted material to train AI systems, exploring if such practices constitute infringement or are considered fair use. It assesses the balance between innovation and the protection of creative rights as contended in the legal battles between authors and AI systems. The paper finds that the advent of AI raises questions about the normative premises of IP law and highlights the pressing need of reform in the present IP landscape. A rethinking of IP principles is necessary as AI keeps blurring the distinction between tool and creator. This revision should acknowledge human input, guarantee accountability, and adjust to the changing dynamics of machine-assisted creation.

Keywords: Artificial Intelligence, Intellectual Property, Copyright, Authorship, Originality

INTRODUCTION

"Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time".[3] The TRIPS

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[3] N.A. "What are intellectual property rights?", World Trade Organisation. Available at https://www.wto.org/english/tratop_e/trips_e/intel1_e.htm Accessed on 6th April, 2025

Agreement, signed in 1995 recognise 8 types of Intellectual property which are, Copyright and Related Right; Trademarks; Geographical Indications (GIs); Industrial Designs; Patents; Layout-Designs (Topographies) of Integrated Circuits; Protection of Undisclosed Information (Trade Secrets); Control of Anti-Competitive Practices in Licensing.[4] To ascertain that these Intellectual property (IP) rights are given to people at large for their intellectual effort, Intellectual property law emerged. Intellectual Property (IP) law has long served as a legal mechanism to grant creators and innovators exclusive rights, incentivizing progress and encouraging the dissemination of knowledge and culture. Over the time, especially with the globalization of commerce and technology, IP law evolved from a largely domestic concern to an essential component of international trade and development. The TRIPS agreement[5] introduced a minimum set of IP protection standards that member countries were required to implement which led to the strengthening of the enforceability of IP rights globally.

With the increasing utilization of Artificial Intelligence tools especially Generative AI which are which are capable of producing original content such as text, images, music, or even functional designs, they are enrooting the IP Landscape and presents complex challenges. AI systems are no longer seen as just tools; they are capable of creating and inventing novel products, hence threatening human intellect and the associated IP Rights. For instance, AI-generated literature, paintings, music compositions, and even fashion designs have started blurring the line between human authorship and machine output. Similarly, in the realm of scientific research, AI models are being deployed to develop new chemical compounds, optimize engineering designs, and predict outcomes in pharmaceutical trials.

This has prompted Scholars and legislatures to debate on the question: Can AI-generated outputs be protected under existing IP regimes? If so, who should be considered the rightful owner? And how do we draw the line between human and machine creativity?

To contextualize these questions, it is important to understand how AI is being used in practice. OpenAI's ChatGPT and DALL·E, Google's DeepMind, and various other generative AI platforms have enabled individuals to create essays, poems, paintings, and songs within minutes. Tools like GitHub and Copilot assist programmers by generating entire segments of code based on brief user prompts. In fashion, AI models predict trends and generate original clothing designs. In pharmaceuticals, DeepMind's AlphaFold has transformed how scientists understand protein structures, potentially accelerating drug development. These real-world applications illustrate the expanding role of AI in domains traditionally governed by IP rights. As AI's capabilities continue to grow, so does the urgency of assessing its legal implications. Intellectual property law was designed around human creativity, skill, and labor. The sudden emergence of machine-generated works therefore disrupts established principles, forcing us to re-evaluate core concepts such as originality, inventorship, authorship, and ownership.

The impact of AI is not limited to one type of IP right, it extends across the entire spectrum. Patent law, for instance, hinges on the concept of inventorship as seen in the case of DABUS AI where the creator of DABUS**,** Dr. Stephen Thaler, the creator of DABUS (Device for the Autonomous Bootstrapping of Unified Sentience), filed patent applications, listing DABUS as the inventor. These applications were rejected by patent offices in UK and Europe on the grounds that DABUS, as an AI system, is not a "person"

[4] N.A., "Overview: the TRIPS Agreement", World Trade Organisation. Available at https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm Accessed on 6th April, 2025
[5] *Id*

as defined in the relevant patent laws.[6] Similarly, For design Law, AI is being used to generate large volumes of visual designs in a time effective manner. Traditionally, the protection of industrial designs has been dependent on human creativity and the novelty. But when design outputs are created using algorithms trained on existing data sets, it becomes difficult to distinguish original from derivative.

However, amongst all the forms of IP, AI has impacted copyright law the most. Copyright law is based on the principle of authorship wherein any sort of literary, artistic, musical, or computer code were accessed on whether the creation is 'original'. But with AI now able to generate entire books, visual art pieces, songs, and even films, the boundaries of authorship are being challenged in unprecedented ways. Various questions has circled the copyright domain such as, If an AI system produces a song or a short story, who owns the rights? Is it the person who programmed the AI, the user who provided the prompt, or does the work fall into the public domain?

COPYRIGHT AND AI: ORIGINALITY & AUTHORSHIP DILEMMA

Artificial Intelligence tools have made human lives easier; they are able to solve queries in seconds, generate output in no time and automate the tedious tasks of daily lives. But, these AI tools are no longer just tools, they are used for more than just data interpretation and automation. The advent of Generative AI has led to use of these AI tools for content creation such as articles, essays, research papers, pictures, scenic videos even artistic work such as creating melodies, songs and portraits. The use of these Generative AI tools has escalated because of their ability to provide quality content in fraction of seconds. On one hand, where a layman only see the use of AI to generate content in less time, on other hand, an intellectual person who has or wants to acquire intellectual property rights for their creation stands to lose. The enrooting of these Generative AI tools raises significant legal and ethical questions within the domain of intellectual property (IP) rights, especially copyright emerging as the most contested terrain. The fundamental concern lies in whether works created, wholly or partly, by AI systems qualify for copyright protection, and if so, who should be recognized as the rightful author.

Traditionally, copyright law has been designed to protect the original expression of ideas by human creators. And, then with the development and generation of content by these AI tools which seem original have complicate this human-centric framework. The implications are twofold: At one side we see that AI democratizes content creation, enabling individuals with limited technical or artistic skills to generate high-quality outputs. And, contrary to this on the other side, it poses a serious challenge to the legal doctrines of originality and authorship that are the essence of copyright protection.

Originality

Originality is the sine qua non for obtaining copyright protection, and different jurisdictions have interpreted this requirement with consistent emphasis on the necessity of human creativity.

In India, Section 13 of the Copyright Act, 1957 protects "original" literary, dramatic, musical, artistic works; cinematograph films; sound recording, and programme.[7] The Supreme Court of India in the case of Eastern Book Company v. D.B. Modak (2008)[8] clarified that to obtain copyright protection under the

[6] Saransh Chaturvedi, "The Curious Case of Dabus: Who should own the AI-Related inventions? " SCC online. Available at https://www.scconline.com/blog/post/2020/12/26/the-curious-case-of-dabus-who-should-own-the-ai-related-inventions/ . Accessed (6th April, 2025)

[7] Section 13 of the copyright Act, 1957. Available at https://copyright.gov.in/Copyright_Act_1957/chapter_iii.html

[8] AIR 2008 SUPREME COURT 809

Act, the conditions mentioned under Section 14 and 17 has to read with section 13 of the act and there "should be the exercise of skill and judgment with labor and capital."

In United States, Section 102 of the Copyright Act of 1976 provides that "Copyright shall subsist for the original work of authorship". The act protects "original" literary works; musical works, dramatic works,; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works.[9] The US Supreme court in the case of Feist Publications v. Rural Telephone Service Co. (1991)[10], said that, as per the act "originality" is the prerequisite to obtain copyright protection, with a "modicum of creativity", which is again tied to human authorship.

In European Union, , the copyright is granted through various directives which are based on Berne convention. The standard of "the author's original intellectual creation" is upheld in EU with the case of Infopaq International A/S v. Danske Dagblades Forening (2009), and various other subsequent cases,[11] emphasizing that works must the creativity of a human author.

All these interpretations stress a central requirement: the original work and application of Skill and judgment and stresses the question: Do AI-Generated Works Satisfy the Standard of Originality?

Copyright protection exists not just to reward the creation but rather to recognize and nourish human creativity, originality, and the use of creative liberty. This basic requirement becomes extremely problematic when creations are "generated" using AI systems. AI systems, unlike human creators, lack consciousness, intent, or creativity in the legal or philosophical sense. This raises a key issue as to, whether and to what degree human input via prompting or other adjustments constitute sufficient intellectual exertion to meet the originality standard? Traditionally, human involvement has been used as the standard for measuring originality, because it guarantees the measure of intellectual labor, intellectual creativity and creative choices. However, With the rise of generative AI, a new concept called "prompt engineering" has gained prominence. "Prompt engineers play a pivotal role in crafting queries that help generative AI models understand not just the language but also the nuance and intent behind the query".[12] Crafting effective prompts requires creativity, precision, and an understanding of the AI model's capabilities and limitations. In this context, some scholars argue that the act of prompt engineering is a novel creative process in itself.[13] This argument has begun to gain some legal recognition. In a recent case in China Li v Liu[14]; the court granted copyright protection to an AI-generated work on the grounds that the user had used prompts and conducted extensive modifications, to generate the picture that matches his expectations thereby demonstrating the essential principal of "originality" and "Intellectual creativity". Similarly, the U.S. Copyright Office's January 2025 report acknowledges that AI-generated works may be eligible for copyright if there is meaningful human creativity involved. "This can include situations

[9] Section 102 of the USA Copyright Act, 1976. Available at https://www.copyright.gov/title17/
[10] Feist Publications, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340 (1991)
[11] Case C-5/08 *Infopaq International A/S v. Danske Dagblades Forening* [2009] ECR I-6569, ECLI:EU:C:2009:465, para. 37; Case C-393/09 *Bezpečnostn softwarová asociace - Svaz softwarové ochrany v. Ministerstvo kultury* [2010], ECR I-13971, ECLI:EU:C:2010:816, para. 45; Joined Cases C-403/08 and C-429/08, *Football Association Premier League v. QC Leisure* and *Karen Murphy v. Media Protection Services* Ltd [2011] ECR I-09083, ECLI:EU:C:2011:631, para. 97.
[12] N.A. " What is Prompt Engineering". IBM. Available at https://www.ibm.com/think/topics/prompt-engineering Accessed 6th April, 2025
[13] Oppenlaender, J., Linder, R., & Silvennoinen, J. (2024). Prompting AI Art: An Investigation into the Creative Skill of Prompt Engineering. *International Journal of Human–Computer Interaction*, 1–23. Available at https://doi.org/10.1080/10447318.2024.2431761 Accessed 6th April, 2025
[14] *Li v Liu , Re Spring Breeze Has Brought Tenderness* (case number (2023) Jing 0491 Min Chu No. 11279),

where a human-authored work is perceptible in an AI output, or a human makes creative arrangements or modifications of the output".[15] However, this determination is made on a case-by-case basis, with a focus on the degree and nature of human contribution.

These developments suggest that originality, while still a requirement, may be satisfied in AI-assisted works through demonstrable human involvement in the creative process. However, purely autonomous AI-generated works, where human input is minimal or non-existent, remain outside the scope of protection in most jurisdictions.

Authorship

Identifying the author of a work is essential, as it determines the first owner of the copyright, the person entitled to moral rights, and the one who can enforce or assign the copyright. However, with the emergence of AI-generated content, this age-old legal concept has been complicated. Ascertaining Authorship of a work in the traditional sense means to assess how a human exercise his creative choices, and imbues it with his intellectual input., whereas to assess AI-generated content, again complex legal question stands such as: Who is the author of an AI-generated work? Is it the AI developer, the user of the AI system, or the AI itself? And if there is no human author, can such works be copyrighted at all?

In India, the copyright Act, 1957 via Section 2(d), defines the term "author" with respect to different categories of works. Notably, Section 2(d)(vi) provides that along with other types of work recognized under the act, in case of a computer-generated work, "the person who causes the work to be created" shall be deemed the author.[16] This provision, although not originally drafted with generative AI in mind, has been interpreted to be applicable to AI-Generated tools. "The definition of "person" as defined by the Act is not specified in its provisions. In such cases of contingencies, in accordance with Article 376 of the Constitution, unless the context dictates otherwise, the General Clauses Act, 1897, will be applied when interpreting Constitution and other legislative enactments. A "person" is defined as include any company or association or body of individuals, whether incorporated or not. It is not expressly required by this definition that a "person" be a human."[17] However, this interpretation is not without contention. Does merely putting right prompts suffice creative control? Does it equate to authorship in the traditional legal and philosophical sense?

In contrast, the Copyright Act of 1976 of USA, places a strong emphasis on human authorship which is evident through the use of pronouns 'his' and 'her' in various sections of the act such as Section 104, Section 104A, Section 105, Section 106, and Section 106A. The U.S. Copyright Office has also taken a strict stance that **"**only works created by a human being can be copyrighted".[18] In the case of Thaler v. Perlmutter, the U.S. District Court for the District of Columbia upheld the Copyright Office's refusal to register an AI-generated image created by the DABUS system, saying that although the US copyright law has been adaptive to include works and give the copyright involving new technologies, human creativity remains the essence and a core condition of copyrightability of any work. According to the District Court, copyright law has never stretched too far to protect works generated by new forms of technology without

[15] United States copyright office, "Copyright and Artificial Intelligence Part 2: Copyrightability", January 2025

[16] Section 2(d) of the copyright act, 1957. Available at https://www.copyright.gov.in/Documents/Copyrightrules1957.pdf

[17] Noel Naiju George, "Adapting Indian copyright law to the age of Artificial Intelligence: recognizing AI as Author under the Copyright Act of 1957", IJILRL, Volume IV Issue III. Available at https://ijirl.com/wp-content/uploads/2024/06/ADAPTING-INDIAN-COPYRIGHT-LAW-TO-THE-AGE-OF-ARTIFICIAL-INTELLIGENCE-RECOGNIZING-AI-AS-AUTHORS-UNDER-THE-COPYRIGHT-ACT-OF-1957.pdf Accessed (6th April, 2025)

[18] US Copyright Office, "Copyrightable Authorship: What Can Be Registered", 306, Chapter 300, January 2021.

any human interference.[19] Notably though, after noticing the surge in the AI-generated work and related applications for obtaining the copyright, The copyright office of USA has issued guidelines on the copyrightability of AI-generated work[20]; in the guidelines, the office has again reiterated that human authorship is an essential component of copyright, however, to attain copyright on an AI-generated work, the applicant should submit an application to the office detailing the contribution of human in the work. This is a crucial step taken forward by the US Copyright office that balances innovation and legal rights.

The EU has also maintained the principle of Human authorship. The EU copyright framework provides the "the author's own intellectual creation" standard for copyright protection, as guided by the InfoSoc Directive and the Berne Convention. Recently a municipal court of Czech has taken a view that since AI is not a natural person which is a primary requirement under the Czech copyright Law, it cannot be granted authorship.[21]

In China, as per the Article 9 of the Copyright Law of People's Republic of China, the term "copyright owner" shall include author, legal entities or any organization that have obtained copyright as per the regulation, and the Article 11 of the law specifies that the Author shall be the creator of the work. [22] These provisions present a wide interpretation of the term copyright owner and Author which has led courts to take a pragmatic stance in dealing with AI-generated content. In the case of Li v. Liu, the court interpreted the Article 11 of the law and concluded that only a natural person can be the author of the work; AI is not a natural person, therefore it cannot be deemed an author under the law.[23] In another case of Tencent Computer System Co., Ltd. v. Shanghai Yingxun Technology Co., Ltd. ((2019), the court ruled that, even though the article had been written by an AI system, it was a "work" because the creative process lay in the intellectual effort of the human team that had worked on the software. The court opined that the originality of the article came from human choices made at the AI's design stage starting from inputting the right data to selecting an appropriate template to programming in relevant stylistic choices thereby fulfilling the requirement of human intellect.[24]

The court adopted a new approach that favored both; traditional and AI-assisted authorship: in the former, the human authorship is simultaneous (created at the same time as the decision to create it) while in the latter case the prior creative act (system design) is separated in time from the later creative acts (generation of specific content).

This divergence in global approach reflects the underlying legal and Ethical question: Should authorship require personal intellectual creation in a strict sense, or can it evolve to accommodate new forms of human-computer collaboration?

TRAINING ON COPYRIGHTED WORK: INFRINGMENT V. FAIR USE

One of the most pressing and burning issue at the intersection of AI and copyright law is whether the use

[19] *Thaler v. Perlmutter*, No. 22-CV-384-1564-BAH

[20] U.S. Copyright Office, Cancellation Decision re: Zarya of the Dawn (VAu001480196) at 5 (Feb. 21, 2023), https://www.copyright.gov/docs/zarya-of-the-dawn.pdf (explaining that registration covered the work's human authored text as well as the human-authored selection, coordination, and arrangement of the work's written and visual elements, but not images generated by Midjourney that were not the product of human authorship).

[21] *The Czech court's judgment of 11 October 2023 is available at: https://justice.cz/documents/14569/1865919/10C_13_2023_10/108cad3e-d9e8-454f-bfacd58e1253c83a*

[22] Article 9 and 11 of the Copyright Law of the People's Republic of China. Available at https://www.wipo.int/wipolex/en/text/466268

[23] Supra note 114

[24] (2019) Yue 0305 Min Chu 14010 ((2019)粤0305民初14010号)

of copyrighted content as training data for AI systems constitutes copyright infringement. This issue lies at the heart of generative AI technologies, which rely on vast volumes of data that is often scraped from the internet, including books, articles, images, and songs, without taking prior consent from copyright holders.

The legal and ethical implications of such practices have triggered global litigation and regulatory scrutiny, especially as AI-generated outputs increasingly compete with original works in the marketplace. In USA, cases such as Authors Gild v Open AI, Alter v. OpenAI, Andersen v. Stability AI, Bartz v. Anthropic are based on the similar allegations that these organisations have used copyrighted content without authorization to develop their LLM's or Generative AI models which amounts to infringement and also devalues human creativity and their legal right. The case of The New York Times Company v. OpenAI and Microsoft and the case of ANI V OpenAI of India, both are based on the similar premise that these organisations have used their copyrighted content without authorization; along with that both the times and ANI have contended that such utilization of copyrighted work not only violates the exclusive reproduction and derivative work rights but also undermines the economic value and journalistic integrity. Despite these claims of infringement, AI developers and some tech stakeholders argue that such training constitutes "fair use" claiming that it is transformative, non-expressive, and necessary for technological innovation. This defense finds its strongest articulation in the doctrine of fair use. In India, Doctrine of fair use finds its strongest articulation in the Section 52 of the act which states that the use of copyright work shall not deemed be Infringement if it is used for research, education, reporting or review purpose.[25] In China, the Copyright Law provides for Fair use under Article 24[26], for the purpose of reprinting, translation, use in scientific research, teaching and research, and for official use. The Indian and Chinese Law doesn't provide any provision for utilisation of copyrighted work for training, innovation or technological development.

In USA, Fair use doctrine is based on section 107 of the copyright Act, which permits 'fair use' based on four-factor test: (i) purpose and character of the use, (ii) nature of the work, (iii) amount used, and (iv) effect on the market.[27] AI models do not reproduce copyrighted works verbatim, they generate content that could substitute for the original, which challenges their transformative claim under Factor 1, especially given their commercial use, for the Factor-4, the training of AI on copyrighted material can negatively affect the market for those works as they have the potential to replace original content sources, and the fact that companies like Reddit and Stack Overflow have signed data licensing deals with AI firms also supports the notion that the training data has market value, undermining a blanket fair use defense.[28] The European Union has opted for a balanced approach via its Copyright directive[29]; provision of TDM through Article 4 of the Copyright Directive which allows TDM for commercial purposes. It states various conditions such as: (i) the data that is "freely accessible" and doesn't require licensing can be used for Training and Data set mechanisms; (ii) The freely accessible content is not presumably used without any

[25] Section 52 of the Copyright Act, 1957. Available at https://copyright.gov.in/Exceptions.aspx
[26] Article 24 of the copyright Law of the people's republic of china- CNO31. Available at https://www.wipo.int/wipolex/en/text/466268
[27] Section 107 of the Copyright Act, 1957. Available at https://www.copyright.gov/title17/92chap1.html#107
[28] Suchir Balaji, "When does generative AI qualify for fair use?" (October, 2024). Available at https://suchir.net/fair_use.html
[29] DIRECTIVE (EU) 2019/790 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC. Available at https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1591810794966&uri=CELEX:32019L0790

consent and it should fulfill the conditions provided in Article 5 (i) of the Infosoc directive of EU. This directive also provides copyright holders a clear opt-out mechanism i.e. denying access to even freely accessible material; many publishers and creators have already opted out, effectively rendering the defense of exception inapplicable. Moreover, the directive also provides that, the exceptions are not absolute. If the data copied or extracted is included in the database of an AI System, then both copyright and the sui generis right will come into consideration along with other relevant rights.

The claims of authors and publishers in the recent cases include that they have used the data without consent and trained their AI systems on such, which probably mean that they have included the data in their database which is a clear infringement of rights of authors, creators and publishers.

The cases around the training of AI on copyrighted data sets marks that, the distinction between "transformative purpose" and "market substitution" has become blurred in the context of AI, as models like ChatGPT or image generators are increasingly able to produce outputs that serve the same functions as original human-authored content, thus demeaning the intellectual property rights and their purpose.

CONCLUSION

The emergence of Artificial Intelligence as a creative agent has profoundly unsettled the foundational principles of intellectual property law. Once predicated on human ingenuity and authorship, IP regimes now confront outputs generated by systems that, although devoid of consciousness or intent, can produce works indistinguishable from human creation. This chapter critically examines how AI disrupts the normative constructs of originality, authorship, and ownership that underpin copyright, patent, and design law frameworks across jurisdictions. At the heart of this issue lies a conceptual tension: Can machine-generated works seek protection under laws intended to reward human intellect? Jurisdictions such as the U. S. and EU continue to maintain human authorship as a prerequisite for IP protection, whereas others like China have demonstrated limited flexibility whereby significant human intervention through design or prompt engineering may justify protection. Likewise, the concept of originality has evolved, with some jurisdictions acknowledging prompt engineering or human oversight as satisfying the threshold of intellectual creativity. The global divergence is particularly pronounced in the copyright sphere, where ongoing debates concerning AI's role in authorship and the scope of fair use for training data remain unaddressed. As evidenced by landmark cases involving OpenAI, New York Times, and others, the legal community is now compelled to redefine what constitutes infringement and how the value of human labor and creative autonomy is safeguarded in the AI era. Ultimately, AI has not only obscured the distinction between creator and tool but has also revealed a regulatory void that is ill-equipped to manage the scale and complexity of machine-assisted creativity. The challenge ahead involves recalibrating IP frameworks that both protect human innovation and adapt to the realities of collaborative creation between humans and machines. This ongoing legal reckoning necessitates proactive policymaking, wherein clarity, balance, and fairness guide the intersection of AI and intellectual property. As we progress, the law must evolve not solely to regulate emerging technologies but to reaffirm the core values that intellectual property was designed to protect: creativity, accountability, and human expression.