

# Generative AI and the legal conundrum

**DOUBLE-EDGED SWORD.** Balancing innovation with legal considerations assumes importance as the tech's potential for misuse soars

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**G**enerative Artificial Intelligence (GAI) is a domain within Artificial Intelligence involving the training of machines to produce original content, including text, images, videos and code. While GAI can be immensely useful, its increasing adoption calls for careful consideration of various legal implications.

## BLURRED LINES

One significant concern regarding the use of GAI relates to the implications under the copyright law. As per the Copyright Act of 1957, copyright protection is granted to “authors” for original works that exhibit a certain degree of creativity rather than being solely the result of skill and labour.

In India, copyright protection is given to works like original literature, drama, music, art, films and sound recordings. To qualify for

copyright protection, GAI output must result from a minimum degree of creativity, as established in *Eastern Book Company v DB Modak*. The threshold laid in the DB Modak case does not provide a conclusive determination on whether the output of GAI can satisfy the “modicum of creativity” requirement and whether a GAI model or its programmer meets the definition of an “author” as outlined in the Copyright Act to claim ownership of copyrighted works.

While computer-generated works are recognised for copyright grant, the existing legal framework does not adequately address or guide the works created by GAI programs which are neither human nor a legal entity.

And then there are concerns related to competition law, because GAI can potentially eliminate smaller competitors who might lack access to big datasets and GAI-based technologies. Furthermore, GAI raises concerns regarding data privacy and protection of sensitive user information. The inadequacy



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of security measures could make GAI tools susceptible to unauthorised access or disclosure of user data. Such breaches result in data privacy violations and opens the door to potential misuse of personal information. Another data privacy concern related to GAI is the adequacy of anonymisation tech-

niques — inadequate anonymisation could lead to re-identification.

Another issue with GAI models is that they tend to accumulate societal biases over time as they get trained on datasets. Given the potential impact of GAI programs in shaping human perceptions, it becomes crucial to keep analysing the

biases in the models to avoid dissemination of misleading, prejudiced or defaming information.

## ACCOUNTABILITY

GAI also brings forth concerns regarding its potential misuse for illegal activities, such as the creation of deep fakes and other forms of deceptive content. Many GAI models can generate highly realistic content that can be used to manipulate public opinion, defame individuals or spread misinformation. In case of any civil or criminal legal action, the complex nature of GAI makes it difficult to pinpoint specific individuals or organisations to hold responsible.

GAI presents immense potential for innovation and creativity, but as it becomes increasingly integrated into various aspects of our lives, it is crucial to develop and enforce comprehensive legal frameworks that adapt to the unique challenges posed by this technology.