India’s Moment to Restore Balance to Copyright

Mains: *GS II - Governance*

Why in News?

The ongoing AI summit in New Delhi offers India a historic opportunity to rethink copyright law in light of technological change.

What is the historical evolution of copyright?

- **The Statute of Anne (1710)** – It was widely regarded as the first modern copyright statute, granted authors a limited monopoly of 14 years, renewable once.
- Protection required registration and deposit of copies in libraries, reflecting a balance between author incentives and public access.
- **Indian Scenario** – In colonial India, copyright law was introduced in 1847.
- Post-independence, the Copyright Act, 1957 became the governing statute.
- Over time, amendments have expanded the scope and duration of rights.
- **Present status** – Today, copyright protection vests automatically upon creation and extends for the author’s lifetime plus 70 years.
- The shift from a conditional, time-bound privilege to an automatic and prolonged monopoly has fundamentally altered the nature of copyright.
- Earlier, the public domain was the default and copyright the exception. Today, virtually every original expression — including social media posts and unpublished notes — is protected for decades.
- This expansion reflects what scholars term “copyright maximalism,” where protection is treated as absolute rather than balanced.

What is the issue between AI and the Centrality of Data?

- **Basis of AI** – AI models, particularly large language models, rely on vast quantities of training data.
- Web search engines and AI systems function by copying and indexing content from the internet through processes such as web crawling and text and data mining (TDM).
- Technically, such copying may constitute infringement unless covered by exceptions.
- **Indian intervention** – India’s 2012 amendment introduced an exception for *“transient or incidental storage”* for providing electronic links or integration.
- While this offers limited protection for search engines, it does not clearly address large-scale AI training.
- The absence of a broad, open-ended exception creates legal uncertainty for researchers and startups.

- **Interventions of Other countries** – In contrast, several jurisdictions have adopted explicit TDM exceptions:
    - **The European Union** – It provides statutory text and data mining exceptions under its copyright directive.
    - **Japan** – It permits uses that are not for "enjoying the ideas or emotions expressed" in a work, thereby covering data analysis by machines.
    - **Singapore** – It has adopted flexible copyright exceptions conducive to innovation.
    - **The United States** – IT relies on an open-ended "fair use" doctrine, which courts have interpreted to allow transformative uses, including certain forms of data mining.
    - **India** – It is lacking a comprehensive TDM exception or a general fair use clause, risks falling behind in the global AI race.
- **Mechanistic use vs expressive consumption –** A key distinction must be drawn between human consumption of creative works and machine processing of data.
- AI systems do not "enjoy" or "experience" creative expression; they analyse patterns statistically.
- Copyright law was originally intended to regulate expressive consumption and commercial exploitation, not mechanistic data analysis.
- Japan's legislative language explicitly acknowledges this distinction.
- Such clarity ensures that copyright does not extend beyond its purpose.
- If machines are merely extracting statistical correlations, treating such activity as equivalent to human reading stretches copyright beyond reasonable limits.
- **Copyright and Employment –** Concerns about generative AI displacing creative labour are legitimate. However, copyright law is not a labour protection statute. Its objective is to incentivise creativity by granting limited monopolies, not to guarantee employment.
- History demonstrates that technological change often displaces certain professions while creating new ones.
- The advent of photography reduced demand for portrait painters but enabled new artistic forms.
- Similarly, automation reduced the need for telegraphists and typesetters while generating new sectors.
- If AI disrupts creative industries, policy responses should include public funding for arts, social security measures, or taxation of large AI firms.
- Expanding copyright protection to block AI training would be an inappropriate and ineffective tool.
- **Protecting the Commons and Open Innovation –** Copyright reform must also recognise the value of open-licensed AI models and datasets.
- Developers and researchers invest substantial resources to create open-source systems that benefit society at large.
- These contributions enrich the digital commons.
- Governments can play a constructive role by curating high-quality, locally relevant public datasets and establishing safe harbour provisions to protect such datasets from copyright claims when used for non-commercial or open-source AI training.
- This would align with the constitutional commitment to promote scientific temper and

innovation.

- **Lessons from the Accessibility Debate –** The struggle leading to the Marrakesh Treaty demonstrates how copyright law can be weaponised to block socially beneficial technologies.
    - **For instance**, the Authors Guild opposed the "Read Aloud" function of Amazon's Kindle, despite its value as an assistive feature for visually impaired users.
- Such episodes reveal a pattern: when new technologies emerge, copyright is often invoked to resist change.
- Over time, however, balanced reforms enable both protection and progress.

What are the policy recommendations for India?

- **Introduce a Broad Text and Data Mining Exception –** Explicitly permit copying for AI training and data analysis, especially for non-expressive uses.
- **Adopt a Flexible Fair Use Clause –** Move towards an open-ended exception capable of accommodating future technologies.
- **Strengthen Public Domain and Commons –** Incentivise open licensing and protect publicly funded datasets.
- **Ensure Accessibility Safeguards –** Build upon the spirit of the Marrakesh Treaty to ensure technology enhances inclusion.
- **Separate Labour Concerns from Copyright Law –** Address employment disruptions through economic policy rather than restrictive IP regimes.

What lies ahead?

- Copyright law was conceived as a limited instrument to promote creativity and the dissemination of knowledge.
- Over centuries, it has expanded into a near-perpetual monopoly covering almost all forms of expression.
- In the age of AI, this expansion risks stifling the very innovation it was meant to encourage.
- India stands at a crossroads. By embracing balanced exceptions and promoting the commons, it can demonstrate that intellectual property law need not be an obstacle to technological progress.
- Instead, it can be recalibrated to serve both creators and the public interest.
- The moment calls not for dismantling copyright, but for restoring it to its original purpose: fostering creativity, expanding access, and advancing human knowledge in the 21st century.

Reference

The Hindu| Restoring Balance to Copyright



SHANKAR
IAS PARLIAMENT
Information is Empowering