

AI in Content Creation: Evolving Contractual Frameworks and Internal Safeguards

INTRODUCTION

Use of AI tools in content creation is no longer limited to minor aspects of production. It has become an established part of the production ecosystem, with platforms now actively licensing and commissioning films and web series generated, in whole or in part, using AI. This shift has brought a set of intellectual property questions into sharp commercial focus: who owns AI-generated content, and how can a creator credibly represent that it does not infringe third-party rights? These issues require parties to build appropriate internal safeguards and, equally, to ensure that content agreements keep pace with evolving modes of creation.

On the ownership question, the law in India remains unsettled. Copyright subsists only in works authored by a natural person, which means purely AI-generated material sits in a grey zone. A committee constituted by the Department for Promotion of Industry and Internal Trade is currently examining the intersection of generative AI and copyright law. While its 2025 report focused on the use of copyrighted works for training AI systems, the question of copyrightability of AI-generated outputs appears to be still under consideration by this committee. By contrast, the U.S. Copyright Office has clarified that copyright does not extend to purely AI-generated material lacking sufficient human involvement. India, on the other hand, has not yet taken a clear position on this aspect. Where there is meaningful human intervention in the use of an AI tool, there may be a basis to argue that the work originates from the individual using the tool, but the threshold remains undefined.

The other big pillar is non-infringement. Most AI models are trained on datasets that likely include copyrighted material. This creates an imbalance as creators are expected to represent that the work does not infringe third party IP without any visibility into what the underlying model was trained on. This issue is currently before the Delhi High Court in the pending litigation between ANI Media and OpenAI, and its resolution will have significant implications for how content agreements are structured.

Until there is greater clarity, parties involved in AI-driven content creation need to do put in place internal safeguards to manage ownership and infringement risk and review their contractual commitments carefully to avoid making inaccurate representations.

POTENTIAL ISSUES AND SAFEGUARDS

Ownership of the output:

Because Indian copyright law requires a natural person as author, the ownership of AI-generated works is uncertain particularly where human involvement is limited or does not meet the threshold of authorship. In the absence of clarity on ownership of AI-generated works, parties should consider if it is possible to provide blanket representations that the content is fully owned and can be assigned without limitation or should the language be restricted to ownership to the extent recognised by law.

The most important internal safeguard is ensuring adequate and documented human intervention at every stage of the creative process. In practice, this means more than a human pressing a button to generate an output. It means humans making substantive creative decisions like drafting detailed prompts that reflect original creative choices, selecting and modifying outputs, and importantly, documenting all of this so that the basis for claiming authorship can be demonstrated if challenged.

Related issues arise from the terms of AI tools themselves. Many generative AI tools retain limited rights over outputs, including for model training purposes. While this may not amount to ownership of the final work, broad representations that no third party has any rights in the licensed or assigned content may not be strictly accurate. Content agreements also typically require assurances that the licensee/assignee has all necessary rights to exploit the work. In this context, it is important to confirm that the AI tool being used permits commercial use of the output. Several platforms restrict commercial usage to enterprise or higher-tier subscriptions. Both creators and commissioning platforms should confirm that the tool being used permits commercial exploitation, review the applicable terms at the time of creation, and maintain records of those terms.

Potential infringement of third-party intellectual property rights:

As discussed above, the risk of infringement of third-party rights remains a key concern in relation to AI-generated content, particularly where adequate safeguards are not in place. At a minimum, complete reliance on AI tools for the creation of core creative elements such as scripts or storylines should be avoided.

Beyond the authorship question, outputs generated from generic prompts may be substantially similar to outputs generated for other users, raising questions about both copyright and originality. The nature and specificity of prompts therefore become critical.

From a contractual perspective, representations may need to be framed around reasonable steps such as using reputable tools, maintaining human oversight, and not knowingly

incorporating third-party content. Knowledge qualifiers also become important in this context, given that there is typically no visibility into the datasets used to train AI models.

Personality Rights:

Generative AI tools have made it significantly easier to replicate the likeness, voice, or other attributes of real individuals. Creative teams must be trained on the permissible and impermissible uses of these tools, including a clear prohibition on using any individual's attributes without consent.

Content agreements typically include representations that the work does not imitate or infringe the likeness of any individual. In the context of AI-generated content, this is genuinely difficult to assess. Creators may not always be able to determine whether an output resembles a real person, particularly one who is well-known only in a specific region or industry context. From a drafting perspective, it is worth building some definition around the scope of the representation. One approach is to limit the undertaking to individuals who are objectively recognisable to a reasonable person in the relevant market. This does not eliminate the risk, but it creates a more defensible position than a blanket undertaking that the work does not resemble any living person.

BALANCED APPROACH TO RISK

Creative teams often have significant freedom to use AI tools but may not fully understand the IP risks involved. This makes having internal safeguards and training critical. However, given the grey areas under law on ownership, and the fact that even with safeguards there is no real certainty that AI-generated works will be completely non-infringing, it is worth questioning whether absolute representations on ownership and non-infringement are even accurate in this context.

In practice, this possibly means that platforms seeking broad warranties will need to accept that the scope of those warranties is constrained by what creators can honestly support. Creators, in turn, need to ensure that their internal processes are rigorous enough to give substance to qualified representations. The allocation of residual risk through indemnity caps or carve-outs for AI-specific claims is likely to become a standard negotiating point as AI-generated content becomes more prevalent.