

Who Owns AI-Generated Works?
A Comparative Analysis of International Copyright Frameworks

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ABSTRACT

*The rapid proliferation of generative artificial intelligence has forced a fundamental re-examination of a question copyright law has never had to answer: can authorship exist without a human author? This article undertakes a comparative analysis of the international copyright frameworks operative in five jurisdictions — the United States, the European Union, the United Kingdom, Japan, and the People's Republic of China — set against the foundational international instruments of global copyright protection: the Berne Convention, the TRIPS Agreement, and the WIPO Copyright Treaty. Drawing on landmark judicial decisions including *Thaler v. Perlmutter* (D.C. Circuit, 2025), *Li Yunkai v. Liu Yuanchun* (Beijing Internet Court, 2023), and the CJEU's *Infopaq* line of cases, as well as the U.S. Copyright Office's January 2025 Part 2 Report on Copyrightability, this article demonstrates that the current international legal architecture is anchored to a human-centred conception of authorship that precludes autonomous AI systems from holding copyright. It further identifies significant and growing divergence in how jurisdictions treat the human-AI collaborative spectrum, and argues that this fragmentation creates regulatory arbitrage, impedes cross-border creative industries, and demands multilateral reform. The article concludes with a proposal for a WIPO-led harmonisation instrument built on the concept of qualified human creative control.*

Keywords: AI-Generated Works, Copyright Authorship, Berne Convention, Comparative Intellectual Property Law, WIPO, Generative Artificial Intelligence, Human Authorship Requirement

INTRODUCTION

When a poet labours over a verse, a sculptor carves marble, or a filmmaker edits footage, the product of that labour is protected by copyright law. The underlying premise, that authorship flows from human creative effort, has been the bedrock of intellectual property doctrine for over a century and a half, encoded in the Berne Convention for the Protection of Literary and Artistic Works (1886)¹ and subsequently reinforced by the TRIPS Agreement² and the WIPO Copyright Treaty.³

Yet the emergence of generative artificial intelligence (AI) systems capable of producing novels, musical compositions, visual artworks, and legal analyses of sophisticated quality has shattered this assumption. These systems do not simply assist human creators; in many cases they generate expressive outputs with minimal, or even zero, deliberate human creative input. The question that copyright systems across the

¹ Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised at Paris on July 24, 1971, 1161 U.N.T.S. 3 [hereinafter Berne Convention].

² Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 [hereinafter TRIPS Agreement].

³ WIPO Copyright Treaty, Dec. 20, 1996, 2186 U.N.T.S. 121 [hereinafter WCT].

globe are now confronted with is, at once, doctrinal and philosophical: who, if anyone, owns a work that no human truly authored?

This question is not merely academic. The global market for AI-generated content is projected to exceed hundreds of billions of dollars within the decade. Creative industries, publishing houses, software developers, and technology companies have a profound economic interest in clarity about ownership of AI outputs. Equally, human creators have an interest in ensuring that the expansion of AI-generated content does not erode the value and protection accorded to genuinely human creative work.

This article undertakes a systematic comparative analysis of how five major jurisdictions, the United States, the European Union, the United Kingdom, Japan, and China, approach copyright ownership of AI-generated works, situating each within the international legal architecture. Part II examines the international framework. Part III analyses the United States approach. Part IV addresses the European Union's rights-based framework. Part V considers the UK's distinctive statutory provision. Part VI examines Japan's nuanced guidelines. Part VII analyses China's pragmatic judicial developments. Part VIII assesses the divergence across systems and proposes a harmonization pathway. Part IX concludes.

THE INTERNATIONAL LEGAL FRAMEWORK

A. The Berne Convention and the Human-Authorship Assumption

The Berne Convention, first adopted in 1886 and most recently revised in Paris in 1971, establishes the foundational architecture of international copyright protection. Its central provisions, national treatment, minimum standards of protection, and automatic protection upon creation, rest on a conception of authorship that, while never explicitly restricted to natural persons in the treaty text itself, has always been understood to presuppose human creative activity.⁴

Article 6bis of the Berne Convention, which enshrines moral rights, the author's right to claim authorship and to object to mutilation of the work, further underscores the Convention's assumption that an author is a person capable of having an honour, a reputation, and a relationship with their work that persists even after the transfer of economic rights. As Professor Sam Ricketson, the leading commentator on the Convention, observed, the need for the author to be a human being and for there to be some intellectual contribution is a longstanding and foundational assumption of national copyright laws that the Convention was designed to reflect.⁵

The Berne Convention does not define 'author' or 'originality,' leaving these concepts to national implementation. This silence, originally a pragmatic diplomatic compromise, has become a structural problem in the age of generative AI: it means that the question of whether AI outputs can attract copyright is being resolved domestically, producing a patchwork of inconsistent answers across 179 member states.

B. TRIPS and the WCT

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), administered by the World Trade Organization, requires member states to comply with Articles 1 through 21 of the Berne Convention and applies these obligations through its dispute settlement mechanism. Article 9(1) of TRIPS incorporates the Berne Convention's core provisions, meaning that the human-authorship assumptions

⁴ Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised at Paris on July 24, 1971, 1161 U.N.T.S. 3 [hereinafter Berne Convention].

⁵ Sam Ricketson, *The Berne Convention for the Protection of Literary and Artistic Works: 1886–1986*, at 7.1 (1987).

embedded in the Convention are also operative under TRIPS. Significantly, Article 6bis of the Berne Convention, covering moral rights is explicitly excluded from TRIPS, leaving member states free to determine the scope of attribution rights independently.⁶

The WIPO Copyright Treaty (1996), adopted to extend copyright protection to the digital environment, similarly does not address AI authorship directly. It supplements the Berne Convention's protections with obligations relating to technological protection measures and rights management information, but its drafters in 1996 could not have anticipated generative AI of the sophistication now available.⁷

In sum, the international framework provides no explicit answer to the AI authorship question. It assumes human authorship without mandating it, leaving a vacuum that domestic legal systems are filling with divergent, and sometimes conflicting, approaches.

THE UNITED STATES: HUMAN AUTHORSHIP AS CONSTITUTIONAL BEDROCK

A. The Statutory and Constitutional Foundation

United States copyright law derives from the Copyright Clause of the Constitution, which grants Congress the power to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries. The Copyright Act of 1976 protects original works of authorship fixed in a tangible medium.⁸

The Supreme Court has, since the nineteenth century, read a human-authorship requirement into these provisions. In *Burrow-Giles Lithographic Co. v. Sarony* (1884), the Court held that photographs could be copyrightable because they embodied a human author's original mental conceptions, confirming that human intellectual genesis is the sine qua non of copyrightable expression.⁹

B. Thaler v. Perlmutter: The D.C. Circuit Speaks

The most consequential recent development in U.S. copyright law on AI authorship is *Thaler v. Perlmutter*. In 2023, the U.S. District Court for the District of Columbia became the first court in the country to directly address the copyright ability of AI-generated outputs. The plaintiff, Dr. Stephen Thaler, sought copyright registration for an image described as autonomously created by a computer algorithm running on a machine, with the AI system listed as the author. The District Court affirmed the Copyright Office's refusal, holding that copyright law protects only works of human creation and that human authorship is a bedrock requirement of copyright.¹⁰

On appeal, the United States Court of Appeals for the District of Columbia Circuit unanimously affirmed this position in 2025, holding that the Copyright Act requires all eligible work to be authored by a human being and that an autonomous AI system cannot be the recognised author of a copyrighted work. This ruling, in conjunction with the Ninth Circuit's earlier decision in *Naruto v. Slater* which rejected copyright

⁶ Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 [hereinafter TRIPS Agreement].

⁷ WIPO Copyright Treaty, Dec. 20, 1996, 2186 U.N.T.S. 121 [hereinafter WCT].

⁸ 17 U.S.C. § 102(a) (2018).

⁹ *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884).

¹⁰ *Thaler v. Perlmutter*, Civil Action No. 22-1564, 2023 WL 5333772 (D.D.C. Aug. 18, 2023), *aff'd*, 130 F.4th 1039 (D.C. Cir. 2025).

claims for photographs taken autonomously by a macaque monkey establishes a clear judicial consensus: non-human entities cannot hold copyright under U.S. law.¹¹¹²

C. The Copyright Office's 2025 Part 2 Report

The U.S. Copyright Office (USCO) has further developed this framework through administrative guidance. Following a 2023 policy statement and an extensive Notice of Inquiry that attracted over 10,000 public comments from all 50 states and 67 countries, the USCO released Part 2 of its comprehensive Copyright and Artificial Intelligence Report on January 29, 2025.¹³

The 2025 Report affirms that copyright protection does not extend to material generated wholly by AI. It draws a crucial distinction between AI as a tool where copyright may subsist in the human creative expression that is perceptible in the output and AI as an autonomous creator, where it does not. Importantly, the Office concluded that prompt engineering, even where highly detailed and iterative, does not in itself constitute sufficient creative authorship, because AI systems respond to prompts in ways that are not fully under the user's deliberate control.¹⁴

The USCO identified four categories of human contribution that may support copyright: (1) using AI to facilitate the human creative process without determining expressive elements; (2) using prompts that constitute independent expressive works perceptible in the output; (3) providing expressive inputs that shape the final output; and (4) making creative selections, arrangements, or modifications of AI-generated content. The Office also concluded that the case had not been made for additional statutory protection or sui generis rights for AI-generated content, finding existing law sufficiently adaptable.¹⁵¹⁶

Landmark cases illustrate the Office's approach. In *Zarya of the Dawn* (2023), partial copyright was granted to the human-authored text of a comic book while cancelling registration for Midjourney-generated images, on the basis that the user lacked sufficient creative control over the visual outputs. In *Théâtre D'Opéra Spatial*, the Office refused registration despite over 600 iterations of prompt refinement, maintaining that extensive prompting alone does not transform a user into an author for copyright purposes.¹⁷

THE EUROPEAN UNION: RIGHTS, TRANSPARENCY, AND TEXT-AND-DATA MINING

A. A Human-Centred Framework Rooted in Dignity

The European Union's approach to copyright is anchored in a rights-based framework that reflects the EU's broader constitutional commitment to human dignity and fundamental rights. Article 17(2) of the Charter

¹¹ *Thaler v. Perlmutter*, 130 F.4th 1039 (D.C. Cir. 2025).

¹² *Naruto v. Slater*, 888 F.3d 418 (9th Cir. 2018).

¹³ U.S. Copyright Office, Copyright and Artificial Intelligence, Part 2: Copyrightability (Jan. 29, 2025) [hereinafter USCO Part 2 Report].

¹⁴ USCO Part 2 Report, at 26.

¹⁵ U.S. Copyright Office, Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence, 88 Fed. Reg. 16,190 (Mar. 16, 2023).

¹⁶ *In re Zarya of the Dawn* (Correspondence), U.S. Copyright Office (Feb. 21, 2023); *In re Théâtre D'Opéra Spatial*, U.S. Copyright Office (Sept. 2023).

¹⁷ *In re Zarya of the Dawn* (Correspondence), U.S. Copyright Office (Feb. 21, 2023); *In re Théâtre D'Opéra Spatial*, U.S. Copyright Office (Sept. 2023).

of Fundamental Rights of the European Union expressly declares that intellectual property shall be protected.¹⁸

EU copyright law operates through a series of Directives that establish minimum harmonised standards while leaving implementation to member states. This decentralised architecture has produced some divergence within the EU itself, but the Court of Justice of the European Union (CJEU) has progressively developed a supranational standard of originality that is central to the AI authorship question.

B. The CJEU's Originality Standard

In *Infopaq International A/S v. Danske Dagblades Forening* (2009), the CJEU held that copyright protection is available only for works that are the expression of the intellectual creation of their author. This formulation, which requires the work to reflect the author's free and creative choices and to bear the author's personal touch, has been consistently applied and refined in subsequent cases, including *Painer v. Standard Verlags GmbH* (2011), in which the Court confirmed that even a portrait photograph could be protected if it reflected the photographer's creative choices.¹⁹²⁰

The implications for AI are significant. Where an AI system autonomously determines the expressive elements of an output, selecting compositions, choosing words, generating imagery, there is no human author whose free and creative choices are expressed. The CJEU standard therefore, as a matter of doctrinal logic, excludes purely AI-generated works from EU copyright protection. A December 2024 WIPO policy questionnaire similarly recorded that EU member states generally considered AI-generated content eligible for copyright protection only if the human input in their creative process was significant.

C. The DSM Directive and Text-and-Data Mining

The Digital Single Market (DSM) Directive (2019/790) introduced provisions on text-and-data mining (TDM) that are directly relevant to the AI and copyright landscape, though they address inputs rather than outputs. Articles 3 and 4 of the DSM Directive permit TDM for research purposes, and extend a limited TDM right to commercial operators, subject to right-holders' ability to opt out.²¹²²

This opt-out mechanism has been contentious, and scholars such as Marcus von Welser have noted that the EU model effectively treats AI training as a separate, regulated act requiring independent legal justification a stricter approach than the U.S. fair use framework.²³

D. The EU AI Act (2024) and the 2025 European Parliament Report

Regulation 2024/1689, the EU Artificial Intelligence Act — adopted by the European Parliament on 13 March 2024 and entering force in stages — introduces copyright obligations for providers of general-purpose AI models. Articles 53(1)(c) and 53(1)(d) require such providers to comply with applicable EU copyright law, to maintain a detailed summary of training data for publication, and to respect opt-out

¹⁸ Charter of Fundamental Rights of the European Union, art. 17(2), 2012 O.J. (C 326) 391.

¹⁹ Case C-5/08, *Infopaq International A/S v. Danske Dagblades Forening*, 2009 E.C.R. I-6569 (CJEU).

²⁰ Case C-145/10, *Painer v. Standard Verlags GmbH*, EU:C:2011:798 (CJEU Dec. 1, 2011), at para. 88.

²¹ Directive 2019/790 of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market, 2019 O.J. (L 130) 92 (EU) [hereinafter DSM Directive].

²² DSM Directive arts. 3–4.

²³ Marcus von Welser, *A European View on Generative AI and Copyright*, 17 *Landslide* 23, 25 (2025).

mechanisms under the DSM Directive. These obligations are primarily transparency and compliance measures.²⁴

In June 2025, the European Parliament published a draft report on Copyright and Generative Artificial Intelligence, calling on the European Commission to urgently assess whether existing EU copyright law adequately addresses legal uncertainty around AI-generated outputs and to further harmonise member state copyright laws. The Parliament explicitly noted that AI-generated content created without human authorship should remain ineligible for copyright protection and called for mandatory labelling of AI-generated works.²⁵

THE UNITED KINGDOM: A STATUTORY EXCEPTION AND ITS LIMITS

A. Section 9(3) of the CDPA 1988

The United Kingdom holds a historically unique position: it is one of the few jurisdictions with a specific statutory provision purporting to protect computer-generated works. Section 9(3) of the Copyright, Designs and Patents Act 1988 provides that, in the case of a literary, dramatic, musical, or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken. At the time of its enactment, Parliament characterised it as the first copyright legislation anywhere in the world which attempts to deal specifically with the advent of artificial intelligence, intending to allow investment in artificial intelligence systems, in the future, to be made with confidence.²⁶

Under section 12(7) of the CDPA, computer-generated works receive a shorter protection term of 50 years from creation, rather than the life-plus-70-years term applicable to human-authored works. Additionally, moral rights under the CDPA expressly do not apply to computer-generated works, reflecting Parliament's view that the legal fiction of authorship under section 9(3) does not carry the full suite of authorial rights.²⁷

B. Doctrinal Tensions and the Limits of Section 9(3)

Despite its innovative intent, section 9(3) faces serious doctrinal difficulties in the age of generative AI. As scholars including Söğüt Atilla have argued, the provision creates a legal fiction an artificial author for authorless works that sits in uncomfortable tension with the EU-derived originality standard requiring the work to be the author's own intellectual creation, a standard that logically cannot be satisfied by a work with no human author.²⁸

A further ambiguity concerns the identity of the person by whom the arrangements necessary for the creation of the work are undertaken. For modern generative AI systems, the candidate pool includes the AI developer, the entity that curated or provided training data, the platform operator, the end user who crafted

²⁴ Regulation 2024/1689 of June 13, 2024, on Artificial Intelligence (Artificial Intelligence Act), 2024 O.J. (L 2024/1689) (EU) [hereinafter EU AI Act], arts. 53(1)(c)–(d).

²⁵ European Parliament, Draft Report on Copyright and Generative Artificial Intelligence – Opportunities and Challenges (June 2025).

²⁶ Copyright, Designs and Patents Act 1988, c. 48, § 9(3) (UK) [hereinafter CDPA 1988].

²⁷ CDPA 1988 § 12(7).

²⁸ Söğüt Atilla, Dealing with AI-Generated Works: Lessons from the CDPA Section 9(3), 19 J. Intell. Prop. L. & Prac. 43, 47 (2024).

the prompt, or some combination thereof, none of whom may have exercised creative control over the specific expressive elements of the output.

Post-Brexit, the UK Intellectual Property Office (IPO) has consulted on whether section 9(3) should be retained, amended, or repealed. Proposals have ranged from targeted reform to outright repeal, with some academics arguing that the provision is not well-suited to modern AI and creates doctrinal confusion that exceeds its protective value. The UK government has not legislated further reform as of 2025, leaving the question substantially unresolved.

JAPAN: STATUTORY REFORM AND NUANCED ADMINISTRATIVE GUIDANCE

A. Article 30-4 of the Copyright Act and AI Training

Japan amended its Copyright Act in 2018 to address the challenge of machine-learning systems requiring large-scale data analysis. Article 30-4 provides a broad exemption allowing the use of copyrighted materials for information analysis — including the training of AI models — for both research and commercial purposes, subject to the restriction that such use must not unreasonably prejudice the interests of the copyright owner. This exemption is notably more permissive than both the U.S. fair use framework and the EU's TDM provisions.²⁹

In May 2024, the Agency for Cultural Affairs of Japan published guidelines on AI and copyright, providing that the copyright ability of AI-generated material rests on whether the human author has provided creative contributions that surpass mere effort. Relevant factors include the amount and specificity of instructions given to the AI, the number of generation attempts, and the extent of human selection and modification of generated outputs.³⁰

Japan's approach thus shares the human-centred orientation of other major jurisdictions while articulating a more graduated, contextual standard for assessing when human direction is sufficient to attract copyright. This nuance, avoiding both a rigid prompt-engineering exclusion and a broad embrace of AI authorship, positions Japan as a potentially instructive model for international harmonisation discussions.

CHINA: JUDICIAL PRAGMATISM AND THE HUMAN-OPERATOR MODEL

A. The Statutory Framework

Chinese copyright law restricts the legal definition of 'author' to natural persons and legal entities — meaning AI systems cannot be authors under Chinese law as a matter of statutory text. Notably, this provision does not resolve the question of whether AI outputs can attract copyright protection; it only means that any such protection must be attributed to a human or legal entity.

B. Judicial Developments

Chinese courts have been remarkably proactive in addressing AI copyright questions. In *Shenzhen Tencent Computer System Co., Ltd. v. Shanghai Yingxun Technology Co., Ltd.* (2019), the Nanshan District People's Court of Shenzhen held that an AI-generated stock market analysis article was copyrightable, attributing authorship to Tencent on the basis that the company's staff had contributed intellectual activity,

²⁹ Copyright Act of Japan, Law No. 48 of 1970, art. 30-4 (as amended 2018).

³⁰ Agency for Cultural Affairs of Japan, Copyright Subdivision of the Cultural Council, Guidelines on AI and Copyright (May 2024).

inputting data, setting triggers, and selecting templates directly connected to the specific expression of the final article.³¹

The most significant development came in *Li Yunkai v. Liu Yuanchun* (2023), in which the Beijing Internet Court became the first Chinese court to grant copyright in an AI-generated image. The plaintiff had generated the image using Stable Diffusion by crafting over 150 detailed prompts, arranging their order, adjusting parameters across multiple iterations, and selecting the final image from among those generated. The Court held that the plaintiff had made a sufficient intellectual investment that the image reflected personalized expression to qualify for copyright protection, attributing ownership to the human operator rather than to the AI system.³²

This approach was affirmed in *Lin v. Inflatable Model Co.* (Changshu People's Court, 2025), in which a plaintiff who used Midjourney and then Photoshop to further refine an AI-generated image was found to hold copyright, on the basis of demonstrable original intellectual input perceptible in the final work. These decisions stand in notable contrast to the U.S. Copyright Office's treatment of comparable prompt-engineering scenarios, where the Office has consistently declined to find sufficient human authorship.³³

C. The 2023 Generative AI Regulations

At the regulatory level, the Cyberspace Administration of China's Interim Measures for the Management of Generative Artificial Intelligence Services (July 2023) require developers to use lawful and truthful training data, to register algorithms with the relevant authorities, and to respect intellectual property rights. These measures establish a framework of administrative oversight that complements the judicial approach.³⁴

COMPARATIVE ANALYSIS: CONVERGENCE, DIVERGENCE, AND THE HARMONISATION IMPERATIVE

A. Points of Convergence

Across the five jurisdictions examined, certain points of convergence are discernible. First, no jurisdiction has recognised AI systems themselves as copyright holders. Whether the framing is constitutional (U.S.), doctrinal (EU, UK), statutory (China, Japan), or administrative (all systems), the universal position is that AI cannot be an author. Second, all jurisdictions agree in principle that human creative contributions to AI-generated outputs can attract copyright protection. The question is not whether human creativity is necessary all systems agree it is, but how much, and what kind.

Third, there is emerging convergence around the view that mere prompting of AI systems is insufficient to establish copyright. The U.S. Copyright Office's 2025 report, the EU member states' position articulated in the December 2024 WIPO questionnaire, and Japan's 2024 guidelines all point in this direction, though Chinese courts have been somewhat more permissive where prompting is detailed and iterative.

³¹ *Shenzhen Tencent Computer System Co., Ltd. v. Shanghai Yingxun Technology Co., Ltd.*, Nanshan District People's Court of Shenzhen (Dec. 24, 2019) (China).

³² *Li Yunkai v. Liu Yuanchun*, (2023) Jing 0491 Min Chu No. 11279 (Beijing Internet Ct. Nov. 27, 2023) (China) [hereinafter *Li v. Liu*].

³³ *Lin v. Inflatable Model Co.* (Changshu People's Court, Jiangsu Province, Mar. 7, 2025) (China).

³⁴ Cyberspace Administration of China, Interim Measures for the Management of Generative Artificial Intelligence Services (July 10, 2023).

B. Points of Divergence

The divergences, however, are substantial and consequential. The most significant is the threshold of human creative control required to attract copyright in AI-assisted outputs. The U.S. position is demanding: the human must determine the expressive elements of the work; detailed prompting alone is insufficient. Chinese courts have applied a more permissive standard, protecting AI-generated images where the human operator engaged in iterative, detailed direction of the AI, even if the specific visual output was not entirely predictable.

A second significant divergence concerns the public-domain status of purely AI-generated works. In the U.S. and EU, works lacking sufficient human authorship fall into the public domain and attract no protection. Under the UK's section 9(3), a legal fiction of authorship means that some computer-generated works may attract a limited form of protection attributable to the person who made the necessary arrangements, a framework that does not exist elsewhere.

A third divergence concerns training data. Japan's Article 30-4 exemption is considerably broader than comparable EU TDM provisions or the U.S. fair use framework, creating conditions where AI developers in Japan can train on copyrighted works with lower legal risk. This asymmetry has implications for the competitive dynamics of the global AI industry.

C. The Regulatory Fragmentation Problem

The divergences described above create conditions for regulatory arbitrage: AI developers and rights holders can structure their operations to take advantage of whichever jurisdiction's legal framework is most favourable. A developer training models in Japan, deploying outputs through a Chinese platform, and asserting copyright in the U.S. faces three different legal regimes that may produce three different answers to the same underlying question of ownership.³⁵

Scholars including Kavya Rallabhandi have proposed that this fragmentation can only be durably addressed through the WIPO Copyright Treaty framework, through either an amendment to the WCT or a new instrument specifically addressing AI-generated works. The WIPO Standing Committee on Copyright and Related Rights (SCCR) has included AI and generative content on its agenda, holding an information session on the topic in April 2025, and comparative legal scholars have increasingly called for multilateral harmonisation.^{36,37,38}

D. Towards a Harmonised Framework: Qualified Human Creative Control

This article proposes that international harmonisation should coalesce around a standard of qualified human creative control. Under this approach, copyright in AI-generated or AI-assisted works would require that a human author: (1) made deliberate expressive choices that (2) are perceptible in or causally operative upon the final output, and (3) exercised sufficient direction to make the output meaningfully attributable to the

³⁵ Frishta Abdul Wali, Copyright Law and Generative AI: A Comparative Analysis on Fair Use Across the U.S., E.U., and China, 51 Rutgers Comput. & Tech. L.J. 293, 310 (2025).

³⁶ Kavya Rallabhandi, The Copyright Authorship Conundrum for Works Generated by Artificial Intelligence: A Proposal for Standardized International Guidelines in the WIPO Copyright Treaty, 54 Geo. Wash. Int'l L. Rev. 311, 336 (2023).

³⁷ WIPO Standing Committee on Copyright and Related Rights (SCCR), 46th Session, Information Session on Copyright and Generative Artificial Intelligence (Apr. 10, 2025).

³⁸ Jiakang Yu, Who Owns AI-Generated Creativity? A Comparative Look at International Copyright Approaches, Minn. J. Int'l L. Blog (Nov. 25, 2025).

human author's creative vision rather than to the AI system's autonomous processing. Purely mechanistic selection — choosing among AI outputs without shaping them — would be insufficient; creative curation, arrangement, modification, or direction of sufficient specificity and expressiveness would suffice.³⁹

This standard is flexible enough to accommodate the graduated human-AI collaboration spectrum that characterises contemporary creative practice, while remaining anchored to the human-authorship principle that underpins the Berne Convention and its successors. It would not require wholesale revision of the Berne Convention but could be implemented through an interpretive protocol or a new WIPO instrument specifying how existing authorship standards apply to AI-generated and AI-assisted works.

Complementary reforms should include: mandatory disclosure obligations for works containing AI-generated material (consistent with the EU AI Act's transparency provisions and the USCO's existing guidance); a *sui generis* right of limited duration for purely AI-generated works of commercial significance, to prevent creative investment going unrewarded while not equating such works with human-authored copyright; and a multilateral framework for training-data licensing that addresses the TDM divergences between jurisdictions.

CONCLUSION

The question of who owns AI-generated works is one of the defining intellectual property challenges of the twenty-first century. This article has demonstrated that the current international copyright architecture built on assumptions of human authorship that predate even the simplest computational tools is under significant strain from generative AI systems of unprecedented sophistication.

A comparative survey of five major jurisdictions reveals that while all share a human-centred orientation, they diverge materially on the threshold and nature of human creative contribution required to attract copyright, on the treatment of purely AI-generated works, and on the regulation of AI training data. These divergences create regulatory fragmentation that undermines legal certainty for rights holders and AI developers alike, and that international copyright instruments have not been designed to resolve.

The time for international engagement is now. The Berne Convention's silence on AI authorship, pragmatic in 1886 and even in 1971, has become a structural lacuna that domestic law cannot fill consistently. WIPO's Standing Committee on Copyright and Related Rights has begun engaging with these questions, and this article has proposed a harmonised standard, qualified human creative control, that is grounded in existing doctrine while adapted to the realities of human-AI creative collaboration.

The history of copyright is a history of adaptation: from Gutenberg's press to photography, from phonographs to software. Generative AI is merely the latest, and most challenging, disruption. The international legal order has adapted before; it must do so again, and it must do so through principled, multilateral engagement rather than through the accumulation of domestic divergences that benefit no one.

³⁹ Yelena Ambartsumian & Maria T. Cannon, *Why the Obsession with Human Creativity? A Comparative Analysis on Copyright Registration of AI-Generated Works*, Harvard Int'l L.J. Online (Feb. 21, 2025).