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## Generative AI: Wolf in sheep's clothing?

Huzefa Tavawalla , Tanisha Khanna | 4 min read | 09 Nov 2023, 09:00 AM IST



The expansive use of generative AI in content creation doesn't exempt it from legal scrutiny, especially under Indian law. (Photo: iStock)

### SUMMARY

*The industry's future will hinge on how well businesses and regulators can establish frameworks to mitigate challenges, unlocking AI's full potential responsibly.*

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The expansive use of generative AI in content creation doesn't exempt it from legal scrutiny, especially under Indian law, which prohibits certain types of content. AI's capacity to mass-produce content can be misused for creating defamatory materials, inciting religious animosity, or promoting terrorism. Moreover, generative AI has been implicated in fraudulent schemes like creating deepfakes or phishing campaigns.

Liability for such misuse remains murky. According to the Information Technology Act, 2000, intermediaries – entities that merely transmit content – can escape liability under specific conditions. Whether AI developers can claim this status is a grey area that might be addressed by the forthcoming Digital India Act, which is expected to assign more explicit responsibilities to them, especially in critical sectors like healthcare, where such tools are being used for diagnosis. It is possible that responsibilities will be prescribed for developers beyond such use cases as well.

## Data Protection

Generative AI tools are trained on vast amounts of data. Accordingly, businesses may also feed data into such tools for data analysis and reporting. As a result, there may be data privacy issues when such tools are trained on the personal data of individuals.

The new Digital Personal Data Protection Act, 2023, enforces strict rules on handling of personal data, emphasizing the necessity of consent and data minimization. Consents under the act are also linked to a particular purpose. The specific purpose for which personal data is processed may not cover activities such as data analytics through such tools.

The act does not, however, apply to non-personal data (such as corporate data or anonymized data), or to personal data which is made publicly available by the individual (such as personal data made public through social media, etc.). Hence, depending upon the nature of the data and the manner of processing by the tool, the permissible contours of processing under the Digital Personal Data Protection Act must be evaluated.

## Intellectual Property Rights

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It is an open question whether the process of training of generative AI tools on copyright works without permission from the owners, results in copyright infringement. There are ongoing lawsuits in the US and the UK by artists alleging copyright infringement basis the fact that their works were used to train AI tools, which could then generate works in their unique styles of art.

Whether copyright subsists in the input and output of generative AI tools is also fact specific. For instance, if an input is simply an idea or concept, copyright may not subsist in such input. If the resulting output is substantially similar to another artist's work, it would not be eligible for copyright, as it would be an infringement of another person's work.

Moreover, the concept of authorship is under scrutiny. Can AI be an author, or is it limited to natural persons? A recent U.S. court decision suggests that AI lacks the required human touch for copyright eligibility.

## Issues with decision-making

If AI tools are trained on biased or flawed data, they may generate a biased outcome. There is a pending lawsuit before a US district court against Workday, which is used for human resources decision-making, alleging that it enables discrimination against certain people (disabled, above a certain age, etc.). Ethical considerations of such decision-making would also need to be considered. Hence, decision-making should not be completely delegated to such tools.

The proof of generative AI's success will be in the pudding. If legislators and businesses adopt certain guardrails and technological solutions to address these issues, generative AI can be harnessed to drive innovation, growth, and efficiency across industries.

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