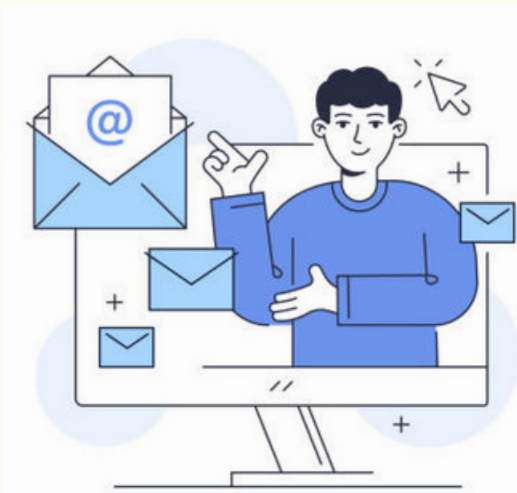


Newsletter

NOVEMBER 2024



ABOUT THE NEWSLETTER

Welcome to this month's Newsletter!

Under this Newsletter, we are thrilled to share some updates, industry insights and the key announcements with you.

In this edition, we delve into the dynamic worlds of Arbitration, Artificial Intelligence, and Intellectual Property Rights (IPR). These fields are rapidly evolving, shaping the future of business, law, and technology.

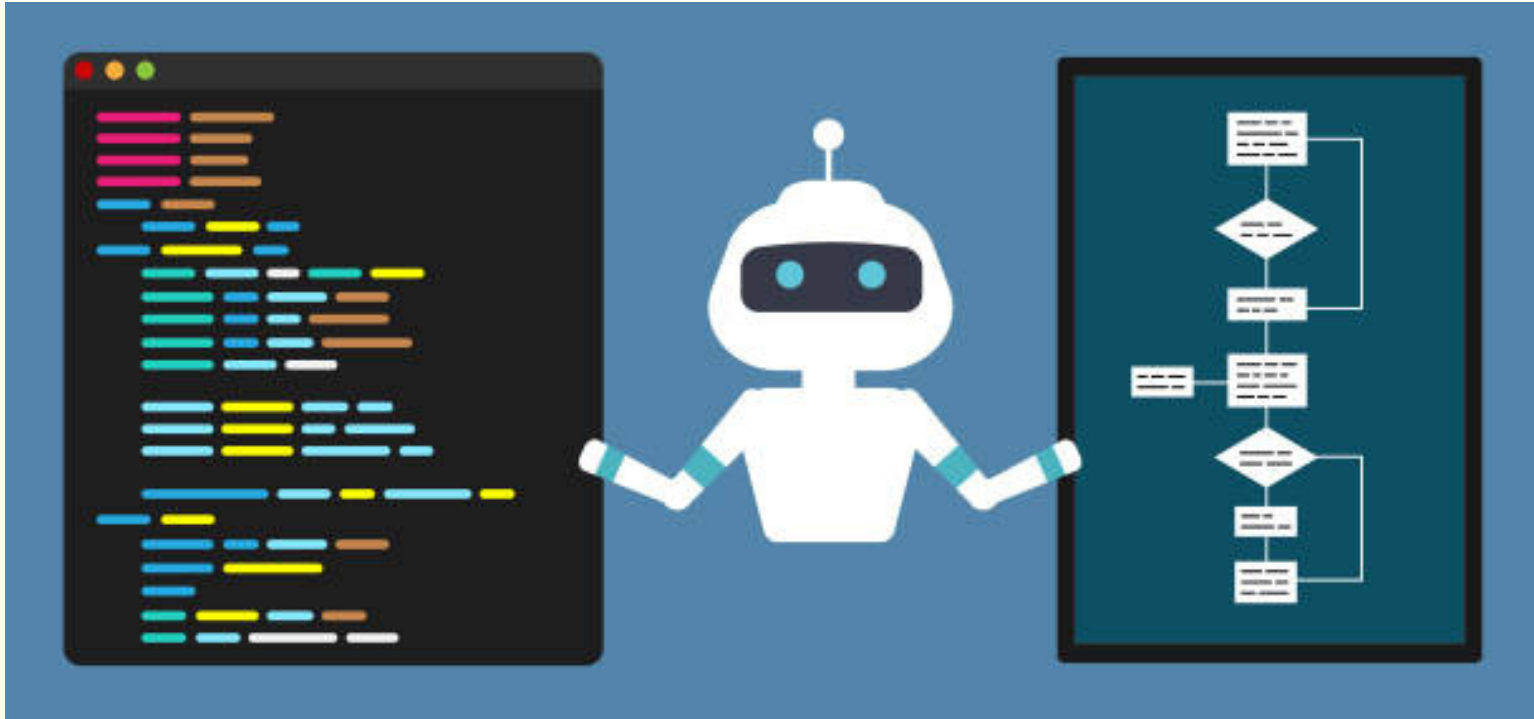
The articles offer in-depth analysis, expert insights, and thought-provoking perspectives on how these areas intersect and impact industries globally. Don't miss out on the latest trends and developments—read on to gain valuable knowledge that could shape your future success!

DISCLAIMER

The articles, cases, references, etc mentioned in the articles of this Newsletter are analyzed as per the personal views of the author and does not reflect the firm's opinion or dissection of the Court's judgment.

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ARTIFICIAL INTELLIGENCE & INTELLECTUAL PROPERTY RIGHTS



INTRODUCTION

In today's scenario when each one is using one or the other AI tool, it may appear that these novel AI techniques can generate original content from nothing, but this is not entirely accurate. Generative AI platforms are educated on data lakes and question fragments. This means that billions of parameters generated by software analyzes the vast repositories of photos and text available. Then such photos and text are analyzed through the patterns and relationships to formulate rules, subsequently making judgments and predictions in response to a prompt put in by us as per the requirement.

This procedure entails legal dangers, including violations of intellectual property rights. And, under numerous instances, the legal enquiries put in as prompt also remain unresolved.

Now the questions arises is that do copyright, patent, and trademark infringements pertain to AI-generated creations? Is ownership of the material generated by AI systems for you or your clients clearly defined? Prior to leveraging the advantages of generative AI, organizations must comprehend the associated threats and the methods for the purpose of safeguarding themselves.

In the 21st century, our day to day activities are consistently connected to artificial intelligence (AI) tools in multiple aspects of our existence. AI is deeply embedded in human existence, rendering numerous societal tasks unfeasible without its assistance. These days, the companies are utilising AI as a means to foster creativity and, in certain cases, to potentially develop independently.

This signifies a substantial transformation in the dominant paradigm. Artificial intelligence (AI) and Intellectual Property Rights (IPR) are not solely the domain of patent and copyright enthusiasts; they also possess significant business and societal implications as AI disrupts traditional IPR frameworks. When artificial technologies are employed to generate inventions, such as utilising evolutionary algorithms for antenna design, intellectual property rights rules become pertinent.

AI is engaged in several creative endeavours across animation, web applications, imagery, music, design, and other domains.

REGULATORY CHANGES IN AI AND IPR

As on today, the Legal AI usage is rising due to efficiency, accuracy, and cost-effectiveness. AI is used for contract assessment, legal research, predictive analytics, and document automation by lawyers in their day to day tasks. These technologies are giving better workflows, decision-making, and justice. And hence, several countries have passed AI-specific laws or recommendations to address these issues. The EU's General Data Protection Regulation (GDPR) addresses automated decision-making and profiling to protect individuals' rights in the AI age.

Understanding AI system causation, intentionality, and agency is crucial to answering these following concerns as stated below:

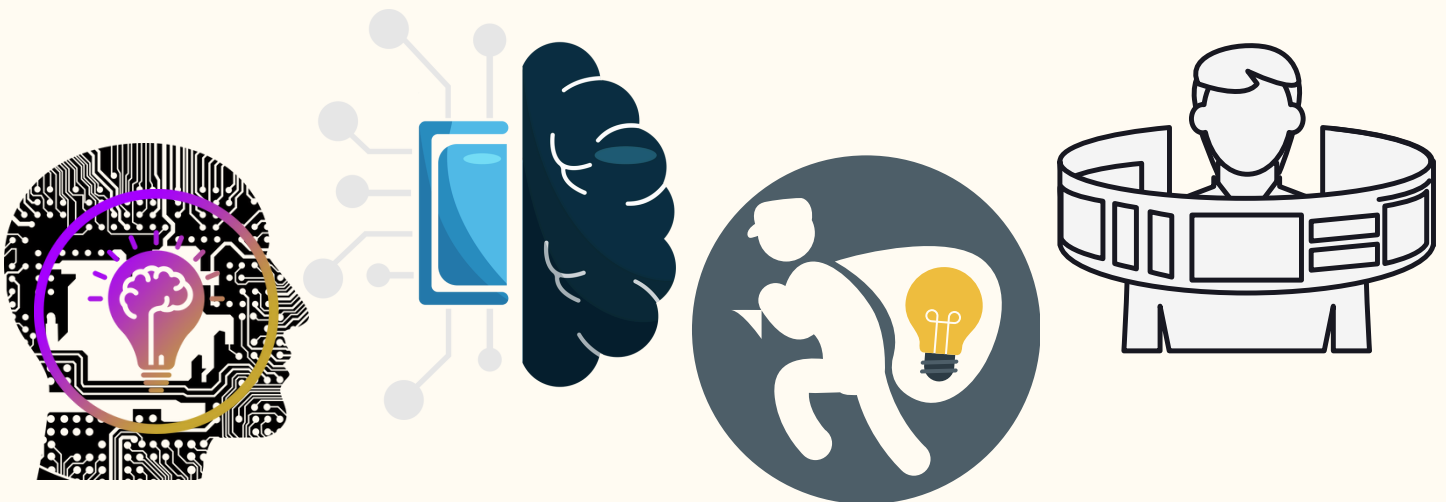
- A new legal challenge involves AI-generated material and IPR. AI algorithms create art, music, and literature, raising copyright and authorship issues.

- Current copyright laws mostly credit authorship to humans, leaving AI-generated works and its rights unclear.
- AI technology has surpassed legislative frameworks, leaving lawmakers unsure how to regulate its legal usage. Data privacy, IPR, and AI error liability are the major legal issues.
- In accordance to the prompt, the AI in law presents ethical and practical concerns. One major concern is AI algorithm bias, which could worsen legal inequities. AI systems are educated on the biased datasets or with defective algorithms may unintentionally prejudice against specific groups, resulting in unfair outcomes.
- The opacity of many AI algorithms hinders legal openness and accountability. Human decision-making can be explained, while AI systems are typically “black boxes”, making it hard to grasp their findings and the reasoning behind the response.
- The high pace of AI technology growth also affects legal structures and regulations, which may struggle to keep up. Lawmakers and legal researchers must address complicated legal and technological issues including liability, accountability, and data protection in AI-generated choices.
- The ethics of AI-generated legal advice and judgements are complicated. Transparency, accountability, and machine decision-making must be examined. Human judgement and legal competence are at risk as AI systems become more independent.
- Legal AI adoption is difficult despite its potential benefits. Obscure algorithms pose problems about accountability and due process for legal decisions with far-reaching effects.

- AI prejudice is another issue. Racial and gender imbalances in the judicial system can be perpetuated by these biases. To avoid unforeseen repercussions, AI bias must be addressed through data selection, algorithm design, and monitoring.
- Another issue is how AI affects the legal profession. Some worry that AI will supplant legal practitioners, especially in junior associate work like document assessment. Proponents say AI may enhance legal practitioners' knowledge, allowing them to focus on higher-value work that involves complicated reasoning and strategic thinking.
- AI's legal ethics are complicated. AI use requires expertise, confidentiality, and aggressive advocacy, which legal ethics codes emphasize. Legal professionals must employ AI systems responsibly and according to legal and professional standards.
- Ethics of privacy, autonomy, and fairness arise from AI use. The collecting and analysis of massive volumes of personal data for AI-driven decision-making may violate privacy rights. Maintaining public faith in the judicial system requires AI system openness and accountability.

CONCLUSION

As we explore the unfamiliar realm of AI-driven innovation, it is essential to establish a careful equilibrium between regulation and incentivization. The existing legal structure, particularly the intellectual property framework, may adapt in order to correspond with the advancements of AI-related technology. The intrinsic ambiguity in the legal environment around AI-generated content, particularly related to authorship issues, poses obstacles that traditional systems were not designed to tackle. This continuing shift poses a meticulous reevaluation of current legislation, highlighting the requirement for an ecosystem that both promotes innovation and safeguards the rights of creators, whether human or artificial. The intricate relationship between AI capabilities and the conventional notion of creativity as a uniquely human trait complicates issues around authorship and ownership in the domain of AI. Developing a progressive legal framework is important to properly leverage the potential benefits of AI. This evolution involves not only the adaptation of laws to technology improvements but also the development of a dynamic and inclusive ecosystem for innovators in India.



ARBITRATION AND ITS LIMITATION TO DELIVER ARBITRAL AWARD



All the companies in their business agreement usually put arbitration clause as their layer of dispute resolution before proceedings for the suit filing in the Court because dispute resolution under the arbitration is considered as fast resolution system, where parties mutually resolve their disputes in a speedy manner. But these days, the prolonged conclusion of the arbitration proceedings by the arbitrator is hindering the prompt resolution of conflicts in India. Hence, in order to curb this problem, Section 29A of the Arbitration and Conciliation Act, 1996 (referred to as the "Act") is brought into the effect by the Legislature with an aim of ensuring efficient and prompt completion of the pleadings within a reasonable timeframe. The concept of imposing a time constraint on the announcement of an Arbitral award was actually originated on 12th September 2001, as stated in the 176th Law commission report.

And the same resulted in the inclusion of Section 29A in the Act initially and The Arbitration and Conciliation (Amendment) Bill, 2002, was presented to both the houses of the Parliament based on the 176th Law Commission Report, dated 4th August 2005 for the passing of the same.

However, while the Bill was presented in 2005, the necessary time limit was not included in the Act because lawmakers believed that implementing such constraints might not produce favorable outcomes and fruitful. Section 29A of the Arbitration & Conciliation Act, 1996, was added through the Arbitration and Conciliation (Amendment) Act, 2015, which came into effect from 23rd October 2015. This section states a time limit for the issuance of arbitral awards wherein the Arbitral Tribunal is given a 12-month timeframe to complete the arbitration processes and issue the award.

And, this timeframe can only be extended by an additional period of 6 months if all parties party to the arbitration agree.

Furthermore, in order to revive or continue the arbitration proceedings, the parties shall have to file an application under Section 29A (5) of the Arbitration and Conciliation Act, 1996. This application seeks an extension of time to complete the arbitration proceedings. When a Court is deciding on a request, it has the authority to make a party pay for the expenses and also order a decrease in the fees of the arbitral tribunal if it can clearly assign blame for the delay in the arbitration proceedings to the relevant party or parties. At the same time, the Court can also grant an extension of time for the arbitration proceedings to be completed.

The Court determines that the arbitration proceedings conducted by the arbitral tribunal are not conducive to a structured and timely completion of the arbitration process, it has the power to replace one or all of the arbitrators and replace it with other arbitrator(s). In case, the Court does substitute one or all of the arbitrators, the arbitration proceedings will continue from the stage already reached and based on the evidence and material already on record. The same shall not begin from the beginning or the initial stage.

It is apparent from the information provided that whenever the deadline for presenting the award has passed, the evaluation of the request for an extension becomes very crucial for the ongoing progress of the arbitral proceedings. At this point, both parties would have already invested a substantial amount of money and time in the arbitration process.

If there is a negative decision to replace the arbitral tribunal, especially when the proceedings are already at an advanced stage with oral arguments underway, it could significantly delay the arbitration process by several months and result in the unnecessary waste of resources.

IN pursuance to the Section 29(5) of the Act, only the relevant court has the authority to grant any additional extensions. Additionally, this provision does not allow any party to request the replacement of an Arbitrator solely based on concerns about the Arbitrator's conduct during the arbitration procedures.

NOW THE QUESTION ARISES IS WHICH IS THE APPROPRIATE COURT TO SEEK AN EXTENSION OF TIME THROUGH THE JUDICIAL PROCESS?

There is also uncertainty on whether civil courts would handle domestic arbitrations. The dispute regarding the meaning of the term 'court' in Section 29A of the Act was addressed by the Delhi High Court in the case of *DDA vs. Tara Chand Sumit Construction Co {2020 (269) DLT 373}*. The issue at hand was whether the petition for extending the mandate should be heard by the High Court or the civil court with original jurisdiction, as defined in Section 2(1)(e) of the Act. Section 29A grants the court the authority to not only prolong the arbitrator's mandate but also to opt for a replacement arbitrator. Thus, the authority to prolong the term of an arbitrator is linked to the authority to replace an arbitrator. Therefore, if the High Court has appointed the tribunal, only the High Court has the authority to replace the arbitrator. Likewise, in the context of International commercial arbitrations, the authority is with the Supreme Court.

The reliance was also made on the ruling of Nilesh Ramanbhai Patel vs. Bhanubhai Ramanbhai Patel {(2019) 2 GLR 1537}, where the issue arose over whether the civil court had the authority to consider the application for an extension of time under Section 29A, given that the Gujarat High Court had been pronounced 'functus ocio'. The High court determined that the legislature, through the interpretation of the term 'court' under Section 29A, does not grant the civil court the authority to consider the application for extending the arbitrator's time when the High court has appointed the arbitrator.

The High Court of Bombay expressed a similar perspective in the case of S.A. v Maharashtra State Electricity Distribution Company Limited {2019 SCC OnLine Bom 1437}. The court noted that in instances of international commercial arbitration where the arbitrator has been appointed by the Supreme Court, the High Court cannot consider an application for an extension of time under Section 29A.

Thus, it is important to consider Section 11 of the Act alongside S. 29A, as they cannot be understood separately. Once the High Court or the Supreme Court has made an appointment, only that Court has the authority to hear an application under Section 14 with S. 29A of the Act.



IS WELL-KNOWN MARK CONSIDERED AS A TRADEMARK?



INTRODUCTION

In accordance with section 2(zb) of the Trade Marks Act, a 'trade mark' is defined as a mark that may be visually represented and has the ability to differentiate the goods or services of one individual from those of others. This may include the shape of goods, their packaging, and combinations of colors. Put simply, a trademark offers legal safeguard for various elements such as symbols, colors, shapes, words, etc. that are used to represent and associate with a product or service.

Remarkably, a trademark application is not required to be filed for marks that are currently in use (although it can also be filed for marks that are anticipated to be used in the future). The main prerequisites for trademark registration are that it must contain a distinctive mark that sets it apart from others and that it can be visually represented.

The Trade Marks Act includes specific reasons for refusing registration, known as absolute grounds. These include:

- a) the mark lacking distinctiveness;
 - b) the mark being deceptive and causing confusion among the public;
 - c) the mark being offensive to religious beliefs;
- the mark being offensive, scandalous, or unclear, among others.

Furthermore, the Act includes relevant grounds for refusing registration, specifically pertaining to the similarity with existing marks.

Trademark registration is essential for providing protection to the brand name, logo, sound, shape, etc., and for uniquely identifying the goods/services associated with the brand, thereby ensuring its distinctiveness.

The validity of a trademark registration is initially for a period of 10 years, and it can be extended indefinitely for subsequent periods of 10 years, as long as renewal applications are filed on time.

To understand further, let's have a look at a case law for a Snack Retail Chain.

- In September 2019, a Local Commissioner designated by the High Court to examine the claim visited the defendant's property. The Local Commissioner found that the defendant corporation has been continuously marketing products under the brand name since January 2019, encompassing the grocery items.
- The Hon'ble High Court levied a fine of ₹50 Lacs in damages and an additional ₹2 Lacs in costs to be paid to the Snack Retail Chain, due to the misuse of food goods from an established brand as compensation.
- Later, the Delhi High Court affirmed that the "well-known mark as brand" is a renowned trademark pertaining to food products, cafes and restaurants, etc. both in India and in the foreign nations.
- The High Court stated, "Undoubtedly, the well-known brand name of the Snack retail chain, with its origins firmly embedded in India's rich culinary heritage, has established a presence in the national market and has also expanded its influence globally, while transcending geographical, cultural, and national boundaries."
- It observed that the mark and logo Snack Retail Chain have been utilised in the food business since the 1960s and have attained the designation of a 'well-known mark'.

- The High Court declared that an order establishing the mark and the oval-shaped mark as a "well-known" mark for food goods and restaurants is allowed.
- The High Court's decision followed a lawsuit initiated by the Snack Retail Chain, requesting the protection for its trademark and a statement that this mark, along with its variations like is 'well-known' under the Trade Marks Act, 1999



CONCLUSION

The Court indicated that the phrase "well-known mark" is defined in Section 2(1)(zg) of the Act, and Section 11(6) of the Act enumerates the criteria for designating a mark as "well-known". The Court observed that the plaintiff relied on the notion of spill-over reputation, wherein a mark's recognition and prestige extend across national boundaries, affecting consumer behaviour in the areas without direct commercial presence of the brand.

The Court additionally observed that the plaintiff asserted a prominent declaration concerning a region where the plaintiff's rights did not reach, namely West Bengal. The Court noted that the circumstances in this case were unusual, as the plaintiff did not possess rights to the mark in West Bengal, yet asserted that the mark was 'well-known' across India, including West Bengal. The Court stated that the notion of a 'well-known' mark was 'dynamic.'

A renowned trademark can confer the individuality and a guarantee of quality that transcends local limitations.

The plaintiff exports its products not just inside Asia but also to a wide range of other nations.

In accordance to the Judgment by the Hon'ble High Court, the claim that the Snack Retail Chain's brand name is a "well-known" mark throughout India, including West Bengal, highlights the plaintiff's commercial and cultural clout. Regardless of regional or geographic borders, this dynamism aims to preserve the goodwill and trust that a brand has with customers. The Court recognizes current consumer perceptions of typical customers in the food and snack industry by issuing such a pronouncement.

