

Copyright Office Provides Guidance on Registration of AI-Created Material: Human Authorship Still Necessary

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by Jeffrey R. Cadwell

This blog has covered artificial intelligence and copyright protection in the United States on a number of occasions, including [It's Alive?](#) and [AI Artwork](#). To date, the Copyright Office has consistently rejected registration of works created using AI technology. The basis is that the Copyright Office and copyright case law have interpreted the term “authorship” from the Copyright Act to exclude non-humans. The current version of the *Compendium of U.S. Copyright Office Practices* indicates that “to qualify as a work of ‘authorship’ a work must be created by a human being.” The Copyright Office recently signaled a willingness to move away from a rigid approach to AI-created works when it approved registration of a graphic novel named *Zarya of the Dawn* consisting of human-authored text and AI-generated imagery. The scope of registration, however, was limited only to the human-authored text in the graphic novel.

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Because AI-generated works will continue to be created and the Copyright Office has seen an influx of applications to register such works, the Copyright Office determined that public guidance is necessary specifically for registration of works created utilizing AI-technology or containing AI-generated content. Accordingly, on March 16, 2023, the Copyright Office released a statement entitled “Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence.”

In this policy statement, the Copyright Office provides two types of examples of use of AI technology and indicates that “what matters is the extent to which the human had creative control over the work’s expression and ‘actually formed’ the traditional elements of authorship”:

- When AI technology determines the expressive elements of the output, the work will not be protectable because it is not the product of human authorship.
- When a human being selects or arranges AI-generated material in a sufficiently creative way, then the work will be protectable as to the human-authored aspects of the work.

The Copyright Office affirms that an applicant must disclose the inclusion of AI-generated content in any works submitted for registration. In the “Author Created” field of an application, the applicant must provide an explanation of the human author’s contributions to the work. AI-generated content that is more than *de minimis* must be explicitly excluded from the application. The AI machine or the company who provided the AI technology does not need to be listed as an author in the application. Applicants are also encouraged to use the “Note to CO” field on the application to provide any additional information that will be useful to an examiner in reviewing the application.

If applicants already have applications pending that do not meet the foregoing

requirements, they should contact the Copyright Office's Public Information Office to request that a note be added to the record about the use of AI for the examiner to consider when reviewing the application. If registrations have already been issued that require correction, then the registrant needs to submit a supplementary registration request to correct or amplify the information in the registration record.

Finally, the Copyright Office notes that applicants who fail to comply with these policies and obtain registrations risk losing the benefits of the registration and that the Copyright Office may take steps to cancel any non-compliant registrations it discovers.

Ultimately, this guidance from the Copyright Office does not change the underlying rules of the game. Works must still have elements of human authorship to be eligible for registration. But use of AI technology to create works of authorship will not be considered a disqualifying factor.