

The COMPUTER & INTERNET *Lawyer*

Volume 42 ▲ Number 5 ▲ May 2025

Ronald L. Johnston, Arnold & Porter, Editor-in-Chief

U.S. Copyright Office Issues Report on Copyrightability of Generative Artificial Intelligence Outputs

By Laura P. Merritt

The U.S. Copyright Office recently addressed whether the outputs of generative artificial intelligence (AI) tools can receive copyright protection in Part 2 of its Copyright and Artificial Intelligence Report.¹ The Copyright Office concluded that questions of copyrightability and AI can be resolved pursuant to existing law without the need for legislative change.

KEY TAKEAWAYS

Key takeaways from the Copyright Office's report include the following:

1. For a work created using AI – like those created without it – a determination of copyrightability continues to require a fact-specific consideration of the work and the circumstances of its creation. Where AI “merely assists” an author in the creative process, it does not change the copyrightability of the output. However, if content is entirely generated by AI, it cannot be protected by copyright.
2. Authorship remains key. Merely inputting a “prompt” – for example, text explaining the desired output – to an AI tool does not constitute sufficient control to make the user of the AI tool the author of the output. At least for current common AI tools, a prompt does not control the “black box” of how the tool processes it. For this reason, prompts function as instructions that convey unprotectable ideas.
3. The author of a copyrightable work remains the author of perceptible, unaltered authorship that can be separated from non-human expression when an AI tool modifies the original work. Using the example of a human hand-drawn copyrightable illustration as an “expressive input” and a prompt instructing the AI tool to make specified modifications to the illustration, the report concluded that if the expressive input was perceptible in the output,

The author, a partner in the Nashville office of Holland & Knight LLP, may be contacted at laura.merritt@hklaw.com.

the author of the copyrightable work remained the author of at least that perceptible portion of the output. However, in that example, the registration's scope was limited to "unaltered human pictorial authorship that is clearly perceptible in the deposit and separable from the non-human expression that is excluded from the claim."

4. Modifying or arranging AI-generated content using tools that enable the user to control the selection, arrangement and placement of individual creative elements must also be analyzed on a case-by-case basis to determine whether it rises to the minimum standard of originality. If it does, the output should be copyrightable.

5. Including elements of AI-generated content in a larger human-authored work does not affect the copyrightability of the larger human-authored work as a whole.

CONCLUSION

As AI technology continues to evolve and its use becomes more widespread to create content of varying types across industries, the fact-specific analysis of the circumstances of a work's creation will remain crucial to determining whether the work is protectable and, if so, the scope of protection.

Note

1. <https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf>.

Copyright © 2025 CCH Incorporated. All Rights Reserved.
Reprinted from *The Computer & Internet Lawyer*, May 2025, Volume 42,
Number 5, page 8, with permission from Wolters Kluwer, New York, NY,
1-800-638-8437, www.WoltersKluwerLR.com

