[US] Copyright Office launches new artificial intelligence initiative

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The Copyright Office is the Federal agency tasked with administering the copyright registration system since 1870, as well as advising Congress, other agencies, and the Federal judiciary on copyright and related matters.

Following the recent developments in the Artificial Intelligence (AI) sphere, including the advances in generative AI (a type of AI system capable of generating text, images, or other media in response to prompts), the US Copyright Office received requests from both Congress and members of the public to examine issues raised by copyright in relation to AI. The Office has in particular received applications for the registration of works, including AI generated content.

In response, the Copyright Office launched, on 16 March 2023, a new initiative consisting in the examination of the copyright law, and consequently of policy issues raised by AI technology. The major concerns revolve around copyrightability and registration.

Recent developments indeed raise a number of fundamental questions, including whether material produced by AI tools can be protected by copyright, whether works consisting of both human-authored and AI-generated material can be registered, and what information should be provided to the Copyright Office by applicants seeking to register them.

In a decision dated 14 February 2022 and currently being challenged, the Office had held that a visual work which the applicant described as ‘‘autonomously created by a computer algorithm running on a machine’’ could not be registered because it was made ‘‘without any creative contribution from a human actor.’’ In another decision from February 2023, the Office concluded that a graphic novel comprised of human-authored text combined with images generated by the AI service Midjourney constituted a copyrightable work, but that the individual images themselves could not be protected by copyright. In *Burrow-Giles Lithographic Co. v. Sarony*, a landmark case from 1884, the Court repeatedly referred to ‘‘authors’’ as human, describing authors as a class of ‘‘persons’’ and a copyright as ‘‘the exclusive right of a man to the production of his own genius or intellect.’’

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Therefore, in response to the numerous questions raised by the recent developments, the Office has issued new registration guidance, requiring copyright applicants to disclose the inclusion of AI-generated content in works submitted for registration and to provide a brief explanation of the human author's contributions to the work.

During the first half of the year, the Copyright office convened public listening session with artists, creative industries, AI developers and researchers, and lawyers working on these issues to gather information about current technologies and their impact. The next sessions will be held on 17th May 2023 (audiovisual works) and 31st May 2023 (music and sound recordings). Visual arts and literary works, including software, have already been discussed during past listening sessions.

The Office foresees to publish a notice of inquiry in the Federal Register later this year.

Copyright Office Launches New Artificial Intelligence Initiative - Issue No. 1004 - March 16, 2023

https://www.copyright.gov/newsnet/2023/1004.html

Library of Congress, Copyright Office, 37 CFR Part 202 - Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence

https://www.govinfo.gov/content/pkg/FR-2023-03-16/pdf/2023-05321.pdf

Copyright Law of the United States

https://www.copyright.gov/title17/

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