



The Register of Copyrights of the United States of America

United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000

February 23, 2024

The Honorable Chris Coons
Chair
Subcommittee on Intellectual Property
United States Senate
218 Russell Senate Office Bldg.
Washington, DC 20510

The Honorable Darrell Issa
Chair
Subcommittee on Courts, Intellectual
Property, and the Internet
United States House of Representatives
2108 Rayburn House Office Bldg.
Washington, DC 20515

The Honorable Thom Tillis
Ranking Member
Subcommittee on Intellectual Property
United States Senate
113 Dirksen Senate Office Bldg.
Washington, D.C. 20510

The Honorable Henry C. "Hank" Johnson
Ranking Member
Subcommittee on Courts, Intellectual
Property, and the Internet
United States House of Representatives
2240 Rayburn House Office Bldg.
Washington, DC 20515

Dear Senator Coons, Senator Tillis, Representative Issa, and Representative Johnson:

In December 2022, I sent a letter to Senator Coons and Senator Tillis outlining the Copyright Office's plans to address the copyright issues raised by artificial intelligence (AI).¹ I write now to provide an update on the Office's work and to inform you of our planned next steps.

In March 2023, the Office announced a broad initiative to examine the copyright implications of the current forms of generative AI. Although we had previously examined the scope of copyright in works created using AI, the increasing sophistication and public adoption of generative AI tools raised new questions about the process of training and the legal status of the outputs. Our goal was to gather information from a full range of knowledgeable and interested parties in order to produce a report to assist Congress, the

¹ Letter from Kathi Vidal, Under Sec'y of Com. for Intell. Prop. and Dir., U.S. Pat. and Trademark Off., and Shira Perlmutter, Reg. of Copyrights, to Sen. Chris Coons, Chair, and Sen. Thom Tillis, Ranking Member, Subcomm. on Intell. Prop. of the S. Comm. on the Judiciary (Dec. 12, 2022), <https://www.copyright.gov/laws/hearings/Letter-to-USPTO-USCO-on-National-Commission-on-AI-1.pdf>.

courts, and others in formulating policy in this area. In taking this initiative forward, we are monitoring related work being done in other agencies, including the U.S. Patent and Trademark Office (USPTO) and the Federal Trade Commission, and communicating with them on an ongoing basis.

This letter summarizes the Office’s work so far and describes our agenda for the rest of 2024, including the release of the report, updates to the *Compendium of U.S. Copyright Office Practices*, and the publication of a proposed economic research agenda.

2023 ACTIVITIES

Over the past year, the Office has engaged in the following activities to explore the copyright issues at stake and assist applicants for registration: (1) publishing a policy statement in the Federal Register on how to register works incorporating AI-generated content; (2) holding a series of public listening sessions; (3) hosting public webinars to explain our registration guidance and discuss international considerations; (4) meeting with multiple stakeholders; and (5) publishing a Notice of Inquiry soliciting public comments. We have also established a dedicated webpage as a resource for those seeking information about our AI initiative.²

I. Registration

A. Registration Guidance

On March 16, 2023, the Office published a policy statement providing guidance to copyright applicants seeking to register works containing AI-generated material (“Registration Guidance”).³ The Registration Guidance reiterated the core legal principle that copyright protection in the United States requires human authorship. In the context of generative AI, this means that “[i]f a work’s traditional elements of authorship were produced by a machine, the work lacks human authorship and the Office will not register it.”⁴ The Registration Guidance instructed applicants seeking to register works containing more than *de minimis* AI-generated material to disclose that the work contains such material and provide a brief explanation of the human author’s contributions.⁵

² U.S. Copyright Off., *Copyright and Artificial Intelligence*, <https://www.copyright.gov/ai/>.

³ Copyright Registration Guidance: Works Containing Materials Generated by Artificial Intelligence, 88 Fed. Reg. 16190 (Mar. 16, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-03-16/pdf/2023-05321.pdf>.

⁴ *Id.* at 16192.

⁵ *Id.* at 16193. Whether a work reflects human authorship is, necessarily, a case-by-case analysis. The Office has explained that the question is whether the AI material, standing on its own, would be copyrightable if it were human-authored. If so, then a very brief statement disclosing that the work includes AI material should be included in the application for registration. *Id.* at 16192–93.

The Office has taken steps to inform the public of its Registration Guidance, including through a June 28, 2023 webinar⁶ and numerous presentations to creators and copyright attorneys.⁷

B. Registration Decisions

The Office's requirement of human authorship was upheld last year by the U.S. District Court for the District of Columbia. In *Thaler v. Perlmutter*, the court affirmed the Office's refusal to register a work of visual art that the applicant claimed was created entirely by AI.⁸ It agreed that "[h]uman authorship is a bedrock requirement of copyright" and this "principle follows from the plain text of the Copyright Act" and "rests on centuries of settled understanding."⁹ The case is currently on appeal to the D.C. Circuit.

Since the Registration Guidance was issued, the Office's Registration Division has examined hundreds of works that incorporate AI-generated material and has issued registrations to well over 100 so far.¹⁰ Over the past year, the Office's Review Board (the body that issues final agency decisions on registration appeals) has twice upheld refusals to register works created using generative AI.¹¹ In one case, the applicant refused to disclaim the contribution of generative AI to the work.¹² In the second case, the applicant had uploaded his own photograph into an AI system and instructed the system to produce a new version in the style of Vincent van Gogh's *The Starry Night*.¹³ The Review Board

⁶ U.S. Copyright Off., *Webinar: Registration Guidance for Works Containing AI-generated Content*, <https://www.copyright.gov/events/ai-application-process/>.

⁷ To date, and in addition to its popular webinar, the Office has provided an overview of its Registration Guidance at over 60 events for the legal and creative communities, reaching thousands of people across the country. This includes law school classes and symposia; bar association conferences; international government-to-government and stakeholder workshops; and professional development events for creators and their business and legal advisors. The Office has conducted further outreach to drive public awareness at major conventions, such as the Consumer Electronics Show (CES) and ImagingUSA, reaching many more.

⁸ *Thaler v. Perlmutter*, No. 22-CV-1564, 2023 WL 5333236, at *7 (D.D.C. Aug. 18, 2023), *appeal docketed* No. 23-5233 (D.C. Cir. Oct. 18, 2023).

⁹ *Id.* at *4.

¹⁰ U.S. Copyright Off. Rev. Bd., Decision Affirming Refusal to Register SURYAST 4 n.3 (Dec. 11, 2023), <https://www.copyright.gov/rulings-filings/review-board/docs/SURYAST.pdf>. Other applications have been rejected either because the applicant failed to follow the Office's Registration Guidance or because the work did not contain sufficient human authorship.

¹¹ The Review Board is appointed by the Register and hears administrative appeals of copyright registration decisions. Review Board decisions constitute final agency actions and are subject to judicial review. See 37 C.F.R. § 202.5(f), (g); see also 5 U.S.C. § 704.

¹² U.S. Copyright Off. Rev. Bd., Decision Affirming Refusal to Register Théâtre D'opéra Spatial 1 (Sept. 5, 2023), <https://www.copyright.gov/rulings-filings/review-board/docs/Theatre-Dopera-Spatial.pdf>.

¹³ U.S. Copyright Off. Rev. Bd., Decision Affirming Refusal to Register SURYAST 2 (Dec. 11, 2023) <https://www.copyright.gov/rulings-filings/review-board/docs/SURYAST.pdf>.

concluded that the resulting image lacked human authorship because the AI system, not the applicant, was responsible for the expressive elements in the output.¹⁴

II. Public Events and Engagement

A. Listening Sessions

In April and May 2023, the Office held four public listening sessions on AI and copyright. Each session focused on a different category of creative works: (i) literary works, including print journalism and software; (ii) works of visual art; (iii) audiovisual works, including video games; and (iv) musical works and sound recordings. Speakers included artists and performers; copyright industries; academics; technology companies; music streaming platforms; and representatives from various unions, guilds, and public interest and trade groups. The events attracted record-breaking attendance, with more than 4,000 people joining live over the course of the four sessions (which are available for viewing on our website, along with transcripts).¹⁵

B. Webinars

In June and July 2023, the Office hosted two public webinars. The first provided examples illustrating how the registration rules for works containing material created or owned by a third party apply to works that incorporate AI-generated material.¹⁶ The second convened experts from different regions of the world to discuss how other countries are addressing AI and copyright issues.¹⁷ The webinars again broke attendance records for Office events, each drawing nearly 2,000 live viewers.

C. Stakeholder Meetings

Throughout the spring and summer of 2023, the Office participated in meetings with a wide array of stakeholders, including creative artists, trade associations and guilds, legal

¹⁴ *Id.* at 7. The Board noted that the applicant could seek to register his original photograph, but it was a separate work from the AI-modified version. *Id.* at 8.

¹⁵ The listening sessions have received, collectively, over 4,200 views on YouTube to date. See U.S. Copyright Off., *Copyright and Artificial Intelligence*, YOUTUBE, <https://www.youtube.com/uscopyrightoffice>.

¹⁶ The transcript and recording of the registration webinar are available at <https://www.copyright.gov/events/ai-application-process/>. The recording has been viewed over 1,000 times on YouTube to date. See U.S. Copyright Off., *Application Process for Registration of Works with Artificial Intelligence-Generated Content*, YOUTUBE, <https://www.youtube.com/watch?v=dzlsx0hLON8>.

¹⁷ The transcript and recording of the international webinar are available at <https://www.copyright.gov/events/international-ai-copyright-webinar/>. The recording has been viewed over 2,300 times on YouTube to date. See U.S. Copyright Off., *International Copyright Issues and Artificial Intelligence*, YOUTUBE, <https://www.youtube.com/watch?v=QaUzkerRSdM>.

and technical academics, and technology companies developing AI products. The meetings helped us to identify topics and questions to investigate further.

III. Notice of Inquiry

In August 2023, the Office published a Notice of Inquiry (the “Notice”) seeking comments on a broad spectrum of copyright law and policy issues arising from the development and use of generative AI.¹⁸ Based on what we had learned through the months of stakeholder discussions, listening sessions, and independent research, we posed 34 questions, with multiple sub-questions. The questions related to (1) the use of copyrighted works to train AI models; (2) the copyrightability of material generated using AI systems; (3) potential liability for any acts of infringement; and (4) the treatment of generative AI outputs that imitate the identity or style of human artists.

The Notice attracted strong interest: we received over 10,000 written comments by the December deadline. Commenters came from every U.S. state. They included award-winning authors and actors, fanfiction authors, freelance artists, press publishers, legal scholars, technology companies, videogame developers, sports leagues, and even a class of middle school students. Reflecting global interest in the U.S. position, individuals from 66 other countries submitted comments.

We are now completing our review and evaluation of the comments.

NEXT STEPS

Over the coming months, the Office will issue a report in several sections analyzing the issues and making recommendations as to any appropriate legislative or regulatory action. The first section will focus on the use of AI to digitally replicate individuals’ appearances, voices, or other aspects of their personalities. It will discuss existing state laws and examine arguments for specifically targeted federal protections. That section will be published in the spring.

The second section, to be published in the summer, will address the copyrightability of works incorporating AI-generated material. It will analyze U.S. law’s human authorship requirement and its implementation by the Office in registration decisions, including how to determine when AI-generated material can embody human authorship; survey international practices; and assess the policy arguments with respect to copyright protection for AI-generated material.

¹⁸ Artificial Intelligence and Copyright, 88 Fed. Reg. 59,942 (Aug. 30, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-08-30/pdf/2023-18624.pdf>.

Later sections will turn to the legal implications of training AI models on copyrighted works as well as the allocation of potential liability for AI-generated outputs that may infringe. Those sections will be published as they are completed, with a goal of finalizing the entire report by the end of the fiscal year.

Separately, the Office will issue an update to the *Compendium of U.S. Copyright Office Practices*, the administrative manual for registration. The update will include further guidance and examples relating to the registration of works incorporating AI-generated material. As is our standard practice, we will publish a draft subject to a notice-and-public-comment process.

In addition, the Office has brought together a group of government and academic economists to discuss the economic aspects of the intersection of copyright and AI. Later this year we will publish a report containing the group's proposed research agenda for assessing policy in this area.

In recognition of the plans outlined by the White House in Executive Order 14110,¹⁹ the Office continues to confer with the USPTO, keeping them apprised of our work. We also remain active in AI-related litigation. As mentioned above, the decision in *Thaler v. Perlmutter*, upholding the Office's application of copyright's human authorship requirement, is currently on appeal to the U.S. Court of Appeals for the D.C. Circuit. And we are monitoring the pending cases brought against the owners or developers of AI systems based on the use of copyrighted works to train those systems.²⁰

Finally, the Office continues to engage with congressional offices as they consider these important issues. We have already provided technical assistance on several draft bills

¹⁹ Executive Order 14,110: Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence, § 5.2(c)(iii), 88 Fed. Reg. 75191, 75207 (Oct. 30, 2023) (“[W]ithin 270 days of the date of this order or 180 days after the United States Copyright Office of the Library of Congress publishes its forthcoming AI study that will address copyright issues raised by AI, whichever comes later, [the USPTO Director shall] consult with the Director of the United States Copyright Office and issue recommendations to the President on potential executive actions relating to copyright and AI. The recommendations shall address any copyright and related issues discussed in the United States Copyright Office’s study, including the scope of protection for works produced using AI and the treatment of copyrighted works in AI training.”). The Office has regular meetings with the USPTO’s AI and Emerging Technologies Working Group on AI-related matters.

²⁰ See, e.g., *Concord Music Group, Inc. v. Anthropic PBC*, 23-cv-01092 (M.D. Tenn.); *Authors Guild v. OpenAI Inc.*, 23-cv-08292 (S.D.N.Y.) (consolidated with *Alter v. OpenAI Inc.*, 23-cv-10211 (S.D.N.Y.), and *Basbanes v. Microsoft Corporation*, 24-cv-00084 (S.D.N.Y.) for pretrial purposes); *J.L. v. Alphabet Inc.*, 23-cv-03440 (N.D. Cal.); *Kadrey v. Meta Platforms, Inc.*, 23-cv-03417 (N.D. Cal.) (consolidated with *Chabon v. Meta Platforms, Inc.*, 23-cv-04663 (N.D. Cal.), which was closed by the court upon consolidation); (*Huckabee v. Meta Platforms, Inc.*, 23-cv-06663 (N.D. Cal.); *Getty Images (US), Inc. v. Stability AI, Inc.*, 23-cv-0135 (D. Del.); *Andersen v. Stability AI Ltd.*, 23-cv-0201 (N.D. Cal.).

and remain available as discussions progress. Please do not hesitate to contact me if we can provide any additional information or assistance.

Respectfully,

A handwritten signature in black ink that reads "Shira Perlmutter". The signature is written in a cursive, flowing style with a long horizontal line extending from the end of the name.

Shira Perlmutter
Register of Copyrights and Director
U.S. Copyright Office