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Can Works Created with AI Be Copyrighted? Copyright Office Issues Formal Guidance

On March 15, 2023, the U.S. Copyright Office announced that works created with the assistance of artificial intelligence (AI) may be copyrightable, provided the work involves sufficient human authorship. *Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence*, 88 Fed. Reg. 16,190 (Mar. 16, 2023) (to be codified at 37 C.F.R. § 202).

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This is the Copyright Office's first-ever formal guidance on this issue.

It is well established that only material that is the product of human creativity is eligible for copyright registration under U.S. law. In the Federal Register [Notice](#), the Copyright Office explained that the scope of this "human authorship requirement" has been challenged in recent years with the onset of AI-generated works, and that the Copyright Office already has received and examined multiple applications for registration that claim copyright in AI-generated material.

According to the policy statement, works created by AI without human intervention or involvement still cannot be copyrighted, as they fail to meet the human authorship requirement. For example, when an AI program produces a complex written, visual, or musical work in response to a prompt from a human, the "traditional elements of authorship" are determined and executed by the technology—not the human user—and, thus, the resulting work is not copyrightable. On the other hand, a work containing AI-generated material may be copyrightable where there is sufficient human authorship, such as when a human selects or arranges AI-generated material in a creative way or modifies material originally generated by AI technology. Ultimately, copyright protection will depend on whether the AI's contributions are "the result of mechanical reproduction," or they reflect the author's "own mental conception," the Copyright Office said. "The answer will depend on the circumstances, particularly how the AI tool operates and how it was used to create the final work."

Copyright applicants must disclose when their work includes AI-generated material, according to the Notice, and previously filed applications that do not disclose the use of AI must be corrected.

The Copyright Office stated that it may issue additional guidance in the future related to the registration of works produced by, and other copyright issues presented by, this technology and intends to publish a notice of inquiry later this year seeking public input on additional legal and policy topics involving AI. These steps indicate the Copyright Office's intent to remain involved in the evolving legal landscape of AI technology and its implications for copyright law.