

# Generative AI in Focus: Copyright Office's Latest Report

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On January 29, 2025, the U.S. Copyright Office released its highly anticipated report (the Report) regarding the copyrightability of works created using generative artificial intelligence (AI). The Report concluded that existing copyright laws protect original expressions in a work created by human authors, even if that work was developed through AI-generated tools or includes AI-generated material.

The Report is the second of three reports from the Copyright Office analyzing legal and policy issues at the intersection of AI and copyright. The Copyright Office's first report recommended federal legislation in response to unauthorized distribution of fake digital replicas. The second report does not recommend any new legislation. The final report, Part 3, will address the legal implications of using copyrighted works to train AI models, including licensing considerations and allocation of liability.

## Background

The Report marks another chapter in the Copyright Office's AI initiative, beginning in early 2023 with a policy statement articulating guidance for registration of works incorporating AI-generated material (the Guidance). This Guidance affirmed the Copyright Office's stance that human authorship remains "essential" for copyright protection. The Guidance also explained that applications to register works containing more than *de minimis* AI-generated material should disclose that material. Following the Guidance, the Office registered hundreds of works containing AI-generated material, with copyright laws protecting human authors' contributions.

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## Practice Areas

Artificial Intelligence (AI)  
Copyright  
Intellectual Property  
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### ***Key Takeaways from Report: Are Works Created Using Generative AI Copyrightable?***

In the report, the Copyright Office concluded that existing law – rather than suggested new legislative solutions – is “adequate and appropriate” to resolve questions regarding the copyrightability of works containing AI-generated material. Moreover, the Office explained that “greater clarity” on the copyrightability of AI-generated material “would be difficult to achieve” through legislative change due to the case-by-case analysis required for “each work and the context of its creation.” The Copyright Office also opined that “the courts will provide further guidance on the human authorship requirement.”

The report affirmed several principles governing copyright protection (emphasis added):

- ***Copyright does not extend to purely AI-generated material***, or material where there is insufficient human control over the expressive elements.
- The ***use of AI tools to assist rather than stand in for human creativity*** does not affect the availability of copyright protection for the output.
- ***Copyright protects the original expression in a work created by a human author***, even if the work also includes AI-generated material.
- Based on the functioning of current generally available technology, ***prompts do not alone provide sufficient control***.
- ***Whether human contributions to AI-generated outputs*** are sufficient to ***constitute authorship*** must be analyzed on a ***case-by-case basis***.
- ***Human authors are entitled to copyright in their works of authorship*** that are perceptible in AI-generated outputs, as well as the ***creative selection, coordination, or arrangement of material in the outputs***, or ***creative modifications of the outputs***.
- The ***case has not been made for additional copyright or sui generis protection*** for AI-generated content.

Notably, the Copyright Office emphasized that “given current generally available technology, prompts alone do not provide sufficient human control to make users of an AI system the authors of the output.” In coming to this conclusion, the Copyright Office reasoned that a single prompt often produces multiple AI outputs. However, prompts could be deemed worthy of copyright protection if they “can sufficiently control expressive elements in AI-generated outputs to reflect human authorship.”

Furthermore, the Copyright Office explained that AI-generated works with clearly perceptible human input will be considered sufficiently authored by a human at least with respect to “that portion of the output.” The Office highlighted that human authors’ “creative expression will be protected by copyright, with a scope analogous to that in a derivative work.” Copyright law “may also cover the selection, coordination, and arrangement of the human-authored and AI-generated material, even though it would not extend to the AI-generated elements standing alone.”

The Copyright Office also affirmed its perspective in the Guidance that works including AI-generated material that are creatively selected, arranged, or modified by humans could be sufficient to obtain copyright protection. In these cases, copyright protection “will depend on a case-by-case determination.”

***Looking Ahead: Next Steps in Copyright Office's AI Initiative***

The Copyright Office plans to publish the final report in this series focusing on the legal implications of training AI models on copyrighted works, including licensing considerations and the allocation of potential liability. Additionally, the Copyright Office will use the comments received following the NOI, judicial developments, and “other relevant input” to update sections of its *Compendium of U.S. Copyright Practices*.

If you have any questions about the Copyright Office's report, please contact one of the attorneys listed on this alert.