



Application Process for Registration of Works with Artificial Intelligence-Generated Content

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Miriam Lord: Hello, and welcome to today's webinar, presented by the United States Copyright Office – Registration Guidance for Works Containing Artificial Intelligence Generated Content. My name's Miriam Lord, and I'm the Associate Register of Copyrights and Director of the Office of Public Information and Education. This webinar is a part of the initiative that the Office has launched to examine the connections between copyright law and policy issues related to artificial intelligence technology. Thanks for joining us. This webinar will be recorded. I'm pleased to introduce my colleague, Rob Kasunic, the Associate Register of Copyright and Director of Registration Policy and Practice, and Erik Bertin, Deputy Director of Registration Policy and Practice. Rob and Erik will be walking you through some of the guidance the Office released in the spring of 2023 in the context of the initiative and in your application process and taking some questions. For general information about copyright or about the Office, please visit our website at copyright.gov. And now, I'm going to hand the floor to Rob to get us started.

Robert Kasunic: Thank you, Miriam, and welcome, everyone. I'm Rob Kasunic and thank you for joining us today.

Advances in generative AI have been at the forefront of our attention over the last year. We've established an office-wide AI initiative and created a webpage dedicated to AI developments within the Office, as shown on the screen. The Office heard from a wide range of authors, artists, copyright owners, and other stakeholders during our recent listening sessions. Some participants expressed excitement about the potential for these new technologies, while others expressed concern about the adverse effects generative AI poses for authors and the impact it will have on creative communities. We understand and appreciate these varying perspectives. To date, the three Divisions of the Registration Program, the Literary Division, the Performing Arts Division, and the Visual Arts Division have received a relatively small number of claims of works known to incorporate generative AI content. The number of claims is less than 100 at this point. These claims have been handled in a fairly routine manner, as we will further illustrate today. We recognize that this volume will likely increase. As more claims involving generative AI content are submitted to the Office, our understanding of the varied uses of generative AI by human authors increases. As we learn more in the coming months, and as generative AI technologies develop further, we will return and provide additional information and guidance on our practices. The Office is currently well situated to meet the challenges of these new technological developments. With our processing times at historically low levels, the Office has the ability to study the variations that we receive. A significant benefit of the registration system is that we can observe the ways that changes in technology affect changes in the creative process across all of the categories of copyrightable works. This unique perspective, excuse me, allows us to see the forest and the trees. But our goal for today is to provide you with an overview of our current policies and some tips on how to complete applications for registration and avoid unnecessary problems.

Today, we'll cover background information that led to the Office's policy statement, step-by-step instructions on how to complete an application when you're registering a work that contains unclaimable material, including AI generated material. We'll also answer several frequently asked questions received by the Office since the policy statement was issued, and then we'll take some additional questions from the audience. I want to start with a few general principles.

As our policy statement on March 16th made clear, there is a duty to disclose if there is an appreciable amount of AI generated content in a work. When the Office examines a work that contains AI generated material, we will apply the same basic principles that apply whenever we consider a work that contains unclaimable material. Unclaimable material being previously published material, previously registered material, material that's in the public domain, or material that is owned by another party. Consider AI generated content or non-human authorship to be a fifth category of unclaimable material. If you aren't familiar with these practices on disclosing on unclaimable material, don't worry. We're going to provide a hands-on introduction for viewers who haven't registered a work before, or for viewers who need a refresher on the electronic registration system.

Second, I want to point out that the requisite disclosure of AI generated content may be quite general in nature as we will illustrate further today. A simple statement in the application will suffice. And that will be placed on the screen, the limitation of claim screen that you see now. If an examiner needs more information, they will correspond. You will never be required to provide the Office with a detailed spreadsheet of every use of AI technologies in the creation of your work.

In determining whether disclosure is necessary, you can discern the line between appreciable and de minimis by answering this question: Would the AI generated material standing on its own be sufficient to satisfy the Feist copyrightability standard if it had been created by a human author? If so, then a brief statement disclosing that material should be included in the application for registration. This is generally the same standard that would be applied to determining whether new authorship was added to a preexisting work, to qualify as a derivative work, or to support a claim in joint authorship. If the material added by AI technologies would qualify as sufficient new authorship to support a derivative work claim, had it been created by a human author, that material should be disclosed. And we'll provide a number of examples today. By contrast, if the AI generated material would be considered de minimis if it had been created by a human author, in other words, if it doesn't contain a sufficient amount of creativity to support a claim in copyright, then there's no need to disclose that material in the application. In some cases, applicants can avoid all disclosure considerations by first registering their human authorship prior to incorporating, combining, or changing it with AI generated content. This will provide the cleanest claim in copyright and eliminate the need for any disclosures. For example, if a book is first written in Spanish, but the author uses AI to translate that book into English, register the human authored Spanish version rather than the AI translated English version. If someone unlawfully copies the English translation, the original Spanish version that was registered will necessarily have been infringed as well. And registration for the Spanish version would enable a copyright owner to initiate an infringement action in federal court for any infringement of the English version. Similarly, if you plan to use AI to make appreciable changes to a photograph or illustration that was created by a human author, you can register the human authored photograph or illustration without the AI modifications, even if the only version that you intend to publicly display or publicly distribute is the modified AI version. If AI is used to make only de minimis changes, then it does not matter whether you registered before or after, because in neither case would disclosure be required. So let's take a quick look at what led to the policy statement on registration guidance for works containing AI generated content. On average, more than 500,000 applications for registration involving millions of works are submitted to the Office each year. Over the past few years, the Office has received a relatively small number of applications seeking to register works that were AI generated or contained generative AI content.

In 2018, the Office received an application for a work titled *A Recent Entrance to Paradise*. The application identified *Creativity Machine* as the author of this work. It also contained a note to the Copyright Office which explained that the work was autonomously created by a computer algorithm on a machine. Based on these representations, the Office refused to register the work because the work lacked the human authorship necessary to support a claim in copyright. Courts interpreting the authorship requirement have consistently held that copyright law only protects works that were created by human authors.

This understanding is reflected in the *Compendium of the U.S. Copyright Office Practices*, which states that to qualify as a work of authorship, a work must be created by a human being. For example, the Office will refuse to register works that are entirely the result of non-human authorship, such as works created by animals, like a photograph taken by a monkey, or a mural painted by an elephant. Based on this human authorship requirement, the Office will refuse to register works created and fixed entirely by generative AI technology.

In a case involving a comic book, titled *Zarya of the Dawn*, the Office reviewed a work that contained both human authorship and generative AI content. The initial application for registration identified a human author as the creator of the work, without disclosing the fact that the images in the comic book were generated through the use of AI. The Office took the representation that the work as a whole was created by a human author at face value and issued a registration for the work. When the applicant announced on social media that they had successfully registered their AI artwork, the Office requested more information from the applicant. Based on the applicant's response, the Office determined that the text of the comic book was created by a human being and that they also selected, coordinated, and arranged the text and images that appeared in the comic book. The Office concluded that the original text and compilation of the elements in the comic book was sufficient to support a claim in copyright. However, the Office canceled the original registration and a new registration that was issued clarifies that the registration does not extend to any of the individual images themselves because they lack the requisite level of human authorship.

In light of these developments, on March 16th of this year, the Office issued a policy statement on works that contained AI generated content to inform applicants about the duty to disclose an appreciable amount of AI generated content and how to disclose that information within the application for registration. Simply stated, content created by human beings may be protected by copyright, content generated by AI cannot. In most of the claims received by the Office that include generative AI material, the works are registerable but simply require a limitation of claim with respect to the non-human authorship contained within the work. The disclosure of the AI generated content within a work only occasionally results in refusal to register the work. In most cases, a general statement identifying sufficient human authorship is enough to support a claim in copyright. So with that, let me now turn the presentation over to my deputy, Erik Bertin.

Erik Bertin: Thank you, Rob. And greetings, everyone. It's a pleasure to be with you here today. So far, the reaction to our policy statement has been generally positive. However, the Office has received some recurring questions such as when a disclosure needed? Is this a new requirement? How do you provide a disclosure in a registration application? And what level of detail is expected or required?

So, when is a disclosure needed? As Rob mentioned at the outset, if a work contains AI generated content, then as a general rule, that content should be disclosed in the registration application if it constitutes an appreciable part of the work. To determine if the AI generated content represents an appreciable amount of the work, ask yourself the following question: Would that content be copyrightable if it had been created by a human author? If so, then it could be considered appreciable and it should be disclosed on the application. Now, consider the image that you see on your screen. Let's say I created the car and the deer and AI generated the forest. In this scenario, the AI generated material would be considered appreciable. Because if the forest had been created by a human being, it would certainly be entitled to copyright protection. Conversely, a disclosure generally isn't needed if the AI generated content would be considered de minimis if it had been created by a human author. So, this time, let's assume I created everything shown in this picture, the car, the deer, and the forest. And then I used AI to sharpen the image. Or I used it to change the background color from green to blue. In that scenario, the AI generated material would be considered de minimis. Because if those modifications had been made by a human being, they normally wouldn't be considered copyrightable. We'll be providing more examples of appreciable and de minimis material in a few minutes.

So the next question, is this a new requirement? Some of you may be wondering why do applicants need to notify the Office if their work contains AI generated material, or you may be thinking, you know, the Office hasn't asked about the author's creative process before, so why are you doing this now? Well, the short answer is this is nothing new. As Rob mentioned earlier, applicants have always been required to notify the Office if their work contains unclaimable material. And applicants are required to provide a brief, general statement that identifies the new material that's being registered. Specifically, disclosures are required if a work contains an appreciable amount of previously published material, previously registered material, material that's in the public domain, or copyrightable material that's owned by another party. The policy statement confirms that this same rule applies to AI generated material. The Office provides spaces on the application where applicants can notify the Office that a work contains unclaimable material and a separate space where applicants can identify the new material that's being registered.

Here's an example of one of the application forms that was used decades ago under the 1909 Act. As you can see, applicants were asked if part of the work was previously published or previously registered. And if so, to identify the new matter that will be covered by the registration. Similar spaces also appear in our current registration application forms, and we'll look at those in a few minutes.

So in this next part of our presentation, we're going to show you how to notify the Office if your work contains unclaimable material. Then we'll show you what you need to do if you're registering a work that contains AI generated material. Two quick caveats before we get started. First, we do have a limited amount of time for our show and tell. So, we're going to assume that most of you are generally familiar with the electronic registration system and that you probably completed an application before. However, if you haven't used eCO before, or if you need a refresher, we encourage you to check out the video tutorials referenced on your screen. They were prepared by our colleague, the late Stephen Oswald, and they will give you an excellent overview of the entire application process from beginning to end. Second, the examples that we're going to show you were created for illustrative purposes. These are not real claims, and just to be clear, the works you're about to see were created by human beings. None of them were created by artificial intelligence, although in some cases we're going to pretend that that's the case.

Robert Kasunic: Thanks, Erik. So we're going to start with some examples. And we'll start with a straightforward one. A children's book titled "The 12 Magic Changelings," M.A. Glen wrote the story and drew the illustrations by himself. The book does not contain any unclaimable material. How should Glen complete the application?

Erik Bertin: So this book is entirely new. That means Glen can register the entire work and he doesn't need to disclose anything. To do that, he needs to tell us what he created. This can be done by checking the boxes for text and artwork on the Authors screen. Glen doesn't need to disclose anything, because he created everything that's in the book by himself. And the work doesn't contain any previously published, previously registered, or public domain material. Nor does it contain any material that's owned by anyone else. So in this case, Glen should tell us what the author created, but he doesn't need to disclose anything in the registration application. Now keep in mind, this same rule would apply no matter what type of work is being registered. So if your work doesn't contain any AI content or any other type of unclaimable material, then all you need to do is complete the author created space and then you're done. In a few minutes, we'll show some examples involving AI works that illustrate this point.

Robert Kasunic: Now we'll look at an example of a work that does contain unclaimable material. A computer program called Clothing Maker version 3.0 is a derivative work because it is based on prior versions of the same program. It contains source code that was previously published in versions 1.0 and 2.0, so how should the applicant register version 3.0?

Erik Bertin: So, a children's book and a computer program are obviously very different types of works. But the process for registering them is very similar. The applicant can register the new source code that the author contributed to version 3.0. To do that, the applicant should tell us what the author created. This can be done by checking the box for computer program on the Authors screen. Now this program also contains unclaimable material, specifically, it contains previously published source code that appeared in versions 1.0 and 2.0. The applicant needs to disclose that material in the registration application, and this can be done on the Limitation of Claim screen.

On the left side of your screen, you'll see a space marked material excluded. The previously published source code from versions 1.0 and 2.0 should be disclosed in this part of the application. To do that, the applicant would check the box marked computer program highlighted on the left side of your screen, and then the applicant also needs to identify the new source code that the author contributed to version 3.0. On the right side of your screen, you'll see a space marked New Material Included. To register the new source code from version 3.0, the applicant would check the box for computer program in the New Material Included space. Now, if the applicant wanted to provide some more detail, they could do that by completing the spaces marked other that are highlighted on the bottom of your screen. Keep in mind, you only need to provide a brief, general statement. For example, you could say "previous versions" in the Material Excluded space and "new version" in the New Material included space. If the claim is approved, the registration will cover the new source code that the applicant identified in the New Material Included space, but the registration would not cover the previously published code that was disclosed in the Material Excluded space. If the applicant wants to register versions 1.0 or 2.0, they would need to submit a separate application for each of those versions. Now, a couple things to point out here. Notice that the applicant didn't need to say anything specific about the previously published versions of this program. They didn't need to tell us that the previously published code came from versions 1.0 and 2.0. They didn't need to tell us where, when, or how that preexisting material was published. And they didn't need to tell us where to find the previously published material in version 3.0. All they needed to do was check the boxes shown in the Limitation of Claim screen, or provide a brief general statement in those other spaces. So, what if you're registering a work that contains AI generated material? Well, guess what. The process for disclosing that material is exactly the same. And the level of detail that you would need to provide in the application is also the same. In a few minutes, we'll show some examples of AI specific works that explain what we're talking about.

Robert Kasunic: Right. So let's see what happens when you have a work that contains multiple types of unclaimable material. The author created an original poster based on illustrations from The Wizard of Oz by L. Frank Baum. The poster is a derivative work. It contains material that was both previously published and previously registered. And all of this preexisting material is now in the public domain. How should the applicant register this poster?

Erik Bertin: So again, a poster and a computer program are different types of works. Both of these works contain unclaimable material and the process for disclosing that material in the application is exactly the same. The applicant can register the new, derivative authorship that she contributed to the poster. To do that, she should tell us what the author created. This can be done by checking the box marked 2D artwork on the Authors screen. 2D of course meaning two-dimensional.

The poster also contains unclaimable material that needs to be disclosed. To do that, the applicant needs to complete the Limitation of Claim screen. On the left side of your screen, you'll see the space marked Material Excluded. The preexisting artwork from The Wonderful Wizard of Oz should be disclosed in that part of the application. This can be done by checking the box marked 2D artwork, or the applicant could provide also the previous registration number for the book. And that will be done in the middle part of your screen. The applicant also needs to tell us and identify the new artwork that the author contributed to the poster. Again, on the right side of your screen you'll see the New Material Included space. So to register the new artwork, the applicant would check the box marked 2D artwork in the New Material Included space. If the applicant wanted to provide more detail, should could do that in the Other spaces shown on the bottom of your screen.

And if she needed more room, she could use what's called the Note to Copyright Office space on the Certification screen. Now, notice the applicant didn't need to tell us that these illustrations came from The Wizard of Oz, they didn't need to identify the author of that preexisting illustrations, and they didn't need to identify the specific parts of the poster that contained previously published, previously registered, or public domain material.

If the claim is approved, the registration would cover the new artwork the author contributed to the poster, but it wouldn't cover any of the material, preexisting material, rather, that came from The Wizard of Oz. So. Now we've covered the basics on how to disclose unclaimable material in a registration application. So, what should you do if you're registering a work that contains AI generated content? During the listening sessions, one person said the Office should create a special form just for works that contain this type of material, but we don't think that's necessary. For any work that contains unclaimable material, applicants are expected to tell us what's new and what's unclaimable. That's what the Limitation of Claim screen is for. And as you've seen from our current application, it can be used to register any type of work ranging from a children's book to a computer program to a poster. So, how do you go about registering a work that contains AI generated material? Well, that's easy. You do the exact same thing that we showed you just a few minutes ago. So let's take a look at some examples.

Robert Kasunic: Let's start with a young adult novel titled The Terrible Tweens. The author had a hard time getting started on this book, so she used AI to overcome her writer's block. The AI offered potential names for the characters, ideas for the major plot points, potential titles for the chapters, and some proposed dialogue. The author used this material for brainstorming purposes, but she wrote the book entirely on her own and didn't include any of the AI generated material in the final draft. How should she complete the application?

Erik Bertin: So, in this case, the author doesn't need to disclose anything because she wrote the book entirely by herself. The author may have used AI for brainstorming, ideation, and overcoming writer's block, but the AI generated material was not included in the work that's being submitted for registration. To register the book, the author needs to tell us what she created. To do that, she should check the box marked text on the Authors screen. And since the book doesn't contain any AI generated material, the Limitation of Claim screen may be left blank.

Robert Kasunic: Next, we have a chapter book titled Rainbow Valley. Caitlyn wrote the text and the images that illustrate her story, and the images that illustrate her story were generated by AI. How should Caitlyn complete the application?

Erik Bertin: So, Caitlyn can register her original text, but the AI generated artwork needs to be disclaimed. To register the text, Caitlyn should mark the box marked text on the Authors screen. To disclaim the AI generated artwork, Caitlyn needs to complete the Limitation of Claim screen. As we've seen before, on the left side of the screen, there's the Material Excluded space. The AI generated artwork should be disclosed in that part of the application. And this can be done by checking the box marked 2D artwork. Or in the alternative, Caitlyn could provide a brief statement in the Other space shown on the Material Excluded space. For example, she could say artwork generated by AI. Or she could simply say all artwork in the deposit. Keep in mind, a brief, general statement is all that's needed. Now Caitlyn also needs to identify the new material that's being registered, and she would do this in the New Material Included space shown on the right side of your screen. Specifically, Caitlyn should check the box for text in the New Material Included space, and if the claim is approved, the registration will cover the new text that appears in the book, but it won't cover any of the AI generated artwork.

Robert Kasunic: Well, let's consider the opposite scenario, where we have a children's picture book titled "The Rocket Book." Peter created the illustrations by himself, AI generated the text. How should Peter complete this application?

Erik Bertin: Peter can register his original illustrations, but the AI generated text should be disclaimed. To register the illustrations, Peter should check the box for 2D artwork on the Authors screen. To disclaim the AI generated text, Peter needs to complete the Limitation of Claim screen. All of our registration applications contain a Limitation of Claim screen, but there are some differences in the boxes that appear in the Material Excluded and New Material Included sections. In this case, the Material Excluded section doesn't contain a box for disclosing unclaimable text. No problem, Peter can provide a brief, general statement in the Other space, such as "text generated by AI." Or he could simply say "all text in the deposit." Now remember, Peter also needs to identify the new material that's being registered. He'll do that in the New Material Included space by checking the box marked 2D artwork. One thing to keep in mind, although AI generated material needs to be disclosed in the application, and excluded from the claim, it does not need to be removed from the deposit. In other words, Peter should submit a complete copy of the work that's being registered. The whole book. Even if it contains human authored artwork and AI generated text. If the claim is approved, the registration will cover the new illustrations but it won't cover any of the AI generated text that appears in the book.

Robert Kasunic: Here we have a children's textbook. It contains text, photos, and illustrations on a wide range of topics. The text was written by employees of the Danbury Press. The photos and illustrations were licensed from third parties. The publisher used AI to check the spelling and grammar, insert page numbers, generate a table of contents, and format the headings, captions, and text. How should the publisher complete the application?

Erik Bertin: So the publisher can register the text of the textbook. The photos and illustrations should be disclaimed because they're owned by other parties. To register the text, the publisher should check the box marked text on the Authors screen. And then they should do the same thing on the Limitation of Claim screen by checking the text box in the New Material Included section. The publisher should disclaim the third party artwork and photos. And this can be done by checking the boxes for photos and artwork in the Material Excluded section. Now, what about the fact that the publisher used AI to check the spelling and grammar, insert page numbers, generate a table of contents, and format the headings, captions, and text? Well, there's no need to disclose any of that material, because those aspects of the work are de minimis. That is to say, if they had been created by a human being, they wouldn't be considered a copyrightable contribution to the textbook.

Robert Kasunic: In the next example, Faiyaz is working on a children's book that contains text and artwork. The text is written in rhyming couplets. Sometimes Faiyaz got stumped and used AI to produce two lines of text that rhyme with what he wrote. He did this six or seven times. Once he was satisfied with the text, he created the illustrations entirely on his own. How should Faiyaz complete the application?

Erik Bertin: So, he can register his original illustrations and his contributions to the text. The AI generated text should be disclaimed. To register his illustrations and his contributions to the text, Faiyaz should check the boxes marked text and artwork on the Authors screen. To disclaim the AI generated text, he needs to complete the Limitation of Claim screen. So, let's start with the Material Excluded section. To disclose the AI generated text, Faiyaz could check the box marked text shown on the left side of your screen. Or, in the alternative, he could provide a brief, general statement in the other space shown at the bottom of the Material Excluded section. Such as "some text generated by AI." Faiyaz also needs to identify the new material that's being registered. To do that, he needs to complete the New Material Included section. Specifically, he should check the boxes marked text and artwork on the right side of the screen, or he could provide a brief general statement in the Other space. Keep in mind, although the AI generated text has been excluded from the claim, that doesn't mean that the rest of the work is uncopyrightable. If the claim is approved, the registration will cover the human authored text and the human authored illustrations, but it won't cover any of the AI generated text that appears in the book.

Robert Kasunic: Next up, we have an epistolary novel that contains a series of letters, emails, tweets, text images, and other written communications between a human being and an artificial intelligence technology. Garrett wrote the portions of the work that are attributed to the human being. He used AI to generate the portions of the work that are attributed to AI. In some cases, Garrett edited, modified, and revised the AI generated material before incorporating it into the text. In other cases, he left in entire sentences and paragraphs from the AI generated content and inserted it into the book. How should Garrett complete this application?

Erik Bertin: So, Garrett can register his original text, as well as his revisions and modifications to the AI generated text. Any AI generated text that hasn't been revised or modified by the author should be disclaimed. To register his original text, Garrett should check the box marked text on the Authors screen. To register his revisions and modifications to the AI generated text, he should briefly describe those contributions in the Other space on the Authors screen. For instance, this could be done by saying "revisions and modifications to AI generated text." Garrett also needs to disclaim the AI generated text on the Limitation of Claim screen. This may be done by checking the text box in the Material Excluded section. Or, Garrett could provide a brief statement in the Other space shown on the left side of your screen, such as "some text generated by AI." Garrett also needs to identify the new material that's being registered. To do this, he would check the box marked text in the New Material Included section. And in the Other space on the right side of your screen, he would briefly describe the revisions and modifications that he made to the AI generated text. If the claim is approved, the registration will cover the human authored text and the revisions and modifications that Garrett made to the AI generated text.

Robert Kasunic: Let's next consider a motion picture claim. Here we have an episode from a reality television show. The producers used AI to blur the faces, license plates, and other personally identifiable information that was inadvertently included in the footage for this episode. How should the producers complete this application?

Erik Bertin: So, the producers can register the entire episode. To do so, they would check the box marked entire motion picture on the Authors screen. In this case, the use of AI doesn't need to be disclosed in the application because the blurring effects are de minimis. That is to say, if these modifications had been done by a human being, they would not be considered a copyrightable contribution to the episode. So in this instance, the Limitation of claim screen may be left blank.

Robert Kasunic: Next is another motion picture claim. It's a period piece about an equestrian athlete. In this scene, our hero is competing in a steeple chase, but there's a problem. During filming, the actress's costume got splattered with mud. During post-production, the editor carefully removed the mud from one of the frames. Then he used AI to perform the same edit in other frames from the same screen. Scene, excuse me, the same scene. How should the producers complete the application?

Erik Bertin: So this one is the same as the previous example. The use of AI does not need to be disclosed in the application because the act of removing the mud from one of the frames and then repeating that process with AI is de minimis. In other words, it wouldn't be considered a copyrightable contribution to the work regardless of whether it's performed by a human being or an automated process. So in this case, the producers can register the entire motion picture. And to do that, they would check the box marked entire motion picture on the Authors screen. The Limitation of Claim screen may be left blank.

Robert Kasunic: Next is a remake of the film *City of Contrasts*. The remake is based on the screenplay for the film, which was published in 1931. The director used AI to recreate the New York City skyline and other backgrounds. She also used AI to produce some of the special effects. How should the director complete the application?

Erik Bertin: So the remake is a derivative work that's based on the screenplay for an earlier film. The screenplay should be disclaimed because it was previously published. The AI generated content should also be disclaimed because the special effects would be considered an appreciable part of the motion picture. In other words, if that material had been created by a human author, they would be considered a copyrightable contribution to the motion picture. To disclaim the AI generated material and the previously published screenplay, the director needs to complete the Limitation of Claim screen. The screenplay can be disclaimed by checking the box marked screenplay in the Material Excluded space. The AI generated material can be disclaimed by providing a brief, general statement in the Other space on the left side of the screen. Such as "some material generated by AI." As we mentioned earlier, a brief, general statement is all that's required. Now the director may register all other aspects of the motion picture. To do so, she should check the boxes on the Authors screen that describe the new material that appears in the motion picture. And then in the Limitation of Claim screen, she should check the box for revisions to the script and the box for all other cinematographic material in the New Material Included section.

Robert Kasunic: Let's next look at a sound recording. TCB Records discovered a previously unknown recording of Elvis Presley performing Kander and Ebb's song *New York, New York*. TCB used AI to isolate Elvis's voice, remove background noise from the original recording, and convert the recording from mono to digital stereo sound. TCB's musicians recorded a new performance of the music and combined it with a remastered version of Elvis's performance. How should the producer complete the application?

Erik Bertin: So, TCB can register the original authorship involved in producing the sound recording. The claim would be limited to the sound recording, so in this case, there's no need to disclaim the preexisting music and lyrics for *New York, New York*, even though the song is previously published, previously registered, and owned by another party. To register the sound recording, TCB should check the box marked sound recording on the Authors screen. Now what about those modifications that were made to the original recording by AI? Such as isolating Elvis's voice and converting the sound from mono to stereo sound. Those AI modifications are similar to de-clicking, or converting a recording from CD to a digital audio format. They don't need to be disclosed in the application because they're de minimis. That is to say, if they had been performed by a human being, they wouldn't be considered a copyrightable contribution to the resulting sound recording. So in this instance, the Limitation of Claim screen may be left blank.

Robert Kasunic: Well, let's look at one last example. Yuki Hiroshi wrote her memoir in Japanese. She would like to distribute her memoir in the United States but she does not speak English. She uses AI to translate her memoir from Japanese into English. How should Yuki complete the application?

Erik Bertin: So this example is similar to the one that Rob mentioned at the initial part of our presentation. Yuki should register the original work that was written in Japanese. That work was written by a human being and is almost certainly eligible for copyright protection. The English translation, however, cannot be registered because it was performed by AI. And as such, it does not contain any human authorship. If Yuki attempted to register the English translation and if the author, if the Office, rather, became aware of that, the fact that the translation was performed by AI, we would likely refuse to register the translation.

Now, before we move onto the question and answer section of our presentation, let's go over a few points to remember when you're registering an AI work. First of all, the amount of space available in those Other spaces that we mentioned during the presentation, the amount of space available there is limited to 1800 characters. If you need more space, you can provide additional information in the Note to Copyright Office space that appears on the Certification screen. Also remember that if you complete the Material Excluded space, you also need to complete the New Material Included space. And vice versa. If you complete one space but not the other, the system will generate an error message like the one you see on your screen.

Also remember that a disclosure does not need to be lengthy. In most cases, you can disclaim AI generated material by checking one or more of the boxes in the Material Excluded space. Of course, if you want to provide additional detail, you can do that in the Other space, but just keep in mind, the author, the Office, rather, does not need lots of detail or a spreadsheet identifying every aspect of the work that contains AI material. We really just need a brief, general statement that alerts the courts and other interested parties that the deposit contains unclaimable material. Also remember by disclosing the AI generated material in the Material Excluded space, you are excluding that material from the claim. In other words, the registration will cover the new material that's identified in the New Material Included space, but the registration will not cover any of the AI generated material that you identified in the Material Excluded space. But just to be clear, you do not need to remove the AI material from the deposit. You should still submit a complete copy of the work that's being registered, even though the registration may not cover all of the content that appears in that work. And finally, although the registration won't cover the AI material that's been excluded from your claim, that does not mean that the rest of your work isn't covered by the registration, or that it isn't copyrightable. To be clear, the registration will cover the new copyrightable material that the author contributed to the work. That's the point of completing the New Material Included space, to identify the new material that's being registered.

Robert Kasunic: Thanks, Erik. And now we will have Jordana Rubel and Jalyce Mangum, who are from the General Counsel's office, who have been monitoring the questions we received from the audience, have them join us. But before we begin with real-time questions, there are a few frequently asked questions that we have received since the policy statement has been issued. And we would like to answer to begin with. So, Jordana or Jalyce, could you begin with a few of those FAQs?

Jordana Rubel: Sure, Rob. I just wanted to make one point quickly before we jump into the questions. For those participants who may have joined while the presentation was already underway, I wanted to emphasize that the examples that we went over in the presentation, those were fictitious examples. Those are not real application materials that the Office has received. Those are just for the purpose of discussing some of these issues with you this afternoon. Rob, here's a question to start you off. Shouldn't the Office wait for courts to decide on issues of copyrightability of generative AI output rather than establishing policies now? Aren't courts better equipped to decide which parts of a work are copyrightable?

Robert Kasunic: Yeah, this is a question that we've heard a number of times. And the first response is the Office can't afford to wait. We're receiving claims that require registration decisions. And while courts typically benefit from the Office's expertise, under the 1976 Act, courts are free to disagree with the Office's registration decisions. Unlike the 1909 Act, the 1976 Act allows the applicants of refused claims to both initiate infringement actions based on a refusal to register, or to initiate an Administrative Procedure Act action to challenge the Office's decision. Second, the Office defers to courts to determine whether a portion of a work that's infringed constitutes an improper appropriation of copyrightable material in an infringement action. The limitation of the claim statements are very general and simply put courts and the public on notice that the work contains what the Office considers to be unclaimable material. Material within the work that is not covered by the registration. Additionally, deferring to the courts on registration decision ignores the important benefits that the registration process provides to creators, the public, and the courts. The Office examines more copyright claims every day than the federal courts review in a year. This is one of the great benefits of a national registration system. Policies are developed based on our unique perspective across the entire array of copyrightable authorship and the accumulated expertise on nuanced aspects of copyright law. Courts benefit from the Office's unique perspective.

Jalyce Mangum: Thanks, Rob. Another commonly asked question is why does the Office use the terms appreciable and de minimis, and what exactly do they mean in the context of the disclosure of AI generated content?

Robert Kasunic: Thanks, Jalyce. And yes, this is a very common question that we've received. So appreciable is a term used in the Compendium of the US Copyright Office Practices. It is meant as the inverse of the term de minimis. It means more than de minimis. It's not merely a quantitative question, but also a qualitative question. Would this material independently support a claim in copyright had it been created by a human author? Or put differently, would the AI generated material be capable of supporting a claim in a derivative work if it had been created by a human and added to a preexisting work?

De minimis is the opposite of appreciable. AI generated content that is merely de minimis does not need to be disclosed in an application. If the material added is a trivial amount and/or the material would not be considered independently copyrightable had it been created by a human author, it is de minimis. As the Supreme Court stated in *Feist*, copyright protects only those constituent elements of a work that possess more than a de minimis amount of creativity. The Court expressly rejected the sweat of the brow doctrine as a basis for copyrightability and the time, labor, effort, and expense are not relevant to the question of sufficient originality of authorship. And I'll just add that, you know, is there a line between those two? Between appreciable and de minimis? And there is not. De minimis and appreciable are opposites or inverse concepts. And so once you rise above de minimis, you have reached the level of appreciable that would need disclosure.

Jordana Rubel: Okay, Rob. Another frequently asked question. What happens if an applicant didn't disclose that the work includes generative AI content and their work is already registered? Would that inaccuracy in the application lead to a problem if, let's say, they were involved in litigation? We have this provision in the statute called Section 411(B) that deals with a registration certificate that contains inaccurate information. If you forgot to disclose this, or you didn't know you were supposed to disclose this, could your registration be invalidated in the context of that litigation?

Robert Kasunic: First, the Compendium and case law had made clear before the policy statement was issued that human authorship was required for copyright protection. The policy statement is the first explicit guidance from the Office about procedures for registering material that include AI generated content. So the Supreme Court decision *Unicolors* makes clear that a registration certificate that includes incorrect information can be used as a basis for filing a lawsuit for copyright infringement, unless the application actually knew that it was providing inaccurate information based on the law or the facts. Because the Office's policy on disclosure of AI generated materials was first announced on March 16th, 2023, failure to disclose prior to that date will not be likely to be considered a knowing inaccuracy. Even after that date, a court would have to determine if the applicant was aware or not willfully blind to the disclosure requirement. That said, even if invalidation of a registration certificate is not warranted under Section 411(B), and the registration certificate is valid, that does not mean that AI generated material survives the Section 410(C) presumption of validity. The mere fact that the registration certificate was not invalidated under 411(B) doesn't mean that a registrant can base an infringement action on AI generated content that was not disclosed. A registrant may choose to submit a supplemental registration to correct or amplify a prior registration to disclose the inclusion of AI generated material in the work prior to litigation.

Jordana Rubel: Is the Office going to go back to prior registrations and initiate cancellations? And I think you just briefly touched on this. Do prior registrants, are they required to file supplemental registrations to disclose the AI generated content at this point?

Robert Kasunic: Yeah, the Office is not generally reconsidering prior registrations to question the adequacy of disclosure. Based on the Office's policy statement, the Office will defer to courts to assess pre-March 16th registrations, with the understanding that the Office views AI generated content contained in works to be unclaimable material that is not encompassed by the registration. And with respect to supplemental registration, this is a decision to be made by the applicant. We are not requiring disclosure of that information for works submitted prior to March 16th. But that would be a judgment call as to whether it would be beneficial, particularly if a claim is going into litigation.

Jalyce Mangum: Rob, what about claims that are still pending? Say you submit an application and you just forgot to include or exclude your AI generated authorship. What do you do then?

Robert Kasunic: Yeah. This is a common question. And if an applicant submitted an application for registration after March 16th, 2023 and did not disclose the inclusion of AI generated content, the applicant should contact the Public Information Office of the Copyright Office. A Public Information Office specialist will then make a note in the record of the claim that will allow a registration specialist to contact the applicant to clarify the scope of the claim prior to making a registration decision. And if further information is necessary, the registration specialist will correspond with the applicant.

Jordana Rubel: One more question for you, Rob. Why doesn't the Office first assess the overall creativity in the work before it assesses the question of human authorship?

Robert Kasunic: Human authorship is a pre-condition to copyrightability. Based on that premise, the first question is was the work or portions of the work authored by a human being? If the work contains both human authorship and AI generated material, then we determine if the human authorship can be distinguished from the AI generated material.

And if so, we determine if it's sufficiently creative to support a claim in copyright. This analysis is not unique to the human authorship requirement. For instance, when an applicant seeks to register a work that could meet the definition of a useful article, the Office first determines whether the deposit involves a useful article under the statutory definition, next we determine if there are pictorial, graphic, or sculptural features that can be identified as conceptually separable and are capable of existing independently of the utilitarian aspects of the article. It's only after a finding of separability that the Office then evaluates whether those separable features are sufficiently creative to support a claim in copyright. So I think that's the end of our preexisting frequently asked questions. At this point, Jordana or Jalyce, are there any additional questions from the audience?

Jalyce Mangum: Boy, are there. So we got almost 180 questions from the audience, which we really appreciate. Some really awesome questions. So I'll just start with this one because I think it's pretty interesting. What if AI created the high level storyline, does that have any effect on the ability to register the content? And also, what if AI created names or other sorts of short phrases? Would that be considered de minimis and thus not required to be disclosed anyway?

Robert Kasunic: Well, I think with respect to the high-level storyline, it would generally, if it's a high enough level that it would constitute an idea, then that is not something that would need to be disclosed. And this goes back to Learned Hand's levels of abstraction. And exactly, and as he said, no one can ever draw that line and no one ever will. So it's not an easy issue to answer. And if Learned Hand couldn't answer it, I'm not going to try to. But I will say, you know, that ideas are not protectable and you can use AI for brainstorming or to get ideas. With respect to memes, I think it's short phrases are not protectable. You know, whether it involves pictorial content or other content within it may change the analysis. So I think we'd have to look at that on a case by case basis.

Jordana Rubel: I'm not sure if Jalyce said names or memes. I guess the question stands either way.

Jalyce Mangum: I meant names, I'm sorry.

Robert Kasunic: Oh, okay. If it's names, names are not – titles, names, short phrases are not copyrightable and would be considered de minimis. So the use of that would not need to be disclosed.

Jordana Rubel: Alright, we've got another question for you. What is the specific, exact total threshold of what is human or AI authorship? Everybody needs a clear, very firm delineation of how much of a portion is considered appreciable. That was a comment not from me but from one of the participants. So I want to give you a chance to respond to that. There might – I would suspect there's a lot of people in the audience who are feeling that way. So I want to give you a chance to provide a response.

Robert Kasunic: Well, thank you. And I think that, you know, that line is a mixed question of law and fact. Copyrightability, I mean, we have explained that it's the same standard as the standard for copyrightability. If there was enough material that if it had been created by a human author would be copyrightable, then it's an appreciable amount and should be disclosed. If it's not, if it's de minimis, it does not need to be disclosed. But keep in mind that having, you know, there's no numeric rule on the number of words or the number of pixels or the number of notes that we can provide for that, an answer to that. And keeping in mind that we're providing policies that extend across the entire array of copyrightable authorship. So I know that everyone in their particular area of creativity is looking for, you know, more examples and brighter lines. And I think at this point in time, we're going to be learning as everyone else is learning. As I mentioned earlier, we've received a relatively small number of claims and most of them have been fairly straightforward in terms of some of what, many of which are like the examples or easier than the examples that Erik and I went over earlier. So, we will be providing more guidance as we learn more. In particular areas of authorship. And as we learn, as we see more examples. But that's, I think, the best I can do at this point.

Jalyce Mangum: So Rob and Erik, we also received lots of questions about prompts. And whether you can register the prompts you use to sort of, you know, in the AI generating tool that you're using to create text or images.

Robert Kasunic: As far as I'm aware, we have not received any applications for registrations of prompts themselves. But we do not ban anyone from submitting applications for registration. So, I can't say whether it would be registerable are not, and we will take that on a case-by-case basis. But so far, we do not have experience with anyone attempting to register prompts.

Erik Bertin: And I guess I would just add to that, you know, if the prompts contained enough text or whatever material, you know, we would certainly evaluate it and make our decision. But it would be important to remember that if we did register the prompts, all we would be doing is registering the text or whatever content that's been submitted to us. The fact that we would register a prompt doesn't mean that that would prevent someone from, or give you an exclusive right or image or artwork or sound or other work that could have been generated from those texts, from those prompts, rather, when they're entered into some kind of AI technology.

Jordana Rubel: Okay, one final question. And I know you covered this during your presentation, but we did get several different forms of this question so it might merit review. What if some of the artwork is AI generated and some in the same work is original human created? How do you explain that in your application?

Erik Bertin: The phrase that you just used sounds pretty good. If you said in the Other space here's what I want to exclude, Material Excluded: "some AI generated artwork." What do I want to register? New Material Included: "some human created artwork." Or just some artwork. As long as there is some indication on both sides of the equation, you know, included and excluded, that there's artwork here and there's artwork here, in most cases, that's going to be sufficient. We don't really need to, as I said, identify the specific, you know, drawings or illustrations or what have you that were human created or AI created or what have you. And as Rob indicated, we're really just creating a record here. Putting a flag on the registration indicating that there's something in here in this work that is unclaimable. And that it's up to the courts, it's up to the public, it's up to the copyright owner to decide what to do with that information should it become relevant in a legal dispute or for other reasons.

Robert Kasunic: Alright. Well I think if that's the end of the questions, I think that at this point, we will turn it back over to Miriam Lord. And just want to close by saying we hope the webinar was helpful and informative. And Miriam, over to you.

Miriam Lord: Thanks, Rob. And thanks so much to both of you and to Jalyce and Jordana for helping to facilitate questions today. That was really helpful. This webinar was recorded and will be captioned and posted to our website in about three weeks. When we do that, we'll put out a Tweet. You'll see that we've recently Tweeted about our last listening session's recording being up, so you can check out the website. We had a big crowd today. Over 1500 people. So thank you so much for all of your attention and questions.

I'd like to also invite you to join us next month on July 26th at 11 am for the next webinar in the series. And that webinar will host a discussion on global perspectives on copyright and AI.

Next slide. Thanks! So, to register for the webinar that's coming up next as well as to learn more about our initiative to examine copyright law and policy issues related to AI technology, you can scan the QR code or go to copyright.gov/ai, which is also where you'll find the materials from this webinar as well. I'd also like to invite you of course, as well, to check out the general copyright information that we have on copyright.gov as well. As it can help you navigate different parts of the process that are not specific to AI questions. So, once again, from the United States Copyright Office, thank you so much for joining us and we hope you have a pleasant rest of your day. Thanks.