

**Congress of the United States**  
**Washington, DC 20515**

May 1, 2023

Ms. Shira Perlmutter  
Register of Copyrights  
U.S. Copyright Office  
101 Independence Ave SE  
Washington, DC 20540

Dear Register Perlmutter:

As members of the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet, we respectfully request information on actions that the Copyright Office is taking to ensure intellectual property rights are being protected against potentially unlawful use by artificial intelligence (AI) programs, including ChatGPT.

As you know, ChatGPT is an artificial-intelligence platform developed by OpenAI in November 2022. ChatGPT, and other AI platforms, gather information from thousands of third-party sources and databases to generate “new” works that can replicate existing works created by humans. ChatGPT has been used to publish a children’s book,<sup>1</sup> to compose music,<sup>2</sup> and even to write legislation.<sup>3</sup> While there are certainly benefits to the continued use and development of AI platforms, it is imperative that the intellectual property rights of musicians, publishers, songwriters/composers, authors, artists, photographers, and the rest of our creative industries be protected against unlawful use.

As you’re aware, several lawsuits are currently pending between copyright owners and AI companies, and the resulting court decisions will help contribute to where the boundaries lie in terms of AI platforms’ use of protected material. The Copyright Office has an important role to ensure industry stakeholders, the public, and Congress are aware of efforts to prevent unlawful use of creative works.

On March 16, 2023, the Copyright Office announced the creation of an Artificial Intelligence Initiative to examine the various copyright issues that arise by the use of AI generated materials and training.<sup>4</sup> This initiative includes new guidance for copyright applicants that requires a disclosure of AI-generated content,<sup>5</sup> as well as a variety of listening sessions with the creative

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<sup>1</sup> <https://time.com/6240569/ai-childrens-book-alice-and-sparkle-artists-unhappy/>

<sup>2</sup> <https://www.nytimes.com/2023/04/19/arts/music/ai-drake-the-weeknd-fake.html>

<sup>3</sup> <https://lieu.house.gov/media-center/in-the-news/ai-wrote-bill-regulate-ai-now-rep-ted-lieu-wants-congress-pass-it>

<sup>4</sup> <https://www.copyright.gov/newsnet/2023/1004.html>

<sup>5</sup> <https://www.federalregister.gov/documents/2023/03/16/2023-05321/copyright-registration-guidance-works-containing-material-generated-by-artificial-intelligence>

industry. While this initiative is a great first-step in examining the copyright issues raised, there are still several questions left unaddressed.

To that end, we respectfully request a briefing from your office on the AI Initiative, as well as any past and future actions taken to protect the intellectual property of rightsholders in light of the use of their protected works by AI platforms. Additionally, please respond to the following questions no later than May 12, 2023:

1. How will the U.S. Copyright Office's March 2023 guidance titled "*Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence*" address the use of third-party sources for AI-generated material?
2. How does your office review applications that contain little or no human authorship? Is the applicant required to disclose which third-party sources were used to generate the work?
3. Have you consulted with industry stakeholders, to include experts in artificial intelligence, regarding the use of generative AI to produce creative works?
4. Have you discussed the issue of intellectual property protection with generative AI companies, like OpenAI, to ensure they are taking proactive measures to comply with statutes governing copyright law?
5. Does your office have the necessary statutory authority to take action to protect creative rightsholders against the unlawful use of intellectual property? If not, what authorization or resources do you need from Congress?

Thank you for your attention to this matter. Please do not hesitate to contact our offices should you have any questions.

Sincerely,



Scott Fitzgerald  
Member of Congress



Darrell Issa  
Member of Congress



Ben Cline  
Member of Congress



Nathaniel Moran  
Member of Congress



**The Register of Copyrights of the United States of America**  
United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000

May 12, 2023

The Honorable Scott Fitzgerald  
United States House of Representatives  
1507 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Darrell Issa  
United States House of Representatives  
2108 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Ben Cline  
United States House of Representatives  
2443 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Nathaniel Moran  
United States House of Representatives  
1541 Longworth House Office Building  
Washington, D.C. 20515

Dear Representatives Fitzgerald, Issa, Cline, and Moran:

Thank you for your letter of May 1, 2023, requesting additional information and a briefing on the Copyright Office's work examining the use of artificial intelligence ("AI") to generate creative works.

For more than a century, the Copyright Office has been active in studying the intersection of copyright law and emerging technologies. Assessing the impact of AI on the copyright system has become one of our highest policy priorities. We know that the recent rapid advances and proliferation of generative AI technologies raise many issues. We are aware of copyright owners' concerns about the ability to control, be remunerated for, and be acknowledged for the use of their copyrighted works in the development of AI tools, as well as about the potential impact of generative AI on their livelihoods. At the same time, we understand that many copyright owners are interested in using AI technologies to advance their own creative expression and that they wish to protect their output.

As you know, to address these issues on an expedited basis, the Office launched a comprehensive AI initiative in March 2023.<sup>1</sup> This initiative includes: (1) a policy statement published in the Federal Register that affirms the requirement of human authorship for copyright protection and provides guidance to applicants seeking to register works created by or with AI tools;<sup>2</sup> (2) a series of listening sessions on copyright and AI technology, with participation by not only artists and the creative industries, but also AI developers, researchers, and lawyers; (3) public webinars this summer, including a walk-through of our registration guidance; and (4) the

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<sup>1</sup> Details can be found on our new webpage on AI at [www.copyright.gov/ai](http://www.copyright.gov/ai).

<sup>2</sup> U.S. Copyright Office, Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence, 88 Fed. Reg. 16190 (Mar. 16, 2023).

subsequent solicitation of public comments on the advisability of additional guidance, engagement, or regulatory or legislative action. At the same time, the Office is closely following AI-related copyright litigation,<sup>3</sup> monitoring developments in other countries, and coordinating with other government agencies.

The Copyright Office does not have enforcement authority and, with the exception of our newly established small claims tribunal,<sup>4</sup> does not play a direct role in protecting or enforcing copyright owners' rights. But, as part of our statutory responsibilities, we do advise other government bodies that play such a role, including the Department of Justice and the courts. For example, under section 411(b) of the Copyright Act, we respond to questions of registrability that are referred to us by federal district courts. We work with the Department of Justice to develop positions and prepare amicus briefs in federal litigation involving important and unresolved copyright issues. In addition, we provide legal and policy advice to Congress and other agencies on enforcement-related matters. We would be happy to discuss the AI enforcement aspect further.

We are hard at work examining the many issues raised by generative AI and welcome the opportunity to provide a briefing to you and your staff. Below are responses to your specific questions.

**1. How will the U.S. Copyright Office's March 2023 guidance titled "*Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence*" address the use of third-party sources for AI-generated material?**

The Office's March 2023 policy statement provides guidance to copyright owners regarding their submission of registration applications for works that contain material produced by generative AI technologies. The guidance makes clear that applicants have a duty to disclose the inclusion of non-*de minimis* AI-generated content in works submitted for registration, and it explains how to make such disclosures in an initial application, how to update pending applications, and how to correct the public record on copyright claims that have already been registered without such a disclosure. It acknowledges that applicants may have questions about how to apply the instructions to their specific works and encourages them to reach out to the Office with questions.

The Office's guidance does not address the use of third-party sources. It is limited to the issue of copyrightability and is not dependent on the specific AI technologies the applicant has used or the nature of the preexisting works that were sourced to train those technologies. We note that in

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<sup>3</sup> The Office is a party in one of these cases, which challenges the Office's conclusion that human authorship is required for copyright protection. *Thaler v. Perlmutter*, Case No. 1:22-cv-1564 (D.D.C.) (motions and cross-motions for summary judgment have been filed).

<sup>4</sup> In late 2020, Congress passed the Copyright Alternative in Small-Claims Enforcement (CASE) Act, which established the Copyright Claims Board (CCB) in the Copyright Office as a voluntary alternative to federal court. Opening its doors to receive claims in 2022, the CCB is an efficient, streamlined way to resolve copyright claims involving damages of up to \$30,000. Claims involving the use of AI may be brought in that forum if they meet the CCB's requirements.

many cases, these details will be unknown to the user of these technologies, which often “train” on vast quantities of preexisting human-authored works pulled from the internet or other sources.

## **2. How does your office review applications that contain little or no human authorship? Is the applicant required to disclose which third-party sources were used to generate the work?**

As the Office notes in its policy statement, copyright only protects works of human authorship.<sup>5</sup> If a work does not contain any human authorship, it is not copyrightable, and the Office will not register it. In cases where a work contains both uncopyrightable AI-generated material and human authorship, the Office may conclude that the work is entitled to copyright if the human authorship is sufficient in itself to support a claim to copyright—for example, when a human has selected or arranged AI-generated material in a sufficiently creative way. In those cases, copyright will protect the human-authored aspects of the work, which are independent of and do not affect the copyright status of the AI-generated material itself.

The Office’s guidance also explains when an applicant has a duty to disclose the inclusion of AI-generated content in the work. Any AI-generated content included in the work that is more than *de minimis* should be explicitly disclaimed in the application. Applicants are not required to disclose the nature of the AI technology used to generate the work, or the third-party sources used to train that technology. As noted above, vast amounts of data are used to train these technologies, and applicants are unlikely to be aware of those details.

## **3. Have you consulted with industry stakeholders, to include experts in artificial intelligence, regarding the use of generative AI to produce creative works?**

The Office has long been committed to engaging with the entire copyright community and reaching out to a diversity of stakeholders. In addition to the public listening sessions described above, which attracted record levels of participation, the Office has held meetings with a wide variety of voices, including individual creators, industry stakeholders, experts in AI, and other representatives of the technology industry. These meetings were the result of both the Office’s outreach and requests received from interested individuals and groups. They have addressed many aspects of the use of generative AI to produce expressive works.

This summer, the Office plans to hold public webinars to educate the public on select AI topics. Drawing on the input received from our meetings and listening sessions, we will also prepare and publish a Notice of Inquiry on artificial intelligence and copyright. We expect to seek public comments on registrability, the use of works as training materials, fair use, and infringement, among others. We anticipate a significant response from a variety of stakeholders. After comments are received, the Office may solicit further written comments, host public roundtables, or issue new policy statements, such as additional registration guidance or a report offering guidance to Congress and the courts.

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<sup>5</sup> 88 Fed. Reg. at 16191–92.

**4. Have you discussed the issue of intellectual property protection with generative AI companies, like OpenAI, to ensure they are taking proactive measures to comply with statutes governing copyright law?**

As described in our response to Question 3 above, the Office's engagement as part of the AI initiative has included voices from a diverse range of perspectives, including the technology industry and developers. The Office has had introductory meetings with several AI companies, including OpenAI, and many of them are participating in our public listening sessions.

**5. Does your office have the necessary statutory authority to take action to protect creative rightsholders against the unlawful use of intellectual property? If not, what authorization or resources do you need from Congress?**

As noted above, the Office is not an enforcement agency with the authority to take action for the protection of rightsholders' intellectual property. In addition to our role administering the copyright registration and recordation systems, however, we do provide advice and assistance to other federal agencies on copyright matters related to enforcement, including before the courts by working with the Department of Justice.<sup>6</sup> We monitor litigation addressing significant copyright questions, including litigation involving generative AI. As this litigation advances, there may be opportunities for the Office to provide guidance, working with the Department of Justice. The Office also provides educational information to the public and conducts outreach events to raise awareness of copyright law among creators and users of copyrighted works, including how to enforce rights against unlawful use. This information is free, accessible and provided in print, web and social media channels, and includes the Compendium of U.S. Copyright Office Practices, circulars, and the Fair use Index maintained on our website.

We do not plan to request any change in the Office's responsibilities to include an additional enforcement function. To the extent Congress is considering adding such responsibilities, that would entail significant statutory revision and funding requirements.

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We hope these responses are helpful. We look forward to working with your offices to arrange a time to brief you and your staff further on our AI initiative. Please do not hesitate to contact us if you need any additional information in the meantime.

Sincerely,



Shira Perlmutter  
Register of Copyrights and Director,  
United States Copyright Office

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<sup>6</sup> 17 U.S.C. 701.