United States Copyright Office
Library of Congress · 101 Independence Avenue SE · Washington, DC 20559-6000 · www.copyright.gov

April 20, 2023

Via Email
Kris Ahrend
The Mechanical Licensing Collective
333 11th Avenue South
Suite 200
Nashville, TN 37203

Re: Royalty Eligibility of Musical Works Generated Using Artificial Intelligence Under the Music Modernization Act

Dear Mr. Ahrend,

In response to a request from Mechanical Licensing Collective ("The MLC") and in light of recent statements by the Copyright Office, this letter provides guidance with respect to musical works that may be the product of generative artificial intelligence technology ("AI") and their eligibility for royalty distributions under the Copyright Act's section 115 statutory mechanical blanket license (the "blanket license").[1]

As discussed in more detail below, section 115 directs the mechanical licensing collective (the "collective")[2] to distribute royalties to *copyright owners* of nondramatic musical works. Accordingly, those who claim ownership of a musical work that is not protected by copyright are not entitled to royalty payments from the collective. Where circumstances reasonably indicate to the collective that a musical work registered in its database lacks the human authorship necessary to qualify for copyright protection (for example, where a songwriter claims that they created an extraordinary number of musical works in an unusually short time period or makes affirmative statements that a musical work was created by AI), it is appropriate for the collective to conduct a timely investigation into the work's copyrightability and hold any royalties that would otherwise be allocated to that work pending its investigation.

The Office's AI Policy Statement

The Office recently issued a policy statement providing the public with registration application guidance related to works that contain AI-generated material.[3] The policy statement

[1] *See generally* 17 U.S.C. § 115.

[2] In our discussion, we distinguish between the mechanical licensing collective established pursuant to 17 U.S.C. § 115 (referred to here as the "collective") and "The MLC," the nonprofit entity that the Office designated as the collective. *See* 37 C.F.R. § 210.23(a). While The MLC initiated the request for guidance, the guidance here is intended to apply generally to the collective.

[3] *Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence*, 88 Fed. Reg. 16,190 (Mar. 16, 2023).

affirmed the Office's view that "copyright can protect only material that is the product of human creativity."[4] This conclusion is grounded in the language of the Constitution[5] and the Copyright Act.[6] Both use the term "author" in the copyright context. For the reasons explained in the policy statement, "the term 'author' . . . excludes non-humans."[7] Accordingly, "[i]f a work's traditional elements of authorship were produced by a machine, the work lacks human authorship" and is not protected by copyright.[8] Determining whether a work contains sufficient human authorship is a case-by-case inquiry and "will depend on the circumstances, particularly how the AI tool operates and how it was used to create the final work."[9]

In some cases, a musical work containing AI-generated material will contain sufficient human authorship to support a copyright claim, including for example, where a human "select[s] or arrange[s] AI-generated material in a sufficiently creative way that 'the resulting work as a whole constitutes an original work of authorship'" or "modif[ies] material originally generated by AI technology to such a degree that the modifications meet the standard for copyright protection."[10] Additionally, there is no dispute that humans can use tools such as digital audio workstations, sequencers, and arpeggiators to create a copyright-protected musical work, provided that the final work is the product of human authorship.[11]

One example of where a musical work would not be protected by copyright is "when an AI technology receives solely a prompt from a human and produces . . . musical works in response."[12] In such cases, "the 'traditional elements of authorship' are determined and executed by the technology—not the human user."[13]

Application to the Blanket License

Section 115 directs the collective to "distribute royalties to copyright owners" of eligible musical works.[14] Musical works that lack sufficient human authorship to qualify for copyright protection do not have copyright owners. Thus, an individual or entity claiming ownership of such a work is not entitled to blanket license royalty payments. As noted above, where circumstances reasonably indicate to the collective that a musical work registered in its database lacks the human authorship necessary to qualify for copyright protection, it is appropriate that

[4] *Id.* at 16,191.

[5] U.S. CONST. art. I, § 8, cl. 8.

[6] 17 U.S.C. § 102(a).

[7] 88 Fed. Reg. at 16191.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 16,192–93 (quoting 17 U.S.C. § 101 (definition of "compilation")).

[11] *Id.* at 16,193.

[12] *Id.* at 16,192.

[13] *Id.* ("When an AI technology determines the expressive elements of its output, the generated material is not the product of human authorship.").

[14] 17 U.S.C. § 115(d)(3)(G)(i)(II); *see id.* § 115(d)(3)(I)(ii).

any royalties that would otherwise be allocated to that work be held pending a timely investigation into the work's copyrightability.[15]

More specifically, the Office advises that a work that appears to lack sufficient human authorship is appropriately treated by The MLC as an "anomal[y]," consistent with its *Guidelines for Adjustments*, and The MLC should "place [associated] Royalties in Suspense while it researches and analyzes the issue."[16] Such research could include corresponding with the individual or entity claiming ownership of the work or inquiring whether the Office has registered the work and whether there are any disclaimers or notes in the registration record.[17] If The MLC subsequently concludes that the work qualifies for copyright protection and the section 115 license, it should distribute any royalties and interest in suspense to the copyright owner. Alternatively, if The MLC believes that the work does not qualify for copyright protection following its research and analysis, it should notify the individual or entity claiming ownership of the work of its determination and that associated royalties will be subject to an adjustment. This conclusion and adjustment may be challenged by initiating an "Adjustment Dispute" consistent with The MLC's policies. If legal proceedings are initiated to challenge The MLC's actions, the disputed royalties and interest should remain suspended until those proceedings are resolved.

Please let us know if you have any questions regarding the above guidance.

Sincerely,

Suzanne V. Wilson,
General Counsel and Associate Register of Copyrights
U.S. Copyright Office

cc: Kristen Johns (via email)

[15] More generally, where the collective reasonably believes that a work registered in its database is not eligible for compulsory licensing under section 115, it is appropriate for the collective to hold any royalties that would otherwise be allocated to that work pending a timely investigation into the work's eligibility. *See* 17 U.S.C. § 115(d)(3)(G)(i)(I)(aa) (providing that the collective shall engage in efforts to "identify the musical works embodied in sound recordings reflected in . . . reports, and the copyright owners of such musical works (and shares thereof)").

[16] The MLC, *Guidelines for Adjustments* §§ 2.1, 2.3, https://f.hubspotusercontent40.net/hubfs/8718396/files/2022-02/MLC%20Guidelines%20for%20Adjustments.pdf (Jan. 2022).

[17] The Office recognizes that musical work copyright owners are not required to register their works with the Office to be entitled to royalties under the blanket license.