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Client Alert: Copyright Protection for AI-Created Works: What Your Business Needs to Know

As generative artificial intelligence (AI) tools are being used more commonly in everyday business operation, from creating marketing copy to designing website visuals, a critical question has emerged: Can your business actually own the copyright in what AI produces? The answer, according to the U.S. Copyright Office, is nuanced. Getting it wrong can leave valuable work unprotected.

The Core Rule: Human Authorship Required

In recent years, the Copyright Office has issued formal registration guidance confirming a foundational principle: copyright protection requires human authorship. Works generated entirely by AI—without meaningful human creative input—are not eligible for copyright registration. This isn't new law; it's the application of longstanding doctrine based on the Constitution's Copyright Clause and the language of the Copyright Act as interpreted by the courts. If an AI system determines the expressive elements of a work, that output potentially belongs to no one.

The Office reinforced this position in Part 2 of its Copyright and Artificial Intelligence report (January 2025), specifically noting that, given current technology, "prompts alone do not provide sufficient human control to make users of an AI system the authors of the output." Simply typing instructions into tools like Claude or ChatGPT does not make you the author of what is produced.

When AI-Assisted Works Can Still Be Protected

Works that combine AI-generated material with sufficient human creativity can qualify for copyright protection. The key factors include: (1) a human selects and arranges AI outputs in a sufficiently creative

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way; (2) a human substantially modifies or edits AI-generated content to impart personal expression; or (3) a human integrates AI-generated material into a larger, predominantly human-authored work. The Copyright Office has granted hundreds of registrations for works incorporating AI-generated material since issuing its 2023 guidance, demonstrating that thoughtful human involvement still earns protection.

Disclosure is Mandatory When Applying for Registration

If your work contains more than a minimal (“de minimis”) amount of AI-generated content, you must disclose that fact when applying for copyright registration. Applicants must identify the AI-generated portions, provide a brief description of the human author’s contribution, and disclaim the AI-generated material. Failure to disclose can jeopardize your registration—and, by extension, your ability to enforce your rights. Don’t worry, a standard U.S. copyright application will prompt you for this.

Fact-Specific Determination

There is no simple formula or minimum threshold that determines copyrightability. The Copyright Office evaluates each application on a case-by-case basis. In one notable 2023 decision, the Office found that AI-generated images in a graphic novel (*Zarya of the Dawn*) were not protectable, while the human-written text and the author’s creative selection and arrangement of the images were. Examples such as these underscore that the line between protectable and unprotectable work depends heavily on the facts.

The Training Data Question: A Related Business Risk

Beyond output copyrightability, the Copyright Office’s Part 3 report (May 2025) addresses whether using copyrighted works to train AI models constitutes fair use. This is a question being addressed in several pending federal lawsuits. Fair use determinations are highly fact-specific and have been for decades. Training is less likely to qualify as fair use when AI systems generate expressive content that competes with the works they were trained on. For businesses that license or deploy AI tools, this creates potential exposure: if your AI vendor trained its model on unlicensed content, you may inherit downstream legal risk.

Practical Takeaways

- Document human creative contributions carefully. The more you can demonstrate that a person made meaningful creative decisions (i.e., selecting, arranging, editing, or transforming AI output), the stronger your copyright position.
- Disclose AI involvement in any copyright registration application as such transparency may protect your registration from future challenges.
- Evaluate your AI vendors’ training data practices. Ask whether models were trained on properly licensed content and factor that risk into procurement decisions.
- Evaluate agreements where your company engages third parties to provide it with creative content. If your company has an expectation that it will own such work product, then your agreement needs guidelines, representations, and warranties regarding any usage of AI. Warranties or indemnities of originality and non-infringement of work product in third-party agreements are typically recommended regardless of AI usage.
- Stay current. The Copyright Office and the courts are actively shaping this area of law; what applies today may shift as cases are decided and technology evolves.

AI is a powerful tool, but copyright law still rewards human creativity. Businesses that build deliberate processes that focus on human involvement and transparent disclosure will be best positioned to protect their AI-assisted work product.

For more information about copyright protections for AI-generated work, please contact Doug Cherry or another member of Shumaker's Intellectual Property Service Line.