

# AI Insights

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## Copyright Office Provides Guidance on the Registration of Works That Include AI-Generated Material

During a June 2023 webinar, representatives of the Copyright Office provided much-needed clarification and guidance on registering works that include material generated through artificial intelligence (AI) (Registration Guidance).<sup>1</sup>

This clarification and guidance was much needed following the Copyright Office's March 2023 guidance on "Works Containing Material Generated by Artificial Intelligence," where the Office stated that AI-generated works are not copyrightable due to lack of human authorship, and thus that use of AI to generate elements of a work may need to be disclosed in copyright applications. As a result of this [March 2023 guidance](#), applicants were unsure about the scope and degree of disclosure required for new registrations, and whether applications and registrations that had already been filed or granted before March 2023 would be cancelled for failing to properly disclose that certain materials in their works were AI-generated. Fortunately, the new Registration Guidance should alleviate many of those concerns.

### Introductory Notes

In the webinar, the Copyright Office first presented background on its March 2023 guidance, and noted that it has, to date, received relatively few (under 100) registrations claiming any generative AI usage. The Copyright Office expects that number to grow as the use of generative AI expands and noted it has plans to update its approach as required. More generally, the Copyright Office acknowledged that this will be an evolving process as AI use itself evolves.

### "De Minimis" Use Defined

Perhaps most significantly, the Copyright Office went to great lengths to explain that in cases where works make "de minimis" use of AI, no disclaimer or disclosure is required. In order to determine whether only "de minimis" use was made, the Copyright Office stated that the key question to ask is whether the AI-generated material standing on its own would be sufficient to satisfy the copyrightability standard in the Supreme Court's decision in *Feist* if that material had been created by a human.

<sup>1</sup> [A recording of the webinar is available here.](#)

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In *Feist Publications, Inc. v. Rural Tel. Serv. Co.*,<sup>2</sup> the Supreme Court held that the test to ensure sufficient originality for copyrightability of work is “independent creation plus a modicum of creativity.” Thus, in the case of works that incorporate content generated by AI, one needs to ask whether each AI-generated component of the work, by itself, would be copyrightable if that component were created by a human. If the answer is “no,” then it is a de minimis use, and the applicant does not need to mention that AI was used or disclaim any AI-component of the work from the application. The Copyright Office noted that this is generally the same standard applied for assessing the existence of new authorship in derivative works or joint ownership.

The Copyright Office provided a series of hypothetical applications to illustrate when use of AI would be de minimis, including:

1. Using AI in connection with writing a book in order to check spelling and grammar, insert page numbers, generate a table of contents, and provide formatting.
2. Using AI to blur or remove any personally identifiable information (such as faces, license plates, etc.) from a video.
3. Using AI to make multiple repeat edits to several frames of a video.
4. Using AI to isolate Elvis Presley’s voice from a recording, remove background noise, and convert the recording from “mono” to “digital” stereo sound.

The Copyright Office explained that in each of these cases, the function performed by AI would not have been copyrightable if done by a human, hence it can be deemed de minimis use.

## Registration Guidance

Assuming the use of AI was “appreciable” (*i.e.*, not de minimis), the Copyright Office stressed that the amount of disclosure required should be simple and straightforward. The Copyright Office explained that it treats AI-generated works for registration purposes as a new, fifth, category of “unclaimable material” (joining previously-published works, previously-registered works, public domain works and copyrightable material owned by a third party). As such, the rules and procedures that exist with disclaiming other categories of “unclaimable material” apply to AI-generated works as well.

In practice, what this means, according to the Copyright Office, is that in the “Limitation of Claim” section of an application, the applicant simply needs to complete the “Material Excluded” section. Next, the applicant should check a box for the type

of work that was AI-generated (*e.g.*, text, artwork, computer program, etc.) and include a simple statement describing the reason that material is excluded, such as “AI-generated artwork” or “text generated by AI.”

The representatives from the Copyright Office stated there is no need to identify the specific drawings or illustrations that were AI-generated, and thus there is no need to specify how AI was used or, in the case of a work that includes a mix of AI-generated art pieces and human-generated art pieces, which are AI-generated and which are not. As the Copyright Office explained, the purpose of this section is to create a record and put the public on notice that some portion of the work is AI-generated. As noted above, this is the same approach used for other categories of unclaimable material.

The Copyright Office noted that the “cleanest” way to address these cases would be to register only the human-generated piece prior to incorporating, combining or changing it with AI-generated content, even if one’s plan is to distribute only an AI-enhanced version. That way, an applicant can avoid all disclosure considerations. The Copyright Office also reminded applicants that, if they prefer to register the entire work, including the AI-generated material, there is no need to remove AI-generated materials from the deposit.

## Works Registered Prior to March 2023

The Copyright Office clarified that it currently has no plans to review registrations prior to March 16, 2023, to determine if AI usage was properly disclosed. It is also not requiring those who registered works before March 16, 2023, to file supplemental registrations disclosing any AI usage that was omitted. However, the Copyright Office noted that applicants may elect to do so at their discretion.

## Examples

The Copyright Office then presented a series of hypothetical works that use AI and detailed whether that use should be disclosed in an application and, if so, how the AI-generated components should be disclaimed:

- *A work where an author used AI to brainstorm ideas for a plot, the names of characters, titles of chapters and some small snippets of dialogue. The author then wrote the book herself without including any of the AI-generated material.* Here, the use of AI is solely for idea generation, so there is nothing to disclose or disclaim.

<sup>2</sup> 499 U.S. 340 (1991).

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- *A book where the author writes the text and uses AI to generate artwork.* The applicant need only check “2D artwork” in the “Material Excluded” section of the Limitation of Claim page and state “artwork generated by AI.”
- *A children’s book of rhyming couplets, where some lines of the text were AI-generated.* The applicant need only check “text” in the “Material Excluded” section of the Limitation of Claim page and state “some text generated by AI.”
- *A book of communications between a human and an AI system, where some of the AI responses were edited by the author.* The applicant would claim the text and revisions to the AI-generated text as registerable human-generated works and disclaim the “AI-generated text.” As noted above, there is no need to specify which pieces were not edited by a human.
- *A motion picture where AI was used to generate background and special effects.* Assuming the AI-generated work would have been copyrightable if created by a human (*i.e.*, it is not *de minimis*), then the applicant need only check the “Other” box on what is being disclaimed and state “some material generated by AI.”
- *A book where AI was used to translate the text from one language to another.* The original book can be copyrighted, but since the translation is entirely AI-generated, none of it can be copyrighted.

## Additional Points

During a Q&A session, the Copyright Office staff provided some additional insights into its thinking regarding AI:

- *Why does the Copyright Office not wait for courts to decide on copyrightability with respect to AI?*

The staff explained that they cannot afford to wait on court decisions, since they need to make registration decisions now. They also noted that the Office is not making decisions on a number of these issues; it is just deciding what can be registered, which falls into the Copyright Office’s jurisdiction. The staff also noted that the Office has a unique perspective on these issues and has developed expertise given the number of applications received.

- *Copyright protection for prompts.* As was stated in the March 2023 guidance, the Copyright Office acknowledged that text prompts entered into an AI system could technically be copyrightable as a string of text, but noted that copyright protection would not extend to the work generated by that prompt. As of now, the Copyright Office stated that it is not aware of any applications for registrations of prompts themselves; however, it anticipates reviewing such applications on a case-by-case basis.

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