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## EXECUTIVE SERIES: INTELLECTUAL PROPERTY



## Artificial Intelligence and Copyright

**Presented by:**  
Ted Behm, Partner and Irfan Malani, Associate

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# Introduction to AI

## 01

- *Definition of AI*

The term “Artificial Intelligence” has been around for decades, referring to computing technologies intended to mimic human reasoning or interaction.



## 02

- *Machine Learning*

Using analytics to find patterns in large data sets. Applications are useful in many areas and generally not controversial.



## 03

- *Generative AI*

Using analytics to create **new content** based on prompts or other user input, relying on huge amounts of training data.

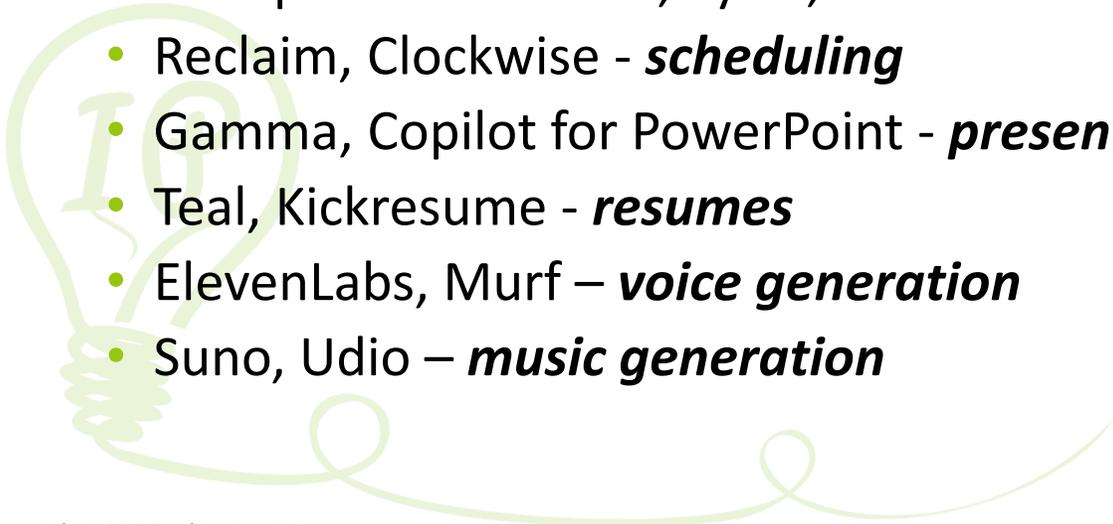
This is where many challenges and controversies begin.

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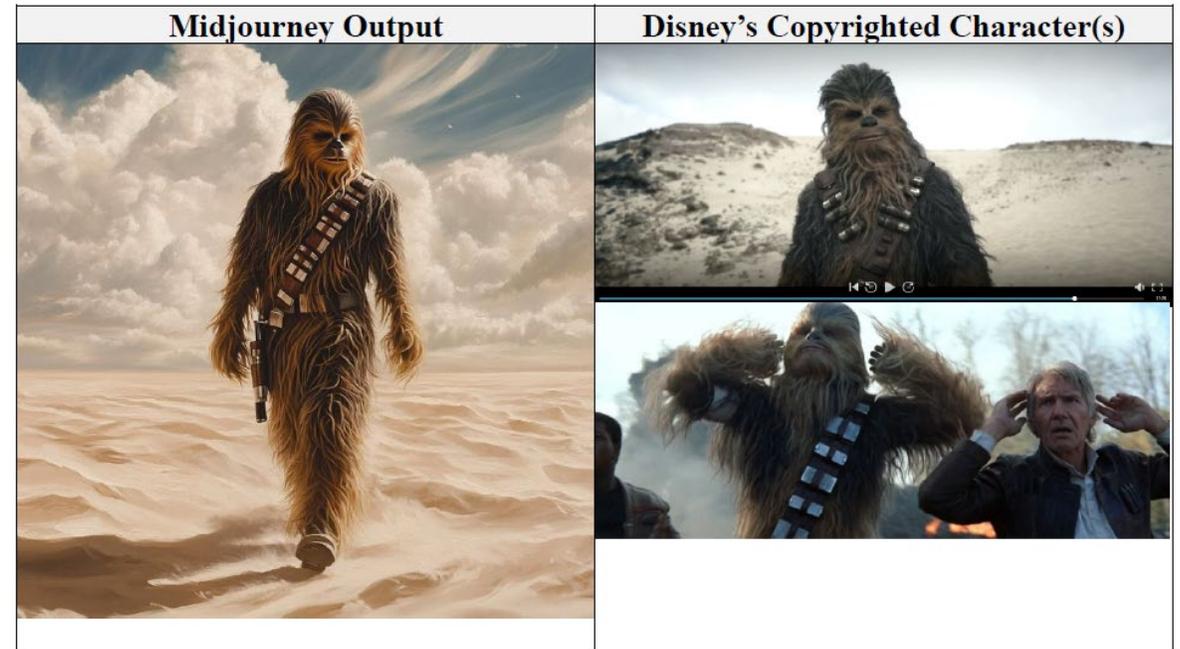
# Introduction to AI

- There are many different AI programs available today.
- ChatGPT, Grok, Claude and Gemini for **text**
- DALL-E (now integrated with ChatGPT) and MidJourney for **artwork**
- Synthesia, Google Veo, OpusClip for **video**
- Fathom, Nyota – **meeting assistants**
- Google AI Mode, Perplexity, ChatGPT search – **search engines**
- Hubspot Email Writer, Fyxr, Shortwave - **email**
- Reclaim, Clockwise - **scheduling**
- Gamma, Copilot for PowerPoint - **presentations**
- Teal, Kickresume - **resumes**
- ElevenLabs, Murf – **voice generation**
- Suno, Udio – **music generation**



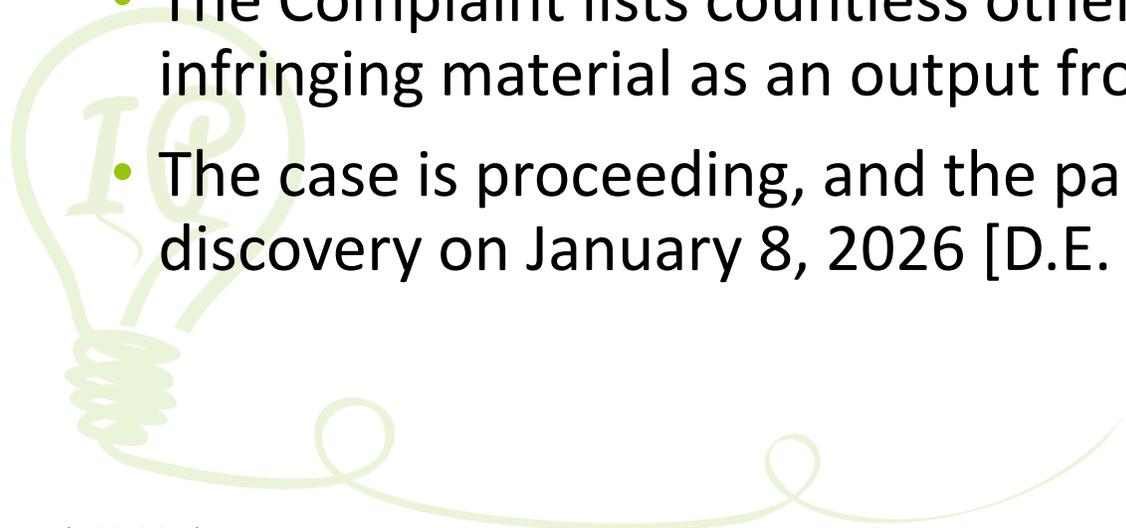
# Can You Tell The Difference?

- *Disney et al. v. Midjourney, Inc.* (C.D. Cal. 2025), Case No.: 25-cv-05275, filed June 11, 2025



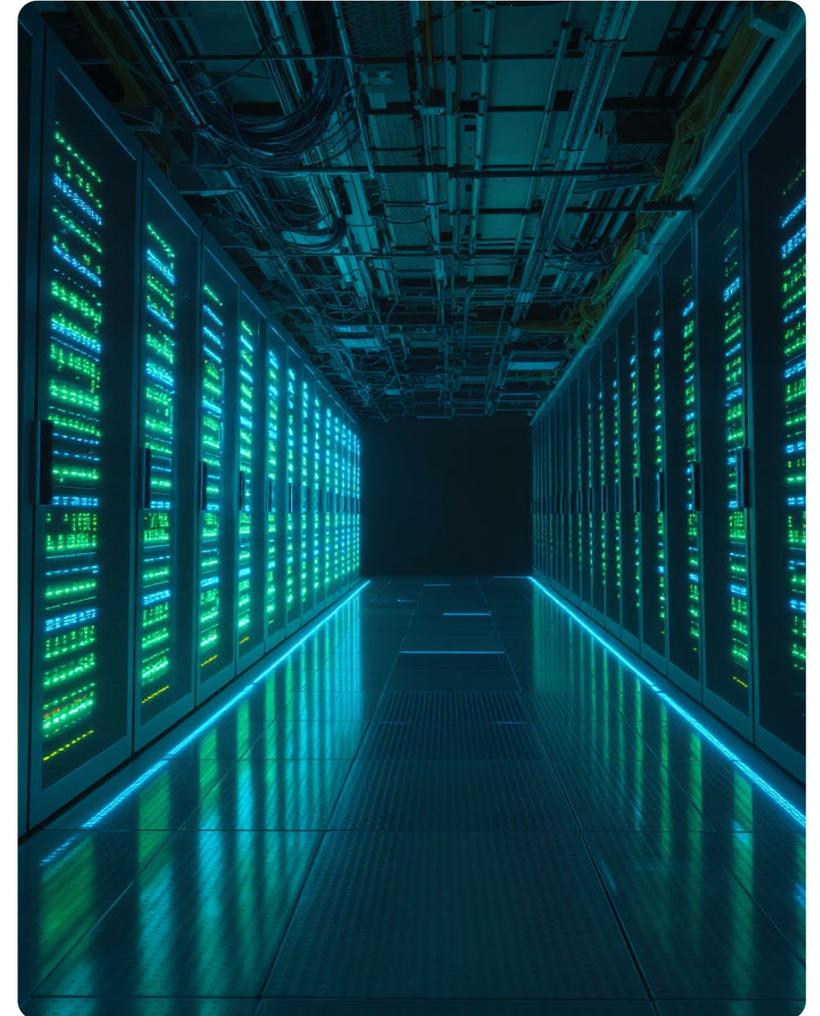
# Can You Tell The Difference?

- *Disney et al. v. Midjourney, Inc.* (C.D. Cal. 2025), Case No.: 25-cv-05275
- The prompt for the Darth Vader image was “Darth Vader walking around the Death Star with a red lightsaber”
- The prompt for the Chewbacca images was “Chewbacca, screenshot from movie”
- The Complaint lists countless other examples of prompts that elicit infringing material as an output from MidJourney
- The case is proceeding, and the parties just a Status Report on discovery on January 8, 2026 [D.E. 42].



# How AI Works

- AI works by using inference and analytics to identify patterns in large data sets, enabling it to learn and make decisions.
- Generative AI creates new content based on prompts or user input, relying on extensive training data.
- Machine Learning and Generative AI require substantial computational resources and large datasets for effective operation.
- The process involves training models on vast amounts of data to enable accurate predictions, content creation, or automation tasks.
- High-performance computing infrastructure and data storage are essential to support AI workloads efficiently.



# Promised Benefits of Generative AI

## Automated Content Generation

Generative AI enables faster, cheaper, and better automated creation of content including written text, visual art, and computer code.

## Mass Personalization at Scale

Everyone can have personalized services such as a concierge, private tutor, or dedicated sales and service agent, tailored to individual needs.

## Rapid Innovation and Prototyping

AI facilitates quick innovation cycles, enabling rapid prototyping and product design to accelerate development timelines.

## Technological Breakthroughs

Generative AI supports advancements like self-driving cars, robots, and medical breakthroughs, driving transformative changes in technology.



# Foreseeable Risks of AI

01

## *Deepfakes and Propaganda*

AI enables creation of deepfakes, propaganda, and spam that are nearly indistinguishable from genuine content, undermining trust in media and information.

02

## *Nonconsensual Image Use*

There is a serious risk of nonconsensual use of images and likenesses, raising privacy and ethical concerns about unauthorized AI-generated content.

03

## *Economic Disruption*

AI threatens massive economic disruption across industries, education, and government sectors, potentially displacing jobs and altering economic structures.

04

## *Military and Surveillance Applications*

Troubling military uses and expanded surveillance enabled by AI raise concerns about privacy, human rights, and geopolitical stability.

05

## *Resource Consumption*

AI development and deployment consume high rates of resources, including energy, water, and land, contributing to environmental challenges.

# AI Is Alright, Alright, Alright

- In December 2023, Matthew McConaughey filed eight (8) U.S. Trademark Applications to protect his image and likeness
- Four of these Applications are for 'Motion' Marks, and four are for 'Sensory' Marks
- The Motion marks are videos of McConaughey speaking
- The Sensory marks of videos of McConaghey saying catchphrases like "Alright, Alright, Alright" and "Just Keep Livin,' Right? I Mean, What Else Are We Gonna Do?"



# AI Is Alright, Alright, Alright

- U.S. Registrations issued for these marks in October 2025.
- McConaughey hopes that these registrations will help him prevent deepfakes and AI-generated images, video and sound representative of his likeness and catchphrases.
- You can see the videos on McConaughey's Website at <https://www.aaajkl.com/>



# What About NIL?

- Most U.S. States have laws that protect the “Right of Publicity” (ROP) against unauthorized uses by AI
- You may have heard the term “NIL,” meaning “Name, Image & Likeness”
- In March 2024, Tennessee signed the ELVIS Act into law
- The Act makes a person's voice a protected property right in Tennessee, amplifying TN’s existing ROP laws
- The 2025 NO FAKES Act was a Bill introduced in April 2025 in both the House and Senate – it would create a new federal “digital replication right” letting people control the use of AI-generated versions of their voice or likeness.



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# Other Risks of AI



## Model Collapse

Problems arising from training AI on synthetic data, which can degrade model performance and reliability over time.

## AI Hallucinations

False, inaccurate, or fabricated content confidently presented as fact by AI systems, causing misinformation and trust issues.

## Low Enterprise Adoption

Despite high capital investment, many enterprises show a low rate of AI adoption, slowing expected economic and operational impact.

## AI Psychosis

Compulsive use of AI, especially among vulnerable populations, leading to problematic behavioral patterns and mental health concerns.

## Consumer Rejection

Resistance and skepticism from consumers toward AI-generated content and services, affecting market acceptance and success.

# Unresolved Issues Around AI

## Fixing AI Hallucinations

Are tech problems like hallucinations fixable?

## Training Data Permissions

Sources of training data raise questions about permissions and fair use.

## Copyrightability of AI Outputs

Can AI-generated content be copyrighted?

## Liability for Misuse

Who is liable for misuse of AI-generated content?

## Regulatory Jurisdiction

Who has authority to regulate AI? Jurisdictional questions complicate enforcement and standards across different countries and sectors.

## Labor and Environmental Impact

Mounting concerns surround labor standards, economic displacement, wealth consolidation, and the high resource consumption of AI technologies including energy and water.

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# AI and Copyright Law – The Fundamentals

## Joint Authorship

All joint authors co-own the copyright unless agreed otherwise in writing.

## Copyright Eligibility

Copyright applies if the work is contains original creative authorship, is fixed in a tangible medium, and created by a human.

## Work for Hire

A work is 'for hire' only if: (a) created by an employee within employment scope, (b) it is a “specially commissioned” work in one of nine (9) categories with a written agreement stating it is for hire, or (c) there is a writing assigning it from the author to the entity.

## Human Authorship Requirement

The key question is whether the work was human-authored with the computer assisting, or if authorship elements were conceived and executed by a machine.



# AI and Copyright: Historical Context

- As computer technology advanced, challenging questions of authorship emerged regarding works produced partly or wholly by computers.
- The critical issue is whether the work is *primarily* human-authored with the computer as a tool.
- Quote from U.S. Copyright Office, 1965: “The crucial question appears to be whether the ‘work’ is basically one of human authorship, with the computer merely being an assisting instrument, or whether the traditional elements of authorship ... were actually conceived and executed not by man but by a machine.”
- These concerns continue to shape how Copyright Law addresses AI-generated content today.

# The Human Authorship Requirement

- Copyright Law protects “the fruits of intellectual labor” that are “founded in the creative powers of the mind.”
- Works produced solely by a machine or mechanical process without creative human input are not eligible for copyright.
- The famous ‘Monkey Selfie’ was held not protectable under Copyright Law by the Ninth Circuit because the photograph was taken by the monkey, not by a human.



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# Human vs AI-Generated Content



## Copyright Protection Distinctions

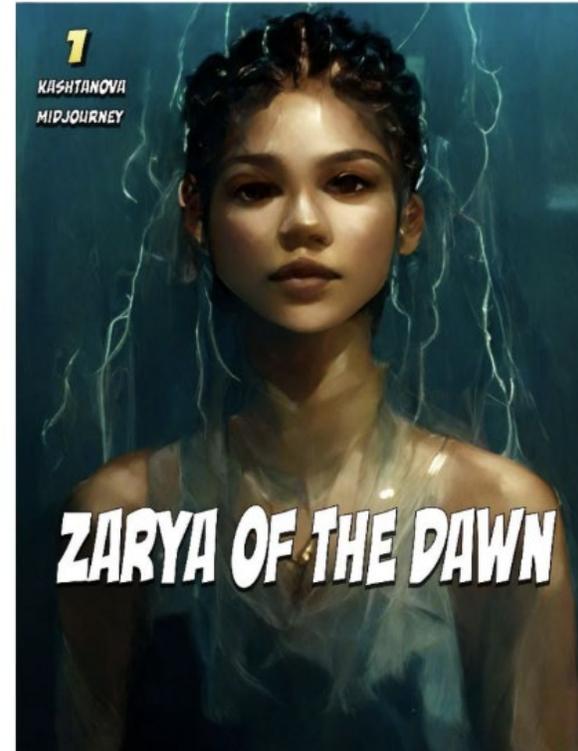
- A Copyright Registration will protect original human-created elements such as scripts and sketches.
- AI-generated content, including AI-created scripts and sketches, cannot be copyrighted on its own, nor can changes introduced solely by AI be protected.
- However, the combination of AI-generated elements with original human works can be protected as a derivative work, reflecting the human author's creative input.
- The overall work, such as a comic book combining human-authored and AI-generated content, may be protected as a collective work, showcasing the human's role in organizing and integrating components into a cohesive final product.

# Copyright Office Guidance

- On March 15, 2023, the U.S. Copyright Office announced that works created with the assistance of Artificial Intelligence (AI) may be copyrightable, provided the work involves *sufficient human authorship*.
- [https://www.copyright.gov/ai/ai\\_policy\\_guidance.pdf](https://www.copyright.gov/ai/ai_policy_guidance.pdf)
- Ultimately, copyright protection will depend on whether the AI's contributions are "the result of mechanical reproduction," or they reflect the author's "own mental conception."
- The answer will depend on the circumstances, particularly how the AI tool operates, and how it was used to create the final work."
- Works created solely through text prompts **do not** qualify for protection.
- "[W]hen an AI technology receives solely a prompt from a human and produces complex written, visual, or musical works in response, the 'traditional elements of authorship' are determined and executed by the technology—not the human user."

# Zarya Of The Dawn

- Author Kristina Kashtanova registered a copyright in her comic book “Zarya of the Dawn.”
- On February 21, 2023, the U.S. Copyright Office (USCO) partially cancelled the Registration because Kashtanova had used Midjourney to generate the images.
- This decision raises questions about whether AI-generated works can be protected under U.S. Copyright Law and highlights the tension between the requirements of human authorship and the evolving means of expression available to creators.



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# *Thaler v. Perlmutter*, 130 F.4<sup>th</sup> 1039 (D.C. Cir. 2025)

- A computer scientist, Dr. Stephen Thaler, created an artificial intelligence system called the “Creativity Machine,” which autonomously generated an artwork titled “A Recent Entrance to Paradise.”
- Dr. Thaler submitted a copyright application to the USCO, listing the Creativity Machine as the sole author and himself as the owner.
- The Copyright Office denied the application, citing its policy that only works authored by humans are eligible for copyright protection.



# Applying the Human Authorship Requirement to AI Works

## *Human vs. Machine*

The Office determines whether the work's traditional elements of authorship were created by a human or generated autonomously by AI, focusing on who conceived and executed the creative aspects.

## *Mechanical vs. Original*

AI-generated content resulting from mechanical reproduction without original human mental conception lacks copyright protection; the Office distinguishes this from works reflecting human creativity.

## *Case-by-Case Review*

Each AI-related work is reviewed individually, considering how the AI tool operates and the extent of human creative control in the final expression.

## *Registering Human Authorship*

If a work contains sufficient human authorship, such as original selection, arrangement, or modification of AI content, it may be registered with copyright protecting the human-created elements.

# Step-by-Step Registration Procedure

01

Prepare Your Work

Identify and document the human-authored elements such as original script, sketches, and manual edits. Also, identify AI-generated parts like altered script sections or comic panels.

02

Choose the Appropriate Form

Select Form VA for visual arts (like comic books) or Form TX for substantial textual content. Consider strategic reasons such as emphasizing literary content or linking to prior registrations.

03

Disclose AI Involvement

Follow Copyright Office guidelines to disclose AI-generated content and describe the extent of human creative control over the final work.

04

Prepare Deposit Copies

Submit deposit copies electronically via the Copyright Office portal or mail physical copies. Include supplementary materials like original script or storyboards to demonstrate human authorship.

05

Pay the Fee

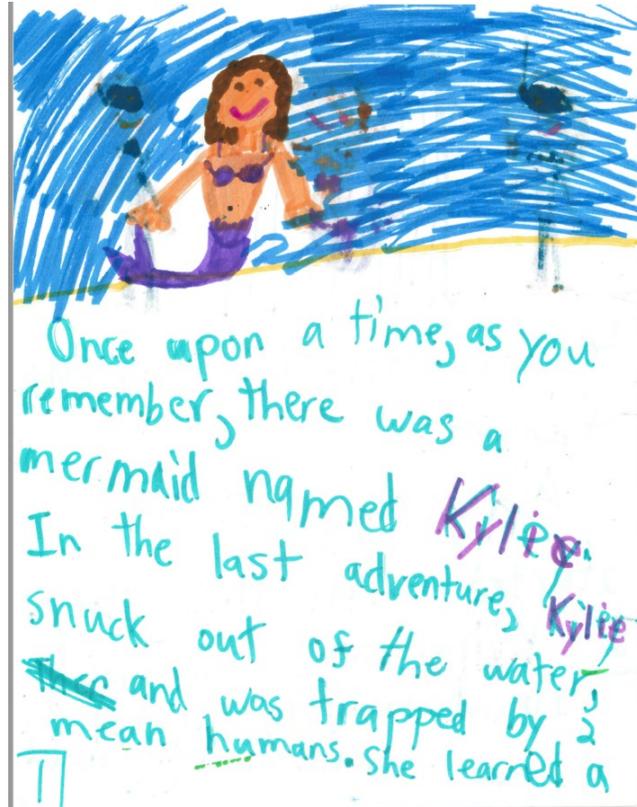
Complete payment of the required registration fee to process the application.

06

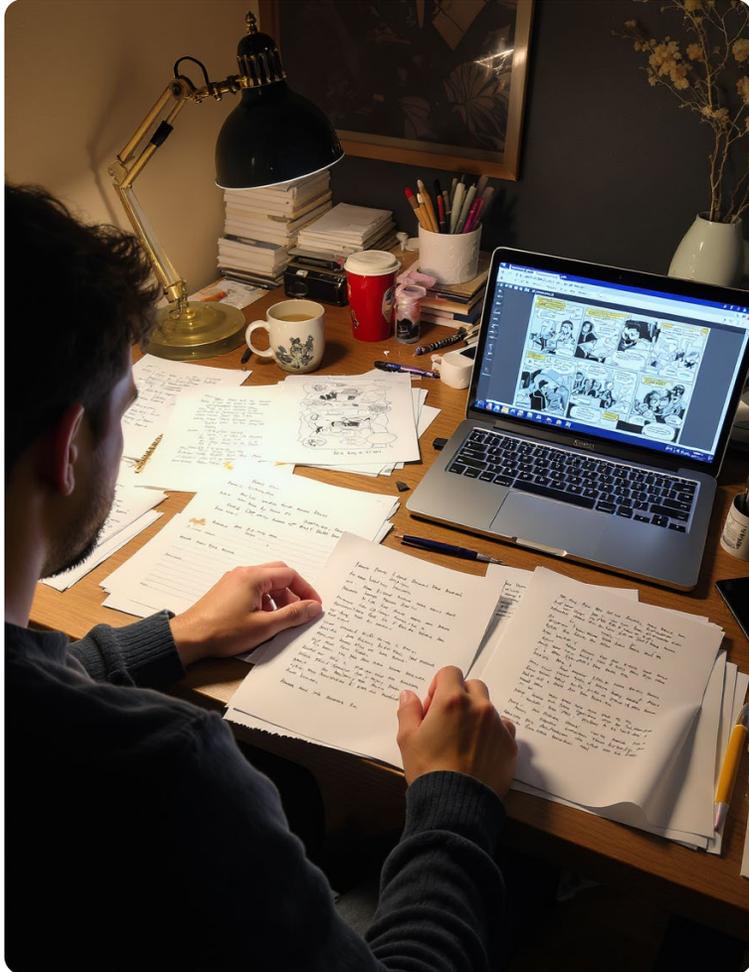
Submit the Application

Submit the completed application with all required documents, disclosures, and deposit copies to the U.S. Copyright Office.

# Registering A Work: Comic Book



# Step 1: Prepare Your Work



## Human Contributions

- Clearly identify and document human-authored elements of your work.
- Include original script, original sketches, and significant manual edits.
- Document the collection, selection, ordering, and arrangement of all constituent elements to form the unified whole, such as a comic book.

## AI-Generated Content

- Identify the parts of the work generated by AI.
- Examples include portions of the comic book script that differ from the original script.
- Also include comic book panels that differ from the original sketches due to AI generation.
- This distinction helps clarify the extent of human creative control over the final work.

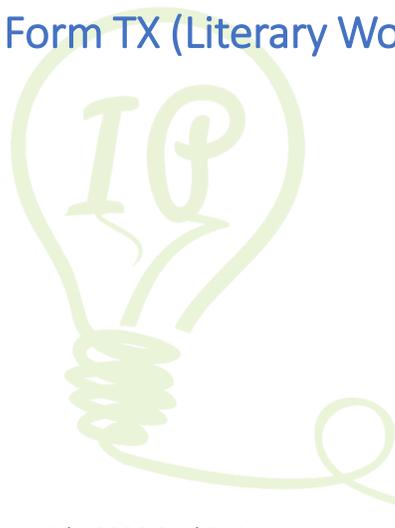
# Step 2: Choose the Appropriate Form

## Form VA (Visual Arts)

- Typically used for comic books due to their visual nature.
- Ideal when the primary content is visual, such as original sketches and artwork.
- Protects the artistic elements that are fixed in a tangible medium.
- Best for works emphasizing visual creativity and original artistic expression.

## Form TX (Literary Work)

- Consider this if the textual content is substantial and integral to the work.
- Suitable when narrative, dialogue, and written elements are rich and central.
- Advantageous if the human-authored script and dialogue are the primary focus of the copyright claim.
- Helpful if there is a pre-existing registration for the original script to streamline linking.
- Emphasizing literary content can be part of a broader legal strategy, especially for adaptations into other formats like novels or screenplays.



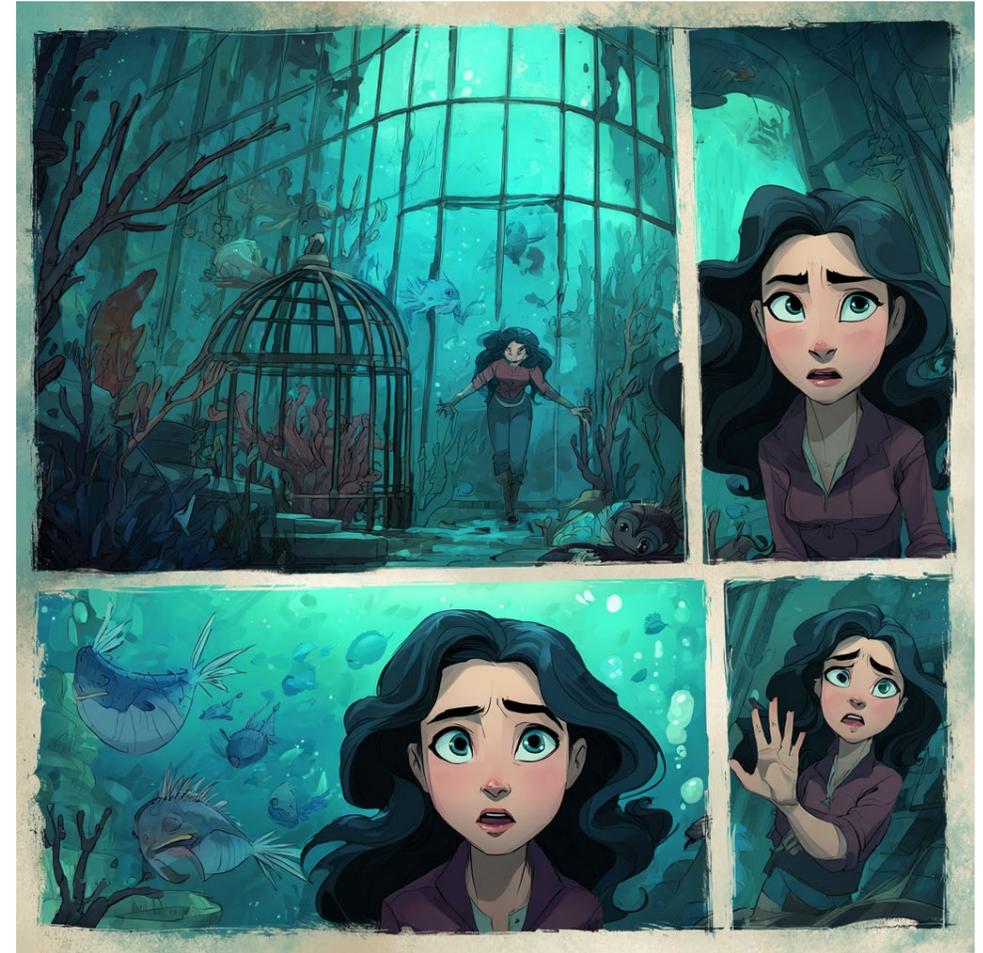
# Step 3: Disclose AI Involvement



- Follow the U.S. Copyright Office guidelines to disclose the inclusion of AI-generated content in your work.
- Clearly describe the extent of human creative control over the final work, emphasizing original human contributions.
- Specify which parts of the work were generated by AI and which were created or significantly edited by humans.
- Disclosing AI involvement helps clarify authorship and supports the application under current copyright regulations.
- This transparency is crucial for works that blend human and AI-generated elements, such as hybrid comic books or mixed media projects.

# Step 4: Prepare Deposit Copies

- Submit deposit copies electronically through the USCO online registration portal for visual arts works.
- If electronic submission is not possible, mail physical copies to the USCO.
- Include supplementary materials to demonstrate human authorship, such as the original script (if it already has a copyright registration) and initial storyboard sketches.
- These supplementary materials help clarify the extent of human creative input in the final work.



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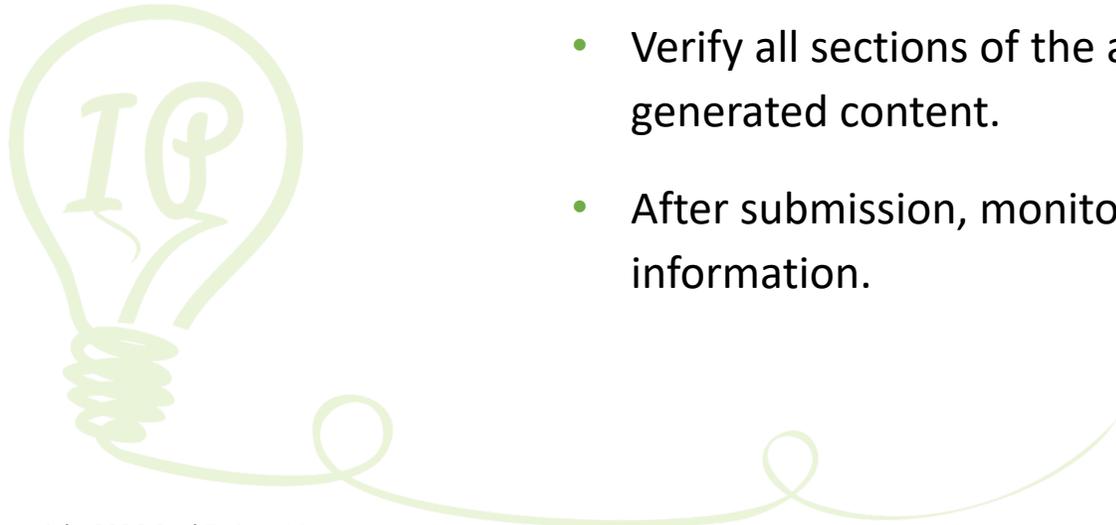
# Step 5 & 6: Pay Fee and Submit Application

## Pay the Fee

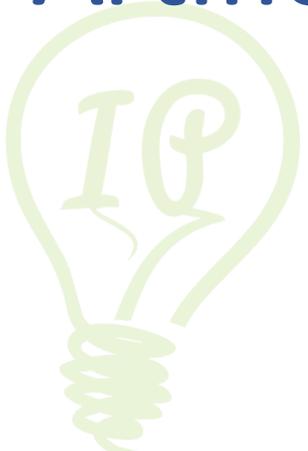
- Complete payment of the copyright registration fee as required by the USCO.

## Submit the Application

- Submit the completed application through the USCO online registration portal (eCO), or by mail if necessary.
- Include all required deposit copies and supplementary materials demonstrating human authorship and AI involvement.
- Verify all sections of the application are filled accurately, including disclosure of AI-generated content.
- After submission, monitor the application status for approval or requests for additional information.



# Navigating Legal and Policy Challenges in Artificial Intelligence



# Training Data & Copyright Challenges

Training AI on copyrighted works raises key legal questions about reproduction rights, derivative works, and fair use, creating uncertainty and potential litigation risks.

## Key Issues in AI Training Data

Generative AI models train on vast datasets including copyrighted works.

This creates uncertainty and risk for developers and creators in the evolving AI landscape.

## Key Challenges

- AI training datasets often contain copyrighted works, raising reproduction rights concerns.
- Debate over whether AI outputs are derivative works under copyright law.
- Fair use in AI training remains legally uncertain and debated.
- Legal ambiguity poses risks for developers and content creators.

# Fair Use Analysis Framework

## Purpose & Character

Assesses whether the use is transformative and non-commercial versus merely commercial exploitation. Transformative uses that add new expression or meaning weigh in favor of fair use.

## Nature of the Work

Considers whether the original work is more factual or creative. Use of factual works leans toward fair use, while highly creative works weigh against it.

## Amount & Substantiality

Evaluates how much of the original work is used. Copying entire works generally weighs against fair use unless necessary for a transformative purpose.

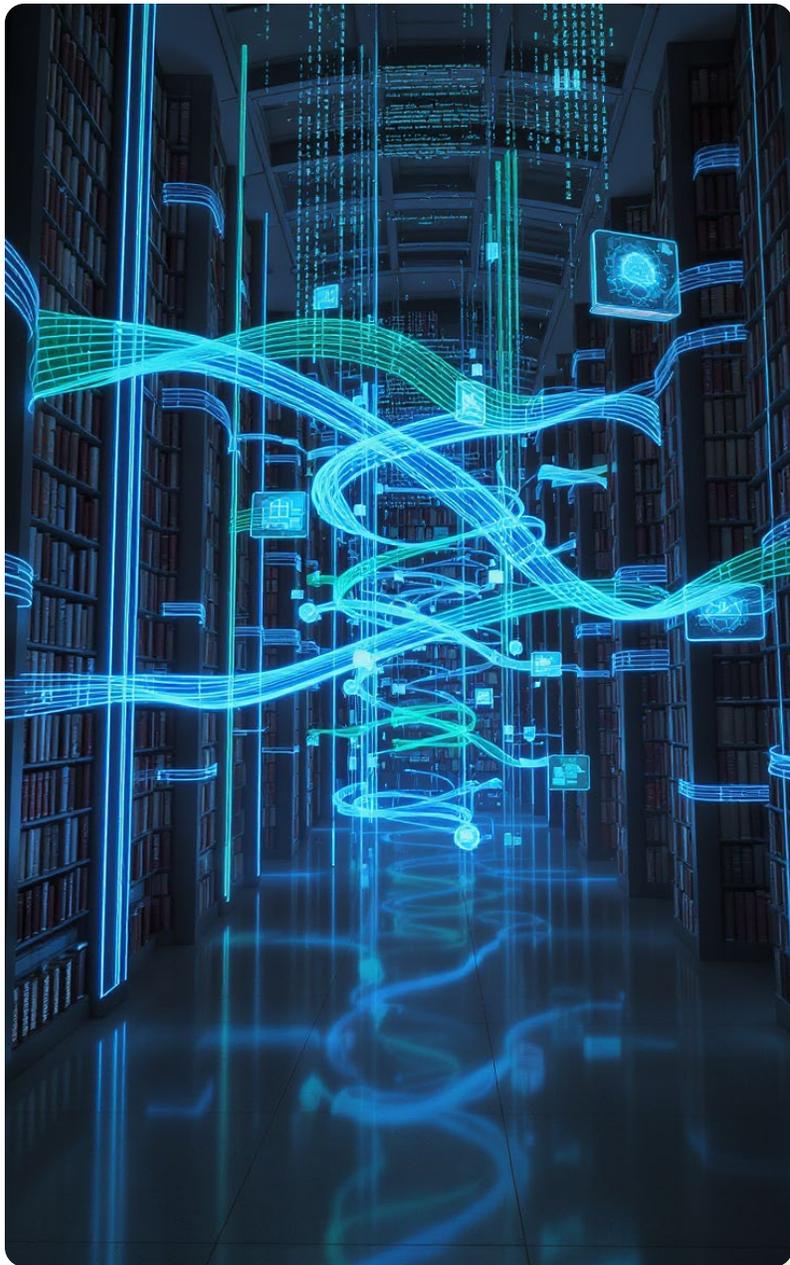
## Market Effect

Examines potential market harm, such as lost sales or licensing opportunities. Unlicensed uses that substitute for originals weigh heavily against fair use.

# Factor 2: Nature of the Work

- The nature of the copyrighted work plays a critical role in fair use analysis for AI training.
- Datasets often include highly creative works such as novels, artworks, and music, which typically weigh against a finding of fair use due to their expressive nature.
- Conversely, factual or functional works like code, news articles, or technical manuals tend to favor fair use because they contain less original expression and more informational content.
- Although this factor is generally less influential than others, its presence can tip the balance, especially when training relies predominantly on creative works rather than factual ones.



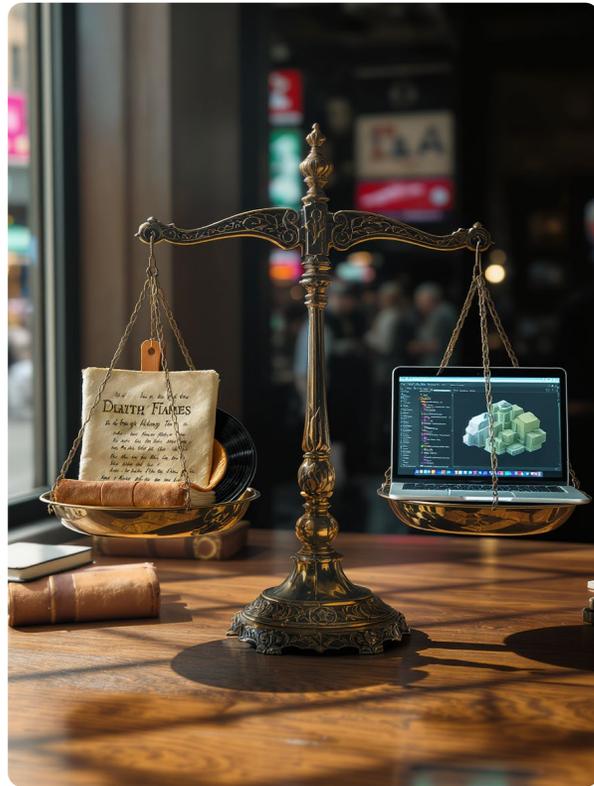


## Factor 3: Amount & Substantiality

- AI training typically involves copying entire works, a factor that generally weighs against fair use.
- Courts have occasionally allowed full copying if it is necessary for a transformative purpose, such as in the Google Books case.
- However, there is ongoing debate about whether wholesale ingestion of copyrighted materials is a reasonable practice for AI training.
- Developers argue that massive datasets are essential for building effective models, while rights holders contend that copying entire expressive works is excessive and substitutes for licensing.
- Safeguards like preventing verbatim output reproduction may help mitigate concerns but do not eliminate the fundamental tension between the scale of copying and fair use protections.

# Factor 4: Market Effect

Market effect is the key factor in fair use analysis due to its direct impact on licensing markets and creator incentives.



## Market Effect Analysis

This factor evaluates how AI training affects the economic market for copyrighted works.

Harms include lost sales if AI substitutes originals, market dilution from excess AI content, and lost licensing revenue.

## Key Market Impact Points

- Lost sales if AI outputs replace original works.
- Market dilution from excessive AI-generated content.
- Lost licensing revenue opportunities for creators.
- Licensing markets strongly influence fair use outcomes.

# The Rise of AI Copyright Licensing



## Legal Uncertainty and Litigation Risks

Courts remain divided on whether AI training on copyrighted content qualifies as fair use, leading to significant exposure to multi-billion-dollar liabilities for unlicensed use.



## Market Response and Licensing Deals

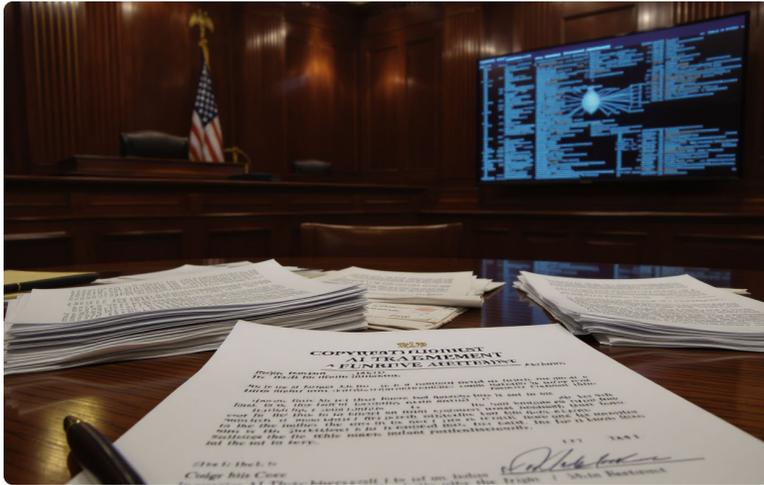
Despite ongoing litigation, major tech companies like OpenAI, Microsoft, Amazon, and Meta are proactively securing licensing agreements with publishers to access authorized, high-quality data.



## Motivations for Licensing

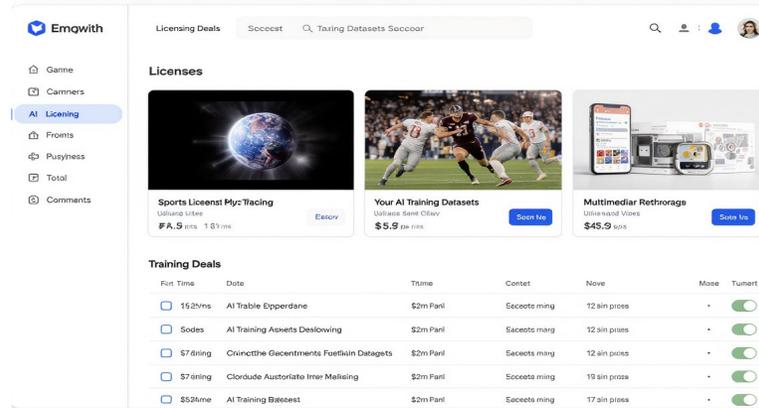
Licensing helps companies mitigate legal risk, ensures access to properly attributed, up-to-date datasets, and builds trust with copyright owners and the public.

# Case Studies & Industry Trends



## Anthropic Settlement & Meta Litigation

Anthropic resolved a major copyright class action over training on copyrighted books; Meta's case confirmed transformative use, but raised sourcing concerns.



## Emerging Licensing Models

Startups like Protege aggregate audio and video for AI training; sports leagues such as Polish Ekstraklasa license footage for generative video models.



## High-Demand Sectors

Healthcare, finance, and education lead in adopting AI content licensing agreements to ensure legal compliance and data quality.

# The Future of AI Licensing



## Benefits of Licensing

Licensing provides legal protection against litigation, ensures access to curated high-quality datasets, and opens new revenue streams for content owners.



## Policy Considerations

The U.S. Copyright Office is exploring blanket licensing models similar to music industry standards, balancing innovation, creator rights, and national security concerns.



## Market Shift

The landscape is evolving from small, internal AI models to large-scale language models with broad applications, increasing demand for standardized licensing practices.



## Outlook

As AI tools become too popular to regulate without frameworks, licensing will likely become a norm, fostering a sustainable ecosystem for creators and developers.

# Upstream Licensing & Ownership

## © IP Ownership Positions

Licensors must identify clear ownership of copyrighted works to authorize AI training use, ensuring rights are properly controlled and transferred.

## ☐ Creator vs. Publisher Rights

Rights may reside with individual creators, publishers, or both, requiring tailored licensing agreements that respect these distinctions for AI training.

## 🤝 Freelance & Independent Talent

Freelancers often retain distinct rights; agreements must clarify licensing scope and permissions for AI use, especially under work-for-hire frameworks.



# Transaction Practices & Drafting Techniques



## Define Authorship Clearly

Specify distinctions between AI-generated content and human contributions to establish clear ownership and credit in contracts.



## Address Training Data Risks

Include clauses requiring datasets to be lawfully acquired and exclude liability for pirated or infringing materials used in AI training.



## Layered Grant of Rights

Structure licenses separately for input data use, model outputs, and downstream adaptations or derivative works to maintain control.



## Representations & Indemnities

Incorporate warranties on third-party content clearance and data privacy with reciprocal indemnification provisions for protection.



## Audit & Royalty Protections

Build in audit rights for AI-enhanced works and specify royalty mechanisms for fair compensation of hybrid human-AI contributions.

# Word To The Wise

- **Do Not** use AI to draft legal briefs without cite checking
- *Lifetime Well LLC v. IBSPOT.com Inc.* (E.D. Pa. 2025), 25-cv-05135 (D.E. 42)
- Two lawyers with no background in intellectual property law submitted a Motion to Dismiss with fake cites. The case involved claims of trademark and copyright infringement.
- Upon review, the court discovered that the brief included at least eight (8) citations that were either non-existent, misquoted, or drawn from inapposite jurisdictions.
- Judge Kearney issued a fairly scathing decision in a case where 2 lawyers One of the sanctions imposed was for the attorney to send a letter to the ***“President of the Philadelphia Intellectual Property Lawyers Association enclosing today’s Order, this Memorandum, and his artificial intelligence policy and respectfully advise the President of our request these attachments be shared with the Association’s membership during its next Association membership meeting as a lesson on the risks of artificial intelligence and the duties of local counsel as members of the Bar of this Court.”***



## Future Outlook

The Copyright Office's policy confirms that only works with human authorship qualify for copyright, excluding solely AI-generated content.

As AI evolves, the USCO is closely monitoring legal developments and exploring broader copyright issues, including AI training uses and output rights.

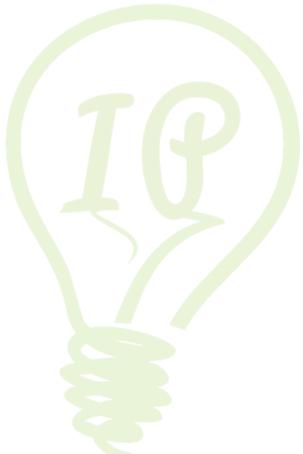
This ongoing review will guide future updates to ensure copyright law protects human creativity while addressing AI challenges.

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[Edward.Behm@saul.com](mailto:Edward.Behm@saul.com)



[Irfan.Malani@saul.com](mailto:Irfan.Malani@saul.com)

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