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Humans are Central to Copyright: Highlights from the U.S. Copyrightability Report and its Potential Implications for Canada

The U.S. Copyright Office released a comprehensive report titled "Copyright and Artificial Intelligence Part 2: Copyrightability " (“U.S. Copyrightability Report”) in January 2025, which delves into the complex issue of copyright protection for AI-generated material.

This U.S. Copyrightability Report reaffirms the necessity of human authorship for copyright protection, a principle deeply rooted in U.S. copyright law. It clarifies that while AI can assist in the creative process, purely AI-generated content cannot be copyrighted. This distinction underscores the importance of human creativity and control in the creation of copyrightable works.

One of the key takeaways from the U.S. Copyrightability Report is the role of prompts and human contribution. The report concludes that prompts alone, no matter how detailed, do not provide sufficient human control to make users of an AI system the authors of the output. Prompts are essentially instructions that convey unprotectible ideas. However, when human-authored inputs are reflected in the AI-generated output, or when humans make creative modifications to AI-generated content, these contributions can qualify for copyright protection. This nuanced approach ensures that the human element remains central to the copyrightability of works involving AI.

The U.S. Copyrightability Report also highlights the international trend on the requirement of human authorship for copyright protection. Countries like Korea, Japan, China, and the European Union have generally agreed that purely AI-generated works cannot be protected by copyright. This global alignment reinforces the principle that copyright should incentivise human creativity and expression. The report's rejection of additional *sui generis* rights for AI-generated content further underscores the sufficiency of existing copyright frameworks in addressing the challenges posed by AI.

Potential Implications for Canada

For Canada, the findings of the U.S. Copyrightability Report may offer interesting insights, particularly in light of the ongoing Suryast case. In this case, the Canadian Intellectual Property Office (CIPO) granted copyright to an AI as a co-author. As we previously discussed, CIPO's decision to register this copyright is being challenged in the Federal Court. The U.S. Copyrightability Report's stance against recognizing AI as a co-author supports arguments against CIPO's decision. More specifically, the U.S. Copyrightability Report states that AI systems cannot be considered co-authors. This is because AI systems are not human beings and cannot form the intention to merge their output with human contributions, which is a requirement for joint authorship under U.S. copyright law. The report clarifies that while AI can assist in the creative process, the resulting work must reflect sufficient human control and authorship to qualify for copyright protection. These types of considerations typically factor into Canadian joint authorship analysis as well (i.e., each author's contribution must be original and there is an intention to collaborate.) We will continue to monitor the developments as the Suryast case unfolds.

We previously discussed some of the challenges facing Canada at the intersection of copyright and AI in Who or What Can be an Author and Let's Chat(GPT). Although this U.S. Copyrightability Report has no authority in Canada it, along with the trends in other countries, may signal the potential path Canada could take in implementing Canadian policies and/or court made decisions. If nothing else, this could prompt the development of clearer standards in Canada for evaluating AI-generated works and reaffirming (or not) the human authorship requirement in Canadian copyright law.

Takeaways

The U.S. Copyrightability Report provides valuable insights for authors and generative AI users that may shape the future of copyright protection for AI-generated works. It emphasizes the importance of human authorship and clarifies the role of prompts and human inputs in the U.S. It may also offer policy guidance that could influence Canadian legislative and judicial developments in copyright. As AI continues to evolve, the law will too but will Canada continue to maintain the core principle of human skill and judgment at the foundation of copyright law? Global trends suggest yes.

The author acknowledges this blog was written with the assistance of a legal AI tool and appreciates the irony.