

Stopping the Regulatory Chase: Charting a Path for Protectable AI-Generated Content

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Abstract

The development of Generative AI (GenAI) is disrupting the jurisprudence of copyright law. As AI-generated content becomes increasingly indistinguishable from human-authored works in appearance, style, and market function, copyright law faces pressure to decide whether, and how, such content should be protected. Existing proposals generally move in four directions. The first is to treat AI-generated content as AI-assisted work and interpret user involvement broadly enough to satisfy the human authorship requirement. The second is to grant only limited or “thin” protection, thereby distinguishing AI-generated content from human-authored works while still recognising some protectable interest. The third is to protect AI-generated content through neighbouring rights or a sui generis right, avoiding the hard question of human authorship. The fourth is to leave AI-generated content in the public domain on the grounds that it lacks human authorship and does not require copyright incentives.

Each approach, however, fails to answer the following question: If AI-generated content receives weaker protection than human-authored works, users will have strong incentives to present AI-generated content as human-authored. This creates an evidence problem that copyright law is poorly equipped to manage. Courts, copyright offices, platforms, and private parties would need to determine not only whether a work contains AI-generated elements, but also whether the level of human contribution is sufficient to justify copyright protection. As AI systems become more integrated into ordinary creative processes, this inquiry will become increasingly impossible. Differentiated protection may therefore produce the very misclassification problem it seeks to solve. However, AI-generated content has social consequences beyond copyright markets, including cognitive offloading, stagnation of human creativity, and risks to the authenticity of information. These consequences require a reliable legal and institutional separation between human-authored works and AI-generated content. Current labelling duties, largely imposed on platforms rather than individual users by certain jurisdictions, are insufficient. They risk becoming a Whack-A-Mole system in which regulators chase undisclosed AI outputs after dissemination. One needs a more coherent and workable copyright governance framework for such AI-generated content.

The paper therefore argues that, by shifting from the current opt-out model to an opt-in model for copyright protection, the risk of AI slop can be greatly reduced. The central question should not be how to exclude AI-generated content from copyright protection, but how claimants should affirmatively establish human authorship before receiving copyright protection. The most complete

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solution would be to reconsider the non-formality principle in international copyright law and permit formal authorship verification as a condition of protection. Because treaty revision is difficult, the paper also explores a more practical path: using copyright registration as an authorship-verification mechanism. On this view, registration would not impose a prohibited formality on copyright as such; rather, it would require the claimant to prove that the work is “authored” before the non-formality rule applies.

Bibliography:

1. Huijuan Peng and David Tan, ‘Copyright in the Generative AI Era: Reimagining Creativity and Fairness’ (2025) 37 Singapore Academy of Law Journal 749.
2. Tianxiang He, ‘Three Obstacles to AI-Generated Content Copyrightability’ (2026) Singapore Journal of Legal Studies, forthcoming.
3. Edward Lee, ‘Prompting Progress: Authorship in the Age of AI’ (2024) 76 Florida Law Review 1445.
4. Zoe B. Kaiser, Kanu Song and Simon J. Frankel, ‘Reconciling Copyright Originality for Photography and Generative Artificial Intelligence’ (2026) 49(2) The Columbia Journal of Law & The Arts, 339.
5. Ioan-Radu Motoarcă, ‘AI, Copyright, and Pseudo Art’ 26(2) Yale Journal of Law & Technology 430.