October 06, 2023
Submitted via *www.regulations.gov*

Re: Docket ID COCL-2023-0006-0001 Artificial Intelligence and Copyright

To Whom It May Concern,

Thank you for the opportunity to comment on the issues raised by the U.S. Copyright Office on August 29, 2023, regarding Artificial Intelligence and Copyright. This comment is written from a personal perspective and my statements do not necessarily reflect the views of my organization of employment. I currently work in an academic library at a publicly-funded land-grant university and am also a graduate student studying library and information science, with research interests emphasizing generative artificial intelligence in information systems. I am responding to the U.S. Copyright request for public comment regarding the copyrightability of materials generated using AI systems.

It is clear from the request for public comment that the Office is seeking comments on the proper scope of copyright protection for material created using generative AI. As noted in the posting for public comment, U.S. copyright law provides copyright protection only to works of human authorship, as demonstrated in *Thaler v. Perimutter,* No. 22-cv-1564, ECF No. 24 (D.D.C. August. 18, 2023), which confirmed the Office's stance and denial of AI-generated work.

I do believe that there are circumstances where a human's use of a generative AI system could involve sufficient control over the technology to result in output that can be considered to be sufficiently authored by a human. Transformative artificial intelligence tools generate sophisticated text that is indistinguishable from that produced by a human. The use of generative AI tools is becoming increasingly common each day, and it is short-sighted to deny copyright protection to materials that are deemed to not demonstrate sufficient human authorship. Furthermore, simply asking creators to disclose AI generated elements in their work does not provide sufficient context for the U.S. Copyright Office to make an informed decision drawing a line between copyrightable and uncopyrightable materials. While tools exist that may identify AI-generated elements in works, none of the tools currently available are sufficiently accurate as to determine definitively the percentage of the work that was created by a human versus AI-generated components.

The U.S. Copyright Office's *Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence* (published March 16, 2023, 16190 Federal Register, Vol. 88, No. 51, 37 CFR Part 202) argues that this policy does not exclude the use of technological tools as part of the creative process to produce copyrighted works. Examples provided include the use of Adobe Photoshop to edit images, or the use of guitar pedals to alter sound recordings. I believe that the use of generative AI to assist in the creation of certain works is not very different from these examples, and thus a more established line must be determined to prevent the accidental use of such tools resulting in copyright protection denial. The line currently drawn between components of works created using generative AI and other technological tools is arbitrary.

The use of generative AI may be as innocuous as an author pasting passages of their unpublished manuscript into generative-AI tools such as ChatGPT and asking for the AI platform to make corrections to the spelling and grammar and help make some sentences flow better. The words were still written by

the author, and the ideas demonstrated in the work are still the thoughts of the author, but it is impossible to draw a line between what is too much AI assistance, at least at this time. Even less innocuous examples may still fairly represent copyrightable works, as humans are quickly learning the most efficient ways to work with generative-AI to produce their creative works through prompt engineering, which is also quickly becoming a desired job skill in today's economy. Prompt engineering takes knowledge, skill, and human cognition to successfully retrieve desired information from generative AI platforms. The skills required for prompt engineering are no different than people acquiring technical skills to operate digital cameras, edit photos in Adobe Photoshop, or creating new creative works using only word or sentence clippings from newspapers.

The U.S. Copyright Office's Guidance issued on March 16, 2023 states "As long as there is sufficient human authorship, the Office will issue a new supplementary registration certificate with a disclaimer addressing the AI-generated material" (p. 6). However, there are no real guidelines that currently exist for what constitutes "sufficient human authorship." How will this currently arbitrary line be established? Will there be a percentage requirement? How then will that percentage be proven? Is it therefore entirely on the creator to prove themselves innocent of potential copyright infringement and therefore be awarded copyright protection, or will technology containing generative AI components be utilized by the U.S Copyright Office to assess the validity of a creator's claims? If the latter option is determined to be necessary, it seems somewhat ironic considering the circumstances.

The U.S. Copyright Office issued a letter (Correspondence ID: 1-5GB561K) regarding the registration of a work titled *Zarya of the Dawn* (Registration # VAu001480196) to Van Lindbery, Taylor English Duma LLP in San Antonio, TX on February 21, 2023. The decision in the letter states "Because the current registration for the Work does not disclaim its Midjourney-generated content, we intend to cancel the original certificate issued to Ms. Kashtanova and issue a new one covering only the expressive material that she created" (p. 1). This decision was issued in February 2023, before the U.S. Copyright Office issued official guidance relating to the use of AI components in copyrighted works in March 2023. Therefore, it is impossible for the author to have known that the U.S. Copyright Office would object to her use of these technological tools to aid in the creation of her work. These types of misunderstandings will continue, especially with the lack of current guidance, and remaining closed-minded to the prevalent use of generative AI tools will only result in further heartbreak for creators and headache for the U.S. Copyright Office. Generative AI tools are not going anywhere, and will only continue to blur the lines between technology and human creation. It is unfair for creators to be punished for using such widely-adopted technology in the production of their works, and it will create even more inequity between individual creators as well, deteriorating the status of copyright protection in the United States.

Sincerely,

C.W.