



The Register of Copyrights of the United States of America

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**Comments of the
United States Copyright Office
to the
World Intellectual Property Organization**

Impact of Artificial Intelligence on IP Policy: Call for Comments

February 14, 2020

The United States Copyright Office appreciates the World Intellectual Property Organization's (WIPO) work on the intersection of intellectual property and artificial intelligence (AI), and is pleased to join the discussion announced in WIPO's December 13, 2019, *Draft Issues Paper on Intellectual Property Policy and Artificial Intelligence (Draft Issues Paper)*.

While many of the technologies employed by AI are new, many of the issues they raise are not. The Copyright Office, which is the primary federal entity charged with administering U.S. copyright law, began thinking about some of these matters related to the intersection of AI and copyright as far back as the mid-1960s. The Office's 1965 Annual Report addressed the concern inherent in machine-generated works, noting that a determination of the line between human and machine authorship would be a "crucial question" to establishing copyrightable authorship.¹ As the Office noted, finding the line between whether a computer was merely a tool or whether a computer independently conceived and executed a work is difficult.

In light of the more recent interest in and development of AI, the Copyright Office believes that now is the time to analyze the intersection of copyright and AI more deeply. The Office has a long history of working with WIPO on copyright issues and has already begun its collaboration with WIPO on analyzing copyright and AI. This began in Geneva at WIPO's September 27, 2019, event *Conversation on Intellectual Property and Artificial Intelligence*, where former Register of Copyrights Karyn A. Temple spoke on the relationship between copyright and artificial intelligence. This was soon followed by the February 5, 2020, symposium *Copyright in the Age of Artificial Intelligence*, a day-long event in Washington DC co-sponsored with WIPO that took an in-depth look at copyright and AI. Director General Francis Gurry opened the widely attended event with a keynote address.² The Director General emphasized the importance of keeping copyright in the AI discussion and noted the value in having different

¹ COPYRIGHT OFFICE LIBRARY OF CONGRESS, SIXTY-EIGHTH ANNUAL REPORT OF THE REGISTER OF COPYRIGHTS FOR THE FISCAL YEAR ENDING JUNE 30, 1965, at 5 (1966).

² See WIPO Director General Speaks on AI and Copyright at Conference in Washington D.C., WORLD INTELL. PROP. ORG. (Feb. 5, 2020), https://www.wipo.int/about-wipo/en/dgo/news/2020/news_0007.html.

countries openly discuss the issues so that they can create their own unique perspectives and paths forward. The rest of the day featured a cross-section of international, private sector, academic, and federal government speakers. Speakers examined complex issues of authorship and ownership in AI-generated works, the appropriate use of copyright-protected works to facilitate machine learning, and AI's potential to encourage the creation of new copyrightable works and also to present challenges—several important topics identified in WIPO's *Draft Issues Paper*. The Office is extremely pleased with the depth of discussion and contributions made at our symposium and is eager to continue exploring these issues.³

Specifically, AI raises many practical and policy considerations in both the copyright sphere generally and in the Copyright Office's work, considerations that are also raised in WIPO's *Draft Issues Paper*. Practically, the Office must adjust to changing technology when administering the U.S. copyright registration system. Each registration application requires a determination on whether a particular work is copyrightable, and the Office will only register original works of authorship created by a human being.⁴ The increase in machine-created works layers new levels of complexity to the U.S. registration process. As such, WIPO's questions on authorship and ownership in AI-generated works are timely, and ones that the Office is also watching evolve. Policy-wise, the Office has long provided advice to Congress, the courts, and intergovernmental agencies on copyright and emerging technologies. The appropriate use of copyright-protected works as input for training AI applications is still being developed in U.S. law, and the *Draft Issues Paper*'s inquiry into infringement of such underlying works as well as the separate issue of later potential infringing uses are similarly important to the Office.

We appreciate the complexities of how technology and copyright are developing, for individuals and for companies, at both a national and global level. As technology evolves and AI becomes more prevalent, it is important to keep a global dialogue open, while encouraging countries to individually explore and establish their perspectives. Each country has its own unique copyright system and, in turn, its own way of grappling with AI issues. A wide variety of views is important to cultivating a balanced and full discussion, and the Office is confident that countries will develop AI viewpoints that best suit their individual systems. We look forward to participating in the continuing conversation on how AI can benefit the copyright community and the public at large.

Respectfully,



Maria Strong
Acting Register of Copyrights and Director
United States Copyright Office

³ The Copyright Office has a webpage dedicated to our February 5, 2020, event, including the agenda and speaker biographies. A video of the entire event will be posted in the near future on this page. See *Copyright in the Age of Artificial Intelligence*, U.S. COPYRIGHT OFFICE, <https://www.copyright.gov/events/artificial-intelligence/>.

⁴ See COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 306 (3d ed. 2017).