Release of US Copyright Office Report on Copyrightability of Artificial Intelligence–Generated Content: Relevance to Design Professional Practice

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On January 29, 2025, the United States Copyright Office (USCO) released Copyright and Artificial Intelligence Part 2: Copyrightability, its second report on artificial intelligence (AI) and copyright regarding copyrightability of AI-generated content (the Report). The Report states that determining copyrightability for "a work created using AI … [requires] fact-specific consideration of the work and the circumstances of its creation" since "various forms and combinations of human contributions can be involved in producing AI outputs."

Regarding so-called "assistive uses" of AI, prompts, expressive inputs, and modification or arrangement of AI-generated content, the USCO indicates that such assistive uses in creating work do not limit the copyrightability of the work. However, further analysis is required if AI is used to make "expressive choices." Design Professionals should consider whether their AI systems "make expressive choices," such as an AI system rendering, sua sponte, a red sweater when prompted with "design a sweater" and no color specification.

The Report notes there may be a time in the future when "prompts can sufficiently control expressive elements in AI-generated outputs to reflect human authorship." However, the USCO notes that prompts that are currently entered into AI systems do not provide a sufficient amount of control for humans to be considered authors of the output generated by those AI systems since "identical prompts can generate multiple different outputs." Design Professionals may want to consider the copyrightability of AI-generated content in light of that determination.

With respect to expressive inputs, the Report states that an AI user will be the author, at least in part, of "AI-generated output where a human inputs their own copyrightable work and that work is perceptible in the output[.]" A Design Professional may therefore be able to copyright output that an AI system generates based on copyrightable input such as their personal design drawings, however that copyright may only extend to the original work.

Regarding the modification or arrangement of AI-generated content, the Report states: "the inclusion of elements of AI-generated content in a larger human-authored work does not affect the copyrightability of the larger human-authored work as a whole." However, the copyright "would not extend to the underlying AI-generated content itself." Design Professionals incorporating AI-generated content into their designs should consider that they may have copyright protection for their design work, but not the incorporated AI-generated content.

In the "International Approaches" section, the Report notes that the countries that have addressed the issue of copyrightability of AI-generated content "so far have agreed that copyright requires human authorship." Design Professionals producing design work outside of the U.S. should consider the copyrightability of AI-generated designs for international projects.

In summary, the USCO Report provides a set of general guidelines on the copyrightability of works that incorporate AI-generated elements without bright line rules for determination. When in doubt, Design Professionals should consider retaining an attorney specializing in intellectual property to evaluate the copyrightability of a particular design.

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