



ARTICLE

AI-GENERATED CONTENT AND COPYRIGHT PROTECTION: STATEMENT FROM THE U.S. OFFICE

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PROPRIÉTÉ INTELLECTUELLE

On February 21, 2023, the U.S. Copyright Office (USCO) took the step of partially revoking the previously granted copyright to the author of a comic strip, which had been produced in collaboration with artificial intelligence (AI). This action was based on the rationale that the AI-generated images did not qualify for copyright protection.

Back in September 2022, the USCO had extended copyright protection to a comic strip titled "Zarya of the Dawn," authored by Kristina Kashtanova. This 18-page comic had been conceived with the assistance of Midjourney, an AI designed to generate images based on textual cues provided by users.

Shortly after the copyright registration, it came to the attention of the Office that Ms. Kashtanova had employed the AI Midjourney to create the comic strip. This information had not been disclosed during the application process, except for a solitary mention of "Midjourney" on the cover alongside the author's name. Consequently, the Office communicated to Kristina Kashtanova its intention to rescind the granted protection for the comic strip "Zarya of the Dawn," unless she could supply supplementary information that substantiated her claim as the author.

Responding through her legal representative, Ms. Kashtanova offered a detailed account of the comic strip's creation process in her letter to the Office. This included an in-depth explanation of the AI Midjourney's mechanics and how she had harnessed this technology to bring the work to life.

In its ruling dated February 21, 2023, the USCO relied on the Copyright Act's provisions, stipulating that copyright protection is bestowed upon original works of authors that are tangible in any form of expression. The Office expounded that the term "works" is universally construed by courts to encompass creations by human authors exclusively.

Nevertheless, despite Kristina Kashtanova's personal modifications to some of the Midjourney-generated images, the Office concluded that these changes didn't demonstrate a sufficient level of "creativity" to warrant the safeguards of copyright.

Additionally, the Office underscored the lack of user control over the image creation process, highlighting that the unpredictability of content generated by Midjourney differentiates AI from other tools utilized by artists in image production.

In consequence, the Office informed the author of the rescission of her initial copyright, substituting it with a fresh certificate that only safeguards the aspects for which Ms. Kashtanova can lay claim to authorship. This pertains to "the text, and the selection, coordination, and arrangement of the text created by the author and the content generated by artificial intelligence," deemed protectable as a compilation.

However, images employed to illustrate the comic strip, having been AI-generated rather than originating from human creation, are deemed ineligible for copyright protection.

While not fundamentally overturning prevailing viewpoints, this groundbreaking decision prompts contemplation about the regulation of AI-generated creations.

It's worth noting that the stance of the U.S. Office isn't entirely rigid and seems to accommodate potential protection for works created with AI assistance, as long as a discernible and significant contribution from the human user is evident. The response of French and European courts to these questions, once they come under scrutiny, will be intriguing to observe to determine whether they adopt a similar approach.

