5 Steps You Can Take to Ensure Your Company's AI-Generated Works are Protected By Copyright

Insights

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As organizations increasingly integrate AI into their creative processes, it's imperative to understand the ins and outs of intellectual property (IP) issues – particularly concerning copyright protection. HR managers and in-house counsel can play a crucial role in ensuring that AI-assisted creations developed by your employees are eligible for copyright protection, thereby safeguarding your organization's best interests. This Insight will provide HR managers and in-house counsel with five key steps you should follow to ensure AI-generated work is copyright protected.

Quick Background on Copyright and AI-Generated Content

The simplest way to explain copyright law and AI-generated work:

- Copyright protection is automatically granted to authors of original works from the moment it is fixed in tangible form. But works generated entirely by machines or through random processes without human involvement are <u>not</u> eligible for copyright protection.

- The U.S. Copyright Office has emphasized that for a work to be protected by copyright, it must be the result of human authorship.

- This means that while AI can assist in the creative process, the final work must reflect significant human creativity and decision-making to be covered by copyright protections.

5 Guidelines to Follow to Protect AI-Generated Work

To help employees create AI-assisted work materials that qualify for copyright protection, consider implementing these five guidelines:

1. Ensure Active Human Participation in the Creative Process

Employees should be actively involved in the creative process. The AI tools they use should <u>assist and enhance</u> their creative process, not <u>replace</u> it. Make sure your employees provide meaningful contributions to the final work product, and their personal input and decision-making should be evident. This means going beyond merely inputting prompts into an AI tool; they should actively shape, edit, and refine the output to reflect their unique contributions.

Employees should also create works that are new and not derivative of existing works. Even when drawing inspiration from other sources, make sure their work adds new expression or meaning.

Since the concept of "active human participation" in AI-assisted creations can be nuanced, you can provide employees with practical examples to help them understand the distinction between protectable and non-protectable AI-assisted works:

Writing Samples

- Not Protectable: An employee inputs a simple prompt into an AI tool (e.g., "Generate a blog post about workplace productivity") and publishes the unedited AI-generated text.

- Protectable: The employee drafts key sections themselves, edits the AI-generated text for structure, adds original analysis, and refines the tone to align with the company's style.

Artistic and Design Work

- Not Protectable: An employee uses AI to generate a series of images and uses them without any modification.

- Protectable: The employee sketches initial ideas, uses AI to refine certain elements, manually adjusts colors, composition, and details, or incorporates AI-generated elements into a broader creative design.

Music Composition

- Not Protectable: An AI system composes an entire piece of music without any human intervention or modification.

- Protectable: A musician uses AI to generate a basic melody, then arranges, orchestrates, and adds lyrics, infusing personal creativity and stylistic elements into the final composition.

Video Production

- Not Protectable: An employee generates a complete video using AI, relying solely on the tool's output without further editing or creative input.

- Protectable: The employee uses AI to create specific scenes or effects, then integrates these elements into a larger video project, adding original scripting, editing, and post-production enhancements.

Software Development

- Not Protectable: An AI tool writes an entire codebase for a software application without human oversight or modification.

- **Protectable:** A developer employs AI to generate code snippets or algorithms, then integrates them into a larger program, optimizing and refining the code to meet specific functional requirements and adding unique features.

Data Analysis and Reporting

- **Not Protectable:** An AI system analyzes data and generates a report, which is then distributed without human review or interpretation.
- **Protectable:** An analyst uses AI to process large datasets, then interprets the findings, creates visualizations, and writes a comprehensive report that includes personal insights, conclusions, and recommendations.

2. Require Documentation

Make sure your employees keep detailed records of their creative process, especially when using assistive technologies. This documentation can serve as evidence of authorship and the originality of the work. These records should include the specific AI tools used, the nature and extent of the AI's contribution, the prompts used with the AI tool (if feasible), and the employee's creative inputs and modifications to AI-generated content.

3. Train Your People

You should offer training sessions on the effective and lawful use of AI tools in content creation. Let your employees know that works generated entirely by AI without significant human authorship may not be eligible for copyright protection. At this training and at all times thereafter, encourage your employees to consult the Legal/Compliance Department if they have questions about the use of AI in their work.

4. Create and Require a Review Process

All AI-assisted works should undergo a review process to confirm that they meet the company's standards for originality and creativity. You should designate a department or individual responsible for evaluating the human authorship present in the work and ensure compliance with company policy.

5. Develop a Company Policy on AI Use That Boosts Copyright Protections

To formalize these guidelines, HR managers and in-house counsel should collaborate to develop a comprehensive company policy on the use of AI tools in content creation. This policy should:

☑ **Define Acceptable Use of AI Tools**: Clearly outline how employees are permitted to use AI tools in their work.

Establish Procedures for Documentation: Detail the requirements for documenting the creative process when AI tools are used.

 Set Standards for Human Authorship: Specify the level of human involvement required in AI-assisted works to qualify for copyright protection.

 Outline the Review and Approval Process: Describe the process for reviewing AI-assisted works to ensure compliance with company standards and copyright laws.

 Provide Resources for Training and Support: Offer information on available training sessions and designate contacts within the appropriate department for employees seeking guidance.

Conclusion

As AI continues to fuel the creation of work product, companies must implement clear guidelines and policies to ensure the materials are eligible for copyright protection. By actively engaging in the creative process, documenting their work, and adhering to company policies, employees can effectively use AI tools while safeguarding the company's intellectual property rights.

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