AI Action Plan Proposal: Reform of US Copyright Office

Written By: Tim Boucher, 12 February 2025 [timboucher.ca/about/]

Introduction & Context:

This document is a submission to the National Science Foundation's Request for Information on the Development of an Artificial Intelligence (AI) Action Plan [FR Doc. 2025-02305], following the White House's January 23, 2025 Executive Order, entitled "Removing Barriers to American Leadership in Artificial Intelligence." The purpose of that Order and subsequent Action Plan are to:

> *"…sustain and enhance America's global AI dominance in order to promote human flourishing, economic competitiveness, and national security."*

The following consists of testimony from an artist and author at the forefront of using artificial intelligence tools for creative production, whose work has been cited by the United States Copyright Office in its most recent report, OpenAI CEO Sam Altman's Senate testimony, Authors Alliance, Coalition for Creativity, and in countless media outlets around the world.

The Case for Reforming or Disbanding the U.S. Copyright Office

Key Points:

- The U.S. Copyright Office enforces a human authorship requirement that is not explicitly stated in the Copyright Act.
- Countries like China, the UK, and Canada recognize certain AI-assisted works, while the U.S. Copyright Office's restrictive stance puts American creators at a huge disadvantage.
- Under the Berne Convention, foreign AI-assisted works may receive stronger protection than those created by American citizens.
- Copyright is automatic under U.S. law, yet the Office maintains an outdated and costly registration system.
- Many of the Copyright Office's functions could be automated or eliminated without affecting copyright protections.

High-Level Recommendations:

- Explicitly adopt as law protections for computer-generated artworks, like the United Kingdom.
- Reduce or eliminate the U.S. Copyright Office's role to remove unnecessary barriers for U.S. creators.

- Strip the Office of its authority to impose policies not explicitly grounded in the Copyright Act.
- Remove the registration requirement for copyright enforcement in court.
- Align U.S. copyright policy with modern technological realities to maintain global competitiveness.

Generative AI Outputs & Copyrightability

In 2024, the US Copyright Office held a public consultation regarding artificial intelligence and copyright, receiving over ten thousand submissions (our original response to which is available here for further reference). From its analysis of submissions, the USCO released in January 2025, Part 2 of its Copyright and Artificial Intelligence report on Copyrightability In it, the Office re-asserted its position that AI-generated artworks cannot be copyrighted unless they meet a still somewhat vague threshold of human authorship.

This decision has broad implications for creators, businesses, and the evolving role of AI in artistic and commercial work. While the ruling appears to align with the Office's long-standing position that copyright requires human authorship, it raises important questions about whether existing copyright law is keeping pace with technological change. Other countries, including the UK, Canada, and China, are taking different approaches, and recognize AI-assisted creativity to varying degrees.

The issue is not just about AI; it highlights broader concerns about the efficiency and purpose of the U.S. Copyright Office in the modern technological age, and how it rigidly applies policies that are not explicitly outlined in copyright law. It also raises questions about how these interpretations affect U.S. competitiveness in emerging creative industries. If AI-generated works are given stronger recognition abroad, U.S. creators and businesses may be forced to navigate complex legal uncertainties that their foreign counterparts do not face, and will be subject to perverse incentives to register their intellectual property abroad under more favorable regulatory regimes.

With the rise of AI bringing copyright law to a crossroads, now is the time to assess whether the Copyright Office's current role and structure serve the needs of a rapidly evolving creative and technological landscape.

International Copyright Comparisons

According to its March 2023 Senate budget written statement, the USCO requested for the fiscal year of 2024, "an overall budget of $103.1 million in funding and 481 full time employees (FTEs)." By way of comparison, the Canadian Intellectual Property Office - which also handles patents and trademarks on top of copyright - employed only around 1,000 people (as of 2019), and the United Kingdom's Intellectual Property Office some 1,600. (In the US, the Patent & Trademark Office separately from the USCO employs some 14,5000 people.)

Canada's CIPO, unlike the US Copyright Office, does not review or assess submissions for copyright registrations. They are granted automatically, and if there proves to be an issue, it ends up being decided in court (which is ultimately what happens in the United States as well, despite the formal approval process required by the USCO).

The United Kingdom's Intellectual Property Office takes it even a step farther: the government does not act as a copyright register at all. Since British law (much like American law) asserts copyright is automatic when works are created in fixed form, registration is considered extraneous. Further, in the UK, computer-generated works have been officially copyrightable since 1988, with the owner of the copyright being the person who arranged to have the work produced. (It is worth noting that their creative economy has not collapsed as a result.)

Clearly, the US Copyright Office arose from a different set of circumstances and responds to a different legal context than the Intellectual Property Offices of the UK and Canada. But the present proposal submits that merely because something is well-established does not mean it should be immune from radical change to a more suitable contemporary form. It is our position that much of the present function of the USCO could be eliminated, and the rest largely automated.

Lack of Statutory Grounding

A key concern with the U.S. Copyright Office's approach is that it continues to enforce policies that are not explicitly required by law but instead stem from its own internal interpretations. The requirement for human authorship is not found in the Copyright Act itself but is an administrative rule derived from the Office's Compendium of U.S. Copyright Office Practices. This means that rather than carrying the force of law as passed by Congress, these policies are discretionary decisions made within a bureaucratic framework. While courts often defer to the Copyright Office's interpretations, there is no binding requirement that they must do so, and it remains an open question whether this approach will hold up in the long term as AI becomes more deeply integrated into creative industries.

This lack of statutory grounding raises the question of whether the Copyright Office has overstepped its role. The agency was not explicitly created by the Copyright Act but rather emerged from administrative necessity within the Library of Congress. It has since grown into a bureaucratic institution that not only processes registrations but also influences major policy debates and public opinion, often shaping copyright enforcement in ways that go beyond the scope of its original mandate. Given that copyright is automatic under U.S. law, the need for a large and expensive registration office is increasingly questionable, particularly when compared to more streamlined systems abroad (such as the Canadian system of optional and automatically-approved registrations, or the British system of no official registration being required at all).

Cultural works created by artists and other creators should not be bound by arbitrary technological restrictions or subject to approval by bureaucrats removed from the creative process. If copyright in the U.S. is automatic, there is no justification for additional bureaucratic gatekeeping. The rights in a work should not vanish simply because an artist chose one tool over another.

Global Competitive Disadvantage

The U.S. Copyright Office's reluctance to recognize AI-generated works also puts it out of step with an increasing number of global competitors. While some countries, like Japan, have taken a more restrictive approach similar to the U.S., others—including China—have begun granting legal protections to AI-generated works in some cases. China's approach in particular demonstrates a willingness to engage with the realities of AI-driven content creation, where AI is considered as just another tool to enable expression by human creators. Meanwhile, the U.S. Copyright Office remains locked in an antiquated anti-innovation interpretation that could leave American businesses and creators at a disadvantage. If foreign jurisdictions develop clearer legal frameworks for AI-generated works, U.S. creators may be left with weaker protections and more uncertainty than their counterparts abroad.

Berne Convention Inconsistencies

Another layer of complexity arises from the U.S.'s obligations under the Berne Convention. Under Berne, member states must provide equal copyright protections to works created in other member countries, meaning that a work copyrighted in another jurisdiction should receive the same protections in the U.S. as a domestically created work. If AI-generated works are recognized as copyrighted works of intellectual property even in a communist country like China, while American creators are denied copyright of their AI-assisted works in the U.S., it raises concerning potential legal inconsistencies. Foreign creators whose works are protected in their home countries might end up being entitled to more recognition in the U.S. than domestic creators whose AI-generated works are rejected outright by the Copyright Office.

A Call For Radical Reform

If the U.S. Copyright Office's current structure is making the United States less competitive and discouraging innovation in the field of AI and computer-generated works, it is worth asking whether the agency remains necessary in its current form. The fact that copyright is already automatic under U.S. law suggests that the role of the Copyright Office could be drastically reduced without harming creators. If other major economies function without an extensive copyright registration system, the U.S. could do the same, particularly as digital record-keeping and AI-driven digital content and licensing management systems continue to improve.

At the very least, reforms should be considered to remove unnecessary barriers for U.S. creators. Eliminating the registration requirement for enforcement in court would be a logical step, as would reducing the Copyright Office's authority to impose interpretive policies that go

beyond the text of the Copyright Act. More fundamentally, the question must be asked whether the Copyright Office itself is still necessary in an era where copyright is automatic and many of its functions could be replaced by modernized, technology-driven solutions.