

## Not Today, HAL: Copyright Still Requires Human Input

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The US Copyright Office (USCO) issued a [policy statement](#) on March 16, 2023, clarifying its position on the use of artificial intelligence (AI) in copyrighted materials. This statement came in the wake of the USCO's recent decision to revoke partial copyright protection over AI-generated images in a graphic novel.

The USCO had previously issued copyright registration to Kris Kashtanova for a graphic novel. Upon learning that the images had been generated using Midjourney, an AI that produces images based on text prompts, the USCO revoked copyright protection over the images consisting of mixed text and images. *Zarya of the Dawn*, Registration No. VAu001480196 (USCO, Feb. 21, 2023) (Kasunic, Asso. Register of Copr.)

The USCO explained that the images lacked the requisite “minimum creative spark” required to make the images copyrightable. The USCO further emphasized that a human author with ultimate creative control is necessary for copyright protection and that providing an AI with word prompts is insufficient to qualify. Therefore, the copyright registration for the images in Kashtanova's novel was revoked. However, because the work consisted of images and text and the text was all written by Kashtanova, that aspect of the work did satisfy the requirements for copyright protection and retained its registration. The USCO did allow that if Kashtanova could exhibit “substantive edits” to an AI-generated image, those edits could prove human authorship and therefore qualify the image for copyright protection.

In its March 16 policy statement, the USCO reiterated that non-humans are firmly excluded from authorship and, therefore, solely AI generated works are ineligible for copyright registration. Applicants should not list AIs as authors, but authors do have a duty to disclose the use of AI in their work and provide an explanation of their own human contribution compared to that of the AI. The USCO explained that the use of AI tools does not necessarily exclude a work from copyright registration. The salient issue in such cases would be the extent of creative control that the human author had over the work and its creative expression. As long as the human-made modifications to the AI-generated work meet the “minimum creative spark” requirement, such works could be subject to copyright protection.

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