

## How to distinguish between Creation and Generation?

“WIPO Conversation 10 on AI Outputs: To protect or not to protect - That is the IP Question,” scheduled for November 5 and 6, 2024

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### Brief statement

I would like to thank the “IP and Frontier Tech Secretariat” of WIPO for this opportunity to share my ideas on how we can distinguish between human creation and AI-generation.

I argue in my latest two articles and one blog post (see below) on AI and copyright law that we should apply a moratorium to the registration of AI-generated content, until we can distinguish between creation and generation. But we could solve this problem. So how to distinguish between human creation and AI-generation?

It is imperative that authors disclose the extent to which the content was created by themselves, and which part and to what extent the content has been generated by AI. A copyright office should not have to rely on the honesty of authors. In addition, it would be burdensome for authors to record the process of each of their creations. AI service providers are already recording every single generated content, if only to learn from these interactions generally (what is the break-off point, which could serve as a proxy of the AI’s success rate) and to personalize the results for the users, unless the user explicitly requests to delete the “memory”.

The U.S. Copyright Office (or any copyright office) should have access to the AI databases of generated products. Then they can compare the copyright applications with the generated products. This comparison can be done by AI, and we can think of a certain percentage as registrable under copyright.

A solution to the input side of the problem is also possible. An optimal solution should reconcile the needs of authors and copyright holders on the one hand, and AI-service providers on the other hand. The authors and copyright holders would like to receive a fair and equitable remuneration, while the AI-service providers would like to have access to high-quality data, such as copyrighted works, so that they can further improve their LLMs and promote the progress of innovation.

Thus, AI-service providers should have access to the works + metadata of these works in the database of the copyright office, so that they can train on these copyrighted works, and have the metadata so that they can remunerate the copyright holders.

A more elaborate version of this statement you can find here:

Danny Friedman, [Copyright Office as Pivot Between Copyright Holders and AI-Service Providers](#), Kluwer Copyright Blog, May 15, 2024.

Danny Friedmann, [Creation and Generation Copyright Standards](#) (forthcoming 2024) New York University Journal of Intellectual Property and Entertainment Law.

Danny Friedmann, [Copyright as Affirmative Action for Human Authors, Until The Singularity](#) (12 December 2023) GRUR International (Oxford University Press).