

The Workshop on Legal and Ethical Governance Challenges Faced by Big Models

February 28, 2023

AI/algorithmic Transparency: a New Role in the Copyright Ecosystem?

Prof. Jacques de Werra

Director of the Digital Law Center



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Outline

- The problem
- The technological solution (?)
- The legal solution(s) (?)

ChatGPT launches boom in AI-written e-books on Amazon



By Greg Bensinger

There were over 200 e-books in Amazon's Kindle store as of mid-February listing ChatGPT as an author or co-author, including "How to Write and Create Content Using ChatGPT," "The Power of Homework" and poetry collection "Echoes of the Universe." And the number is rising daily. There is even a new sub-genre on Amazon: Books about using ChatGPT, written entirely by ChatGPT.

But due to the nature of ChatGPT and many authors' failure to disclose they have used it, it is nearly impossible to get a full accounting of how many e-books may be written by AI.

Distinction

- AI-generated output: “generation of an output by AI without human intervention”
- AI-assisted output: “generated with material human intervention and/or direction”

REVISED ISSUES PAPER ON INTELLECTUAL PROPERTY POLICY AND
ARTIFICIAL INTELLIGENCE

prepared by the WIPO Secretariat

WIPO/IP/AI/2/GE/20/1 REV.

ORIGINAL: ENGLISH

DATE: MAY 21, 2020



Copyright Review Board

United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000

February 14, 2022

Ryan Abbott, Esq.
Brown, Neri, Smith & Khan, LLP
11601 Wilshire Blvd #2080
Los Angeles, CA 90025

Re: Second Request for Reconsideration for Refusal to Register A Recent Entrance to Paradise (Correspondence ID 1-3ZPC6C3; SR # 1-7100387071)



Dear Mr. Abbott:

The Review Board of the United States Copyright Office (“Board”) has considered Steven Thaler’s (“Thaler’s”) second request for reconsideration of the Registration Program’s refusal to register a two-dimensional artwork claim in the work titled “A Recent Entrance to Paradise” (“Work”). After reviewing the application, deposit copy, and relevant correspondence, along with the arguments in the second request for reconsideration, the Board affirms the Registration Program’s denial of registration.



Copyright Review Board

United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000

February 14, 2022

Courts interpreting the Copyright Act, including the Supreme Court, have uniformly limited copyright protection to creations of human authors.

=> Copyright is (still) anthropocentric



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United States Copyright Office

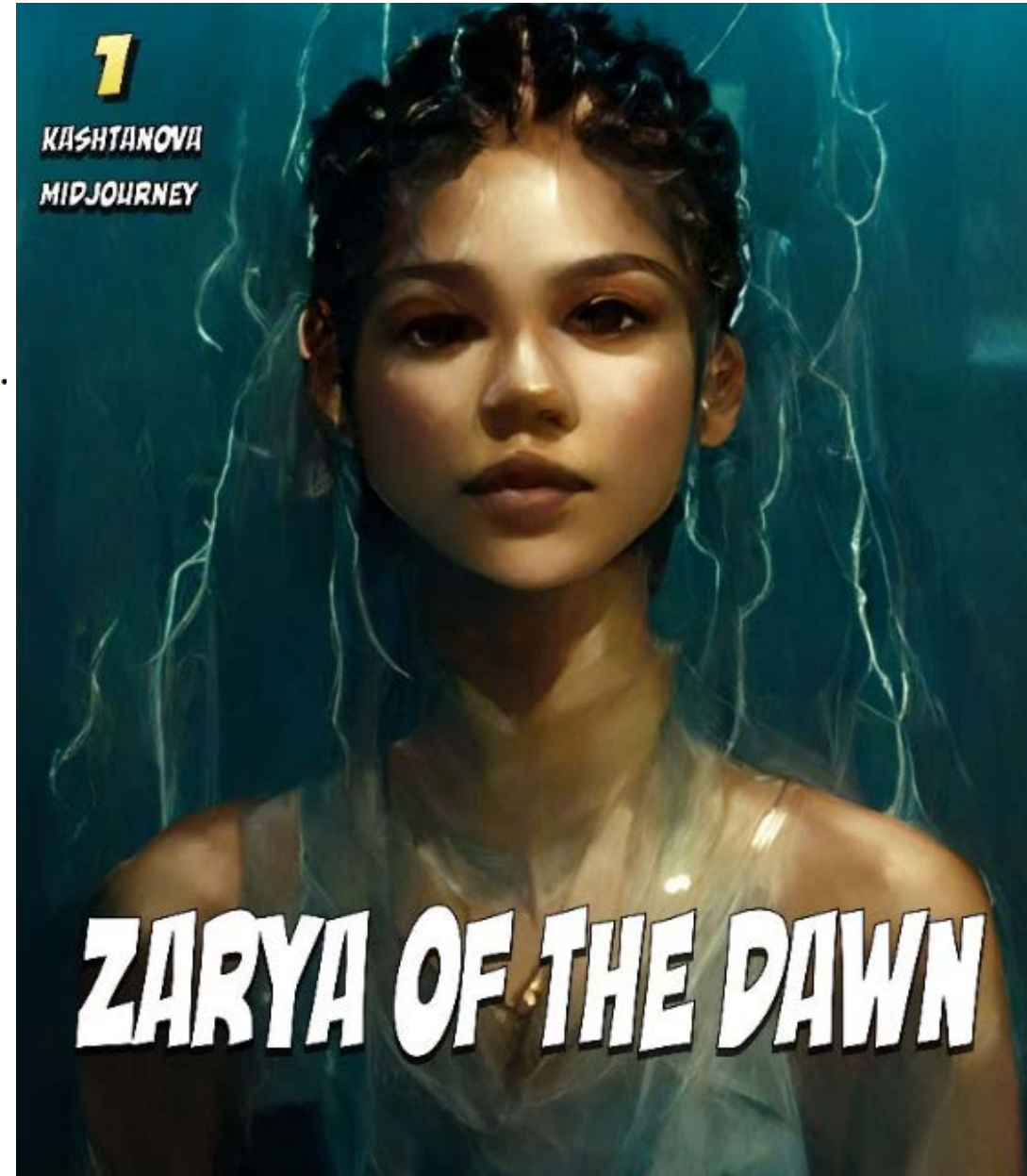
Library of Congress • 101 Independence Avenue SE • Washington DC 20559-6000 •
www.copyright.gov

February 21, 2023

Van Lindberg
Taylor English Duma LLP
21750 Hardy Oak Boulevard #102
San Antonio, TX 78258

Previous Correspondence ID: 1-5GB561K

Re: Zarya of the Dawn (Registration # VAu001480196)





Rather than a tool that Ms. Kashtanova controlled and guided to reach her desired image, Midjourney generates images in an unpredictable way. Accordingly, Midjourney users are not the “authors” for copyright purposes of the images the technology generates. As the Supreme Court has explained, the “author” of a copyrighted work is the one “who has actually formed the picture,” the one who acts as “the inventive or master mind.” *Burrow-Giles*, 111 U.S. at 61.



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ReCreating Europe



AI Music Outputs: Challenges to the Copyright Legal Framework

Oleksandr Bulayenko, João Pedro Quintais,
Daniel Gervais and Joost Poort

2022

Risk of false claims of human authorship

[...] the presumption of authorship helps with addressing the problem of lack of information on the creative process characteristic of AI outputs, it also enables false authorship and ownership claims that may inter alia cause the practical extension of copyright protection in practice to AI-generated outputs that should be unprotected and, therefore, in the public domain.

AI Music Outputs: 

Need for transparency

in the absence of additional transparency measures, the proper substantive assessment of originality along the lines described above will require a reverse engineering of the human interventions or contributions in the use of the AI system leading to a certain output. In practice, this will not be an easy or scalable task.



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January 31, 2023

New AI classifier for indicating AI- written text

We're launching a classifier trained to distinguish between AI-written and human-written text.



Our classifier is not fully reliable. In our evaluations on a “challenge set” of English texts, our classifier correctly identifies 26% of AI-written text (true positives) as “likely AI-written,” while incorrectly labeling human-written text as AI-written 9% of the time (false positives). Our classifier’s reliability typically improves as the length of the input text increases. Compared to our previously released classifier, this new classifier is significantly more reliable on text from more recent AI systems.



Machine Learning

Human Writer or AI? Scholars Build a Detection Tool

DetectGPT can determine with up to 95% accuracy whether a large language model wrote that essay or social media post.

Feb 13, 2023 | Katharine Miller     

Regulating ChatGPT and other Large Generative AI Models

Philipp Hacker, Andreas Engel, Marco Mauer

Working Paper, this version February 10, 2023

The enforcement of any user-focused transparency rule being arduous, it must be supported by technical measures such as digital rights management and watermarks imprinted by the model [138].



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Digital right to algorithmic/AI transparency

23.1.2023

EN

Official Journal of the European Union

C 23/1

European Declaration on Digital Rights and Principles for the Digital Decade

(2023/C 23/01)

Interactions with algorithms and artificial intelligence systems

8. Artificial intelligence should serve as a tool for people, with the ultimate aim of increasing human well-being.

We commit to:

- b) ensuring an adequate level of transparency about the use of algorithms and artificial intelligence, and that people are empowered to use them and are informed when interacting with them;

OECD AI Principles



Transparency and explainability (Principle 1.3)



This principle is about transparency and responsible disclosure around AI systems to ensure that people understand when they are engaging with them and can challenge outcomes.

AI Actors should commit to transparency and responsible disclosure regarding AI systems. To this end, they should provide meaningful information, appropriate to the context, and consistent with the state of art:

> to foster a general understanding of AI systems,

- « Digital right » to (algorithmic) transparency about the non-human source of a creative output ?
- Justification: not being misled about the existence of copyright protection
- Obligation of « creators » to disclose the non-human source of their creations

- Compatibility with international copyright standards?

Art. 5 para. 2 of the Berne Convention:

«The enjoyment and the exercise of these rights shall not be subject to any formality»

- General algorithmic transparency => copyright transparency
- Transparency as an emerging value in the copyright ecosystem:
« transparency obligation» (art. 19 of EU Directive 2019/790
on copyright and related rights in the Digital Single Market)
- N.B. transparency for the benefit of the authors



- Transparency as an emerging value in the IP ecosystem:

WIPO MAGAZINE

Is an international agreement on IP, genetic resources and associated traditional knowledge finally in sight?

February 2023

*By **Wend Wendland**, Director, Traditional Knowledge Division, WIPO and Secretary of the WIPO Intergovernmental Committee (IGC)*

The proposal at the heart of the upcoming diplomatic conference is that applicants seeking patents for inventions that are based on genetic resources and associated traditional knowledge should include certain additional information, as part of the patent application. This includes information about the source or origin of the genetic resources and associated traditional knowledge.

Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

Forty-Sixth Session (Hybrid)

Date and venue

February 27 to March 3, 2023 (*Geneva, Switzerland*) **Hybrid**



- What « sanctions » in case of false declaration of authorship ?

=> Protection against the removal / alteration of digital rights

management (DRM) information (art. 11 of the WIPO World

Copyright Treaty) to be extended to non-copyright protected

works ?

17 U.S. Code § 1202 - Integrity of copyright management information

(a) FALSE COPYRIGHT MANAGEMENT INFORMATION.—No person shall knowingly and with the intent to induce, enable, facilitate, or conceal infringement—

(1) provide copyright management information that is false, or



ChatGPT Heralds an Intellectual Revolution

WSJ | OPINION

Generative artificial intelligence presents a philosophical and practical challenge on a scale not experienced since the start of the Enlightenment.

By Henry Kissinger, Eric Schmidt and Daniel Huttenlocher

Feb. 24, 2023 2:17 pm ET

« Sophisticated signals of falsehood—including watermarks that signify the presence of AI-generated content, which OpenAI is considering—may not be enough; they need to be buttressed by elevated human skepticism »

Thank you for your attention

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