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Armand J. (A.J.) Zottola and Channing D. Gatewood

Development Contract Considerations for AI-Generated Works and Copyright Ownership

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Want to learn more about drafting, negotiating, and understanding intellectual property and technology contracts and have 10 minutes to spare? Grab your morning coffee or afternoon tea and dig into our Tech Contract Quick Bytes—small servings of technical contract insights prepared by our seasoned attorneys. This month, we are discussing artificial intelligence tools and development agreements with a focus on copyright ownership, assignment, and compliance with U.S. Copyright Office (USCO)

guidance.

In a recent ruling from the U.S. Court of Appeals for the D.C. Circuit, the court refused to register a work where its sole author was an artificial intelligence (AI) tool. This holding is in line with the Copyright Office's guidance, as briefed in a previous Quick Byte, advising that AI programs are not eligible to be authors of copyrighted works. Per the U.S. Copyright Office (USCO), human involvement is a necessity for copyright ownership of a work.

It has been an uphill battle for creators seeking copyright registration for AI tool-generated works. However, in the meantime, the D.C. Circuit Court's ruling also reminds us that where copyright law does not cement ownership and rights associated with AI tool-authored works, the terms of a contract are even more essential to fill in the gaps not governed by federal agencies and common law rules.

Parties to a service arrangement calling for the development of AI tools or developments from AI tools should consider the suggestions below, and other additions to their service contracts.

Require Human Involvement When Using AI Tools

Thaler suggests that where an AI tool is the sole author of a work, that work is not copyrightable. Should an individual or entity want to register any deliverables developed for and assigned to it for

copyright protection, the USCO may reject the application if the applicant cannot show that a human was involved in the creation.

Thaler did not provide guidance on whether works with a *mixture* of human and AI input are copyrightable. However, the USCO has published guidance on this question previously, providing that human involvement is a necessity for copyright ownership of a work. Should a copyright application be contested, it will be useful to be able to show that an AI tool did not generate the work on its own.

Include Clear Assignment Language for AI-Generated Content

In *Thaler*, the court also notes that the human-authorship requirement applies to all copyrightable works, including works made for hire. Since per *Thaler*, AI tools cannot be the sole authors of copyrightable works, language designating AI tool-generated works as “works made for hire” in accordance with 17 U.S.C. § 101 alone may be ineffective, if the works themselves are not copyrightable. Including an assignment of AI tool-generated works, independent from the works-made-for-hire doctrine or other IP statutes, allows the parties to determine, contractually, the ownership rights associated with AI tool-generated works.

AI-Generated Works May Not Be Registrable with the USCO

It is common for a service agreement to require the service

provider to cooperate with the customer in registering deliverables prepared for the customer with the USCO, USTPO, or another appropriate federal agency. To set expectations, parties may want to also acknowledge in the contract that “cooperation” does not mean that the service provider can guarantee registrability of any deliverables prepared for the customer.

A party’s service contract can be an effective tool in setting parameters and expectations around use, assignment, and ownership of AI tool-generated works. Entities that are embracing AI tool development, and those that permit its contractors to use AI tools in development work, should assess whether their contracts dictate those expectations.

If you or your company would like to talk about AI tools and service agreements, please contact [A.J. Zottola](#) or [Channing D. Gatewood](#).

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