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### Title

Intellectual Property Legislation and Litigation Update: Copyright Claims Board / Copyright and AI

### Permalink

<https://escholarship.org/uc/item/8nk439sz>

### Author

Briston, Heather

### Publication Date

2023-07-27

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# Intellectual Property Legislation and Litigation Update

Copyright Claims Board / Copyright and AI

Heather Briston, MSI, JD

Director, Scholarship Tools and Methods Program

July 27, 2023

UC San Diego  
LIBRARY

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**Do you know if your  
library/archive has  
opted out of CCB  
jurisdiction, or is not at  
risk?**

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# Copyright Claims Board

- Established by the CASE Act 2020
- Small claims court for copyright
  - No attorneys needed\*; \$30,000 maximum total damages for registered works; (max \$15,000 per work)
  - Can hear claims on 1) registered works, and 2) works with pending applications for registration (different from federal court)
- Blanket opt-out of jurisdiction and venue for libraries and archives (and their employees) available
  - Covers employees making a good faith determination of fair use in course of their work.
  - Keeps the case in federal court, with all established protections



# CCB and Archives

- Supporting researchers – education and awareness
  - Never ignore a subpoena.
  - The CCB can reach a decision whether you participate or not.

# Copyright and Generative AI

- Generative AI – category of web-based tools that use algorithms, data and statistical models to draw reasonable inferences to create content of its own (e.g. text, images, etc.)
- Large language models – the data that train the chatbots to a prompt that you have given to it appropriately.
  - Ex. see - LAION – Large-scale Artificial Intelligence Open Network- they hold the data sets that many tools use and encompasses billions of images/texts from around the web.



# Copyright and AI current state

- Background – photography -to qualify as a work of “authorship” a work must be created by a human being. *Burrow-Giles Lithographic Co.*, 111 U.S. at 58.
- “The Copyright Office will not register works produced by a machine or mere mechanical process that operates randomly or automatically without any **creative input or intervention** from a human author.”

## Authorship

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- <https://copyright.gov/comp3/chap300/ch300-copyrightable-authorship.pdf> U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 313.2 (3d ed. 2021)



# Current state

- Litigation – authors/artists suing AI tool makers for infringement by their training data.
- Diffusion models are trained to re-create images, as opposed to drawing from scratch, by working through training datasets via the text prompts.
- Is it fair use? Transformative – LCA and other groups.
- Algorithmic disgorgement



# What does this mean for archives?

- CURRENTLY
- Layers of copyright – new meaning – unwitting incorporation of copyrighted materials into works.
  - Deeds of gift – indemnification clauses!
- Ethical questions – digital archives as training data?
  - More accurate responses when trained on open access articles

## Copyright Claims Board

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- <https://ccb.gov/> - all things CCB
- <https://ccb.gov/handbook/Opting-Out.pdf> - CCB Handbook – Opt Out instructions/information

## AI and Copyright

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- <https://copyright.gov/docs/zarya-of-the-dawn.pdf> - Zarya of the Dawn Registration Decision
- [https://copyright.gov/ai/ai\\_policy\\_guidance.pdf](https://copyright.gov/ai/ai_policy_guidance.pdf) Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence.
- <https://www.librarycopyrightalliance.org/wp-content/uploads/2023/06/AI-principles.pdf> - Library Copyright Alliance Principles for Copyright and Artificial Intelligence