

# Registering AI-generated works with the U.S. Copyright Office

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# Copyright - The Basics in Brief

- What is it: Bundle of exclusive rights to recreate “original works of authorship”
  - Rights include: copy, perform, display, distribute, sell, adapt, derive
- How to get it: Create the original work
  - Independent creation
  - Sufficient creativity
    - Low threshold: “minimal degree of creativity.” *Feist Publ’ns v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991).
- Who owns it: A work’s creator owns the copyright in the work, unless the copyright is transferred or it is a “work made for hire” by written agreement
- Why register a work with the U.S. Copyright Office (USCO): Registration is required to bring a copyright infringement lawsuit

**2** a

NAME OF AUTHOR ▼		DATES OF BIRTH AND DEATH Year Born ▼ Year Died ▼	
Was this contribution to the work a “work made for hire”? <input type="checkbox"/> Yes <input type="checkbox"/> No		AUTHOR'S NATIONALITY OR DOMICILE Name of Country OR { Citizen of _____ Domiciled in _____	
NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼		WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK Anonymous? <input type="checkbox"/> Yes <input type="checkbox"/> No Pseudonymous? <input type="checkbox"/> Yes <input type="checkbox"/> No <small>If the answer to either of these questions is “Yes,” see detailed instructions.</small>	

**NOTE**  
Under the law, the “author” of a “work made for hire” is generally the employer, not the employee (see instructions). For any part of this work that was “made for hire” check “Yes” in the space provided, give the employer (or other person for whom the work was prepared) as “Author” of that part, and leave the space for dates of birth and death blank.

**b**

NAME OF AUTHOR ▼		DATES OF BIRTH AND DEATH Year Born ▼ Year Died ▼	
Was this contribution to the work a “work made for hire”? <input type="checkbox"/> Yes <input type="checkbox"/> No		AUTHOR'S NATIONALITY OR DOMICILE Name of Country OR { Citizen of _____ Domiciled in _____	
NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼		WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK Anonymous? <input type="checkbox"/> Yes <input type="checkbox"/> No Pseudonymous? <input type="checkbox"/> Yes <input type="checkbox"/> No <small>If the answer to either of these questions is “Yes,” see detailed instructions.</small>	

**c**

NAME OF AUTHOR ▼		DATES OF BIRTH AND DEATH Year Born ▼ Year Died ▼	
Was this contribution to the work a “work made for hire”? <input type="checkbox"/> Yes <input type="checkbox"/> No		AUTHOR'S NATIONALITY OR DOMICILE Name of Country OR { Citizen of _____ Domiciled in _____	
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**3** a

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED This information must be given in all cases.	b	DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK Complete this information ONLY if this work has been published.
Year _____	Month _____ Day _____ Year _____	Nation _____

**4**

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼	APPLICATION RECEIVED
TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼	ONE DEPOSIT RECEIVED
	TWO DEPOSITS RECEIVED
	FUNDS RECEIVED

DO NOT WRITE HERE OFFICE USE ONLY

Source: <https://www.copyright.gov/forms/formtx.pdf>

# Who is the author and owner of the copyright in a work including AI-generated content?

- Ownership of AI-generated content may depend on the terms of the AI service that is used

(a) **Your Content.** You may provide input to the Services (“Input”), and receive output generated and returned by the Services based on the Input (“Output”). Input and Output are collectively “Content.” As between the parties and to the extent permitted by applicable law, you own all Input. Subject to your compliance with these Terms, OpenAI hereby assigns to you all its right, title and interest in and to Output. This means you can use Content for any purpose, including commercial purposes such as sale or publication, if you comply with these Terms. OpenAI may use Content to provide and maintain the Services, comply with applicable law, and enforce our policies. You are responsible for Content, including for ensuring that it does not violate any applicable law or these Terms.

*Source: OpenAI Terms of Use (<https://openai.com/policies/terms-of-use>)*

- What does this wording suggest about who/what is the author of “Input” vs. “Output”?



# Are AI-generated works copyrightable (and registrable)?



*A Recent Entrance to Paradise*



*Théâtre D'opéra Spatial*



*Zarya of the Dawn*



Source: <https://www.copyright.gov/rulings-filings/review-board/docs/a-recent-entrance-to-paradise.pdf>; <https://www.copyright.gov/rulings-filings/review-board/docs/Theatre-Dopera-Spatial.pdf>; <https://www.copyright.gov/docs/zarya-of-the-dawn.pdf>

## Case Study #1: *A Recent Entrance to Paradise*

- Copyright Application identified the author of the digital image as “Creativity Machine”
- Creativity Machine uses a computer algorithm to generate the image **autonomously**



*A Recent Entrance to Paradise*



## Case Study #1: Is *A Recent Entrance to Paradise* copyrightable and registrable?

- No, according to the USCO and more recently, the DC District Court
- Courts have interpreted the statutory phrase “works of authorship” to require **human** creation of the work



*A Recent Entrance to Paradise*



## Case Study #2: *Théâtre D'opéra Spatial*

- Copyright Application identified the author of the digital image as Jason Allen
- But media reports suggested otherwise – heralded for being the first AI-generated image to win an art competition
- Mr. Allen's contribution to the work: inputting a series of (at least 624) text prompt into the Midjourney software program to adjust the scene, tone, and focus relative to the initial output by Midjourney; using Adobe Photoshop to further adjust the image; and using Gigapixel AI to upscale the image



Midjourney Image



The Work

## Case Study #2: Is *Théâtre D'opéra Spatial* copyrightable and registrable?

- No, according to the USCO, because Mr. Allen refused to disclaim copyright in the material generated by AI



Midjourney Image



The Work

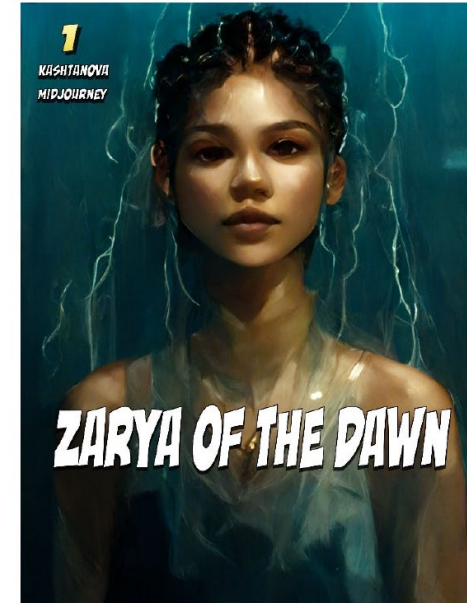
*Théâtre D'opéra Spatial*





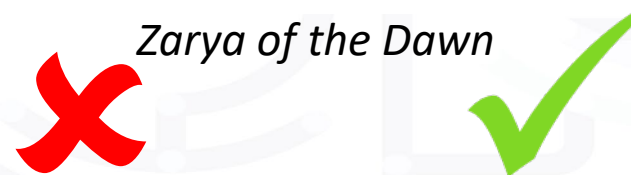
## Case Study #3: Zarya of the Dawn

- Copyright Application identified the author of the comic book as Kristina Kashtanova, and the USCO registered the comic book
- The USCO then learned of Kashtanova's statements on social media that Midjourney AI was used to generate the comic book
- Midjourney AI's contribution to the comic book: digital images
- Kashtanova's contribution to the comic book: all text and the selection, coordination, and arrangement of the text and digital images



# Case Study #3: Is *Zarya of the Dawn* copyrightable and registrable?

- Certain elements are copyrightable, according to the USCO
  - All text and the selection, coordination, and arrangement of the text and the digital images
- Digital images alone are not copyrightable



*Zarya of the Dawn*

# Improving the copyrightability (and registrability) of works including AI-generated content

- Consider adding sufficiently creative human-authored modifications of AI-generated material (e.g., coordinating)
- Specify that portions are AI-authored
  - Not necessary to specify the name of the AI technology
- For more guidance: [https://copyright.gov/ai/ai\\_policy\\_guidance.pdf](https://copyright.gov/ai/ai_policy_guidance.pdf)

← Less Copyrightable

More Copyrightable →



*A Recent Entrance to Paradise*



*Théâtre D'opéra Spatial*



*Zarya of the Dawn*

