# Navigating the complexities of AI and intellectual property regulation



As the role of artificial intelligence (AI) in business and innovation continues to evolve, so too does the need for regulatory frameworks that address its implications. Ongoing discussions in legislative chambers reflect a deeper inquiry into how AI technology intersects with intellectual property (IP) rights. Most recently, in April 2024, the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet engaged in its third hearing concerning the regulatory landscape necessary for AI-assisted inventions and creative works.

The hearing highlighted a spectrum of perspectives among witnesses and legislators regarding the relationship between AI and IP rights. Representative Jerry Nadler (D-NY) articulated a philosophical view, referencing the enduring debate on the nature of human creativity dating back to thinkers like Descartes. He questioned whether existing IP laws are equipped to govern this groundbreaking technology.

Sandra Aistars, a Clinical Professor at George Mason University Antonin Scalia Law School, argued affirmatively, suggesting that the Supreme Court’s test for copyright originality, as established in the landmark 1991 case of Feist Publications, Inc. v. Rural Telephone Service Co., can be seamlessly applied to AI. She asserted that as long as a human author contributes a minimal amount of creativity, copyright protection should ensue. Aistars warned against diminishing the status of human creativity in favour of AI outputs, insisting that to do so would unjustly categorise human input as mere synthetic data.

Joshua Landau, Senior Counsel for the Innovation Policy at the Computer and Communications Industry Association, echoed Aistars' sentiments, emphasising that the concerns raised about AI authorship mirror those presented during the previous technological advancements, particularly in computing. He noted that the central query involves determining whether a work is authored by a human who employs AI as a tool or if a machine becomes the principal creator.

A salient topic of debate centred on the subcommittee's eagerness to proactively extend IP protection to AI-assisted creations. Ranking Member Hank Johnson (D-GA) expressed apprehension about leaving legislative considerations regarding AI to the discretion of the courts or regulatory agencies. His concerns were shared by Chairman Darrell Issa (R-CA), who warned that failure to act could jeopardise the United States’ position as a leader in innovation, in particular against the backdrop of international competition, notably from China, which poses a considerable threat through intellectual property theft.

Despite these calls for robust legislation, the matter of defining the boundary between AI-assisted and AI-generated innovation remains contentious. Kristelia Garcia, a Professor of Law at Georgetown University, underscored the current guidance from the Copyright Office, which suggests that works predominantly created by AI should be excluded from copyright protection. In contrast, Aistars suggested a more subjective approach that considers whether an AI's output aligns with a user’s authentic artistic voice.

Further complicating the matter are the implications surrounding liability for training AI on copyrighted materials. Chairman Issa raised pertinent questions about the connection between fair use during training and the copyrightability of AI-generated works, arguing that a clear link between these aspects is essential for the economic viability of AI developers.

Despite varied opinions on the specifics of authorship and inventorship, one point of consensus emerged from the hearing: there is a widespread agreement among witnesses that Congress should refrain from hastily enacting legislation. Garcia contended that awaiting court rulings on these issues could mitigate the risk of unintentional consequences arising from new laws. Laporte also advocated for cautious deliberation, noting the complexities that current litigation introduces, without the added layer of new regulations.

In summary, the legislative discussions surrounding AI and intellectual property reflect an ongoing effort to navigate the challenges posed by rapidly advancing technology. While the urgency to maintain a competitive edge in the global economy is palpable, the path forward remains intricate, characterised by diverse viewpoints on how best to incorporate AI into existing legal frameworks.

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## References

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* <https://www.rothwellfigg.com/publication-reviewing-2024s-ai-patent-and-copyright-developments> - This publication reviews developments in AI patent and copyright issues in 2024, including updates from the U.S. Patent and Trademark Office and the U.S. Copyright Office.
* <https://ipwatchdog.com/2024/10/28/intellectual-property-policy-look-like-age-ai/id=182610/> - This article discusses the need for intellectual property policies that balance the rights of creators and innovators in the age of AI, emphasizing the importance of licensing agreements.
* <https://www.copyright.gov/> - The U.S. Copyright Office website provides information on copyright law and recent developments related to AI, including guidance on works created with AI assistance.
* <https://www.uspto.gov/> - The U.S. Patent and Trademark Office website offers guidance on inventorship and AI-assisted inventions, reflecting ongoing discussions about AI and IP rights.
* <https://www.congress.gov/> - This official government website provides access to legislative hearings and documents related to AI and intellectual property, including those from the House Judiciary Subcommittee.
* <https://www.georgetown.edu/law/> - Georgetown University Law Center is a source of expert opinions on IP law, including perspectives from professors like Kristelia Garcia on AI-generated works.
* <https://www.gmu.edu/> - George Mason University's Antonin Scalia Law School is associated with experts like Sandra Aistars, who have contributed to discussions on AI and IP rights.
* <https://www.ccia.org/> - The Computer and Communications Industry Association (CCIA) represents tech companies and has been involved in discussions about AI policy and intellectual property.