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**Presentations and Posters** 

#### Title

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

#### Permalink

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

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#### **Publication Date**

2023-07-27

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## Intellectual Property Legislation and Litigation Update

Copyright Claims Board / Copyright and Al Heather Briston, MSI, JD

Director, Scholarship Tools and Methods Program



LIBRARY

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



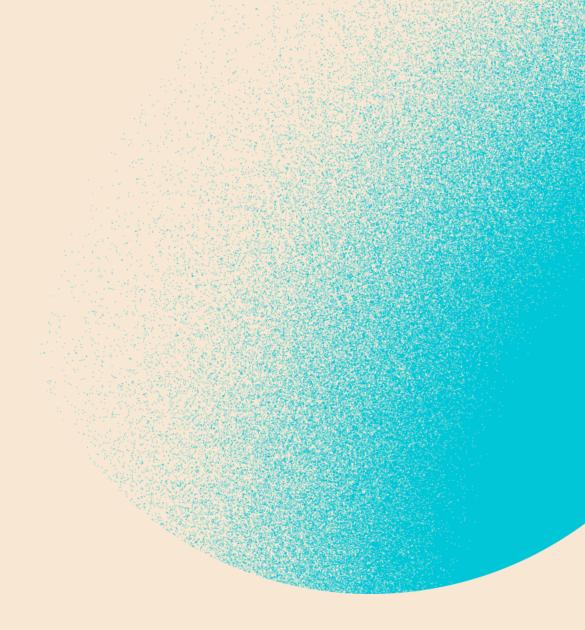
## **Copyright Claims Board**

- 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 Al**

- 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 Networkthey 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

<u>https://copyright.gov/comp3/chap300/ch30</u>
<u>0-copyrightable-authorship.pdf</u> U.S.
COPYRIGHT OFFICE,
COMPENDIUM OF U.S.
COPYRIGHT OFFICE
PRACTICES § 313.2
(3d ed. 2021)



6

## **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**

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

### Al and Copyright

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

