

# AI-created scripts are not ready for prime time (yet)



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**Hollywood writers secured a deal preventing the use of GenAI but why were producers so ready to make the concession? Andy Stroud of Hanson Bridgett digs into the subplot.**

From the advent of TV there have always been writers' rooms—the formerly smoke-filled but now mostly snack-filled spaces where writers gather to swap storylines, hone scripts, and practise the art of writing quality television.

Writers' rooms even survived the pandemic, when rooms became Zooms. However, is the writers' room now going the way of the television antenna? An abandoned relic of a bygone age made obsolete by new technology? Apparently not...yet.

One of the questions central to the recently resolved writers' strike was the role of artificial intelligence (AI) in the writing of future movie scripts and television series. Writers fear that they will soon be replaced by AI, which may be used to craft entire scripts or even television series, without the assistance or input of a professional writer.

That fear has been assuaged, at least temporarily, through the [agreement](#) reached between writers and producers. The new 2023 Minimum Benefits Agreement (MBA) between writers and producers closely regulates the use of AI in the writing of future productions.

AI-generated material is not to be considered either literary material or source material under the MBA. Neither is AI considered a writer under the MBA. The producers cannot require a writer to use AI software such as ChatGPT for their writing and a writer may only use AI with the approval of the producer and under strict guidelines.

## **What's in it for the producers?**

Given the implications of AI as a significant labour-saving device for creating content, the question is why were the producers so willing to bargain away their right to use this new technology?

The answer, I believe, lies in the lack of protection the Copyright Act presently provides for AI-generated materials. Were a television series or movie to be written either solely or primarily through the use of AI software, then it would not be protected by copyright law and could be pirated with impunity.

This is because both the copyright office and the courts now agree that the protections of a copyright and the Copyright Act itself only apply to works created by humans. See, for example, *Naruto v Slater*, 888 F.3d 418, 420 (9th Cir. 2018) (Only humans have standing to pursue claims under the Copyright Act.); *Thaler v Perlmutter*, \_\_\_ F.Supp.3d \_\_\_, (2023 WL 5333236) ("United States copyright law protects only works of human creation").

Indeed, the Copyright Office now requires authors to “disclaim” for copyright purposes any part of their work that was generated by AI, so that part of the work cannot qualify for copyright protection.

Thus, just as AI cannot qualify as a “writer” because it is not human, so too an AI-generated work cannot qualify for copyright protection because it lacks human creation.

The Copyright Office recently demonstrated the implications of these decisions in its determination to deny registration to *Theatre D’Opera Spatial*, a visual work of art generated in part by AI, which was recently submitted for registration.

Although the work was well known because it won the Colorado State Fair’s fine art works competition in 2022, the Copyright Office denied registration because the work was generated by AI, and the author refused to disclaim the parts of the work that were AI-generated as opposed to his own work.

Consequently, the Copyright Office decided that, as the work contained more than a *de minimus* amount of AI content, it did not qualify for registration.

Likewise, under the current status of the copyright law, scripts that are primarily generated through AI would undoubtedly be denied copyright protection. This would mean that the scripts could be copied or used by anyone as they would essentially be in the public domain.

Moreover, although the television programme or movie created using an AI-generated script might qualify for copyright protection as a visual work, the characters and content of the work would presumably not qualify for protection because they were created through AI.

## Humans still required

Hollywood, therefore, finds it best not to rely primarily on AI for generating creative works as the law presently stands, because the content of those works might not be subject to copyright protection.

Not coincidentally, this is almost exactly what was agreed to by both sides in the new MBA. AI cannot be used to write or rewrite literary materials and studios may not use scripts generated by AI as source materials.

Although a writer can use AI to generate ideas for scripts, they must advise the producer of that fact and only use AI under strict guidelines generated by the studios.

No doubt those guidelines serve to ensure that the AI input into the work is *de minimus* at most. In other words, under the MBA, human input is required at every step of the creative chain, mirroring the Copyright Office's present requirement for registration of a work that was generated in part by AI.

Like many IP practitioners, I was initially surprised that the producers did not insist that the old-fashioned writers' room now give way to the new AI computer room as a means of creating content at a greatly reduced cost.

However, when taking into account the present status of copyright law for AI-generated work, it seems clear that the producers were not giving much away at all.

Instead, they were doing as producers typically do, and protecting their significant investment in the work.

This is because, under the present state of the copyright law, AI-generated content is not ready for prime time. Yet.

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