COMMITTEE REPORT

Authorship and Protection Subcommittee
of the Copyright Committee

Copyrightability of AI Prompts:
A Comparative Analysis of the US and the EU

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for the Authorship and Protection Subcommittee
of the Copyright Committee of the International Trademark Association.

Alan Behr, Subcommittee Chairman
Lorin Nimonaj, Law Clerk at Phillips Nizer, New York
Laura Voigtlaender, Associate of Phillips Nizer, New York
Franziska Herlitzius, Law Clerk at Phillips Nizer, New York

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We hope that the findings and perspectives presented in this analysis will contribute meaningfully to future discussions, and policy developments.

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Any decisions involving legal, business, or strategic considerations should be made only after consultation with qualified experts who can assess the specific facts and appliable laws of the relevant jurisdiction.

Although care has been taken to ensure the accuracy and reliability of the information provided, variations in copyright law-particularly regarding the concept of originality-may lead to differences in interpretation across countries and even within jurisdictions. Consequently, the material presented herein may not be universally applicable or exhaustive.

COPYRIGHTABILITY OF AI PROMPTS:
A COMPARATIVE ANALYSIS OF THE US AND THE EU

1. United States

(a) Introduction

To determine if AI prompts created for entry into AI systems (i.e., AI tools) qualify for copyright protection in the United States, it is necessary to analyze their nature and the boundaries of copyrightability. Prompts, which can be textual, visual, or auditory, are the primary means through which users interact with generative AI systems to produce desired outputs.[1]

The result is generated by the AI system based on its internal computations, algorithms and training (meaning the body of available information stored in its memory and kept available for access by the AI tool).[2] Their structure and complexity vary widely: a prompt could be as brief as a single word or as elaborate as a multi-sentence narrative detailing characters, settings, and stylistic influences. A prompt might ask a question such as, "Explain quantum computing in simple terms," issue an instruction such as, "Compose a jazz melody in the style of Miles Davis," or set parameters, such as, "Generate a 3D model of a medieval castle with, parapets, a moat and Gothic arches." Prompts might be used one or more times, contingent on whether the AI generates an acceptable output.[3]

(b) Copyrightability

In the United States, a work is copyrightable if it is original, fixed in a tangible medium of expression, and authored by a human.[4] The threshold for originality is notably minimal and is known as the "low bar" set for copyright protection.[5] A work is fixed in a tangible medium of expression if its copyrightable elements are embodied in a copy by its author and the embodiment is sufficiently permanent or stable to be perceived, reproduced, or otherwise communicated for longer than a transitory duration.[6]

Copyright protects original creative expressions, not the ideas behind them, a concept known as the idea/expression dichotomy.[7] Under the merger doctrine, if there is only one likely way to express an idea, it cannot be granted a copyright.[8] Works that are primarily functional or utilitarian or created for practical application rather than for their intellectual or aesthetic value generally do not qualify for copyright protection.[9] Examples of those works include procedures, systems, and

[1] NPS Library, Using Generative AI Tools Effectively, https://libguides.nps.edu/gen-ai/using-gai ("Prompts are explicit instructions that enable an AI tool to produce the desired output.") (last visited June 17, 2025); TechTarget, AI Prompt, https://www.techtarget.com/searchenterpriseai/definition/AI-prompt (last visited June 17, 2025).
[2] https://www.creatio.com/glossary/generative-ai (last visited June 17, 2025)
[3] U.S. Copyright Office, Copyright and Artificial Intelligence, Part 2: Copyrightability 5 (Jan. 2025), https://www.copyright.gov/policy/artificial-intelligence/ (last visited June 17, 2025).
[4] *Briarpatch Ltd., L.P v. Phoenix Pictures, Inc*., 373 F.3d 296, 305 (2d Cir. 2004); see also, *Kelley v. Chicago Park Dist.*, 635 F.3d 290, 304 (7th Cir. 2011); COMPENDIUM (THIRD) § 306*; Thaler v. Perlmutter*, No. 23-5233 (D.C. Cir. 2025).
[5] See *Feist Publications, Inc. v. Rural Telephone Service Co*., 499 U.S. 340, 358 (1991) ("Original, as the term is used in copyright, means only that the work was independently created by the author (as opposed to copied from other works), and that it possesses at least some minimal degree of creativity.").
[6] See 17 U.S.C. § 101.
[7] See *Golan v. Holder,* 132 S.Ct. 873, 890, 181 L.Ed.2d 835 (2012) ("The idea/expression dichotomy is codified at 17 U.S.C. § 102(b)."); *Oracle v. Google*, 750 F.3d 1339 (Fed. Cir. 2014).
[8] *Kregos v. Associated Press*, 937 F.2d 700, 705 (2d Cir. 1991).
[9] 17 U.S.C.A. § 102(b); *Universal Furniture Intern., Inc. v. Collezione Europa USA, Inc.,* 618 F.3d 417 (4th Cir. 2010)

processes. [10] The scenes à faire doctrine prevents the monopolization of common tropes and elements inherent to a specific idea. [11] The United States Copyright Office generally denies copyright protection for short phrases such as commercial slogans (which might, just the same, be valid trademarks or service marks, depending on other factors) because they lack the minimal creativity required by law. [12] Those criteria and others raise profound questions about the copyrightability of AI prompts, which contain functional aspects,[13] are regarded as merely ideas by some,[14] and are often concise by design and AI tool requirements.

Literary works are "works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film tapes, disks, or cards, in which they are embodied." 17 U.S.C. § 102(a)(1) Both the literal and non-literal components of a literary property are protected by copyright.[15] *See Computer Associates Intern., Inc. v. Altai, Inc*., 982 F.2d 693 (2nd Cir. 1992) The literal components are those expressions that have been reduced to writing.[16] The non-literal features are non-textual elements, such as structure and organization.[17] The arrangement, selection, and coordination of otherwise unprotectable expressions may also merit copyright protection the result is expression crosses that low bar of originality.[18]

It is currently understood in the United States that AI prompts are generally not considered copyrightable, largely because of their functional nature, intended use, and brevity, which typically precludes the possibility of original expression.

Although they are not direct commands (because AI outputs remain unpredictable[19]), they function as requests designed to elicit specific but not precisely realized results. The tool's interpretation and output may vary widely based on its training data and algorithms.[20] Prompts may also be denied protection under the merger or scenes à faire doctrines, or for other reasons.

Under United States copyright law, computer programs are protected as literary works.[21] That protection extends to both literal elements—such as source code (human-readable instructions in

[10] 17 U.S.C.A. § 102(b)
[11] *Mitel, Inc. v. Iqtel, Inc.,* 124 F.3d 1366, 1372 (10th Cir.1997); *Softel, Inc. v. Dragon Med. & Scientific Commc'ns,* 118 F.3d 955, 964 (2d Cir.1997) There is an ongoing debate in federal circuits about whether merger and scenes à faire doctrines should be considered in the copyrightability analysis or the infringement analysis. See *Oracle v. Google*, 750 F.3d 1339 (Fed. Cir. 2014) ("In the Ninth Circuit, while questions regarding originality are considered questions of copyrightability, concepts of merger and scenes à faire are affirmative defenses to claims of infringement." Compare that with *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 387 F.3d 522, 533 (6th Cir.2004) (finding that the district court erred in assessing principles of merger and scenes à faire in the infringement analysis, rather than as a component of copyrightability).
[12] *Feist,* 499 U.S. at 363; *see also* 37 C.F.R. § 202.1(a).
[13] https://www.springboard.com/blog/data-science/ai-prompts/ (last visited June 17, 2025)
[14] U.S. Copyright Office, Copyright and Artificial Intelligence, Part 2: Copyrightability v, 12–13 (Jan. 2025), https://www.copyright.gov/policy/artificial-intelligence/ (last visited June 17, 2025).
[15] *See also Sheldon v. Metro-Goldwyn Pictures Corp.,* 81 F.2d 49, 55 (2d Cir.) ; *Detective Comics, Inc., v. Bruns Publications, Inc.,* 111 F.2d 432, 433 (2d Cir.1940); *Bradbury v. Columbia Broadcasting System, Inc.,* 287 F.2d 478, 482–84 (9th Cir.), *cert. dismissed,* 368 U.S. 801, 82 S.Ct. 19, 7 L.Ed.2d 15 (1961); *Roth Greeting Cards v. United Card Co.,* 429 F.2d 1106 (9th Cir.1970)
[16] Id.
[17] Id. (citing 3 *Nimmer*, § 13.03[A][1], at 13–24)
[18] *Feist* at 358–59, 111 S.Ct. 1282.
[19] U.S. Copyright Office, Copyright and Artificial Intelligence, Part 2: Copyrightability 6 (2025), https://www.copyright.gov/policy/artificial-intelligence/ (last visited June 17, 2025).
[20] https://www.forbes.com/councils/forbestechcouncil/2024/05/09/understanding-the-limitations-of-generative-ai/ (last visited June 17, 2025); https://www.strong.io/blog/applications-of-generative-ai-a-deep-dive-into-models-and-techniques (last visited June 17, 2025).
[21] Id.

languages like Python or Java[22]) and object code (the machine-readable version)—and certain non-literal elements, including structure, sequence, and organization.[23] All software exists to be used—mainly by data inputs entered through specialized interfaces for processing, after some movements through circuitry, by computer chips.

User prompts into AI tools—such as those submitted to generative AI systems like Midjourney or GPT-4 — are also data inputs processed by chips, but they typically differ profoundly in purpose and expression. Most chips are built to do the hard work of science, mathematics and accurate data retrieval. AI chips, on the other hand, are not all that good in STM subjects; think of them as students of the humanities, and prompts inputted into the AI tools operating under those chips are largely intended to elicit not precision but creativity. The result is that the same prompt can (and often does) lead to different results based on the patterns the particular system has learned at the moment it receives the prompt—a response that can change as the tool is given more training—or sometimes just because it has a new idea on how to respond to the same prompt next time. It is as if, were an AI tool a calculator asked what is the sum of two plus two, it might indeed answer four the first time it was asked but reply with a sum of twenty-seven in the next go.[24]

Although textual prompts can be longer and more complex than the data input to more traditional software, prompts are typically utilitarian in nature, intended to instruct or guide an established software to perform a task or generate content.

The short phrases doctrine generally excludes brief and commonplace expressions[25] from copyright protection[26]; however, courts have repeatedly affirmed that brevity alone is not disqualifying whenever original expression is present. As the Federal Circuit held in *Oracle America v. Google*, 750 F.3d 1339, 1362 (Fed. Cir. 2014), "[…] the relevant question for copyrightability purposes is not whether the work at issue contains short phrases but whether those phrases are creative."

In assessing whether some prompts might be protectable, *Star Athletica, L.L.C. v. Varsity Brands, Inc.*[27] offers guidance. In that 2017 case, the Supreme Court held that even minimally original fabric designs are protectible by copyright, even as those intended for a functional purpose. The fabrics at issue were stitched together to create cheerleader uniforms, but the court said that the designs qualified for copyright protection because they were original expressions no matter what functional purpose might be achieved from their use. In theory, at least, a prompt could be original enough and just large enough to be so protectible, regardless of the functional purpose of its use. For example, if a prompt had the originality and creative expression of even a short poem—such as a haiku or a limerick—it could be argued that it could be protected by copyright regardless of its use as a prompt for an AI tool. To show fixation, the prompt's author would need do nothing more than write it down and submit that text as the deposit copy for a copyright application. That would be consistent with the Supreme Court's ruling in *Star Athletica* and in the decisions arising from cases under the

[22] *Lexmark Int'l, Inc. v. Static Control Components, Inc*., 387 F.3d 522, 533 (6th Cir. 2004), *abrogated on other grounds by eBay Inc. v. MercExchange, L.L.C*., 547 U.S. 388, 126 S.Ct. 1837, 164 L.Ed.2d 641 (2006)

[23] *See Atari Games Corp. v. Nintendo of Am., Inc.,* 975 F.2d 832, 838 (Fed.Cir.1992) ("As literary works, copyright protection extends to computer programs."); *SAS Inst., Inc. v. World Programming Ltd*., 64 F.4th 1319, 1326–27 (Fed. Cir. 2023); *Softel, Inc. v. Dragon Med. & Sci. Communs.,* 118 F.3d 955, 963 (2d Cir.1997), *cert. denied,* 523 U.S. 1020, 140 L.Ed.2d 466, 118 S.Ct. 1300 (1998).

[24] *See* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC11326001/ (last visited June 17, 2025).

[25] *See, e.g., Peters v. West*, 692 F.3d 629, 635 (7th Cir. 2012) (noting that the maxim 'what does not kill me, makes me stronger' lacks the requisite originality to be protectable); *Acuff-Rose Music, Inc. v. Jostens Inc.,* 988 F. Supp. 289, 294 (S.D.N.Y. 1997).

[26] *See* Copyright Review Board Decision Letter for (Untitled) SR # 1-7780378501, dated September 12, 2022, available at https://www.copyright.gov/rulings-filings/review-board/docs/Untitled.

[27] *Star Athletica, L.L.C. v. Varsity Brands, Inc*., 137 S. Ct. 1002 (2017).

precedent set by that case, but that simple proposition apparently has not yet been tested in litigation. It is a stretch to consider AI prompts in this manner—perhaps being more of a theoretical exercise in the manner of debating how many angels can dance on the head of a pin than a point of pressing legal concern. Surely, among the many millions of prompts entered daily (perhaps hourly) now, the foregoing analysis is unlikely to apply to more than a few, but it is indeed theoretically possible. And to take that taffy-like stretch yet farther:

(c) Fair Use

Assuming that an IA prompt would be found to be protectible by copyright as a short literary work, an obvious next question would be whether the use of it for the practical purpose as an AI prompt would be deemed fair use under the Copyright Act.[28] There is case law about whether and to what extent published works can be copied to train AI models, but those decisions are outside the scope of this examination. Here, we are considering the unique question about whether the use of a theoretically protectible prompt to reach into the "knowledge" of the trained model would be fair use.

We can quickly examine the four fair use factors under § 107:

1. **Purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes.** In simple terms, the use of a literary work as a prompt, if the work had been written or published for profit, is less likely to be seen as fair use than the use of one written or published for educational or noncommercial purposes. As part of any such analysis, the question would likely be asked whether the new use was "transformative"—likely meaning, in this case, if the use as a prompt would be far from the point for which the prompt were originally authored**.**

2. **Nature of the copyrighted work.** Oversimplified, the more original or imaginative the prompt, the more likely this factor would weigh in favor of the copyright holder. We are talking about short works here, so moving this factor into the column against a finding of fair use could prove to be a challenge in many imaginable instances.

3. **Amount and substantiality of the portion used in relation to the copyrighted work as a whole.** We are presuming that the use is of the whole work, so that could potentially weigh against a finding of fair use.

4. **Effect of the use upon the potential market for or value of the copyrighted work.** It is not likely that the owner of a work used as an AI prompt is marketing it for that purpose or expects to make money from such a use, so that could prove a challenge in an attempt to blunt a fair use defense.

And put aside the theoretical questions of law in favor of a more practical one: if someone uses a short literary work as a prompt, unless the AI model were programmed to be aware of that happening and to sound an alarm to others, how would the owner of the copyright in the prompt ever know that his or her legal rights were now implicated? If that were to become known and

[28] 17 U.S.C. § 107.

litigation were to follow, how would that all come out? It is hard to say, and we are now in an area of very abstract thinking that need not be pursued just yet. It illustrates again why so much about the law surrounding AI is not yet known and what is known is thinly developed. But this is the first time in human history anyone has had to turn on a screen and sincerely wonder if the person addressing him is really a person and not an imposter generated by an AI model that is mimicking (at least for now) sentience. Compared even to that small new perplexity, the current gaps in the law are but a small nuisance as humanity collectively works its way through what AI has done and what it yet will do.

2. The Copyrightability of AI Prompts under European Union, German and United Kingdom Law

Although United States copyright law has yet to provide clear guidance on the protectability of AI prompts, similar uncertainty exists abroad. As questions about prompt authorship and originality continue to emerge, it is instructive to examine how other legal systems address these issues. The following section turns to European frameworks—specifically those of the European Union, Germany, and the United Kingdom—to explore whether and how prompts might qualify as protectable works under their respective copyright standards.

The legal foundation of copyright protection in the European Union is based on the principle of the "author's own intellectual creation," a standard established by the Court of Justice of the European Union (CJEU) in *Infopaq International A/S v. Danske Dagblades Forening*[29] and further refined in *Eva-Maria Painer v. Standard VerlagsGmbH*[30] and *Football Dataco v. Yahoo!* [31]. This standard reflects a personalist conception of copyright, emphasizing the connection between the author and their work rather than focusing solely on commercial value. A work is protected only if it reflects the author's personality through free and creative choices excluding outputs that are mechanical, predetermined, or the result of purely technical processes.[32]

This approach is embedded in Directive 2001/29/EC (the "InfoSoc Directive") [33], the principal legal instrument harmonizing copyright across the EU. Recitals 10 and 11 highlight the importance of protecting authors and ensuring fair remuneration as a means of encouraging cultural and creative development. Articles 2 and 3 enshrine core exclusive rights, including the right of reproduction and the right of communication to the public, in a technology-neutral framework. However, as clarified in Recital 11, protection applies only to the *expression* of ideas—not to ideas, procedures, methods of operation, or mathematical concepts themselves. Article 11 also confirms that moral rights remain subject to national legislation.

The EU framework is further supported by sector-specific directives, including Directive 2009/24/EC on computer programs, Directive 2006/115/EC on rental and lending rights, and Directive 2019/790/EU (the Digital Single Market Directive), which expands rights in the context of digital and user-generated content. [34]

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[29] C-5/08, ECLI:EU:C:2009:465 (July 16, 2009).
[30] C-145/10, ECLI:EU:C:2011:798 (December 1, 2011).
[31] C-604/10, ECLI:EU:C:2012:115 (March 2, 2012).
[32] C-145/10, at 87; Xiao, "Decoding Authorship: Is There Really no Place for an Algorithmic Author Under Copyright Law?", IIC 5, 11 (2023).
[33] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, 2001 O.J. (L 167) 10.
[34] Directive 2009/24/EC, 2009 O.J. (L 111) 16; Directive 2006/115/EC, 2006 O.J. (L 376) 28; Directive 2019/790, 2019 O.J. (L 130) 92.

Despite this harmonization, the practical application of copyright law remains largely national. While the CJEU has established a unified standard for originality, the classification of what constitutes a protectable work, such as whether something qualifies as a literary, artistic, or musical work, is generally left to the domestic laws of member states.

In the context of artificial intelligence, the CJEU has not yet addressed whether works generated by AI systems may qualify for copyright protection. Policy statements and Council Conclusions indicate, however, a clear consensus: protection under EU copyright law requires human authorship. It has long been understood in the EU that works generated autonomously by machines, without meaningful human input, are generally considered ineligible.[35] That position aligns with the Berne Convention's principle that copyright is a right belonging to human creators.[36]

Although prompts authored by humans and expressed in text may resemble literary works, their copyrightability in the EU ultimately depends on whether they meet the originality threshold under EU law. This requires that the prompt result from the author's free and creative choices, rather than serving merely as a functional instruction. The classification of prompts as literary or artistic works remains a matter for national law, but across the EU, protection applies only where a prompt reflects individual expression and personal authorship—criteria that exclude generic, utilitarian, or purely technical formulations. Human-authored prompts, particularly when expressed in text, may resemble literary works in form. However, under EU law, protection is not granted based solely on format or communicative function. A prompt must reflect the author's individual expression and result from free and creative choices. Purely functional, generic, or technically necessary formulations—such as straightforward instructions to an AI system—will not meet that threshold. Although national law determines whether a specific type of work falls within a protectable category, the overarching requirement of originality applies uniformly across the EU. Accordingly, a prompt may be protected as a work only if it demonstrates a level of creativity that expresses the author's personal intellectual contribution.

(a) Germany as a Model of Implementation

The German copyright system offers a robust example of how the European Union's author-centric principles are implemented at the national level. The German Copyright Act (*Urheberrechtsgesetz,* commonly known as the UrhG) reflects both the EU standard of originality and Germany's longstanding tradition of personal authorship, known as the *Schöpferprinzip*[37] (§ 7 UrhG). Under § 2(2) UrhG, a work is protected only if it constitutes a *persönliche geistige Schöpfung*—a personal intellectual creation. That aligns with the CJEU's interpretation in *Infopaq*, under which originality requires the expression of the author's own intellectual creation and excludes subject matter that is merely functional or technically determined.[38] Section 7 UrhG further clarifies that authorship can only be attributed to natural persons. Accordingly, German law categorically excludes autonomous AI systems from qualifying as authors, a position consistently supported by legal scholarship and official policy. The originality threshold (*Gestaltungshöhe*[39]) under German copyright law is relatively low, though not without limits. Protection may extend even to simple or utilitarian works under the *kleine Münze* ("small coin") doctrine, provided they show minimal individual intellectual

[35] Council of the European Union, "Council Conclusions on the Protection and Enforcement of Intellectual Property Rights – Challenges and Opportunities for the Future", Doc. 16710/1/24 REV 1, at 5 (2024).
[36] Id.
[37] Wandtke/Bullinger, Urheberrecht, § 7 UrhG, paras. 13–15 (6th ed. 2022) (Ger.).
[38] *Infopaq*, ECLI:EU:C:2009:465.
[39] Wandtke/Bullinger, Urheberrecht, § 2 UrhG, paras. 23–25 (6th ed. 2022) (Ger.).

effort.[40] Traditionally, that lower threshold has been more readily accepted in areas such as fine arts, literature, and music.

The BGH's decision in *Geburtstagszug* marked a pivotal development in German copyright law. The court held that a children's toy train could be protected under copyright despite its utilitarian function, recognizing that even a work of applied art may qualify for protection under the doctrine *kleine Münze* if they exhibit discernible creative choices.[41] That effectively softened the historically higher bar for the applied arts and signaled a more inclusive approach to originality in design contexts, bringing it closer to the standard for other artistic fields.

That development could prove to be important in the context of AI prompts, which theoretically can represent individual intellectual expressions. If courts continue to adopt a more inclusive view of originality, as suggested in the *Geburtstagszug* case, prompts that demonstrate even a modest level of creativity could qualify for copyright protection, despite their practical applications.

It remains a question, but it could be asserted that AI prompts, when authored by a human and expressed in text, can qualify as *Sprachwerke* (linguistic works) under § 2(1) No. 1 of the German Copyright Act (*Urheberrechtsgesetz*, UrhG), if they meet the originality requirement in § 2(2) UrhG.

Although German courts have yet to address that question directly, such a finding could align with established principles on the protectability of linguistic expression in German copyright law.

Under § 2(1) UrhG, *Sprachwerke* include both written and oral expressions and are not limited to traditional literary forms. Protection extends to speeches, letters, news articles, and more broadly to any linguistic expression that reflects individual creative input. German legal doctrine interprets language expansively to include not only familiar modern languages (such as German or English), but also artificial and symbolic systems such as Esperanto, international sign language, mathematical expressions, or maritime flag codes as long as they convey meaning. *Sprachwerk* must consist of signs governed by rules that allow a recipient to derive meaning. Expressions devoid of intelligibility, such as random characters or uninterpretable (by human) computer code, fall outside the scope of protection.[42] On that basis, AI prompts could fall within the formal scope of *Sprachwerke*: they are text-based, semantically meaningful, and can be structured in a natural language. However, not all intelligible prompts would meet the threshold of originality (*persönliche geistige Schöpfung*) under § 2(2) UrhG. Mere intelligibility or completeness is insufficient; the prompt must reflect the author's individual creative contribution. Any protectable expression must be in the construction of the prompt itself. That view is supported by recent academic commentary[43] and policy statements from the Federal Ministry of Justice, which affirm that protection is limited to instances in which the user exerts decisive creative control and uses the AI as a tool, not as a co-author.[44]

In simple terms, the potential protectability of AI prompts under German copyright law must be assessed case-by-case. Courts must determine whether a prompt reflects a *persönliche geistige Schöpfung*, grounded in the author's creative freedom and individual expression. In the absence of

[40] Fromm/Nordemann, UrhG, § 2, para. 213 (13th ed. 2024) (Ger.).
[41] Id.
[42] Id.
[43] Wandtke/Bullinger, Urheberrecht, § 2 UrhG, para. 20 (6th ed. 2022) (Ger.).
[44] Federal Ministry of Justice (Ger.), Artificial Intelligence and Copyright – Questions and Answers 5 (2024), https://www.bmj.de/SharedDocs/Downloads/DE/Themen/Nav_Themen/240305_FAQ_KI_Urheberrecht.pdf (last visited June 17, 2025).

legislative reform, prompts remain subject to the general framework of literary works under § 2(1) No. 1 UrhG and thus to the full rigor of the originality standard.

Although no functional shortcut exists under German law for the protection of prompts, the general copyright regime applies in full wherever the conditions of protectability are met. If a court were to find that a prompt qualifies as a protected linguistic work under § 2(1) No. 1 and § 2(2) UrhG, all associated rights would arise automatically. That includes the author's moral rights under §§ 13 and 14 UrhG: the right to be named as the author and the right to object to distortions, deletions, or other impairments of the work protection as moral rights for AI prompts, as a kind of expression of a person's visions or voice, is obviously a long way off — if even is to come at all.

3. The United Kingdom: A Divergent Statutory Model

The United Kingdom takes a distinct stance to authorship in the context of works involving AI. Section 9(3) of the Copyright, Designs and Patents Act 1988 (CDPA) allows copyright to subsist in "computer-generated" works, defined in § 178 as works "generated by a computer in circumstances such that there is no human author." In those cases, the "author" is deemed to be "the person by whom the arrangements necessary for the creation of the work are undertaken." That provision is generally understood to apply to AI-generated outputs for which no human can be identified as the author in the traditional sense.

However, whenever a human creates a work that satisfies the originality requirement, it falls under the general authorship framework set out in §§ 1(1)(a) and 9(1) CDPA. Section 1(1)(a) provides that copyright subsists in "original literary works," and under § 9(1), the author is the natural person who creates the work. The UK applies a lower originality threshold than the EU or Germany, requiring only that a work reflect skill, labor, or judgment. In that context, some prompts authored by a human might be protected as literary works if they constitute original expression. That may apply even if the prompt serves a functional purpose—such as instructing an AI model—provided it reflects sufficient skill, labor or judgment.

This structure illustrates the UK's more pragmatic and utilitarian approach to authorship. As *Sven Hetmank* and *Anne Lauber-Rönsberg* have observed, the UK system is more open to non-human creativity because it emphasizes operational causality rather than the author's personal relationship to the work.[45] In practice, this means that human-authored inputs and AI-generated outputs may fall under different legal regimes, with distinct implications for the scope and nature of copyright protection. This differs significantly from the German and EU model, where protection is fundamentally tied to the creative personality and autonomy of a human author.

[45] Hetmank & Lauber-Rönsberg, Künstliche Intelligenz – Herausforderungen für das Immaterialgüterrecht, GRUR 2018, 574, 578 (Ger.).

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