

**This comment responds to the Federal Register’s request for comments on intellectual property protection for artificial intelligence innovation.**

A work produced by an AI algorithm or process, without the involvement of a natural person contributing expression to the resulting work, should not qualify as a work of authorship protectable under United States copyright law. There are two reasons for this: (1) the current state of the Copyright Act; and (2) the core purpose of compensation.

First, the Copyright Act rejects any statutory protection to processes. 17 U.S.C. § 102(b) (“In no case does copyright protection for an original work of authorship extend to any idea, procedure, *process*, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.”). AI algorithms or processes could belong to the public domain because their creation consists of elements taken from the public domain, which are not protected by copyright law because they are not “original works of authorship” under the Copyright Act. 17 U.S.C. § 102(a). Indeed, AI algorithms or processes are dictated by external factors, including common features and multiple collaborators intending to automate manual tasks. It has been recognized that certain aspects of the use of building the algorithm may be protectable if it exhibits a high degree of originality in cases of hardware-driven, robotic automation. But the AI algorithm or process, without more, does not offer such a codified solution because it performs based on computerized software at a high rate of speed based on the data entered by its engineer.

Second, the United States Constitution identifies the purpose of the Copyright Act as a means “[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” U.S. Const. art. I, § 8, cl. 8. While an AI algorithm or process can effectuate this constitutional purpose, the core benefit of statutory copyright protection solely for remuneration for advancing a creator’s creative labor and stimulating artistic creativity for the benefit of the public. An AI algorithm or process need not receive compensation for creating any type of expression independently conceived by it. Moreover, the Copyright Act contemplates an inheritance system that allows a creator’s spouse, widow, or child to receive certain rights as a result of the copyright. An AI algorithm or process would not receive that benefit because, by the very state of the Copyright Act and its core purpose, it was not intended for algorithm or process to receive benefits because it is impracticable.

For these reasons, a work produced by an AI algorithm or process, without the involvement of a natural person contributing expression to the resulting work, should not qualify as a work of authorship protectable under the United States Copyright Act.