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States Eye AI Ownership Laws To Fill Federal IP Gaps

By **Ivan Moreno**

Law360 (May 14, 2026, 8:27 PM EDT) -- States are beginning to test whether they can fill a gap left by federal copyright and patent law for works created with artificial intelligence, with Arkansas adopting a first-of-its-kind ownership rule for generative content and lawmakers elsewhere weighing their own proposals.

The law Arkansas enacted last year and proposals in other legislatures raise the possibility of a parallel, state-level system of copyright- and patent-like ownership rights for generative outputs, even as federal law protects only human authorship and inventorship. But attorneys warn that state-by-state ownership rules could create a fragmented legal landscape and trigger federal preemption challenges.

That tension is reflected in the way the Arkansas law was drafted. The statute does not purport to create patent or copyright protections, but instead says a person who provides the input or directive to a generative tool owns the resulting content, as long as it does not infringe someone's existing intellectual property rights.

Arkansas Rep. R. Scott Richardson, a Republican who sponsored the law, said the cautious approach was intentional.

"I was very deliberate about saying this needs to be a minimalist approach," Richardson told Law360. "Let's provide protections for our businesses to be able to implement these technologies with some level of recourse."

Richardson said the concern was that businesses would have no clear legal remedy if competitors or departing employees took with them prompts, workflows or outputs that a company spent significant time and money developing. The law also states that generated content created by an employee within the scope of employment belongs to the employer.

"This is a first step in saying, hey, listen, this stuff should be owned by the creator. The tool in the middle — how they get the information out — is just a tool," he said.

Bills introduced in Iowa this year followed a similar approach, avoiding language that would expressly create copyright or patent protection, suggesting lawmakers are framing generative content ownership as a way to provide certainty for business and creators rather than a copyright or patent overhaul. The bills didn't advance before the legislative session concluded May 3.

The issue the state proposals seek to address echoes concerns raised by **vibe coding**, where developers use natural-language prompts to generate software code that may be unprotected by copyright.

Richardson introduced his Arkansas bill just as a law professor was in the middle of writing an article for the Texas A&M Law Review that was published last month, that said state copyright and patent laws could reemerge as a way to protect AI-enabled creations.

Timothy McFarlin, a professor at Samford University's Cumberland School of Law, said he initially set out to explore a largely theoretical possibility, but Arkansas' legislation showed "it's now actually happening."

Preemption Questions Loom

McFarlin said he has wondered whether states that have considered AI-ownership rights are thinking about federal preemption, given the wording of their proposals.

"Are they really tuned into this being effectively state copyrights and patents in these outputs? Because they're not exactly calling them that," McFarlin told Law360. "I could see that from a strategic standpoint, you don't necessarily gain a whole lot in calling them that, and what you potentially set up is an even clearer preemption argument."

While patents and copyrights are now clearly the realm of the federal government, McFarlin's paper, "The Unexplored Future of State Copyrights and Patents in AI-Generated Creations," points to history showing that was not always the case. He notes that before the first Patent Act and the first Copyright Act enacted in 1790, states issued patents and there were common-law copyrights.

McFarlin said in his paper that if federal copyright and patent law protects only human authors and inventors, then works created with AI may sit outside the federal system in a way that leaves room for state-law ownership rights.

"Then the state's more general power, as recognized under the Tenth Amendment, kicks in," he told Law360, emphasizing that he was not taking a position on whether states or the federal government should create IP rights for generative content.

Maria Anderson, a partner at Davis Wright Tremaine LLP, said the idea of states passing their own AI-work ownership laws in the absence of federal protection is novel and responds to a real gap, but warned that a patchwork approach could create practical problems beyond federal preemption.

"What if states define ownership differently?" she said.

Anderson said there would be "a lot of practical hurdles" and unintended consequences if states enacted their own AI ownership laws, including stifling innovation in states that do not enact their own rules.

"There could be a vastly different enforcement mechanism between states," she said. "There could be vastly different damages awards and equitable relief provided in different states. And ultimately, this can come back to negatively impact the cycle of innovation."

Even if more states follow Arkansas, attorneys also questioned whether these ownership measures would actually change business behavior. Mike Word, a member at Dykema Gossett PLLC, said state laws may be appealing in theory but could be too uncertain for companies to rely on when making major investment decisions.

"I'd be hesitant myself to invest substantially in these types of state laws because I'm just not sure that they would stand up at the end of the day when somebody challenges them in court," said Word, who is co-leader of Dykema's AI and innovation group.

Word said state efforts may help elevate the issue and spur Congress to act, but argued the stronger pressure on federal policymakers may come from global competition if companies conclude that other countries offer clearer protection for generated inventions or content.

"Obviously we're not operating in a bubble of the United States," he said.

Why States Are Acting

For the lawmakers pursuing these measures, the uncertainty at the federal level was part of the reason to act.

Richardson said the Arkansas law grew out of concerns from a constituent whose surveying business was using generative text to reduce the hours it took to come up with a legal description of a property to just minutes. He said he hopes the law, which also grants ownership rights for model training, can give businesses the confidence to conduct AI-related business in Arkansas.

Richardson added, however, that he is willing to adjust the statute as technology and the legal landscape develops. He said lawmakers in other states have expressed interest in Arkansas' law and that he is considering crafting model legislation that other legislatures could follow.

"No one creates a piece of legislation in a vacuum that's successful everywhere," Richardson said. "So you want to be able to get it out in front of people and see how many holes they can poke in it and help you find opportunities for improvement."

Richardson acknowledged that cross-border disputes could be difficult to resolve under a state-by-state regime, saying the federal government will eventually need to establish clearer protections for AI-generated material.

In Iowa, Republican Rep. Ray Sorensen shared some of Richardson's concerns but approached the issue from a different perspective. Sorensen, a muralist who has spent nearly three decades repainting Iowa's Freedom Rock as a tribute to veterans, said his background shaped his view that people should not lose protection for their work simply because they use AI.

"I want to know clearly from an artist standpoint, if I give 90% of the lyrics to an AI tool, and then it helps me come up with that last 10%, does the company that owns the AI tool, do they get royalties? Do I own 100% of the song, or 90% because that's all I did? Where do we draw the line?" Sorensen said.

Sorensen did not bring his bill to a vote because House leadership raised concerns about Trump administration efforts to deter state AI regulation by threatening to withhold funding. He also "had every lawyer in the building telling me I was violating federal copyright," he said.

Another proposal in the Iowa Senate with the same intent as Sorensen's also did not advance before lawmakers adjourned, but Sorensen said he plans to continue working on the issue and hopes state action will eventually push Congress to clarify the law.

"I just want clarity for myself, for fellow artists and for these companies," he said.

--Editing by Brian Baresch.