Does AI generated content commit copyright infringement?

Unless the art is a carbon copy, almost certainly NOT!

There has been a lot of discussion recently concerning the implications of advanced generative algorithms like ChatGPT, Dall-E, Stable Diffusion, and others on our future. Important issues relating to data security and privacy call for in-depth debate. However, since the original works of artists and other creators were utilized to train the AI system, we concentrate on the copyright infringement charges made against them. In the case of image generators, the algorithm is trained on dozens or possibly millions of photos, breaking each image down into its constituent parts, and then creates new art based on these found elements. To achieve ChatGPT or Dall-E levels, additional training and testing are frequently used in the process. Artists claim that using their work to train these models violates their and their works' intellectual property rights. We don't agree!

AI steps into the footprints of generations of humans which have learned by looking at, examining, and breaking down the art of mentors and predecessors before blending the styles into something new. The training of AI on known works of art to generate new content has little difference from what generations of artists have done. AI training demonstrates the formalization of this historical process into an overt exercise that is known and can be examined with data. We know exactly what data was used to train the AI models, unlike in humans where we might know some, but certainly not all influences that trained them. BUT unlike this clear difference in training, the generation of new art is mysterious in both AI and human art. When we ask artists why or how they created a piece of art, they can mention influence as well as emotions or ideas they were trying to capture, but many aspects of the artistic process are ineffable. Similarly, these AI algorithms are incredibly complex and equally difficult to explain. If we question them about why they chose a style or aspect and they may (as in the case of ChatGPT) be able to give some explanation, but like humans this explanation is incomplete and fails to capture the entire generative process.

This debate is likely to grow as generative algorithms expand into new arenas such as books and videos. With the idea of fair use, one might hope that artists (or creators) allow the use of their art to train the AI and in exchange this AI generated art is not copyrighted or sold, but freely available as a public good. In the absence of such fair use, I postulate a two-part test to determine whether the AI should be considered to be breaking copyright.

First, while examining the use of art in training models, persons who allege that the AI is infringing on their copyright throughout the training process should inquire whether the same art (or content) was used to train human artists. Could the human artist have discovered the photos without violating this copyright? Is the art, for example, easily accessible on the internet?

Second, in the case of AI generated art, anyone claiming that a generated item violates copyright should identify the ten artists (or creators) whose style is most similar to yours. Take a random selection of their and your art, 2 or 3 works each. Then, request that the AI create art (or other content) based on your name or works. Take a random sample of two or three of the created pieces. Then, take the artwork to a local art walk, gallery, or even a busy street corner. Begin by pointing out one or two of your own artworks among the available art samples. Then ask them if they can identify any of your other pieces in the sample (give them two or three options). If 8 out of 10 individuals regularly recognize the AI generated pieces as your own artwork, you have a solid claim to copyright based on your unique creations.

My argument that AI generated art does not infringe upon copyright is not done to undersell the value of human artists. Artists represent humanity and our many trials and tribulations. Without artists humanity would be voiceless, irresolute, and destitute. This change requires us to ask a scary, but necessary question: how do we provide value and support to artists in a world of AI art generation. I do not have an answer, but I plan to continue supporting my local art museums and seeking discourse with artists and patrons to secure a necessary future for artists in modernity.