

In regards to the first topic of concern I believe very strongly that no AI or technology should be allowed to “train” on or in any way use any copyrighted material as part of their dataset without the permission of the original author or artist. This should certainly apply to conversation and chat logs as well (zoom’s recent terms of service controversy comes to mind) but for now let me talk on the subject of art and writing. The current AI technology cannot exist without the use of a massive amount of copyrighted material, which it uses to create what are essentially composite works. While composite works made by a human hand might, in some circumstances, be considered transformative and valuable, what current AI is doing is nothing short of an abuse of creative people’s labor.

I would ask you to consider why copyright law exists. Humans have always been making art and, in many historical societies, ideas, stories and many forms of art were not considered property that could be owned by anyone. In times past a great deal of art was incredibly derivative to a degree that would not be considered fair use by today’s laws. This way of doing things had the benefit of engendering creativity and supporting a continuous build of ideas that propelled human innovation. We sacrificed a great deal of this innovation when we chose to enact copyright law. (Look at some of the difficulties we have in the realm of patent law. For example, many inventions that would decrease human suffering cannot be made due to competing entities owning patents to previous innovations needed to make this new invention. To make a wheel you also need an axle and spokes.) But we made this sacrifice for a reason. Copyright law was created to protect the economic interests of creative people. We, as a society and as a legal entity, decided that creative people should have a clear legal avenue through which they could profit off of their creative thoughts, labor and output. We decided that the work artists and authors do is valuable, and so we also concluded that these people should be able to be compensated for the work they do. They needed this legal avenue for compensation so that in a post-industrial capitalist society, they would still be able to make said work. So that they would be able to continue producing the great stories and works of art that all human society leans towards. And from this economic need we created copyright law: the legal concept that a person can own an idea, or a story, or a piece of art. Copyright law exists, at its core, to protect the economic well-being of creative people. I would ask you to remember this as I continue to discuss AI generative work.

Returning to the topic of copyrighted work in datasets, an AI is not a human mind reading a story and then having a new idea based off of that story. An AI is a machine owned by a corporation or possibly in some cases, an individual, that is being used to make that company or individual money and/or decrease the amount of labor they themselves need to do. But this money or labor does not come at the labor cost of only the person who made the AI, it comes from the labor and thoughts of all the people who’s creative works were fed into that AI. And in many cases the AI is then being used with the intent to push those people out of their own work spaces (AI generated book cover art is currently taking work from human artists who depended on that revenue stream to support themselves and their family.) So the use of copyrighted material in datasets should be illegal for two reasons 1) It is a clear theft of the labor of those artists

and creatives whose material was fed into the AI against their will and 2) It is catastrophic to the economic wellbeing of creative people, the very thing copyright law was created to protect.

Before moving to the next issue I would like to share that I am a hobbyist writer. I do not make my living through creative writing but I have over 100,000 words of creative writing currently published on a website. I do not make money off of my work and it is free for anyone to read. This website, along with many others, was scraped sometime last year and my works are almost certainly being used as part of a dataset for multiple generative AI technologies against my will. It is true that this has had no economic impact on my livelihood, but I labored over those stories and I shared them with the public so that others could read and enjoy something free of charge, not so that others could profit off my creations. The knowledge that my work has been stolen by corporations without my permission and without credit infuriates me. The knowledge that my work is now being used by machines to create composite works which are actively harming the economic wellbeing of fellow writers, of writers who do make their living through their writing, grieves me deeply. No company or individual should be allowed to steal copyrighted works of art and use them to create machines without the permission of the original creator. Full stop.

As for the matter of generative art itself being copyrightable, given that current AI is based on stolen art, I don't think anything created by an AI currently can be copyrightable. Assuming there was, in the future, an AI whose dataset contained entirely legally obtained data used with the creator's permission, I still think the bar for copyrighting would still be very high. There is, perhaps, an argument that all the artists whose work was included by the dataset and the programmer could hold a joint copyright. But so many artists are necessary for a dataset that this seems too messy and not useful in any way. Additionally, and perhaps most importantly, the entity deciding what should go into the composite work is not a human with rights to be protected but a machine. An algorithm or a machine has no economic interests or creative rights that the law would need to protect. There's neither basis for nor reason to copyright AI generated work. Even with heavy human oversight and prompting, it still seems too much of a stretch. That said, there might be a situation where a piece of art created by a human incorporates something generated by an AI but I think in these cases the current definitions of fair use and transformative work should apply just fine. A book with whole paragraphs written by AI? The paragraphs themselves would not be copyrightable (and if using copyrighted datasets might be plagiarism.) A book written entirely by a human based on prompts provided by an AI could be copyrighted by the human, just as a book inspired by a conversation could be copyrighted. In between these two examples you might have painting in which the artist prints out sentences from a generative AI, pastes them to a canvas in a collage and paints the blank spaces. But this last one is clearly transformative, just as the same work could be done with newspaper headlines and be copyrighted to the artist and not the newspaper. Ultimately I cannot see a situation where work created by a generative AI could itself be copyrighted.

As for the third issue, I think if you consider that no copyrighted art should be used by AI datasets without permission then this would be a clear case of plagiarism. If the original artist consented to the use of their artwork for data-training to produce composite works then the AI creating works that mimic their own would be expected. Otherwise, it is a very simple case of plagiarism. Any company or individual who stole that artwork and used it without permission should be liable. The programmers themselves should not be liable, unless they knew about the stolen artwork and chose to publish it anyway. The coding that allowed that art to be reproduced so exactly is not the problem, it just reveals the problem: the theft of the original art. Furthermore, no user prompt or input should ever be liable for what an AI produces. If a man assaults his wife is it her fault because she said the thing that upset him? Of course not. That's absolutely ridiculous. We are all responsible for our own actions, and since AI is not a person, the people who created that system, who own it and who sent it out into the world are responsible for its actions.

And lastly I would like to address the very concerning topic of AI generated likenesses of real people and of real people's voices. It is unfortunate that I have to say what should clearly be obvious but no real human being should have their likeness or voice reproduced by technology so exactly that it is indistinguishable or nearly indistinguishable from the original without their consent. Human identity is an unalienable and basic right. Every person should own their own likeness, their own face and their own voice from birth, and no one should be able to take these things from them or use these things against that person's will. Not only is it economically harmful (background actors being replaced by their own technological shadows, voice actors out of work after one recording.) Not only is it a horrific recipe for defamation and fake news (a computer can make my voice say any horrible thing. My employer might believe it was me. My family might believe it.) It is also deeply, horrifically, unethical. In this vein I should also mention that I believe these rights should apply to the dead as well. I don't believe that people should be allowed to sell their famous grandpa's likeness to make a buck. Unless someone has put it explicitly in their will, no dead person's likeness or voice should be reproduced by AI within at least 200 years of their death. I can see how there could be anthropological or scientific value to reconstructing the faces of humans long dead, but no person still in living memory should be forced by a machine to haunt the living for entertainment or profit. Let them rest. And let those of us who are still alive feel safe that our faces, voices and identities are protected by the law.

In summary it is my strong opinion: that no AI should be allowed to be trained on copyrighted works without the copyright holder's permission, that artwork produced by generative technology should not be eligible for copyright protection, that any company or individual who own or creates an AI that produces plagiarism be liable for that plagiarism, that no individual who does not own or program an AI be held responsible for what an AI does in response to their prompts, and that no company, individual or entity be allowed to reproduce a real human being's likeness or voice using generative technology without that person's consent.