

Submitter: Matthew Spencer

1. As described above, generative AI systems have the ability to produce material that would be copyrightable if it were created by a human author. What are your views on the potential benefits and risks of this technology? How is the use of this technology currently affecting or likely to affect creators, copyright owners, technology developers, researchers, and the public?

I believe that use of generative AI systems overwhelmingly has the potential to harm humanity as a whole more than benefit it. The recent AI boom of the last couple years has already

- tainted previously reliable sources of information,

- made any image that crosses the internet is suspect,

- caused websites that used to be filled with images by human creators to be flooded with AI generated images,

- lead to artists having their work, their livelihoods- fed into AI generative systems, and then had prompters use those same AI generative systems to imitate their work (for various degrees of attempted profit)

It's disheartening, frustrating, and we're in a major turning point where I feel like protection needs to be put into place now before it's too rampant to bring under control.

2. Does the increasing use or distribution of AI-generated material raise any unique issues for your sector or industry as compared to other copyright stakeholders?

I am a freelance illustrator. I'm faced with an already competitive industry and the introduction of AI generated imagery, especially with models trained on the work of my fellow illustrators, among others, is extremely disheartening, frustrating, angering. It feels like with the situation as it currently stands, artists are in the position of unwillingly training their replacements.

Training

If your comment applies only to a specific subset of AI technologies, please make that clear.

8.3. The use of copyrighted materials in a training dataset or to train generative AI models may be done for noncommercial or research purposes. ⁽⁴⁴⁾ How should the fair use analysis apply if AI models or datasets are later adapted for use of a commercial nature? ⁽⁴⁵⁾ Does it make a difference if funding for these noncommercial or research uses is provided by for-profit developers of AI systems?

Once a dataset is adapted for commercial use, or if funding is provided by a for-profit AI developer, the rules should change completely. As seen with OpenAi and their eventual deal with Microsoft, a training dataset originally being used for noncommercial or research purposes is no guarantee that it will remain that way. Large for-profit entities shouldn't be able to buy their way into commercial use once a training dataset is established.

8.5. Under the fourth factor of the fair use analysis, how should the effect on the potential market for or value of a copyrighted work used to train an AI model be measured? ⁽⁴⁶⁾ Should the inquiry be whether the outputs of the AI system incorporating the model compete with a particular copyrighted work, the body of works of the same author, or the market for that general class of works?

The measurement of effect on the potential market/value should ABSOLUTELY be whether the outputs compete with an author's work/body of work/ the market for that class of works. All of the above. As a freelance illustrator, I am particularly keeping up on the situation relating to the use of AI for image generation, but where I stand is pretty consistent for all uses of AI, especially when used

to imitate human creative output (music, voice acting, film, animation, art, etc.). And I have already seen more examples of events, publishers, and other entities- that would have otherwise been clients of human artists- using AI generated imagery for promotional purposes, book covers, etc. If human creatives are going to be protected by copyright policy, **every** output of an AI system incorporating a model trained on copyrighted work needs to be viewed as potential competition against that original creative.

9. Should copyright owners have to affirmatively consent (opt in) to the use of their works for training materials, or should they be provided with the means to object (opt out)?

Yes. I think operating from a base that assumes most copyright owners will NOT want their works used as training materials is absolutely preferable than an opt-out system. Requiring copyright holders to opt out puts the onus on the wrong party, and given how poor both the track record for following through on opt-out requests AND the fact that most of the current models were trained without consent in the first place, that responsibility needs to rest with the developers/trainers/users of the AI model.

9.1. Should consent of the copyright owner be required for all uses of copyrighted works to train AI models or only commercial uses? ⁽⁴⁷⁾

Given how fast non-commercial models can seemingly be acquired for commercial use, yes. Consent should be required for all uses.

Transparency & Recordkeeping

15. In order to allow copyright owners to determine whether their works have been used, should developers of AI models be required to collect, retain, and disclose records regarding the materials used to train their models? Should creators of training datasets have a similar obligation?

Yes. Absolutely.

15.1. What level of specificity should be required?

Original author name, and which specific works.

15.2. To whom should disclosures be made?

These disclosures should be made publicly available.

15.3. What obligations, if any, should be placed on developers of AI systems that incorporate models from third parties?

The same.

15.4. What would be the cost or other impact of such a recordkeeping system for developers of AI models or systems, creators, consumers, or other relevant parties?

If the cost of such a recordkeeping system (if required) prohibitive to the developers/consumers/creators etc. perhaps it will deter improper use.

16. What obligations, if any, should there be to notify copyright owners that their works have been used to train an AI model?

I want to say SOME kind of obligation, certainly. But the genie is out of the bottle now, and I imagine the training materials for the currently existing datasets are so vast that no developers/creators/etc. on the AI side of things will want to invest the time to manage such disclosures. That doesn't prevent me from thinking that's the right thing to do. Especially considering that copyright owners deserve the opportunity to defend their works, or pursue legal action at this crucial point in time.

Generative AI Outputs

If your comment applies only to a particular subset of generative AI technologies, please make that clear.

Copyrightability

18. Under copyright law, are there circumstances when a human using a generative AI system should be considered the “author” of material produced by the system? If so, what factors are relevant to that determination? For example, is selecting what material an AI model is trained on and/or providing an iterative series of text commands or prompts sufficient to claim authorship of the resulting output?

Unless the training data has all been created by that human, (say, an artist that has trained an ai system on their own art), I don't think that there's a point where a human using generative AI should be considered the author. Specifically in regards to AI generated images: Typing a series of iterative text commands or prompts to generate a series of images from which one can choose the closest is more akin to becoming very good at using a search engine (on the less creative side) or being a client of an illustrator- with several rounds of edits to achieve a goal- than to being the author/artist themselves.

21. Does the Copyright Clause in the U.S. Constitution permit copyright protection for AI-generated material? Would such protection “promote the progress of science and useful arts”? ⁽⁵²⁾ If so, how?

Such protection would do the opposite of promoting the progress of science and useful arts. AI generated material is already being mistaken for human-made-creations, and in some cases, taken as fact when it's merely predictive text based on what its been fed, with no regard to whether the statements are truth or fiction. The current atmosphere of AI generated imagery is actively discouraging young and seasoned artists alike- dampening potential unique human voices in exchange for regurgitated slop trained on their work. AI generated material needs to be fed in order to exist, it can't be created in a vacuum, and as I see it, there's nothing its currently being used for that couldn't be done by a human being. The only difference is how fast something gets done, and who's being paid for it. The arts (and good science for science's sake) are already largely undervalued in our current society. AI generated material being eligible for copyright protection will only make things worse.

Additional Questions About Issues Related to Copyright

32. Are there or should there be protections against an AI system generating outputs that imitate the artistic style of a human creator (such as an AI system producing visual works “in the style of” a specific artist)? Who should be eligible for such protection? What form should it take?

There should be protection. I don't know what form it should take or how it should be determined....