

Library of Congress

Copyright Office

Docket No. 2023-6

Notice of Inquiry and Request for Comments: Artificial Intelligence and Copyright

**Comments submitted by Nia Jackson¹
in my personal capacity**

Nia.jackson2@law.bison.howard.edu

Student at Howard University School of Law*

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I am responding in my personal capacity to the Question indicated below.

Question 20: Is legal protection for AI-generated material desirable as a public matter? Is legal protection for AI-generated material necessary to encourage development of generative AI technologies and systems? Does existing copyright protection for computer code that operates a generative AI system provide sufficient incentives?

Response:

Copyright protection is rooted in the powers granted to Congress under the United States Constitution. Article 1, Section 8, Clause 8 states that “Congress shall have the power to promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”² Copyright law provides protections and rights to creators regarding their work which excludes the unlawful use or copying of that work by others. Generative AI is a useful technology which makes the creative process easier by gathering a wide range of information and presenting it to a user in a condensed manner. Legal protections for AI-generated material are desirable as a public matter because they would provide safeguards against the unlawful and unfair copying of works which are generated either partially or wholly through AI. Such safeguards would give the public confidence in Intellectual Property protection, specifically Copyright law as an element of the legal system which is modern and applicable to the quickly evolving technology industry. Public confidence in Intellectual property rights ultimately encourages the public to continue creating useful art and developing new technologies, like Generative AI, to do so.

¹ J.D. Candidate, Howard University School of Law; student in The Morality of Intellectual Property Seminar, Fall 2023.

² U.S. CONST. art. I, § 8, cl. 8.

The desirability of legal protections for AI-generated material is a complex matter. AI generated material raises concerns about the potential for Copyright infringement (and who to hold liable if infringement is found) and the lack of or improper attribution. Not all AI-generated material is created equally. Some material incorporates a legitimate creative element that comes from the human mind. For example, a song entitled “Heart on My Sleeve” was created using a ghostwriter’s lyrics and Generative AI.³ The ghostwriter combined his lyrics with the voices of two well-known recording artists, Drake and The Weeknd, to create a new song in their voices. The song garnered widespread attention because the voices sounded nearly identically to the real artists even though Drake and The Weeknd had not contributed to the song in any way. This is an example of Generative AI being used in tandem with human creativity that raises concerns of infringement and improper attribution. However, not all creators use Generative AI in tandem with their own creativity. Some creators rely solely on the technology to produce new work. For example, an author may use the OpenAI service ChatGPT to write a short story or script about a married couple experiencing relationship problems. In this case, the final product would be a culmination of information gathered from ChatGPT presented to the user, instead of a combination of the user’s creativity and Generative AI. Due to the infringement and attribution concerns raised from the use of Generative-AI, legal protections for AI-generated material must come with limitations.

To encourage the continued development of AI technology, creators must be able to claim protection over their AI-generated works. Without such protection creators are less likely to publish their works, which stifles creativity on a macro level. The development of such legal protections requires a balance of the public’s desire for legal protections for their AI-generated works with the public’s adverse desire for protection against infringing AI-generated works. These adverse interests can be reconciled through moral and ethical considerations during the development of legal protections for AI-generated materials.

On the one hand, legal protection for AI-generated material would encourage innovation by providing creators with exclusive rights over their work. Creators will have opportunities to capitalize from their creations. Income from Intellectual Property encourages more people to create with the hopes that they too will be able to benefit monetarily from their creations. Legal safeguards for AI-generated material would also incentivize companies to invest in the continued development of AI. If a company knows that they will gain Intellectual Property rights in a project, they are more likely to invest in the development similar projects. Legal protections for AI-generated material will foster a sense of security within the public which will ultimately encourage the continued development of generative-AI technology and systems.

On the other hand, there must be protection for human-made Copyrighted works against potentially infringing AI-generate material. AI-generated material is often a culmination of already existing Copyrighted works, which it uses as building blocks for a new work. It is crucial to Congress’ interest in promoting the science and useful arts that humans have confidence that the Copyright system will safeguard their work against AI-generated material that was created

³ Jordan Pearson, *Viral AI-Generated Drake Song ‘Heart on My Sleeve’ Removed from Spotify, YouTube*, Vice (Apr. 18, 2023), <https://www.vice.com/en/article/xgwx44/heart-on-my-sleeve-ai-ghostwriter-drake-spotify>.

with the help of other Copyrighted works. Without public confidence in the Copyright system, creativity amongst traditional authors could be stifled. The goal of legal protections for AI-generated material should be for AI and humans to work in tandem, not to stifle human creation to promote AI creation.

AI-generated songs, deepfakes, and art in the style of human creators have garnered public attention as lacking attribution to the human creators whose data helped the AI generate the new material. A class action lawsuit against OpenAI was filed in response to this issue. Plaintiffs, Authors Guild and a class of television writers are seeking redress under the Copyright Act for OpenAI's "flagrant and harmful infringement of Plaintiffs' registered copyrights in written works of fiction. *Authors Guild v. OpenAI* (2023)."⁴

The solution to improper attribution or infringement by AI-generated material can't be to eliminate protection for AI-generated works because this stifles technological innovation. At this juncture, ethical frameworks could benefit the public by considering: 1) who does the AI-generated material benefit and who does it harm, 2) what is the public good served by this creation, 3) was the data used to create the AI-generated material properly attributed to the human creators who inspired the AI material, and 4) is the AI-generated material novel compared to already Copyrighted works. The findings from these considerations should provide guidelines to whether an AI-generated work deserves Copyright protection or not.

Existing copyright protection for computer code that operates generative AI systems does not provide sufficient incentives to encourage development of generative AI. Copyright protection for the computer code protects the creator of the code or the company who owns the code. However, Copyright protection doesn't extend to creators who don't own the code and only use generative AI to create new material.

Furthermore, Copyright law protects human-authored expression, not works created purely by AI. Per *Burrow-Giles Lithographic Co. v. Sarony*, the United States Copyright Office will only protect fruits of intellectual labor that stem from the mind of a human.⁵ A claim will be denied from Copyright protection if the Copyright office determines that a human did not create the work.⁶ Even though Copyright law protects only the human author, Copyright protection could still extend to a work that is determined to have been created by a human author with the help of generative AI. Even so, this only protects collaborative efforts between AI & humans. To incentivize continued development of generative AI by the general public, the Copyright statute will need to be amended to protect works generated by AI without human authorship, instead of only protecting the code that that operates generative AI.

These sorts of amendments are necessary as a social justice consideration. A creator may not be invested in writing code that operates generative AI, but they might be invested in creating new material through their use of AI. Those creators should be entitled to protection of their works just as the code writer would. Protection for both the public consumer of AI technology

⁴ *Authors Guild et al. v. OpenAI Inc.*, 1:23-cv-08292, (S.D.N.Y.) (2023).

⁵ *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884).

⁶ *Id.*

and code writers ensures that Copyright protection is equitable, inclusive, and fair in its protections of works. Furthermore, protections for AI-generated material ensures that Copyright protection extends to a wide range of people (coders, authors, and general AI consumers included). Finally, protections work to encourage creativity and innovation which is one of the main policy considerations justifying Copyright law.

Of course, protection for works generated by AI with minimal human authorship should be limited. Protections for these sorts of works should have a mandatory attribution requirement where the creator is able to attribute their final product to AI and the human data that the AI used to generate the new work. Creators should not be able to Copyright works that would have otherwise been an infringement of another's Copyright but for the use of AI. Attribution is essential to promote the progress of science and the useful arts, as well as the continued development of generative AI systems.

Respectfully submitted,
/s/ Nia Jackson
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