A Comment to the Copyright Office

To whom it may concern:

I hope this comment finds you well. I am a senior at The American University in Washington, DC, earning my degree in communication studies and the Chinese language. I am writing to express my thoughts regarding Artificial Intelligence and copyright.

As mentioned in your own article, the crux of this question resides in the distinction between human authorship in accordance with the assistance of a machine, or if what has been long established as conventional pieces of authorship, such as literary, musical, artistic expression were assembled and presented solely by a machine. When looking at works that are submitted for copyright, there should be listed requirements for the amount of human authorship involved in these works to meet potential approval, which seems to have been mentioned in the *March 2023 Registration Guidance.* Prior to the guidance, during the 2022 AI copyright case involving Kashtanova's graphic novel, "the term 'author,' used in both the Constitution and the Copyright Act, excludes non-humans."

I would like to present my commentary on the first three issues that input has been requested upon.

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?**

A great benefit that generative AI systems could bring is the possibility of being used as an extension of creative outlets. Such as in the 2022 case, where the copyright of the cover and illustrations of author Kris Kashtanova's graphic novel *Zarya of the Dawn* was revoked due to being the product of generative AI. While Kashtanova was responsible for the creative writing and arrangement of text and visuals in the graphic novel, the illustrations themselves were not revealed as AI generated until after copyright had been granted. I believe the problem in Kashtanova's argument lies in the program that was used. Midjourney, the generative AI program that was used, does not involve human engagement in the artistic process. It instead creates from the basis of a written prompt. While Kashtanova may be able to consider descriptions of her characters and written world as IP and written copyright, they should not apply to the AI generated visual pieces.

That said, there are other generative AI systems that DO allow for deeper engagement of human artistic expressions. Artbreeder, formerly known as Ganbreeder, is described as a "collaborative, machine learning-based art website" on Google. The website encourages "remixing" creative artworks made with AI, but also has a section that is much more involved with the audience. Here, users can manually create visual representations of people and

original characters through the adjusting of traits in the website's "splicer". By either uploading an artwork/photo of their own, or using free-to-use pre-generated and created models, users can interact and take part in the creative expression of how they want their characters to look by manually altering virtually every trait. This can aid creators of written works to engage in visual aspects of their intellectual products without necessarily having the same artistic skill without the aid of AI. Additionally, Adobe Photoshop uses the aid of generative AI and allows users to edit their photos in such a way. This type of generative AI can grant access to such expressions to the public and lead itself to more involved works.

However, there are risks to using generative AI and other similar technologies when it comes down to infringing on pre-existing works with copyright. AI is trained in its programming, taking influence from other creations and assigning patterns to what it produces from the works in which it has been given. I'd like to present a hypothetical, based on the Rogers v. Koons case from 1992. If this had been a modern day AI case in which Jeff Koons' sculpture had in fact been an item of digital work produced by generative AI based on Art Rogers photograph, not only would it not have any human authorship, but it would also infringe on Roger's copyright just as Koon's sculpture had. By taking the same exact photo, there are some AI applications, like WOMBO Dream, for example that users can upload photos and change art style, yet it would still be virtually identical aside from that change, which would infringe on copyright.

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?**

Generative AI material may very well pose risks in the world of academics, particularly in universities and even lower levels of education. There is risk in the realm of academic performance, but also the impact of AI use upon completion of one's degree. First, in regards to academic performance, there is the concern of academic integrity. Student honor codes call for academic integrity, which often forbid plagiarism, the use of unauthorized materials, and cheating. AI could fall into each of these categories.

A specific example has been the fight against ChatGPT amongst universities. Launched on November 30th, 2022, students across the country began using the language chatbot to write papers, discussion posts, gain clarity on concepts, answer test questions, and other means of engaging academically. This system directly conflicts with student honor codes when abused. Generated material is not guaranteed to be correct, which can misinform students using it regardless of in which connotation. The continued use of AI in academic settings may develop a reliance on instantly generated information and lead to a lack of retention of materials. In a study done for the *Entrepreneurial Business and Economics Review,* "The dark side of generative artificial intelligence: A critical analysis of controversies and risks of ChatGPT", researchers found that another category of threats that ChatGPT brings regards ethics, describing there as being "poor quality, lack of quality control, disinformation, deepfake content, [and] algorithmic bias" within the system (Wach et. al), all of which are highly unideal for students.

3. **Please identify any papers or studies that you believe are relevant to this Notice. These may address, for example, the economic effects of generative AI on the creative industries or how different licensing regimes do or could operate to remunerate copyright owners and/or creators for the use of their works in training AI models. The Office requests that commenters provide a hyperlink to the identified papers.**

In terms of AI generated art, and to what extent will this be allowed to undergo copyright registration, I believe Michael Heller's novel *The Gridlock Economy: How Too Much Ownership Wrecks Markets, Stops Innovation, and Costs Lives* provides strong insight to the potential situations AI could lead to. In his first chapter, he describes how "private ownership usually increases wealth, but too much ownership has the opposite effect: it wrecks markets, stops innovation, and costs lives" (Heller). If all AI generated works grow to be registered under copyright, this could very quickly lead to a deterioration of creative works in which, for example, authors work on generating visual works to match their written worlds, keep future visual artists from creating works that have already been created by AI that would not have been created otherwise, songwriters from writing songs that engage in similar assemblies of lyrics that AI has previously generated, and so on. The overallowance of AI copyright could defeat the purpose of encouraging innovation, and go so far as stunting it from the human perspective and capabilities until such copyrights enter the public domain.

Thank you for your time.