

To preface my comments, I am an art director at a major board and card game company, and I manage a roster of 80 different freelance illustrators and artists there who we count upon to create the artwork for our product lines. I am also a freelance illustrator, having worked in that capacity in the board and card game industry for 13 years. Suffice to say, the issues at hand are deeply relevant to my line of work, and for the many artists who make a living as part of our team.

1. I have experimented to some degree with these AI image generation platforms, particularly DALL-E 3 by OpenAI. In regards to the benefits that these programs offer, they can occasionally be quite instructive, to the extent that they are copying the work of professionals and applying it to my experimental use cases, and I learn a great deal simply by observing their output and how the algorithm approaches my queries. However, the fact that the sourced images were acquired without the consent or approval of the image authors, and these platforms have the functional intent of removing the need for artists to begin with, is no small cause for concern on my part. If it were given sufficient time and leeway, the lions share of the creative industry will be out of a work, as contractors and companies will elect to generate their own materials for the cost of a small subscription instead of the time and money involved with contracting artists. If this were merely the function of technological advance, and the language-learning models were creating their images ex nihilo, I would have no cause for consternation. But the fact that these models explicitly depend on established artwork from artists who have trained their whole lives in this industry, and who in no way shape or form want to contribute any training data to their own replacements, is aggravating to the extreme.

If no case can be made for the artists themselves, who ought to be able to maintain legal control over the artwork they have created, then I would hope that at least a case can be made for copyright holders. In my industry, Magic the Gathering and League of Legends are immensely popular brands with their own distinctive style. These image generators can copy the styles of these brands wholesale—and more than once, I have found even the company logos imbedded in the final output of these algorithms.

2. Regarding new legislation that would be warranted to address these issues, I would propose the following:
 - a. No intellectual property, and no artist name or brand, should be allowed as prompts by these image generators.
 - b. All images generated by artificial intelligence should be identified or watermarked as such, to protect the integrity of actual artwork and artists.
 - c. US-based companies should be discouraged heavily from contracting artwork or images from contractors in any country that do not have similar regulations against AI.
- 6.2. I am not aware of any artist who works professionally in the industry and derives their sole income from artwork, who has licensed their work to data training in this way. We are not interested in adding fuel to a fire that is burning down our house.
9. Copyright holders should most certainly have to opt-in instead of being forced to opt-out, when many companies are purposely making the opt-out process draconian and difficult. Artist consent should be mandatory for all usage of their work, whether it is commercial or not. I do

not believe any opt-out process is fair, when the burden should be on the AI company to seek approval for usage of the artwork in their training data. Feasibility of gaining consent for image use should not be a deciding factor—these companies stand to make a great deal of money off of our work for free, and the very least they can do while pulling the rug out from under us is ask for permission to do so.

9.4 there is currently ZERO practical remedy for an artist to contest the use of their artwork without permission, as artists cannot afford the legal fees required to do so—especially if the copyright violation is performed overseas, which is already an issue.

9.5 The copyright holder of the commissioned artwork should have discretion over whether the AI is used in training datasets, at the very least. The holder/company who commissioned the artwork should be transparent about whether it is being used in this fashion.

10. AI companies should reach out to artists/copyright holders on a case by case basis to ask for permission/license to use their artwork. Voluntary licensing is viable, and perhaps platforms online where artists can “sell their style” should be permissible, providing the compensation is fair. I cannot imagine any artist willingly doing this, however.

10.3 I think Congress should go a step further and have the AI companies pay for damages to affected artists. Artists like Greg Rutowski have been used in millions of prompts at this point, damaging the value of their style and creativity. There is no fair basis for royalty rates moving forward. If an AI prompter licenses the work of a popular artist, they can modify it slightly and in turn present their own version of the artists work as their own, and license that for a cheaper price. The actual artist will ultimately be cut out of any earnings by these methods.

13. The economic impact of a licensing requirement on AI companies is infinitesimally smaller than the economic impact of virtually all creative professionals losing jobs that they have trained, bled, and sweat their whole lives for.

18. The only instance where it is fair and appropriate to consider a human using an AI generative system as the author of their output, is if the training model exclusively utilizes content created by that human.

25. Open source models functionally do the same thing as the paid ones—they deprive artists of their livelihoods.

28. The law should definitely require AI generated artwork to be disclosed, either in writing in accompaniment with the image, or via a clearly visible watermark. The platforms generating the artwork should apply such a watermark. Failure to do so, or removal of the watermark, should result in fines of sufficient quantity as to discourage this.

32. “In the style of” or artist names, or brands/IPs that depend on the works of those artists, should be barred from usage by the image generators.

Thank you for your time and for taking the input of the individuals affected by this. In our industry we have greatly appreciated the quick action of the US Copyright Office in respect to this matter, and seeking a fair and productive outcome. In your decisions, we ask that you weigh the livelihood of the

entire creative industry in the balance, and the combined millennia of hard work and training that has gone into it. We were told that AI would take away the hard jobs and afford us more time for creativity and expression. We did not expect it to be the first thing they would take away from us. Our work has value, and should not be stolen wholesale.