Generative “A.I.” is one of the most serious threats to clear copyright and the value of artistic creation in labor in modern history. It has already been used to violate existing copyright, privacy, and to create falsified works that obfuscate the very concepts of ownership and authorship. It must be highly regulated for the continued function of copyright, as well as the continued ability to make a livelihood in the creative arts.

I am a comic book writer and editor by trade. In the course of my history, I have contributed to hundreds of comics, including original works owned by the creator-copyright holders and licensed titles where work is created on a for-hire basis and rights are assigned to the brand owners. For myself, and people I work with everyday, I have to be familiar with the tenets of copyright, fair use, and proper accreditation and reproduction. I constantly work with writers and artists on original, creative works for both monetary gain and the proliferation of the arts in the U.S. and globally.

Central to the question of the potential use or harm of generative A.I. is the ability for works produced with it to be granted copyright. So far, following the Copyright Offices’ opinion issued after *Naruto v. Slater et al*, many of the results of generative A.I. have not been recognized as unique, copyrightable works of art under the basis that they were not meeting the standard of human authorship. Additionally, the question has been raised whether or not the results of generative A.I. qualify under the requirements of originality and creativity.

For the majority of the works being created with generative A.I. at the moment, they wouldn’t meet that standard and many would be in violation of copyright infringement. Most of the major A.I. “systems” are being populated by “scraped” data–or a dataset that has taken material without any regard for authorship and existing copyright. This dataset is then filtered to some small degree by humans, primarily poorly paid ones who work anonymously internationally to specifically remove certain types of images, and sorted through programs to filter or create metadata tags that can be used to call up the original work for use in a pool with other existing works to be combined given a set of keywords.

If these data sets were purely populated using self-created materials, works in the public domain, and works with approval from the copyright holders, then we’d be fine. However, that’s not how they’re working–as you can see in the various lawsuits that have been filed by creators like Sarah Silverman, Christopher Golden, Paul Tremblay, and Mona Awad–or those of non-creative individuals who have found their privacy violated in these data sets, including confidential medical records being fed into the system. Clarifying the legitimacy of sources in a data set and prosecuting data sets that are using copyrighted and trademarked materials illegally should be a primary goal of the copyright office. It should be treated with a standard similar to fruit of the poisoned tree–if there’s evidence that material included in the set violates copyright or other law, the dataset itself should be thrown out as illegitimate.

As a result, the output of a generative A.I. program does not meet the standards of creativity implicit in the need for human authorship. It is an output from a program that inherently can’t hold copyright. A.I. itself is a tool, like a camera, a tablet, a pen, or an x-ray machine and cannot be granted copyright because it doesn’t actually think or create for itself–despite the name “artificial intelligence”. While copyright may extend to other works that have used tools to

be created, if the tool itself is responsible for the output of work, and working off of existing material, it cannot qualify as meeting the standard of originality or human authorship.

Central too to this question is what is the human contribution to a work created by generative A.I.? If the contribution is an idea–a group of words or sentences to describe a result–that would not fall under copyright, because to the previous point, if that is the only creative contribution by a human hand, it isn't a work created by a human or meeting the other standards. The human element has little to no actual ability to guide the process and, subsequently, little to no contribution to the final product that as discussed above is already failing to meet standards of creativity and originality.

To speak specifically to the challenges in my industry, publishing, we've already seen a spate of imposters who are complicating clear copyright and infringing on existing materials. There have been authors who have found works listed under their name for sale on Amazon–and linked to their Amazon account–that were fully written by generative A.I. and sold under false pretenses. There are artists who have had their works taken and "finished" or "adjusted" by A.I. in which their works were used without their knowledge or consent to have new results that are not substantially transformative of the work and that proceed to undervalue the original creator's contribution, or alternatively if they are more transformative, are often still in violation of existing copyright.

And this is all in the question of individuals abusing the system to "create" works for sale. If companies continue to try to use generative A.I. to supplement their material, not only will we have a crisis of unclear chain of ownership and artists being put out of work in favor of machine outputs because machines that can't claim copyright are inherently cheaper than artists, we'll also have a plethora of bad "art."

Simply put, it is imperative to the goals of this office as set forth in Twentieth Century Music Corp v. Aiken, " to secure a fair return for an 'author's' creative labor" and "to stimulate artistic creativity for the general public good," to regulate generative A.I. in favor of the existing, working artists whose copyright claims are at stake, not to allow their works to be violated, stolen, and abused.