

I am an accomplished transport photographer and artist, with ca 15 years of experience in licensing my work via stock photography and print on demand agencies. My comments are based on my experience relating to the rise of generative AI, image scraping, and how this has affected my work and livelihood.

On the haveibeentrained.com website I've searched and found thousands of my images scraped without my consent from stock photography agencies and other sellers, eg. Alamy, Dreamstime, Agefotostock, FineArtAmerica, Photo4Me, 123rf.com, and customer sites. My name and photography business avatar have been scraped. All of these images that are under copyright by me have been used to "train" generative AI software without my permission and without any compensation offered.

On haveibeentrained.com it is possible to opt out some future generative AI projects, but the fact is, these images have already been scraped and used. It also works the wrong way around, that copyright holders need to mark images specifically to opt out. At best I had marked ca 1500 images stolen from me by AI projects one by one, and I am sure there are hundreds, maybe even thousands more that do not come up in searches due to the total volume of the database plus the limited search function. Opting out one by one is time-consuming and frustrating as one should spend time working, not clicking pictures.

I feel that 15 years of my work is stolen. This feeling materializes in the declining sales of my art images and print on demand products in particular. What is an artist and photographer to do? To sell images at a couple of cents? To stop altogether and change professions?

Adobe Stock has introduced their own generative AI app Firefly which they advertise as "safe for commercial use". To train their first commercially released Firefly model they have used licensable images from Adobe Stock that are under copyright by their contributors without permission and giving no option to opt out. They advertise their app as "responsible AI", which clearly it is not. After using copyrighted images without consent, they offered contributors a lump sum based on the number of images on each contributor portfolio. Calculated per licensable image this makes 0,02 USD – two cents. Opting out is not possible. If I want to licence my images via Adobe Stock I must agree to this. Adobe Stock has a large customer base and at this time I can't afford to stop selling there, so my hands are tied.

To train generative AI basically anything and everything that is posted online has been scraped and utilized: content from stock photography agencies, news and media, social media, organizations, advertisements... images contain people, intellectual property, trademarks, design... (Source: haveibeentrained.com) This being the base of an AI tool, it can by no means be ethical and law-abiding.

***Scraping, copying and exploiting online content must stop.***

**Why generative AI images should NOT be granted copyright:**

1. *They're not original.* A human using a generative AI tool does not create anything new and original, but with the help of the AI tool generates images based on works that already exist. The works used in developing a generative AI tool may be under copyright by someone else, and they may contain other intellectual property or trademarks. The output may also infringe intellectual property or trademarks. Example: Generative AI picture of a woman using a laptop showing Apple logo. (Adobe stock/ commercial licensing)

Due to the source material, the output of a generative AI tool does not constitute an original image, which is the prerequisite for copyright.

2. *They're not works of art.* The definition of "art" needs to be studied closely. Art is usually understood as expression or application of human creative skill, which would make images generated with generative AI not art, but just pictures. Images generated with generative AI are mechanical and formulaic, they have no inner meaning, they lack emotional depth and subjective experience essential in art.
3. *Copyright should protect original creators.* Copyright was originally established to protect authors and creators and their livelihoods. Copyright owners have the exclusive statutory right to control copying and other exploitation of their works for a certain of time. Now, AI businesses would want to make this statutory right a mere tool to make money and justify stealing from original creators.

To license and sell our work, we creatives need to own copyright of our own work and be fully entitled to control its use. We should be the ones to decide what happens to our art. Why should the work of creatives be freely exploitable? Why would some business be allowed to make money from our work? What other professions would tolerate this kind of exploitation?

Intellectual property is especially vulnerable to theft and misattribution, which is why copyright needs to be stronger and more protective for the original human author.

IF generative AI images should be granted copyright, the copyright holder would be able to license and sell these images and put them in any commercial use. This would violate the rights of the original creators, whose work belong to the pool from which Generative AI processes images. Currently, some stock photography agencies are distributing and licensing work that is made with generative AI and based on a pool of work created by others. This is something that should be stopped and strongly prohibited.

***The only way to protect authors, image creators, artists is in NO circumstances whatsoever grant copyright to any works generated by generative AI.***

Commenting some of the questions:

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 see no benefits. Generative AI systems and businesses do not currently respect copyright. This leads to the**

**situation where copyright will not give a sufficient level of protection to the original author of the works any longer. Generative AI enables large scale theft.**

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)? **Copyright owners should always be consulted before any planned use of their images, in any project, and their opt in should be specifically requested.**

9.1. Should consent of the copyright owner be required for all uses of copyrighted works to train AI models or only commercial uses? <sup>(47)</sup> **Consent of the copyright owner should be required for all uses, whether commercial or non-commercial. Creating images is work, and artists need their livelihood. Image creators and authors should not be expected to work free of charge.**

9.3. What legal, technical, or practical obstacles are there to establishing or using such a process? Given the volume of works used in training, is it feasible to get consent in advance from copyright owners? **Yes. It has to be.**

10. If copyright owners' consent is required to train generative AI models, how can or should licenses be obtained? **Contact the copyright owner directly and obtain permission in a verifiable manner. A specific license agreement should be drawn.**

16. What obligations, if any, should there be to notify copyright owners that their works have been used to train an AI model? **A notification is not sufficient. Asking copyright owners' permission in a verifiable manner before any planned use needs to be obligatory.**

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? **No, because the system is trained with, and the output generated from material that already exists and this material is created by somebody else.** 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? **No. This scenario resembles somebody editing a public domain image. The human editing cannot become the author of a public domain image by editing. In the case of AI, the amount of time spent fixing the text commands or fine-tuning the material (which is not created by the human in question) does not make a difference. The descriptive prompts or a sequence of words to generate an image with an AI tool cannot be copyrighted, but due to the nature of the output, this is not even relevant.**

20. Is legal protection for AI-generated material desirable as a policy matter? **No. Generative AI systems fail to respect or recognise copyrighted material. It would be nonsensical to protect legally a system that breaks intellectual property law routinely.**

Is legal protection for AI-generated material necessary to encourage development of generative AI technologies and systems? **No. Their incentive is money.** Does existing copyright protection for computer code that operates a generative AI system provide sufficient incentives?

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"? <sup>(52)</sup> If so, how? **Copyright protection for AI-generated material would kill "the progress of science and useful arts." AI can generate a vast amount of imagery quickly and inexpensively. There would be a flood of low-quality imagery based on copying. This can dilute the value of high-quality, original art by creatives, and severely impact their livelihoods. In these**

circumstances creating original art would not be possible any more. Some artists would feel no point in creating or publishing of their work, as everything would be scraped and stolen anyway.

28. Should the law require AI-generated material to be labeled or otherwise publicly identified as being generated by AI? **Yes.** If so, in what context should the requirement apply and how should it work?

28.1. Who should be responsible for identifying a work as AI-generated? **The end user of the system and the owner of the AI tool. The best policy would be that the output of an AI tool would always have an “AI generated” stamp plus the end user would be obligated to check that the stamp is properly displayed.**