

To The US Office of Copyright - Dustin Bramell

Before making my comments, I want to first thank the US copyright office for opening this process. The ability to personally and financially benefit from one's own creative pursuits is not only just, but also critical to the future of the Internet. It is the protection this office provides that ensures value can accrue to the people who create the heroes, shared narratives, and thought provoking works that propel the American people forward.

I am submitting this comment with the unique honor of having helped creators economically benefit from their work for more than a decade. First as a brand manager for the late actor, Paul Walker, and more recently as a Director of Partnerships at Facebook and Instagram. In my time at Facebook, I launched products such as Video, Facebook Live, and many creator monetization tools that helped turn millions of artists into small business owners.

During my decade at the company, I had a front row seat to the challenges that exist for creators and their partner platforms. Notably, I argued internally for the initial development of Facebook's Rights Manager, a tool that enables artists to protect their videos, photos, and sound recordings. While there were many starts & stops and competing priorities that created friction between creators and the platforms, there was also a vision of shared prosperity that did not waiver.

As dawn breaks on Generative AI, the world is now at a crossroads and many questions are being raised as to whether or not the media and tech communities will continue to step forward together. While much attention has been given to the question of whether or not AI artists should gain copyright protection, I am setting that aside for this comment. Instead, this comment will focus on the adjacent questions, which all tend to boil down to the following:

1. Should artists' works be included in AI training data without consent, credit, or compensation?
2. What responsibilities do AI developers have for the output of their products?
3. What responsibilities do distribution platforms have to ensure proper consent, credit and compensation for the content shared on their platforms?

While many have debated these questions through the comforts of theoretical and legal frameworks, moving forward requires us to develop practical solutions that will work at the speed and scale necessitated by user generated platforms and the Internet at large. The Digital Millennium Copyright Act (DMCA) was appropriate for the time, but, we must recognize that 25 years after its inception, the Internet has evolved and the DMCA now has many practical shortcomings. Developing an updated framework requires the following considerations:

1. It is impractical for private individuals and/or the government to patrol the Internet with the goal of enforcing copyright protections.
2. It is impractical for technology companies to gain consent and provide credit or compensation for every bit of data they ingest.
3. Value on the internet is rarely created via one-to-one interactions, but instead through mass aggregation.

With these considerations in mind, I'd like to share my point of view and offer a set of potential solutions rooted in practicality.

Content Ingestion for AI Development

As stated above, there is a tension between tech platforms and creators as to whether or not consent, credit, and compensation are required when a creator's content is ingested for AI training

purposes. Practically speaking, this is not something that legislation will be able to control for one main reason: access to data in all forms is widely available and the reality is that no entity nor individual will be able to control access to said data for less cost than the value it individually provides to a large AI model. Furthermore, it is unlikely that the data can be “unseen” once the ingestion has taken place. However, it may turn out that bespoke datasets become a competitive advantage for individual AI providers and many technologists would be willing to pay, even without a legal obligation to do so. Only the free market can dictate the answer to that question.

AI Output

When AI engines generate output, there is the potential occurrence for both creator rewards and damages, but both will be minuscule at best, as it is hard to create value or meaningful losses without scale. If, for instance, an AI product is able to create a photorealistic replica of a celebrity that is seen only by the person who entered the prompt to create it, it is hard to see how that creates any significant value or loss for the artist.

With that said, I’m not suggesting that AI output should go completely unchecked. There is a need to develop legal and safety frameworks that give artists the ability to “opt-out” their likeness and creative works. This, of course, would require a robust third party evaluation ecosystem for AI outputs to ensure that likeness is not being generated at the output phase. I will describe this ecosystem in greater detail toward the end of this comment.

Distribution Monitoring

The Internet and Section 230 have democratized the scaled distribution of content. This benefit cannot be argued nor ignored. However, it has also put an undue burden on content creators to patrol the Internet in search of unauthorized uses of their work. In recent years, locating this content has become even more challenging as platforms have shifted to private communication and have locked down public feed APIs. The result is that content cannot be found without the use of platform specific tools, which are only available to select partners. The notice and takedown process is for all intents and purposes, useless, if the infringing content cannot be located in the first place. While Google and Facebook have taken steps to invest in tooling (Content ID and Rights Manager), most platforms do not offer any solution.

It is also worth noting that no platform nor marketplace provides the ability for creators and public figures to easily find instances of their likeness. Even though this is a relatively novel issue, generative AI is now making it possible to “pirate” a person’s likeness to make an entirely new piece of content, creating demand for tools that go beyond the ability to find like-for-like matches.

To address this, I again propose a third party ecosystem that can access “firehose” level APIs. This ecosystem would enable creators to work with IP management companies to monitor how their content and likeness are being used across platforms and request corrective actions on behalf of the creators.

Actioning on Infringing Content

With many years of hindsight, it is clear that the notice and takedown process of the DMCA did not fully meet the needs of creators. However, innovative products, such as Youtube’s Content ID and Meta’s Rights Manager did go a step further in providing more flexibility for content owners to address the DMCA’s shortcomings. These systems not only enable creators to remove their content under the notice and takedown process, but also provides them the ability to reconstitute ownership to regain attribution and compensation for their works. This is how the entirety of the Internet should work. When infringing content and merchandise is found, owners should have the option to either petition to have it removed, or capture a portion of the value that it has created. For instance, when a celebrity is used to promote a T-shirt with his or her face on it, they should have the option to claim a portion of the revenue if they choose to leave it on the platform. This will, of course, require federal right to publicity regulation.

Trust and Safety Ecosystem

Regardless of how content policies change, the implementation of policies requires significant investment in infrastructure. Today, some Internet platforms spend billions per year on content moderation, while others spend virtually nothing, and it is becoming increasingly clear that few Americans are happy with the results. AI will only accelerate these trends.

To truly address the challenges associated with content moderation, it's likely that we, as a nation, will need to consider a public investment in content moderation the same way we think about investments in education and national defense. With this investment, a new ecosystem of third party trust and safety companies could be developed, independent of any one platform. Doing so would help to alleviate the burden of content moderation from platform providers, while also ensuring content is moderated in a way that reflects the wishes of the American people. By centralizing these efforts, we unlock the ability to create efficient standardized approaches that traverse the Internet and develop innovative approaches that help keep America at the forefront of creativity and innovation.

Closing Thoughts

In summary, ensuring the Internet remains equitable and trustworthy isn't easy, but it's a democratic ideal worth prioritizing and protecting. While the challenges around AI may be novel, the solutions are likely found within our ability as a nation to come together and deal equitably with one another in the pursuit of a common goal. The exceptionalism that allowed this nation to develop great inventions, interstates, and the expression of ideas is the exceptionalism that will enable us to reimagine how value can be protected and shared on the Internet.