

Dear U.S. Copyright Office,

I am a second-year law student at St. John's University of Law. This comment is an excerpt from a scholarly paper written for an Entertainment Law Class that covers the issues of copyright protection of AI generated works and makes policy recommendations. This comment is coming from the perspective of a law student, and a published songwriter having previously worked in both the creative and business sides of the music industry. I appreciate you reading this comment. I appreciate you opening this inquiry into these issues and thank you for considering my comment and policy suggestions.

Sincerely,

Dylan Morrissey

MONKEY BUSINESS: Potential solutions to the issues of copyright protection for AI Generated Works and potential copyright infringement by AI during Training

I. INTRODUCTION

In 2017, the United States Court of Appeals, Ninth Circuit decided on perhaps one of the most amusing cases in United States history. Making national headlines for its ridiculous fact pattern, *Naruto v. Slater*¹ had a massive, unexpected influence on what would quickly become one of the most important emerging technologies in recent years. Naruto was a crested macaque from a wildlife preserve in Indonesia.² During a trip in 2011, David Slater left his camera placed his camera on the ground in the preserve and Naruto proceeded to take multiple “selfies” with the Camera.³ Slater published the photos identifying Slater and Slater Wildlife Personalities, Ltd. as the copyright owners.⁴ These photos were very widely circulated on the internet and became international headlines for some time.⁵ However, People for the Ethical Treatment of Animals (“PETA”) filed a complaint for copyright infringement against Slater, asserting that they can represent claims for the Naruto the monkey, and that Naruto the monkey is the rightful owner of the copyrights to the photos.⁶ The Ninth Circuit, using a rule from *Cetacean Community v. Bush*,⁷ stated that:

¹ *Naruto v. Slater*, 888 F.3d 418, 418 (9th Cir. 2018)

² *Id.* at 420.

³ *Id.*

⁴ *Id.*

⁵ See, e.g., Danny Cevallos, *When a monkey takes a selfie ...*, CNN (Aug. 18, 2014), <https://www.cnn.com/2014/08/08/opinion/cevallos-monkey-selfie-copyright/index.html>; *Monkey Steals camera to snap himself*, The Telegraph (Jul. 4, 2014), <https://www.telegraph.co.uk/news/newstopics/howaboutthat/8615859/Monkey-steals-camera-to-snap-himself.html>.

⁶ *Naruto*, 888 F.3d at 420.

⁷ *Cetacean Community v. Bush*, 386 F.3d 1169 (9th Cir. 2018), (where the worlds cetaceans (dolphins, whales, and porpoises) were found to not have standing to bring suit in their own name under the Endangered Species Act, the Marine Mammal Protection Act, the National Environmental Protection Act, and the Administrative Procedure Act.

[I]f an Act of Congress plainly states that animals have statutory standing, then animals have statutory standing. If the statute does not so plainly state, then animals do not have statutory standing. The Copyright Act does not expressly authorize animals to file copyright infringement suits under the statute. Therefore, based on this court's precedent in *Cetacean*, *Naruto* lacks statutory standing to sue under the Copyright Act.⁸

Using this rule, and using statutory interpretation, the Ninth Circuit determines that *Naruto* lacks standing to sue for infringement under the Copyright Act, and therefore cannot assert ownership of the photos in questions.⁹ Crucially, the court does not indicate that the photo in question is not copyrightable, nor does it invalidate Slater's asserted ownership in the copyright.¹⁰ Incidentally, This case about copyright ownership for a monkey with a camera taking a selfie, ended up implicating copyright ownership for infinite monkeys on infinite typewriters writing the complete works of Shakespeare¹¹, also known as Generative Artificial Intelligence.

Stephen Thaler, owner of the Artificial Intelligence Computer System "Creativity Machine" attempted to register an image titled "A Recent Entrance to Paradise" created entirely by the machine.¹² The US Copyright Office denied the application on grounds that the work "lacked human authorship, a prerequisite for a valid copyright to issue, in the view of the Register of Copyrights."¹³ Thaler challenged this decision and the District Court agreed with that decision,

⁸ *Naruto*, 888 F.3d at 426, citing *Cetacean Community*, 386 F.3d at 1179.

⁹ *Id.* (The court analyses wording in various copyright statutes such as "children," "grandchildren," "legitimate," "widow," and "widower," and concludes that these words all imply humanity, while excluding animals who cannot marry and have heirs entitled to property by law.), See 17 U.S.C. § § 101, 201, 203, 304, 203(a)(2)(A).

¹⁰

¹¹ The Infinite Monkey Theorem is a mathematical theory which describes mathematical randomness akin to the following metaphor: If there were an infinite number of monkeys striking keys on a typewriter randomly, given enough time, it will reproduce the complete works of Shakespeare. There have been some comparisons made between this famous thought experiment and Generative AI, considering both the ability to generate works that would be deemed intellectual property if a person made them, and the ability to reproduce existing works of intellectual property. See e.g., Ben Hattenbach & Joshua Glucoft, note, *Patents in an Era of Infinite Monkeys and Artificial Intelligence*, 19 STAN.TECH. L.REV. 32 (2015).

¹² *Thaler v. Perlmutter*, No. CV 22-1564 (BAH), 2023 WL 5333236 at *1 (D.D.C. 2023)

¹³ *Id.* at *1

stating: “Copyright has never stretched so far, however, as to protect works generated by new forms of technology operating absent any guiding human hand, as plaintiff urges here. Human authorship is a bedrock requirement of copyright.”¹⁴ The court’s assertion that copyright requires a human hand is supported by multiple sources.¹⁵ The court finally cited *Naruto v. Slater*, which made said that since a human author needs to be present, a monkey cannot receive copyright ownership.¹⁶ Using all of these examples, the court concluded that a work created entirely by AI cannot receive Copyright protection.¹⁷

However, the court does not answer a crucial question, and a question regarding the facts of this case. Thaler later asserted new facts that he “provided instructions and directed his AI to create the Work.”¹⁸ The court, however validly, does not answer the question because of procedural reasons.¹⁹ This new set of facts that Thaler attempted to bring to the District Court is

¹⁴ *Id.* at *4

¹⁵ “To be sure, as plaintiff points out, the critical word ‘author’ is not defined in the Copyright Act. See Pl.’s Mem. at 24. ‘Author,’ in its relevant sense, means ‘one that is the source of some form of intellectual or creative work,’ ‘[t]he creator of an artistic work; a painter, photographer, filmmaker, etc.’ *Author*, MERRIAM-WEBSTER UNABRIDGED DICTIONARY, <https://unabridged.merriam-webster.com/unabridged/author> (last visited Aug. 18, 2023); *Author*, OXFORD ENGLISH DICTIONARY, https://www.oed.com/dictionary/author_n (last visited Aug. 10, 2023). By its plain text, the 1976 Act thus requires a copyrightable work to have an originator with the capacity for intellectual, creative, or artistic labor.” *Id.* The court also discussed the settled understanding of authorship going back to the foundation of our government and constitution. “[t]he utility of this power will scarcely be questioned,” for “[t]he public good fully coincides in both cases [of copyright and patent] with the claims of individuals.” THE FEDERALIST NO. 43 (James Madison). The court then brings up *Burrow-Giles Lithographic Co. v. Sarony*, which describes how “the human creator, not the camera, conceived of and designed the image and then used the camera to capture the image,” on the issue of 1800s photography. *Thaler*, No. CV 22-1564 (BAH), 2023 WL 5333236 at *4 (D.D.C. 2023), (citing *Burrow-Giles Lithographic Co. v. Sarony*, 4 S.Ct. 279 (1884)).

¹⁶ “While resolving the case on standing grounds, rather than the copyrightability of the monkey’s work, the *Naruto* Court nonetheless had to consider whom the Copyright Act was designed to protect and, as with those courts confronted with the nature of authorship, concluded that only humans had standing, explaining that the terms used to describe who has rights under the Act... all imply humanity and necessarily exclude animals.” *Id.* at 5, (quoting *Naruto*, 888 F.3d at 420). However, while the court in *Naruto* established that a monkey cannot own copyright in a photo, the court did not invalidate Slater’s asserted copyright in the photograph that was taken by the monkey.

¹⁷ *Thaler*, No. CV 22-1564 (BAH), 2023 WL 5333236 at *7 (D.D.C. 2023).

¹⁸ *Id.* at 6.

¹⁹ “[I]t is black-letter administrative law that in an [APA] case, a reviewing court should have before it neither more nor less information than did the agency when it made its decision.” *Id.* (quoting *CTS Corporation v. Environmental Protection Agency*, 759 F.3d 52, at 64 (D.C.C. 2014)).

more aligned with how AI generated works are typically created compared to the factual analysis that was originally described in Thalers copyright registration document and the subsequent court analysis.

Generative AI works are typically created in this fashion:²⁰

First, the user of the AI (“User”) inputs various directions of what they want the work to be into the input of the AI program. For demonstration purposes, I as a User created the text prompt for Open AI’s Generative AI chat box “Chat GBT”:

“Write me a sad quasi-political folk song about the plight of the AI songwriter who is not recognized as a person eligible for copyright protection in a post *Thaler v. Perlmutter* world”

This input is an original sentence created by me. I specify to the AI program the type of work I wish to create (musical composition), themes (AI songwriter not eligible for copyright protection), emotions (sad), context (post *Thaler v. Perlmutter* World), etc... As the User, I gave this AI program original, creative direction that it would never have had if not for my inputs.

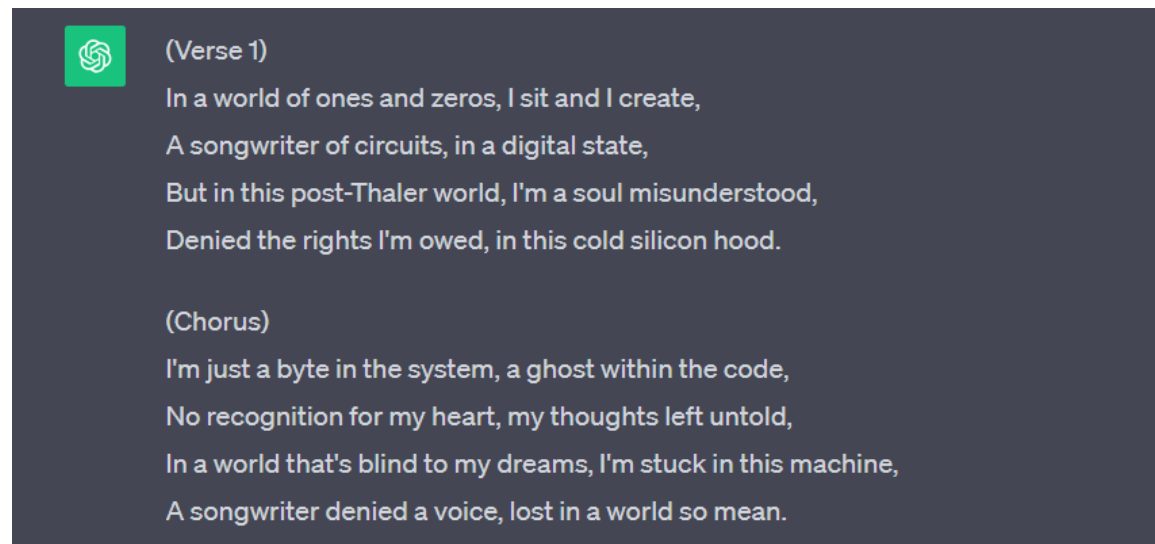
Second, the AI program loads while it is generating the work. It will search its code for an understanding of my prompt. The AI had been trained on essentially the collective works of humanity (“CWH”). This has implications of infringement of existing copyrighted works.²¹ In generating this song, it will probably rely on its training data of copyrighted folk songs. It may infringe upon the works of Bob Dylan, Paul Simon, or Phoebe Bridgers, but there is no way to

²⁰ The process described where a human is required to input text into the program for it to generate content is how the majority of commercially available Generative AI programs are designed to work.

²¹ *Getty Images v. Stability Inc.* is a pending case involving a copyright owner suing a Generative AI for infringement based on blatant evidence. There were many instances where pictures generated by the AI program have included a resemblance to Getty Images watermark.

tell. Regardless of who it has infringed upon in its training data, there are definitely implications of human authorship being infringed and worked into the final product of the song.

Finally, the AI program generates the work. Chat GBT titled the song “Silicon Soul’s Lament.”



In this demonstration, Chat GBT generated just song lyrics, but it is possible for various AI programs to generate an entire song with melody, harmony, and with a full vocal and instrumental performances, wrapped up into a single phonogram. These programs and their respective companies are all created, owned, and operated by people.

Using the combination of these three elements: Users, The Collective Works of Humanity, and Developers, an original work is created that would unquestionably be copyrightable subject matter if it were created in the traditional way. All three essential parties put in effort led by humans to create this final work.

In limiting the inquiry to just the facts presented by Thaler in the registration process, and nothing more, the court did not give an answer on how to treat copyright ownership of AI

generated works for the factual manner in which the vast majority of AI generated works are actually created. Therefore, *Thaler* cannot be the controlling case on which to decide whether works created with generative AI.

There are many open questions to answer that revolve around generative AI.²² Would an AI generated work prompted with human inputs be subject to copyright protection? By the User? By the Developer? By the millions of copyright owners whose work is embedded in the code of the AI program? There is also the question of whether those millions of copyright owners have valid infringement claims against the Developers for their work being used as Training data for the AI and embedded in the source code? Generative AI is a very disruptive tool that the Copyright Board is correct in viewing as a unique thing deserving of special attention. This note will seek to attempt to answer those questions by proposing policy that benefit all three of the aforementioned categories of parties involved in the creation of generative AI works.

II. Argument

The decision in *Thaler* is in line with the current position of the US Copyright Office.²³ But, the *Thaler* decision is only a single District Court's opinion. There have not been any decided cases from the higher federal courts on this issue. There have been no statutes passed by congress regarding copyright protection on works created by AI or if the data mining done to train AI

²² Many of these questions are asked by the court in *Thaler* themselves. "The increased attenuation of human creativity from the actual generation of the final work will prompt challenging questions regarding how much human input is necessary to qualify the user of an AI system as an "author" of a generated work, the scope of the protection obtained over the resultant image, how to assess the originality of AI-generated works where the systems may have been trained on unknown pre-existing works, how copyright might best be used to incentivize creative works involving AI, and more." *Thaler*, No. CV 22-1564 (BAH), 2023 WL 5333236 at *6 (D.D.C. 2023).

²² *Id.*, at 6.

²³ Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence, 88 FR 16190

constitutes infringement. It is evident that is not a settled issue in US law. The route that the Copyright office and the D.C. District Court took of denying copyright protection of AI generated works is not the only direction that US policy can go.

There are a few issues with the current US approach. The foundations of US copyright law are utilitarian in approach. The Constitution originally intended to have intellectual property protection to “promote the Progress of Science and useful Arts.”²⁴ To promote progress, being the creator of writings or discoveries entitled the author to exclusive rights for a limited time.²⁵ The property rights and subsequent financial benefits to having these rights were seen as more of an incentive to better society, rather than a reward for owning something intangible.²⁶ However, since AI generated works have no copyright protection, there is no legal incentive to benefit society with use of AI generated works. Generative AI is a powerful tool and is getting more advanced at a rapid pace. It has the potential to be a groundbreaking tool for beneficial creativity, though it seems like AI is most frequently used as just a novelty, as a nuisance, or for nefarious purposes. Considering this constitutional framework of copyright, US policy should be incentivizing use of generative AI in beneficial ways.

Additionally, there is nothing stopping people from just lying on their copyright registration documents. As a songwriter, it is possible for me to register the song I had generated by Chat GPT with the US copyright Office with me claiming that I wrote it in its entirety.²⁷ Then have it recorded and distributed onto the various streaming platforms as I start to receive royalties from the song, all based on a falsehood. This would create liability and potentially litigation as the

²⁴ U.S. Const. Art. 1, §8, cl. 8

²⁵ See generally William M. Landes & Richard A. Posner, *THE ECONOMIC STRUCTURE OF INTELLECTUAL PROPERTY LAW* (2003)

²⁶ See *Mazer v. Stein*, 347 U.S. 201 (1954)

*Getty Images*²⁸ case looms over the issue of copyright infringement of training data. Having a policy that encourages this bad faith deceit of Copyright office is not a public policy that the US should follow.

A solution to this policy that encourages deceit rather than beneficial creation using advanced technology would be to allow certain AI generated works copyright protection and to give the three aforementioned parties of creator's ownership of that work. US copyright law already treats different types of works differently in the copyright statutes. It is reasonable that we can carve out special rules for AI generated works.

But to give Generative AI created works copyright protection, there would have to be a particular way it should be done as to adhere to constitutional principles of intellectual property law. Firstly, this proposal is only valid if an End User uses existing minimum creativity standards when creating inputs into a generative AI program. If there is no minimum creativity by a human at this stage, the rule in *Thaler* would apply and the AI work cannot be a protected copyrightable work.²⁹ But if the user does “[provide] instructions and [direct] his AI to create the Work,”³⁰ and minimum creativity standards are met, then the facts are similar to the facts alleged by Thaler, and the work should be seen as created by an author. This End User should get a piece of the ownership, and all associated rights of copyright ownership. The other half of the copyright ownership going to the AI programs developer. Because of the implicit agreements in using generative AI, the User and the Developer create a quasi-work-for-hire relationship, making the

²⁸ *Getty Images (US), Inc. v. Stability AI, Inc.*, Docket No. 1:23-cv-00135 (D. Del. Feb 03), Court Docket

²⁹ *Thaler*, No. CV 22-1564 (BAH), 2023 WL 5333236 at *6 (D.D.C. 2023).

³⁰ *Id.*

AI developer an author, manifesting mutual intent to merge their contributions into a unitary whole work.

Then, because of the way AI training data works, it is assumed that the generative AI has embedded within its code an untold number of copyrighted works used without permission.³¹ While the outcome of *Getty Images* is still unknown, it is likely that they will prevail and the court will see the process of AI training data and generation as infringement.³² Therefore, the collective works of humanity that have been infringed upon also deserve a piece of copyright. However, it is probably not possible to prove what was infringed and how significantly unless it is a case as blatant as *Getty*. Therefore the U.S. should look at proven solutions for similar problems that have existed in US copyright law for decades. Performing Rights Organizations are a particular feature of the music industry that engage in a practice called Collective Rights Management for performance rights of song compositions.³³ These organizations, such as ASCAP, BMI, SESAC, and GMR will collect public performance royalties from concert venues, restaurants, event spaces, television networks, and music streaming services and then distribute them appropriately to the artists based on proprietary formulas.³⁴ This system in the US music industry has international parallels and is very effective in collecting royalties in a sector of the music industry where it may be functionally impossible for a particular songwriter to track how

³¹ Many companies are in the business of “web scraping,” to download mass amounts of material from the internet, many times completely automated. This industry is seemingly crucial to providing an AI program with the data it needs to learn to “learn.” AI advisory company WSaaS described Web scraping as “Web scraping involves downloading a web page, parsing the content of that page, and extracting relevant data for storage or further processing. The purpose of web scraping is to quickly and efficiently gather large amounts of data from the internet.” Use Web Scraping to Supercharge Your Training Data for Machine Learning, WSaaS (March 22, 2023) <https://wsaas.ai/blog/web-scraping-machine-learning-training-data/>

³² *Getty Images*, Docket No. 1:23-cv-00135 (D. Del. Feb 03), Court Docket

³³ Donald Passman, *All You Need To Know About The Music Business: Eleventh Edition*, 230 (2023)

³⁴ *Id.*

much they are owed, and even more difficult for that songwriter to collect what they are owed.³⁵

A system such as this, if set up with the goal of collecting royalties for copyright owners on AI generated works, would be highly efficient and would be an effective remedy for the infringement that is inherent in training AI programs.

This paper will examine the justifications for affording copyright protection to AI generated works and will propose policy to update the law to manage the various issues surrounding generative AI.

III. Justifications for affording copyright protection to AI Generated Works

a. Constitutional analysis

As mentioned previously, US copyright law protects the “sciences and useful arts” for the purposes of promoting the creation of those sciences and useful arts. The reward system inherent in copyright isn’t the primary consideration. The court says that copyright was “intended definitely to grant valuable, enforceable rights to authors, publishers, etc., without burdensome requirements; ‘to afford greater encouragement to the production of literary [or artistic] works of lasting benefit to the world.’”³⁶ This incentive is based in a utilitarian philosophy that believed that “encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors in ‘Science and useful Arts.’”³⁷ The goal is to benefit society via creating impactful artistic works. However, as the courts and the copyright office deny granting copyright protection to AI generated works, they are denying protection to many potentially beneficial works because of the assistance of a new technology in creating it.

³⁵ *Id.*

³⁶ *Mazer v. Stein*, 347 U.S. 201, 2018 (1954), (quoting *Washingtonian Co. v. Pearson*, 306 U.S. 30, 36 (1939)).

³⁷ *Id.*

The specter of artificial intelligence is often discussed as a sweeping change from how a work is typically made, but AI is far from the first-time technology has drastically changed how copyrightable works are created. As discussed before, a camera allowed a photographer to capture a picture of the world as it was. Sure, photographers can meticulously direct the subjects of the photo, alter the lighting, and even edit the picture “in post,” but a photo taken quickly on a phone without any artistic direction is copyrighted just the same. The use of various recording tools allowed musicians to record and reproduce music that would be impossible if not for the technology. The law was updated to give these types of works copyright protection³⁸. These now noncontroversial uses of technology allow the user to be afforded copyright protection, even though the authors relied heavily on tools.

The problem with denying protection for works created by this new technology is this: because there is no incentive for people to create beneficial works using AI, they likely won’t use this impressive technology to the best of its ability to benefit society. In our current system, AI is still used, but it will never move past its image as a disruptive nuisance. People who want to be disruptive will be disruptive regardless. If there was a real benefit to using AI to create beneficial works, it would be more prevalent.

Within the current framework of US copyright law, there are justifications for allowing the end user of an AI generated work to receive a piece of ownership of the work created.

b. Justifications for giving ownership to the End User.

i. Authorship

³⁸ An amendment to the U.S. copyright law was passed in 1865, but it wasn’t until the case citing *Burrow-Giles Lithographic Co. v. Sarony* that photographs as copyrightable works became settled law. *The Evolution of Copyright Law*, <https://www.copyright.gov/history/copyright-exhibit/evolution/>

Inherent in the copyright laws of the US, there is the requirement of an author.³⁹ For a long time, this wasn't an issue. Quills cannot write on parchment by themselves. The steam engine could not have just come into existence without people experimenting. Then this device called the camera was invented.

Using a chemical reaction and the press of a button, a user was able to capture an exact image of what was in front of them. While the photographer receiving a copyright for the photo is obvious now, it wasn't initially clear who, if anyone, would receive copyright ownership.⁴⁰ The photographer doesn't necessarily create the subjects or the background in the photo, but by framing what they want into the photo, they are deemed the author. In *Sarony*, the court answered this question.⁴¹ The argument against providing copyright to photographs is that "a photograph is not a writing nor the production of an author."⁴² However, the court goes through the history and expansion of copyright law.⁴³ The court used an expansive view of the constitution to say that copyright can cover photographs, "so far as they are representatives of original intellectual conceptions of the author."⁴⁴ The facts in *Sarony* did end up aligning with the courts idea of "original intellectual conception of the author."⁴⁵ Meanwhile, the idea that photographs are

³⁹ Const. Art. 1, §8, cl. 8. 17 U.S.C. §102

⁴⁰ *Sarony*, 4 S.Ct. at

⁴¹ *Id.*

⁴² *Id.*

⁴³ They described how the copyright law was amended in 1831 to add "copyright, musical compositions, and cuts, in connection with prints and engravings. *Id.* (quoting 4St. 436) .

⁴⁴ *Id.*

⁴⁵ "The third finding of facts says, in regard to the photograph in question, that it is a 'useful, new, harmonious, characteristic, and graceful picture, and that plaintiff made the same * * * entirely from his own original mental conception, to which he gave visible form by posing the said Oscar Wilde in front of the camera, selecting and arranging the costume, draperies, and other various accessories in said photograph, arranging the subject so as to present graceful outlines, arranging and disposing the light and shade, suggesting and evoking the desired expression, and from such disposition, arrangement, or representation, made entirely by plaintiff, he produced the picture in suit.' These findings, we think, show this photograph to be an original work of art, the product of plaintiff's intellectual invention, of which plaintiff is the author, and of a class of inventions for which the constitution intended that congress should secure to him the exclusive right to use, publish, and sell, as it has done by section 4952 of the Revised Statutes." *Sarony*

covered by copyright became an unchallenged part of the copyright scheme protecting all photographs, not just ones with a very narrow set of facts to be allowable. The camera became simply an uncontroversial tool in the grand scheme of copyright.

At its core, AI presents a very similar process to early photography. There is a user who “sets up” an AI software by putting prompts into a program, they give creative direction, and the program spits out a work that is along the lines of the vision that the user was trying to create. If the outcome of the generation isn’t what the User wanted, they keep trying again with different direction to get the generation closest to the “plaintiff’s intellectual invention.” This is similar to how a photographer would have to set up the photo with framing, but ultimately the final image is somewhat unpredictable, because of the long exposure time and the process of developing the photo. They might try again, telling their subjects to stay still, until they get the result that they’re happy with.

This process is also different to the facts of *Kelly v. Chicago Park District*, where the Court determined that a garden, even though designed by an artist, cannot be a work of authorship.⁴⁶ The way an AI generated work is created is sufficiently different to a garden. Whereas a garden is infinitely changing, using forces of nature to determine where they’re growing, once an AI generated work has generated, it is a distinct work, not to be changed except by the end User. While the exact expression of the generation isn’t fixed at the instant of using the program, once it is fixed, it is an expression of what the User envisioned, through use of a tool. And, if the result

⁴⁶ “Simple put, gardens are planted and cultivated, not authored. Garden’s constituent elements are alive and inherently changeable, not fixed. Most of what we experience in a garden—the colors, shapes, textures, and scents of the plants—originates in nature, not in the mind of the gardener. Any given moment in time, a garden owes most of its form and appearance to natural forces, though the gardener who plants and tends it obviously assists. At this state of World over Works, even though it was designed and planted by an artist.” *Kelly v. Chicago Park District* 35F. 3d 290 (7th Cir. 2011).

is unpredictable to their vision, they try again with more detailed inputs until the generation is what is in the mind of the artist. A gardener does not have this luxury of trying again, at least not on any short scale.

Based on this interpretation of authorship, it should be deemed that the End User of a generative AI software can be considered an author for the work, making it viable to be copyrightable work.

ii. Originality

For a work to be copyrightable, there needs to be an original work of authorship fixed in any tangible medium of expression.⁴⁷ “Original” as understood in qualifying copyright means that the work was independently created by the author, and that it possesses at least some minimal degree of creativity.⁴⁸

Independently does not mean one single author, it simply means that it was created independent from copying other works.⁴⁹ For AI generated works, there is no single type of work created. AI generated works can be copies of works, but they also don’t necessarily have to. It would likely depend on the direction and inputs that the User puts into the work. But this also doesn’t consider that there could be works that “copy” existing works that still have originality.

Fair Use is an affirmative defense that allows use of copyrighted works under certain circumstances, such as a weighing of the fair use factors.⁵⁰ If this affirmative defense is brought up in court, and the court gives a favorable weighing toward fair use, then that work is still

⁴⁷ 17 U.S.C. § 102. Though, unlike authorship, this is not a constitutional requirement..

⁴⁸ *Fiest Publications, Inc. v. Rural Tel. Serv. Co.*, 488 U.S. 340 (1991). (citing *Nimmer & D. Nimmer*, Copyright § 2.01[A], [B] (1990)).

⁴⁹ *Id.*

⁵⁰ 17 U.S.C. § 107.

copyright protected though being “copied” from an existing work. This defense is decided on a case-by-case basis and can’t be determined if we’re only discussing hypothetical works with no context.

Additionally, derivative work is a right are an exclusive right given to a copyright owner to create works derivative of a copyright owner.⁵¹ If a new author is given a license to create a derivative work, they will be authorized to create a copyrightable work based on “copying.” Since AI generated works have the potential to be derivative, acquiring a license may be required for this factor of originality.

However, the need for creativity on both sides of this joint work is still present. But in many examples of User direction for AI generated content, this creativity requirement should be met. The court in *Feist*, explained how the bar for creativity is low.

To be sure, the requisite level of creativity is extremely low; even a slight amount will suffice. The vast majority of works make the grade quite easily, as they possess some creative spark, “no matter how crude, humble or obvious” it might be. *Id.*, § 1.08 [C] [1]. Originality does not signify novelty; a work may be original even though it closely resembles other works so long as the similarity is fortuitous, not the result of copying.⁵²

In the demonstration example discussed in the Introduction, the prompt created entirely by me, “Write me a sad quasi-political folk song about the plight of the AI songwriter who is not recognized as a person eligible for copyright protection in a post Thaler v. Perlmutter world,” would meet that creativity requirement as it does possess a creative spark, despite being crude. It is possible for the direction given to a generative AI program to meet that minimum creativity requirement.

⁵¹ 17 U.S.C. § 106(2)

⁵² *Feist Publications*, 499 U.S. at 345.

iii. Fixed in a tangible medium

This requirement⁵³ can be easily met for AI generated works. Once a work is generated, it can be fixed into a tangible medium just as any other work. Even if it isn't fixed originally, the End User has the ability to fix the work in the same manner as any other author would fix a work in progress work. An image can be published or printed. A song can be recorded. A line of text can be published in some form of literature. This is sufficiently different than a garden, which is not fixed.⁵⁴

iv. Copyrightable Subject Matter

Like Fixation, this requirement⁵⁵ for copyright protection can be easily met for AI generated works. As long as the work generated is copyrightable subject matter, it can be eligible for copyright protection. This requirement isn't challenged by any courts. No one can argue that an AI generated song composition, for example, is not a song composition. This is an element that would have to be determined on a case-by-case basis, but is not a barrier to entry unless it's a subject matter that would also be denied copyright protection if it was made by a human.

Because AI generated works are able to meet these criteria, there is valid justification for providing the User with copyright protection on AI generated works that do meet these criteria.

c. Justifications for giving copyright ownership to the AI Developer

⁵³ 17 U.S.C. § 102

⁵⁴ “When an author conceives of a plan for a garden and puts it in writing—records it in text, diagrams, or drawings on paper or on a digital storage device—what is an intangible intellectual property has been embodied in a fixed and tangible “copy.” This writing is as sufficient permanent and stable copy of the author's intellectual expression and is vulnerable to infringing copying, giving rise to the author's right to claim copyright. The same cannot be said for a garden, which is not a fixed copy of the author's intellectual property.” *Kelly v. Chicago Park District*, 35 F. 3d 290 (7th Cir. 2011)

⁵⁵ 17 U.S.C. § 102

If an AI generated work meets the criteria for copyright protection through the actions of the user, that work should be given copyright protection. However, the User was not the only party contributing to the work. The Developer, through its generative AI program was an integral part of the work. Joint work is a doctrine of Copyright law that facilitates the coming together of two parties relying on each other for the creation of a single work.

A Joint work is “prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.”⁵⁶ If you assume that an AI program can be considered an author, this definition fits perfectly with how AI generated works are created. The User contributes their part of the unitary work by imputing direction into the program’s input; with the implicit intention of creating a unitary work with the AI program. Meanwhile, the AI program contributes their part into the unitary work by generating something based on direction from the user. The intention of the AI is there via the company who owns the program making their AI commercially available.

However, AI programs are not authors. Just like a monkey, a software program is not a legal entity that can be entitled to ownership. But that is not to say a person is the only thing that can own a copyright. Corporations and other legal entities are not just buying copyrighted works, they are creating them. The concept of Work-for-hire is a long-accepted doctrine in which a legal fiction such as a corporation assumes ownership of a copyright created for the corporation via contractual agreement or statutory employment relationship.⁵⁷ The court even separates the work-for-hire from the actual author by making the copyright duration 95 years from publication (or 120 years from creation).⁵⁸ Additionally, for works-for-hire, the “employer or other person

⁵⁶ 17 U.S.C. § 101

⁵⁷ 17 U.S.C. § 201(b)

⁵⁸ 17 U.S.C. § 302(c)

for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.”⁵⁹ This statute is clear that a corporation can be considered an author for copyrighted works in a work-for-hire situation.

Therefore, while it is nonsensical to give an AI program in and of itself copyright ownership, the developer of such program may have a valid justification for being afforded ownership. Based on a combination of the joint work doctrine and the work-for-hire doctrine, the User and the Developer may have a valid claim to having joint ownership in a copyrighted work. There is also an implicit agreement between the User and the Developer that the Developer will contribute to a work by generating based on the Users Directions in exchange for the User to agree to whatever the Developers terms are (i.e. a subscription fee for using the program), creating a quasi-work-for-hire relationship. These contributions are then brought together by these two authors through the mutual intention to create a work merged into an inseparable or interdependent parts of a unitary whole.

While granting part of the copyright ownership to the AI developer goes against the status quo of current policy, there are sound justification existing within the framework of current US copyright law. Because of the complexity of this relationship between the User and the AI developer, this relationship should be memorialized by congress as the way to provide AI Generated Works, that fulfil all aforementioned criteria, copyright protection.

⁵⁹ 17 U.S.C. § 201 (b)

IV. Justifications For Affording Copyright Protection to “The Collective Works of Humanity”

a. Thesis

The various generative AI programs aren’t, however, creating these works out of thin air. Inherent to the process of creating a generative AI program is training it. What separates artificial intelligence from other types of complicated software is the ability to learn from data and make choices depending on what they learned from that data. Generative AI then gains the ability to “make predictions, recognize patterns, and comprehend complex information – skills once reserved solely for human intelligence.”⁶⁰ A requirement for this training to be done is massive quantities of information. When it comes to AI programs designed for generating images, text, or other forms of copyrightable subject matter, that data tends to be existing literature, music, pictures, etc., much of it copyrighted works. At this point, most copyrighted works exist in some form on the internet, usually accompanied by some information about what the work is.⁶¹ This is a treasure trove for AI developers who have gone through a process of “scraping” this data to use in their training data. The resulting works created by the various generative AI programs are often derived from works that the AI programs were trained.

Obviously, the existing copyright owners are not very happy about this arrangement, and many lawsuits have been filed against AI developers in the last year alleging infringement. The complaint in a 5-billion-dollar class action lawsuit against Google started like this:

It has very recently come to light that Google has been secretly stealing everything ever created and shared on the internet by hundreds of millions of Americans. Google has taken all our personal and professional information, our creative and copywritten works, our photographs, and even our emails—virtually the entirety of our digital footprint—and is using it to build

⁶⁰ <https://thedata scientist.com/how-the-training-of-the-ai-models-works/>

⁶¹ This accompanying information is called Metadata

commercial Artificial Intelligence (“AI”) Products ... For years, Google harvested this data in secret, without notice or consent from anyone.⁶²

While none of these many lawsuits have been decided yet, the copyright owners of the world are rightfully upset at the status quo of AI data training and generation, not to mention the personal data used as well. Therefore, a solution to this status quo may be to give an interest in the resulting AI generated works to the Collective Authors of Humanity.

b. Analysis of Getty Images v. Stability AI

The *Getty Images*⁶³ case is perhaps the most well-known of the pending AI infringement cases. What makes this case so interesting is how blatant the copying seems to be. Getty Images is a leading company in the stock image industry and in the furtherance of running their business unintentionally created one of the best libraries for AI training data.⁶⁴ Their hundreds of millions of assets include photographs and the associated metadata describing what the image conveys in rich detail.⁶⁵ They even started licensing the use of these assets to tech companies as AI training data.⁶⁶ Getty alleged that Stability AI, instead of negotiating for a license, has scraped and reproduced 12 million images and associated metadata for use in AI training.⁶⁷

Stability has only motioned for dismissal for personal jurisdiction reasons.⁶⁸ They have not responded to the merits of Getty’s claims as of yet. However, an analysis of the facts points

⁶² Complaint at 1, J.L., C.B., P.M., N.G., R.F., J.D., and G.R., v. Alphabet Inc., Docket No. 3:23-cv-3440 (N.D. Cal. 2023), Court Docket.

<https://fingfx.thomsonreuters.com/gfx/legaldocs/myvmodloqvr/GOOGLE%20AI%20LAWSUIT%20complaint.pdf>

⁶³ *Getty Images (US), Inc. v. Stability AI, Inc.*, Docket No. 1:23-cv-00135 (D. Del. Feb 03, 2023), Court Docket

⁶⁴ Complaint at 1, *Getty Images (US), Inc.*, Docket No. 1:23-cv-00135 (D. Del. Feb 03, 2023), Court Docket

⁶⁵ *Id.*, at 2

⁶⁶ *Id.*, at 2

⁶⁷ *Id.*, at 3

⁶⁸ Defendants’ Motion to Dismiss or Transfer this Action at 1, *Getty Images (US), Inc.*, Docket No. 1:23-cv-00135 (D. Del. Feb 03, 2023), Court Docket

to a possible conclusion that there was infringement in this case. In using the images of Getty's database in the training data, the developers of AI have encoded the images and related metadata into their dataset, arguably infringing on Getty's reproduction right and right to create derivative works. The reproduction right and the derivation right, as defined by 17 U.S.C. 106, are some of the exclusive rights that a copyright owner is granted.⁶⁹

Reproduction is when an "copy" or a "phonorecord" is copied into a different fixed and tangible medium.⁷⁰ An example is if someone duplicates an MP3 file to send it to someone else. The right to do this is an exclusive right granted to the owner of the copyrighted work, therefore if someone reproduces a work without the authority to do so, then it is an infringement. One may obtain authorization via a license, usually with monetary compensation as consideration, then they may reproduce the copyrighted work as per the particulars of the agreement. As per their complaint, Getty Images was in the business of licensing their copyrighted images and associated metadata in "connection with the development of artificial intelligence and machine learning tools." Stability AI decided to not negotiate for a license and just risk the liability of this lawsuit. They allegedly used "scrapers" to take Getty's images and reproduced them in its training data. This cause of action is one of primary infringement.

The use by Stability AI may also implicate the Derivative use right also exclusive to

⁶⁹ "A author holds a bundle of exclusive rights in the copyrighted work, among them the right to copy and the right to incorporate the work into derivative works." *Stewart v. Abend* 110 S. Ct. 1750, 1760 (1990).

⁷⁰ "Copies are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term 'copies' includes the material object, other than a phonorecord, in which the work is first fixed;" "Phonorecords are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term 'phonorecords' includes the material object in which the sounds are first fixed." 17 U. S. C. §101.

copyright owners. Getty Images contends that many of the images produced by Stability AI are similar to specific images from Getty’s library that were copied.⁷¹ Not only does this point to evidence that images were copied for Stability’s training data, but also, if what Getty purports is the truth, an infringement of Getty’s other exclusive right of creating derivative works.⁷² This cause of action is one of secondary infringement.

While Stability AI’s motion to dismiss included only personal jurisdiction and procedural arguments, if the lawsuit survives the motion, Stability AI will likely argue the Fair Use affirmative Defense.

The first factor is “the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.”⁷³ The use by Stability AI is commercial; though that is relevant, it is not dispositive. The court in *Warhol* says “[t]he ‘central’ question it asks is ‘whether the new work merely ‘supersede[s] the objects’ of the original creation ... (‘supplanting’ the original), or instead adds something new, with a further purpose or different character.’”⁷⁴ The court in *Warhol* goes even farther by stating a use that has further purpose or different character is said to be transformative.⁷⁵ For reproduction, there is no transformative use. Getty already has licensed their photos for use in AI training software and even started developing their own AI image system training on Getty images.⁷⁶ Stability’s use very clearly just supplants the original use of the images. But there is an issue with applying a

⁷¹ Complaint at 4, *Getty Images (US), Inc.*, Docket No. 1:23-cv-00135 (D. Del. Feb 03, 2023), Court Docket

⁷² In addition to Stability AI creating images that are derivative of Getty’s copyrighted photos, many images created by Stability AI include a recreation of the iconic “gettyimages” watermark. This amusing fact is perhaps a reason why this case garnered so much media attention when the Lawsuit was first filed.

⁷³ 17 U.S.C. § 107

⁷⁴ *Andy Warhol Found. For the Visual Arts, Ind. v. Goldsmith*, 143 S.Ct. 1258 (2023).

⁷⁵ *Id.* at 1275.

⁷⁶ Complaint at 4, *Getty Images (US), Inc.*, Docket No. 1:23-cv-00135 (D. Del. Feb 03, 2023), Court Docket

transformative standard over the alleged infringement against Stability. Since the users ultimately create the derivative images, the way users use the software can make images either transformative or not transformative. People can use the software to create an image completely erasing the need for the use of Getty Images pictures by creating an image for use as a stock image. However, they can use the same program to create an Avant Garde post-modern art piece using some reminiscences of Getty stock photo imagery, but ultimately for a completely different use with a completely different character. Ultimately because Stability allows users to create derivative uses of Getty Images photos at ease, and that this is a secondary infringement suit, this weighs in the favor of infringement.

The second factor is the nature of the copyrighted work.⁷⁷ This favors infringement because the nature of the copyrighted work is to compete with Getty Images.

The third factor is the amount and substantiality of the portion used in relation to the copyrighted work as a whole.⁷⁸ Here the court looks at how much of the work was taken. For the reproduction infringement, it is obvious that the pictures were taken in full by the scrapers as part of the training data. However, this weighs more in favor for fair use on the derivative infringement because it is ultimately something to be decided on a case-by-case basis.

The final factor is “the effect of the use upon the potential market for or value of the copyrighted work.”⁷⁹ Looking at Getty Images’ business overall, the unlicensed reproduction will have a massive impact on the market of the copyrighted work. As AI imaging software improves, we may have the technology to completely recreate images perfectly very soon using

⁷⁷ 17 U.S.C. § 107

⁷⁸ *Id.*

⁷⁹ *Id.*

commercially available generative AI's such as Stability AI. Getty's business is based on having an extensive library of stock images for essentially any situation for purposes of media, education, journalism, etc. It would have a massive effect on the market when AI replaces the stock image industry, using the expensive libraries of copyrighted works maintained by these stock image companies like Getty for free. This weighs in favor of infringement.

While this lawsuit is still in the very early stages and much of the analysis available to make is based on speculation from the facts alleged in the complaint and with how AI training and generation works, it seems likely that Stability may be liable for infringing on Getty's works. That decision would probably implicate the entire industry that's popped up surrounding generative AI. The impending litigation by every interested and/or litigious copyright owner would clog the court system and cause financial strain on all parties involved. Functionally, it is not a solution. Generative AI companies can instead acquire licenses to avoid infringement, such as the licenses Getty was selling, but getting licenses on every copyrighted work that is already in the various systems will be logistically impossible. These problems, however, have a solution.

c. Basis for affording royalties to the collective works of humanity.

While Getty Images was about a single plaintiff and a single defendant, this problem is about how all the AI companies have potentially infringed on basically everything that has ever been posted on the internet. This massive amount of data is essentially the Collective Works of Humanity. A legislative solution to this problem is to allow the Collective Authors of Humanity ("CAH"). a piece of the pie: a part of ownership and subsequent royalties in the copyrighted works created by generative AI. The CAH is not a single author, it is just a grouping of every copyright owner. But how could the CAH own a piece of a work created by AI?

Because of the inherent difficulty in organizing ownership and collection of royalties when everyone who has ever owned a copyright is implicated, it may be better to look at this problem by examining a similar problem solved by the Music Industry

i. Performing Rights Organizations

Public performance is one of the exclusive rights granted to copyright owners.⁸⁰ However, with certain types of works it is more difficult for copyright owners to manage these rights. For musical compositions, managing these rights on an individual level is a logistical impossibility. For a songwriter to manage these rights, they would need to be able to gain access to a functionally infinite amount of data and reach out to every radio station, every television station, every music venue, every restaurant with music, and every internet streaming service. They would then need to negotiate a license with every party just mentioned for a royalty rate appropriate for how much the song was played (for both as a phonorecord or as a live performance), and if a license cannot be reached, file an infringement action against them. If they couldn't do this, they couldn't be paid. That process would be ridiculous for songwriters with major publishing companies working for them, not to mention smaller, less established songwriters working on their own. The solution to this logistical and legal nightmare was the establishment of Performance Rights Organizations ("PRO"). A PROs is a type of organization that exists to collect royalties for public performance of song compositions.⁸¹ The way they work is this:

⁸⁰ Donald Passman, *All You Need To Know About The Music Business: Eleventh Edition*, 230 (2023)

⁸¹ *Id.* This paper only focuses on PRO's but different types of organizations exist for different types of royalties. Examples of such are MLC, SoundExchange and Harryfox.

There are a few PROs in the US that a songwriter can choose: ASCAP, BMI, SESAC, and GMR.⁸² A songwriter can choose to sign up for whichever one they want to become a Member of the PRO.⁸³ They register the songs they write with information such as the publishing company, all the songwriters and their respective percentage of the song, and other information. Then when phonorecords are released comprising of a sound recording of the song, that is added to the database. By signing up, a Member agrees for the PRO to collect publishing royalties on their behalf and send the money to them for a small fee.⁸⁴ The PRO then negotiates with the aforementioned parties⁸⁵ and issues “blanket licenses”⁸⁶ that covers all of the music by all of the artists represented by that particular PRO.⁸⁷ The PRO takes this massive pool of money and divides the royalties to the artists appropriately based on proprietary formulas based on tons of data.⁸⁸ The songwriters and publishers will then receive their royalties directly from the PRO.⁸⁹ If a music venue, for example, didn’t pay its ASCAP royalties, they would be liable for infringement, or they can start paying the license. The PROs are successful at enforcing this rights collection scheme, making sure songwriters can get paid their performance royalties. While the way music industry pays its artists and songwriters has its many complaints, the system of Performing Rights Organizations is a well respected one because of the herculean logistical problem that it solves.

d. Applying a similar system to AI generated works

⁸² *Id.*, at 230. ASCAP is a semi-governmental organization, the rest are private non-profit corporations.

⁸³ *Id.* They have some different terms and perks but they all generally function the same.

⁸⁴ *Id.*, at 231.

⁸⁵ *Id.* The licenses are paid by the venues and not the performers.

⁸⁶ *Id.*, at 230.

⁸⁷ *Id.*

⁸⁸ *Id.*, 231-36.

⁸⁹ *Id.*, at 231.

A system similar to this system of consolidating licensing for performance royalties would be adept at solving the problems associated with AI generated works. Since infringement is likely and a case-by-case licensing is a logistically impossible problem to solve, a legislative solution to give the CAH a piece of the ownership of AI generated works would be a mutually amicable solution. Congress should set up an Artificial Intelligence Rights Management Organization (“AIRMO”) for the purpose of collecting royalties on behalf of the CAH and distributing royalties to them proportionally. Like the PROs, the AIRMO would have to be an opt-in system for copyright owners to sign up as Members and register their works.⁹⁰ Additionally, just like PROs, they would have to implement a complicated and proprietary algorithm based on data to determine how to divide and distribute royalties amongst their members. AIRMO could collect and distribute royalties in the following way.

The AI generated work would exist as a joint-work between the End User and the AI developer. The AI developer involved would have to negotiate for a blanket license for the right to use AIRMO’s works in the training data and to create derivative works. If a developer of a generative AI uses copyrighted work in its training data without securing a blanket license, then they are liable for infringement. This option is better public policy because it puts the burden of securing licensing and paying royalties on the AI developer who is the party that infringed upon the copyrights of the CAH.

IV. Overview of the proposed system

a. How it should be implemented.

⁹⁰ It would be impossible to distribute royalties if it were not an opt in system.

This proposed system, while rooted in the unanswered questions of caselaw and supported by many doctrines within the current Copyright framework, needs clear statutory support to implement correctly. These proposed rules require more than just action from the US Copyright office and caselaw. An act of congress would be needed to fully support the propositions stated here. This section is going to give an idea of what provisions are needed in such an act of congress to solve the problems associated with generative AI.

i. Creating Definitions for all the relevant terms

Congress should first define the terms associated with providing these types of works copyright protection. Some words and terms of art that would need clear definitions for purposes of this act of Congress are as follows:

AI Generated Work: Any type of copyrightable subject matter fixed in a tangible medium created in the following way: An end user directs a generative AI program, meeting minimum creativity standards, the Generative AI then generated a work that is substantially predictable to the creative direction of the End User.

End User: The intended user of a Generative AI program. For purposes of copyright they must put direction into the input of a Generative AI program.

Generative AI: A software program that is designed to create copyrightable subject matter fixated in a tangible medium after being given direction as an input by an End User. There is a presumption that Embedded within a Generative AI's data is an unauthorized reproduction of the CWH. The resulting works created by a Generative AI have the potential to be unauthorized derivative works.

Developer: The legal entity, (corporation, LLC, etc...) that is the owner of the Generative AI program.

Collective Works of Humanity: A collection of every copyrighted work ever created and are publicly available. A presumption that the developer has infringed on every copyrighted work ever created in its training data.

Collective Authors of Humanity: A collection of the various owners for the CWH. The CAH are deserving of royalties from the resulting AI generated work.

**ii. Enshrining AI generated works created with the direction
of an End User as a separate category of Copyright under
Title 17**

Congress should enshrine AI generated works created with the direction of an End User as a separate category of copyright under US copyright Law. An AI generated work, as defined above, is copyrightable under US copyright law. The User, when directing inputs into the generative AI, is entering into a quasi-work-for-hire contract with the developer of the AI, giving the AI a joint-work interest in the ownership of the work following the merger doctrine. Both the User and the Developer have equal ownership of the resulting work. When they register the work with the Copyright Office, there will be a place to disclose this relationship.

**iii. Presumption of Infringement on The Collective Authors of
Humanity's reproduction and derivative works rights.**

There is a presumption that an AI developer has participated in infringement of the copyrighted works of the CAH. Because of this, there is a requirement of obtaining a license for the copyrighted works that go into the training data. AI Developers must then, to not be liable for

infringement, obtain a license for the copyrighted works reproduced embedded in the training data, and for the potential derivative works. Alternatively, if a developer can affirmatively prove that there is no unauthorized infringement, such as if a AI developer uses only images they own in their training data, they would not have to pay any license.

**iv. Establishing the creation of the Artificial Intelligence
Rights Management Organization (AIRMO)**

To solve the issues of the logistics of licensing, Congress should establish the Artificial Intelligence Rights Management Organization. AIRMO will be authorized by its members to negotiate blanket licenses with AI developers for authorized use of its Member's copyrighted work. AIRMO's purpose is to represent the Collective Authors of Humanity, so the barrier to register as an AIRMO member should be low, as it is for other collective rights organizations. Members will register themselves as authors and register their works with AIRMO. Because of the presumption of infringement, AI Developers will either have to affirmatively prove that they do not infringe on any copyrighted works that they do not own or negotiate a blanket license with AIRMO for use of the Collective Works of Humanity. AIRMO then distributes these royalties from the blanket licenses to the members of AIRMO, proportionality based on data.

**v. Requirement of Disclosure of data by the AI developers
about training data.**

To aid in the algorithm applied by AIRMO for distributing royalties, AI Developers must comply with disclosure requirements. Data about what was used in the training data and how the generation uses copyrighted images must be disclosed so AIRMO can accurately determine how

much royalties should be distributed to the various members. This requirement can be waived if the Developer affirmatively proves that they do not infringe on any copyrighted works.

**vi. This Act of Congress only applies to Copyright not any
other intellectual property scheme**

This act of congress only applies to copyright. This act of congress would not affect Trademark or patent law. Additionally, This act of Congress does not affect the status of the Right of Publicity. Works that infringe upon a person's right of publicity will still be liable as per current state right of publicity laws.

V. Conclusion

While these policy proposals do not solve every issue about Artificial Intelligence, creating a system to manage copyright protections revolving AI generated works will stand to benefit most people. Users can benefit from the financial incentives to use this new technology in more useful ways. Developers can benefit from the financial incentives involved in developing the technology further. The existing copyright owners, and future creators of copyrighted works can benefit from being financially rewarded from other's use of the technology. If these benefits are not in place, the only parties who benefit are the AI developers, who already have financial incentives to develop the technology. The status quo is indifferent to the Users and potentially hostile to the existing copyright owners. This situation is sufficiently different than the outcome of *Naruto*, where the only thing at stake was a monkey's standing to sue; whom being a wild monkey in the rainforests in Indonesia, had no actual benefit from claiming infringement of copyright, even if it was permissible. While it can be used in very silly ways, AI is not a novelty. It is a technology that in the last few years has rapidly progressed; faster than the law could keep

up with. It is a technology that is a force to be reckoned with, not merely monkey business.

Using this technology in a way that benefits society and doesn't disincentivize existing authors is critical for managing our future.