

Comments upon Questions Regarding Artificial Intelligence and Copyright

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Question #1.

A benefit of this technology is the democratization of art. Rather than an elite few producing a product/work, generative A.I. allows for the masses to produce a product/work. Just as the advent of the printing press moved the creation of books beyond the realm of those few who were creating them by hand, so does generative A.I. open up a new vista by which society as a whole might benefit (Soon).

A risk of this technology is that it will put certain segments of the population out of work. While lamentable, it is nevertheless the history of progress. The printing press put an end to the illuminated manuscript ("Illuminated Manuscripts"). The automobile put an end to the stagecoach (Alexander). The tractor put an end to the mule (Smith), etc, etc. Such shifting of societal dynamics is not within the purview of the Office of Copyright, and as such, should play no role in its deciding of how to handle generative A.I. Such issues should be dealt with at the political level, not the administrative (Wilson).

As to the technology's current affect on creators, it has aided in the creation of more of them. As creative works have become easier to produce, more people have been producing them, thus expanding the amount of product in the marketplace. Such expanded opportunity has allowed for certain people to profit off of endeavors that would not have been possible before, thus contributing in the best tradition of the capitalistic system that is the economic hallmark of this country. As to how the use of technology is likely to affect creators in the future, it will

force them to come up with newer ways to ‘stand out from the crowd’ in order to compete in a newly crowded marketplace—again in the best tradition of capitalism.

In regard to copyright owners, the current use of the technology is causing no material harm. In those cases where a given work **is** a material copy of a pre-existing intellectual work, copyright law already provides a remedy for redress. No new remedy is needed. As to the future, one would expect the situation to remain the same. Out-and-out copyright fraud is not the same as the currently discussed use of generative A.I.

Technology developers have benefited greatly from the current use of generative A.I., allowing them to go so far as to develop software programs that require little to no input from a programmer (Phillips). Such uses can in the future allow developers to produce and market new products, thereby benefiting the public at large, and those members of the public that are shareholders of said companies.

Researchers too currently benefit from the use of such technology, as it affords them the ability to quickly synthesize large amounts of data into coherent reports (“How is AI Used”), thereby not only increasing their efficiency, but also allowing them to analyze and codify a greater array of research, thus aiding those experts who rely on such efforts, which in turn aids the general public. Such a use should only increase as time wears on.

Ultimately, it is the public that gains from each individual sector’s usage of the technology, as the fruits of said usage filters down to the common man. Additionally, the public currently derives a direct benefit from its use of such technology, as it provides for the ability to create content where one may not have previously had the talent to do so. Such a state of events

is transformative, akin to the popularization of literacy. One would expect such opportunities to only increase over the course of time.

Question #2.

As a member of the public, the increasing use of, or distribution of, A.I. generated material has an impact unique from that of other copyright shareholders. Its use has liberated what had heretofore been a cumbersome process to produce creative content. For example, whereas before, even the most mundane desire to draw a picture required either many years of learning the skill, or the expense of hiring an individual who had done so, now a picture can be produced ‘on demand’ in mere moments. Time, effort, and financial loss are all cut down for the consumer. Such technology once more puts said consumer in the driver’s seat, rather than being held hostage by industry. Just as the creation of the camera made everyone a portraitist overnight, so has generative A.I. allowed everyone to unleash their inner artist, bereft of any ‘gate keeping’ mentality. The wants and needs of the masses that make up the country’s consumer base should not be forgotten/ignored in a discussion that threatens to place more emphasis on the desires of an industry.

Question #3.

One is troubled as to the phraseology of this question, as it in part implies that the Copyright Office has a predetermined stance on the issue of remuneration of copyright holders for the use of their works in the training of A.I. models. By suggesting that one offer ways that such a system might be implemented, the office is implicitly assuming that such a system *should* exist. Not only is this not true, but the very conception is outside of the bailiwick of an organ of the Executive Branch. Such ideas should originate with the politicians of the Legislative Branch.

In truth, copyright holders should no more be ‘compensated’ for their works being used to train generative A.I. than they should be compensated for their works being used to train any number of human artists (Izzo). The very idea is a farcical attempt at ‘hemming in’ a new technology within a pre-existing paradigm. It is a concept lacking true intellectual heft.

What is more, the request for links to research papers ‘backing up’ one’s opinions on the subject implies an unconscious bias in favor of the academic community, leading to the perception that unless a perceived ‘expert’ says something, then it does not carry as much weight with the Copyright Office. That disconcerting thought aside, here is a list of references that should satisfy the aforementioned department’s desire for expert opinions:

“Exploring the Opportunities of Generative AI in Corporate Tax: Trends, Benefits, and Challenges.” *Accountancy Age*, 2023.

“INTERVIEW: Generative AI Use by Govt Staff Has ‘Big Benefit.’” *Jiji Press English News Service*, JIJI Press America, Ltd, 2023.

Larosa, Francesca, et al. “Halting Generative AI Advancements May Slow down Progress in Climate Research.” *Nature Climate Change*, vol. 13, no. 6, 2023, pp. 497–99, <https://doi.org/10.1038/s41558-023-01686-5>.

Morley, Jessica, et al. “Generative AI for Medical Research.” *BMJ (Online)*, vol. 382, 2023, pp. 1551–1551, <https://doi.org/10.1136/bmj.p1551>.

“74% of Executives Believe the Benefits of Generative AI Will Outweigh the Associated Concerns.” *Dow Jones Institutional News*, Dow Jones & Company Inc, 2023.

Weinberg, Neal. "How IT Pros Can Benefit From Generative AI Safely: Natural Language Chatbots Can Transform Enterprise IT For the Good, But Keep a Human In the Loop." *Network World (Online)*, 2023.

Question #4.

When considering those statutory or regulatory approaches that foreign nations have taken around the world, as it pertains to copyright and A.I., there are certainly examples that the United States of America could find of value. As to copyright specifically, one might look to Somaliland, which at this time is thought to have no applicable laws regarding the subject (Pillay), for the free flowing of information is preferable to the would-be chains placed on it by the Berne Convention. Considering the fact that copyright did not exist prior to 1710 (Tallmo), the vast majority of human history survived and thrived just fine without it. As much of Shakespeare's own works would be considered violations of copyright (by today's standards), it might be argued that its very existence does more harm than good. Regarding intellectual property, the adage of 'the government that governs least governs best,' comes to mind. Japan (Klimentov) and Israel's (Klimentov) current stance on generate A.I. falls within that framework.

"International consistency" is not an important factor at all in this area. The purpose of copyright's current international consistency is to promulgate the present paradigm. A consistency born not of virtue, but of finance. The copyright law of the United States of America should be predicated upon that principal of limited monopoly that our Founding Fathers intended—not the principal of profit-mongering. Though it may mean less revenue for the few, and more bureaucratic headaches besides, the law (be it for copyright or A.I.) should be written

as best benefits the citizens of the United States of America—regardless of how it may upset international consistency.

Question #5.

No, new legislation is not warranted to address copyright or related issues with generative A.I.

Question #9.

As using copyrighted materials for the training of generative A.I. does not infringe upon the rights of the owners of said copyrights, they should not be provided with the means of either opting in or opting out of such training.

Question #9.1

This is a leading question, as it presumes that copyright owner consent should be requested for the training of A.I. models, if said model is for commercial use. Such consent is unnecessary, regardless of a given A.I. maker's intended use. A copyrighted work is the sum of its parts, not the individual parts themselves.

Question #13.

The primary economic impact of a licensing requirement on the development and adoption of generative A.I. systems is that it would put the kibosh on independent creators. If every street corner artist had to pay a fee for learning how to draw/paint from studying the Old Masters, there would be decidedly fewer of them. Only the select minority with deep pockets would be able to peddle their wares. A situation which is inherently uncompetitive. To establish an industrial oligarchy in the name of 'fairness' would be a sick mockery indeed.

Question #15.

No, developers of A.I. models should not be required to either collect, retain, or disclose records regarding the materials used to train their models. Nor should creators of training datasets have a similar obligation.

Question #16.

There should be no obligations to notify copyright owners that their works have been used to train an A.I. model.

Question #19.

No, revisions to the Copyright Act to clarify the human authorship requirement are not necessary. The current standard of A.I. generated work as being considered public domain is fine, as one can still derive profit from a work that is in the public domain (as any number of retailers of out-of-print texts can attest to).

Question #20.

Legal protection for A.I. generated material is desirable as a policy matter insofar as said policy protects the ability to produce such material from claims of copyright infringement.

From this perspective, such legal protections would materially nourish advances in the field. However, the argument is that such legal protections already exist, thus shielding such development from the capricious claim of copyright infringement.

Question #21.

No, the copyright clause in the U.S. Constitution does not permit copyright protection for A.I. generated material, as the creator of such works is alike to the person who buys the groceries that are then given to a cook to prepare. The buyer (creator) provided the ingredients, but it was the cook (A.I.) that made the meal. The creator can certainly claim ownership over the ‘meal,’ and subsequently make money from the peddling of it, but the creator cannot credibly claim to have personally made it.

No, providing such copyright protections would not promote the progress of science and useful arts.

Question #22.

A.I. generated outputs can infringe upon the copyright of pre-existing works the same way that non-A.I. generated ‘outputs’ can. It is not the mechanism that determines infringement, it is the outcome. If one creates a picture of Spider-Man and sells it without the benefit of a license from the proper copyright holder, it is infringement—whether said picture was created by A.I. or by hand. Infringement is all about what one seeks to do with a work, not how the work was created.

Question #25.

If A.I. generated material is found to infringe upon a copyrighted work, the end user who seeks to palm off said work should be held directly responsible. One does not hold the paint brush maker liable for having produced the image, nor the manufacturer of the paint. Adobe is

not to be blamed if a user uses Photoshop to create and sell one's own pictorial depiction of Superman. The fault lies with the user.

Question #28.

No, the law should not require A.I. generated material to be labeled or otherwise publicly identified as being generated by A.I.

Question #28.1.

No one should bear the responsibility for identifying a work as A.I. generated, just as no one should be required to identify an article of clothing as being either hand stitched or machine stitched.

Question #30.

Historically, the United States of America has rejected the concept of 'moral rights,' as is witnessed by its incomplete adherence to the Berne Convention ("Moral Rights in U.S. Copyright Law"). It is a foreign idea which is anathema to our understandings of freedom. A person no more has a 'right' to their visual or vocal likeness than the songbird in the tree. As one does not have to pay a fee to either paint its picture or record its warbling, neither should one be required to do so as it regards a fellow human being. That most jurisdictions have not adopted such 'rights of publicity' laws should speak to how much of a cultural outlier they are. They are 'rights' manufactured out of thin air, established only to maintain an economic status-quo, devoid of any historical relevancy. They serve only to stifle creativity.

Question #31.

Not only should Congress not ‘establish’ a new federal right similar to state law rights of publicity, but it is disturbing that the Copyright Office, a subunit of the Executive Branch, should profess such ignorance as to think that government can establish rights. Government merely acknowledges or infringes upon pre-existing rights—it is not the source of them. Rights are divinely inspired, natural born to every human being (Feulner). The understanding of such is the very bedrock of our political system. That an office of said government is so woefully unaware of this state of affairs is beyond troubling.

Question #32.

No, there should not be protections against an A.I. system generating outputs that imitate the artistic style of a human creator anymore than there are protections currently against humans doing the same. The history of art itself is stratified by the popular emulation of any given style during any given period of time. The Old Masters became the Old Masters because they learned by way of aping the styles of others.

Question #33.

If there is any federal legislative attention required, it would merely be to abolish those fictitious ‘rights’ of publicity that select states have seen fit to foist upon an unwary public.

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