

ARTIFICIAL INTELLIGENCE STUDY QUESTIONS/RESPONSES (please note that I did not answer all questions, as some felt beyond my scope/experience)

by Peg Gerrity, Certified Medical Illustrator

1. By harvesting existing copyrighted illustrations without permission and offering these images as 'parts' for end users to piece together 'Frankenstein-style' visuals, the AI Industry directly infringes on the copyrights of the original creators and indirectly diminishes their ability to earn a living through the secondary license of their existing copyrighted works.
2. Roughly 80% of my annual income is derived from the secondary licenses of my existing medical and scientific illustrations. AI threatens my ability to continue leasing my archived images, thus affecting my company's survival. I have thousands of images in my archives that I lease over and over, often for usage on the web. These include several award-winning multiethnic 40 image sets of pregnancy, which I have leased to the US government, various State Depts of Health, and to outside groups for both commercial and noncommercial usage. I spent over 30 years creating inclusive fetal development illustrations in my own unique style, for books, patient websites, apps. Though I've registered the copyright to every image, I am at present powerless to stop the AI industrial complex from using my existing images as Training Material. Furthermore, by providing Clients amalgamated pregnancy images pieced together from my own art and that of other pregnancy illustrators, AI is essentially using our work, unauthorized, to create unfair competition.
3. <https://copyrightalliance.org/event/ai-and-copyright-webinar/>
4. No answer
5. Add verbiage stating "consent of the copyright owner is required for any image or creative content to be used as Training Material and/or compiled in any Training Datasets for any purposes"
6. I have limited understanding on this
7. I have limited understanding here
8. Currently, the 'fair use' laws we have in place are often used as an excuse for infringement. I've successfully settled lawsuits against MDs, clinics, and medical product manufacturers who have infringed my art in order to lure patients and investors, in spite of their claims of 'fair use' due to 'education' or 'research'. And while many hospitals have no problem paying fair prices, just many hospitals and nonprofits feel they deserve huge discounts in the name of 'education', forcing me to remind them that while they are subsidized, I as a freelance illustrator, receive no such subsidies to pay my bills or feed my family. Quite simply, this is my livelihood, and the unauthorized usage of my copyrighted work via AI databases claiming 'fair use' will be just as fraught and just as liable as an MD using my art unauthorized on their website. 8.1 The Warhol-Goldsmith case is an excellent example of the importance of artists to seek written permission to use the works of others, including photographs, as reference material for new or derivative art. I am currently creating watercolor paintings of wildlife, portraits, etc. in most cases, I take my own photos that I then use as references for my sketches/finals. In the event that I find an existing image I'd like to use, I send a written request to the photographer seeking permission to use their photo as a reference for my art. Social media, Google, and the digital world make it simple to locate the rights holder of a photograph. In some cases, I've been asked to pay a fee for reference usage. In others, the photographer has simply given written permission and asked to be given credit via a social media 'tag'. With all the technological advances most AI companies have, it is difficult to imagine they would have any trouble whatsoever in locating the rights holder of an image to request written permission to use that image for Training. Nor should the

onus be on the artist or photographer to 'opt out' of such infringement. I would NEVER assume if I used a photographer's work unauthorized that the burden would be on THEM to discover my infringement or 'opt out' of such unauthorized usage 'in advance'. It's like saying I can steal a car and sell it in Canada without recourse, and it's up to the owner of the car to have 'opted out' of such thievery. If the AI industry wants my art to Train, they MUST obtain my permission to do so. Anything less than that is an infringement of my copyright. Period. 8.2 I see the 3rd party data collectors as being liable of copyright infringement as well. Again, the onus is on the data/image collector to OBTAIN PERMISSION. In some of the infringement lawsuits I've settled, the defendants have blamed the web designer, layout artist, or some other 3rd party. In some cases, the 3rd party becomes a co-defendant. 8.3 Please see my response regarding SUBSIDIES for nonprofits/research/etc vs Freelance Illustrators/Artists. 8.4/8.5 I do not understand the Qs.

9. As I stated previously, the onus should NOT be on the artist or photographer to 'opt out' of such infringement. Simple example: I own a car. I must 'opt in' to allow that car to be used as an Uber vehicle. The onus is NOT on me as a car owner to notify Lyft/Uber etc that they cannot simply take my car and place it into ride-sharing service. My intellectual property is the same as my personal property. Furthermore, there is no solid, consistent, and free way to 'opt out'. Some artists use Adobe products to add metadata to their images in an effort to protect them, but AI continues to infringe regardless, and Adobe requires a hefty paid subscription for their products. Furthermore, metadata can be easily stripped from files. The AI industry and technology in general changes daily, and yesterday's metadata or 'opt out' tools will continue to be stripped, hacked, or worse. The AI industry itself MUST BE HELD RESPONSIBLE for OBTAINING PRIOR AUTHORIZATION via consultation and compensation with EACH Rights Holder whose work they choose to employ for AI Training, monetization, exploitation, and manipulation. My contracts clearly state that no alterations to my artwork may be made without prior written approval from the artist. As a Certified Medical Illustrator, it is crucial my work be preserved in its original form for purposes of anatomical and surgical accuracy. Anything less ruins my credibility and could be potentially dangerous for patients and surgeons who rely on my credentials and the sanctity of my surgical and histological illustrations. 9.1 YES, absolutely, please refer to answer nine. 9.2 As stated previously, there is no means by which to fully ensure 'opting out'. 9.3 Again, every image AI pilfers must be cross-referenced and the rights holder contacted for permission. As an example, there are millions of cars in the world. Would we tell an industry that wants to steal those cars it's OK because the amount of cars they'd steal is too hard to control? The AI industry has a duty to locate and obtain permission. AI is already becoming a multibillion \$ industry. Think of the jobs they could create by simply hiring folks to perform due diligence in locating the rights holders and obtaining permission? By giving the AI Industrial Complex free rein to steal, the US government would only be ensuring that the profits from AI go to relatively few people when in fact, it could be creating jobs. 9.4 Artists would need to file copyright infringement claim(s) against the AI industry, training content providers, etc. 9.5 In my experience settling claims against the infringers of my work, the only fruitful recourses have come from suing for the infringement of works I have previously registered w the US Library of Congress. Any copyright attorney worth their weight will insist that the artist not only be the rights holder, but also have registered the work. As a mentor for my profession, I regularly coach students and young artists to register their works.
10. I am contacted regularly by clients, students, etc via email, who hope to license my existing medical and scientific illustrations. I'm also contacted by folks who wish to license my watercolor wildlife art. It is not difficult to find me, as I sign every piece of work with my readable name, and I can be googled, like every other illustrator I know. In the case of my pregnancy art which I have licensed to the US and State Depts of Health for their Informed

Consent Legislation (brochures and websites), I add my website on each image as further protection. I do this to discourage political groups from using my pregnancy and embryonic art unauthorized for the purposes of pro-choice/pro-life causes. My agreement with the departments of health forbids me from licensing my fetal WRTK images to political groups, so infringement by AI or any other unlicensed usage of these works could breach my legal agreements with state and federal governments. 10.1 Direct licensing is certainly feasible. 10.2 there are also 'stock art' houses such as Getty, iStock, Almay, etc where Artists who wish to participate in AI could provide their images to these parties who would then pay the Artist a fee. This is NOT something I would do personally, nor would I encourage student artists to do it either, simply because stock houses are notorious for lowering fees and paying tiny percentages to artists. Still, any artist who truly wants their work to feed the AI machine could easily opt in via a stock art company, though the reimbursements they'll be paid will be minimal. 10.3 If you're thinking something like ASCAP which allows musicians to obtain royalties for their works, I'm not sure how ASCAP was started, nor if Congress was involved. It might be a model you could research though? 10.4 I prefer to set my own terms and fees, so I license all my work directly. I know the value of my art much better than a stock company does, plus by licensing directly, I can monitor where my images end up, how they're used, are they complying with my agreement terms, etc. 10.5 Licensing regimes should be opt-in only. I would never opt-in because I only lease My work directly. My work has great value, and the stock and licensing agencies know that, which is why they've tried to get me to join (so they'd get the biggest %). I'd tried one 30 years ago when I started my career only to find that the licensing group charged well-below market value for my work and of that, took 50%. I quickly removed all my images from stock agencies and have always direct-licensed ever since.

11. Questions 11 thru 14: There are HUGE legal ramifications in terms of copyright infringement with AI. I have settled several claims against infringers and will most likely be forced to do so against the AI Industry as well. As the original creator and rights holder, it is my work and only I have the right to license any portion of it. Period.

15. Absolutely! There needs to be a paper trail for those who collect images to feed AI training. If not, these AI players will be liable for all kinds of lawsuits. This is how business works. You can't simply sell a gold watch you stole to a pawn shop, or the pawn shop could be sued. Same w AI. Most ad agencies and publishing companies that use in-house or WFH imagery have HUGE archives that are catalogued and may easily be accessed. The AI industry will need to catalogue the training work as well. Short cuts, poor record keeping, and random screen grabs will end up costing them dearly in an infringement lawsuit. That has been the case for every copyright settlement I've been a party to since 2017.

16. There should be NO surprises. The AI industry MUST obtain permission from EACH copyright holder PRIOR to using the works. Each artist should be consulted and compensated. Artists should not have to 'OPT OUT', just as a car owner does not have to 'opt out' of ride-sharing to keep Uber from stealing their car and putting it into service. Permission should be obtained from Artists via 'OPT IN' only.

18. The only situation would be if I feed my own images into some AI software that will create AI works fully and completely out of MY OWN work. Nobody else's. Then, and only then, could I register the copyright to the resulting piece.

21. I do not believe stolen intellectual property is eligible for copyright protection/registration under the current law. However, an AI training system that legally licenses EACH training image could register the resulting image as possibly a 'derivative' or 'co-authored' work. There could perhaps be a box to tick for 'AI' similar to the existing 'previous author' or 'existing materials' boxes on the copyright registration portal.

22. YES! AI can absolutely infringe on the exclusive rights of the copyright holder unless a contract exists between the AI company/training entity wherein the rights holder has allowed the copyrighted work(s) to be used.

25. There should (and will) be multiple co-defendants when an Artist finds their work has been infringed by AI. 25.1. I worry that 'open source' is a misunderstood term. Just like 'fair use', it needs to be well-defined and limited. Furthermore, Artists must maintain the right to deny the usage of their work by any entity that intends to publish the work as open source.

30. Just as I must obtain a 'model release form' before depicting a specific person in a portrait or illustration, so should an AI company obtain such permission to use the likeness/voice of an individual.

32. Regarding AI 'imitating the style of' an artist, I feel like as long as the AI has LEGALLY sourced their training materials by consulting with and compensating each original copyright holder, then 'wanna be' AI art is a logical byproduct. As an example, the style of the great illustrator Norman Rockwell has been imitated for years by a more contemporary 'artist' who even signs his name in the same block lettering as Rockwell. It's not illegal, it's just terribly unoriginal and not the 'artist's way'. I fully expect 'Rockwell wanna be's' to feed images to AI who will then generate pieces that mimic the Rockwell 'look'. How to stop that? I honestly don't know if you can. It would certainly dilute my ability to make a living if someone imitated my style of pregnancy illustration and fed it to an AI training module for mass consumption.

Thank you so much for the opportunity to answer these questions. I appreciate all the work the US Copyright Office has done on behalf of illustrators and artists not just in the US, but all over the world. By truly researching how AI impacts Artists, you are modeling and maintaining the highest standards of protection for creative people.

-Peg Gerrity, Certified Medical Illustrator