

Reply Comment of Michael Capobianco

To: Suzanne V. Wilson, General Counsel and Associate Register of Copyrights, Maria Strong, Associate Register of Copyrights and Director of Policy and International Affairs.

Re: Docket ID COLC-2023-0006

My name is Michael Capobianco and I'm the author of two and co-author of four science fiction novels, as well as several science fiction short stories. I am a past president of the Science Fiction and Fantasy Writers Association (SFWA) but these comments represent my personal position and not the position of SFWA. Thank you for the opportunity to submit the following reply in response to comments submitted to the Copyright Office Notice of Inquiry pertaining to the Office's study of copyright law and artificial intelligence ("AI").

TechNet

You don't have to be a science fiction writer to see the horrendous implications for the future of humanity plainly spelled out by TechNet's comments to the NOI (COLC-2023-0006-8767) TechNet represents members Apple, Google, and Meta, among others, and has thechutzpah to say in a straightforward way what their members are thinking. The comments submitted to the Copyright Office by Apple, Google, and Meta also advocate for the systematic abridgement of their responsibility for transparency, liability for the harms they cause, and ethical oversight, but the TechNet comment provides the most direct statements of their corporate wish lists.

Right off, they quote the Supreme Court as saying "artistic protection is favored" when it comes to copyright, but they don't seem to understand what art is and how it is created. They say "The goal of Generative AI is to help authors create new content", which is fundamentally untrue, because authors are, by definition, human beings and "new content", in this quote, is not artistic and not covered by copyright law at all. The goal of Generative AI is to help computer systems create new, uncopyrightable content, not art.

They go on to say "to use copyright to throttle the creation of a technology for producing new works simply to protect existing copyright owners from competition would be to turn copyright policy on its head." In its comment (COLC-2023-0006-8834), SFWA laid out how unfettered Generative AI content threatens the markets for short and long form fiction, so it's not a simple matter of competition from other human beings on a level playing field. TechNet makes another fundamental error by implying that Constitution's tenet about "securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries" is solely about competition and financial gain. The examples that they give as analogous, cameras and audio recordings, bear no relationship with the capabilities of Generative AI to distort art into ersatz content. It is TechNet that is "turning copyright on its head."

After their misdirection's about the nature of generative AI content, they go on to make the blanket statement that "There is no basis to impose liability on AI developers for users' misdeeds" and thus

absolve the large companies that benefit from AI bear no responsibility for the result, even if it infringes copyright. So even if the content that these companies produce does violate copyright, it's not their problem. Essentially, they have no responsibility for their content, no matter what, because it is a tool like a word processor and the prompt that the user creates makes them responsible for the output, even though that's like saying the user of a slot machine is responsible for the symbols that pop up on its screen. This is a *reductio ad absurdum*.

Then they make a blanket statement that transparency obligations would unduly burden AI developers and handicap domestic AI development. This is another blatant misdirection. They say that "forcing AI companies to disclose the contents of these datasets would, in effect, force the publication of valuable and otherwise confidential commercial secrets." Basically, they put the value of their confidential, commercial secrets as being higher than the value of the copyrighted works they ingest. It is our understanding that at the current level of Generative AI the companies that are promulgating their AI systems don't even know what's in the datasets. That's hardly the result of "secrets" except the secret that they couldn't tell you even if they wanted to. The current strategy appears to be to scrape as much as they can, and the most valuable material they ingest when it comes to producing fictional content is copyrighted, published books and stories, many if not most put on the Internet illegally. This isn't a secret. Not revealing what books and stories they've ingested is comparable to a fence not letting police into the warehouse where the stolen goods are stored. They compare this to forcing a musician to disclose poems they've read, mp3 they've heard, and cover art that played a role in developing a hit song. This is risible, blurring the lines between copying and inspiration and human and machine.

And, as a final sortie, TechNet claims that disclosure restrictions placed on American companies will make them less competitive with the rapacious companies that are not hobbled by the restrictions and result in the US falling behind in the Generative AI race. Is that something the Copyright Office should even be thinking about?

To summarize, what TechNet is arguing for is Generative AI that is opaque, exempt from liability, and free of government imposed restrictions. This is a recipe for a science fiction dystopia, and we hope that the Copyright Office sees it for what it is.

AUTHORS ALLIANCE

The Authors Alliance response to the NOI (COLC-2023-0006-8976) does not represent the views of most science fiction and fantasy authors, and turns their understanding of copyright and the threat of AI on its head. The most prominent example of this is their second bulleted point: "Legislation to address copyright issues in generative AI would be premature while the technology and its use are still nascent;" The fact that it's still nascent means that there's still time to head off the worst and most devastating results of the technology before it becomes entrenched.

They also say "Copyright is at its core an economic regulation meant to provide incentives for creators to produce and disseminate new expressive works. Ultimately, its goal is to benefit the public by promoting the "progress of science," as the U.S. Constitution puts it. To do that, the Supreme Court has stated, the law's primary objective of copyright is to stimulate artistic creativity "for the general public good."² Because of this, we think new technology like generative AI should typically be judged by what it

accomplishes with respect to those goals, and not by the incidental mechanical or technological means that it uses to achieve its ends.” (Funny, they left promoting “and useful Arts” out of the Constitution's purpose of copyright.)

Again, they’ve got this backwards, putting the ends before the means. If the objective is to stimulate artistic creativity, that’s not what generative AI is doing, because the output is not artistic and not creativity. That’s why, as the CO correctly ruled, it’s not copyrightable. Whether it’s for the public good related to the progress of science is debatable, but in the field of artistic creation, the result is a kind of de-humanized illusion that erodes the public good. And by the way, the “incidental mechanical means” they casually dismiss is infringing the copyrights of authors.

There may very well be ways for authors to use generative AI as a tool, but even Tim Boucher, an author that the Authors Alliance cites in their response concedes, “Yes, there will be scammers, spammers, pirates, get-rich-quick schemes and plagiarizers using these tools to mass produce crap and publish it quickly.” He believes that markets are already being overwhelmed by “a tsunami of crap.” Why does this matter? Because it discourages writers and artists, depresses the markets for artistic creativity, makes it less possible to make a living as an artist or writer, and, as a result, harms the general public good.

Respectfully submitted,

Michael Capobianco