Introduction

I am of the opinion that any work created through so-called generative AI, with few exceptions, should not be eligible for any copyright protections whatsoever. While this is a strong position, I believe it is called for when several ideas are analyzed and the incentives are weighed. Copyright is not an automatic or obvious legal structure to begin with. Copyright was created to balance two major, conflicting incentives, the desire to reward creators with the ability to benefit financially and control the use of the work they create, and the desire of the public to have access to creative works, to enjoy and potentially to modify, recreate, or remix existing works into new works that, when added to the body of works available to the public, enriches the people and contributes to the development of culture. When we return to those two opposing forces, the best option is to prohibit generative AI works from being commercially viable by denying them copyright and other intellectual property protections.

Defining Generative AI Works

The works that I am particularly concerned with in this comment I am terming "Generative AI Works." This would include text generators and chat bots, image generators, and all similar works that have traditionally been artistic works protected by copyright when created by humans. I will discuss further the major exception I believe should be protectable, and thus commercially viable, later in this comment, but the short version is that tools that use AI technology, created through the work of those who truly and knowingly contribute to the development of the tool, and stand to benefit from the commercial success of the tool, should be protectable.

Too Many Cooks

The first major difficulty in awarding copyright to Generative AI Works is obvious, and has been discussed in many places in detail, so I will keep my remarks brief. The majority of Generative AI Works currently being produced depend on massive databases of human created works, generally created by scraping internet content hosts, often without permission, of their creators. These works are strictly derivative, and as such subject to arguments and lawsuits about whose intellectual property they truly are. Because Generative AI Works often depend on thousands, millions, or billions of scraped sources, and are often black boxes that disguise how exactly they generated their output, even from the creators of the AI Generators, it is simply impossible to determine the percent that each artist contributed to the final work. The AI Generators argue that because each contributors' share would be so small, they are entitled to simply rob every artist, because they are only robbing them a little bit. This argument is obviously self-serving and unprincipled, and becomes more so as AI Generators become able to produce more and more works more and more quickly. Furthermore, it is obvious that the AI industry believes these databases to be worth millions and even billions of dollars. Investment into AI tools is massive, and the companies that believe they own Generative AI Works are valued by major markets at astounding values. One of the major issues in the writer and actor strikes of the past year was the ability of studios to remove human writers and actors from the creative process, robbing mass databases of previously created works to create inexpensive Generative AI Works that could still rake in fortunes. The value of Generative AI Works must be curbed before it is too late. The People, those who create true artistic works, and those who will in the future, must be protected by their Government from being replaced by a small few who can buy the newest AI Generators.

Incredible Inequity

This leads into my next major point, which is that using Copyright—designed to incentivize new works from new voices—to protect Generative AI Works would fly in the face of its original purpose. I am strong supporter of Fair Use and Remix culture, and those in the AI industry like to argue disingenuously that Generative AI Works are nothing different from what any artist does. Isn't every new written work a remix of old words and sentences. Doesn't every artist reference existing art in creating new art. Of course. But when a human does it, they rely on their own eye or ear, their own senses, their own emotions, their own experiences, and must dedicate precious resources of time and energy to create new art. Furthermore, when a human does it, any human can do it. People of every age, background, and any other characteristic you care to name, can and has produced profound works of art that affect other people and contribute to the culture. Copyright allows for any person who has created a work of art to benefit from and control (at least some of) the use of their work. It allows any person the ability to break through, to connect with their fellow humans, and to maybe get to a place where they can make a living off of their artistic contributions. Copyright protections for human creators truly reward merit. Anyone can create copyrighted works. There is no financial bar to gaining a copyright. As soon as work is created, it is protected, and any work that others find valuable can gain economic value.

Generative AI Works will never function this way. Again, many have touched on the fact that the works in Generative AI databases are stolen. Due to the pushback against such theft, many have now dropped clauses into long, unreadable user agreements that posting works on art aggregate sites on the internet, the best way to have your art seen by others and to gain a following that can lead to economic benefit for a small artist, automatically opts all hosted works into inclusion into Generative AI databases. Even when users can opt out, it's made to be difficult. And really, the difference between straight up scraping without permission, and obtaining in this fashion is minimal. In both cases, huge numbers of artists are being stripped of the right to benefit financially or control the use of their art when it is used to create Generative AI Works.

But the very worst aspect of allowing Generative AI Works to obtain significant economic value through copyright protection is that it will, inevitably and irrevocably, push all value to a vanishingly small number of incredibly rich people. It is already evident that Generative AI Works can flood the market. At current capabilities, these tools can pump out huge quantities of movie scripts and images. Again, those who are pushing for copyright protection clearly believe that they will soon be able to make entire feature films with AI tools, cutting out nearly all human involvement. As the technology continues to develop, it will become more and more powerful. Additionally, most current AI-generated images are, after a fair bit of time spent analyzing them, identifiable, and are in many ways inferior to images created by skilled human artists. But as time goes on, they will get better and better, and become better at disguising themselves. Marketing will almost certainly also attempt to obfuscate the AI roots of more complicated works as major industries attempt to sell us Generative AI Works. Very, very quickly, the newest and strongest AI tools will be creating considerably superior work to slightly older models. Those who already have massive financial resources will be able to afford the newest tools, as well as the massive computing power needed to generate the most convincing and effective Generative AI Works, and no one else will. Market forces that already tend to push wealth towards the wealthy few will be massively accelerated if Generative AI Works are commercially viable. And the flooding of the markets by Generative AI Works will also make it much more difficult for human creators to have their works seen, and to have them become economically valuable.

Putting Pandora in her Place

A reasonable concern is that it's impossible, already, to eliminate the use and development of more and more powerful generative AI tools. There is some truth to that; people are going to continue to develop

and explore what AI can do, out of curiosity even if not out of economic interest. However, there are ways to use copyright and other government interventions to funnel AI development into things that genuinely benefit humans. Lots of humans, not just the rich ones. And that is to allow Generative AI Works to continue to be legal, but simply not commercially viable. If someone wants to use these tools to generate a work that they will enjoy, where no human artist of sufficient skill wants to put in the time to create such a work, why not let that happen. If it is free and accessible to all people, it is a good. If it is controlled by a tiny group of excessively wealthy people who can squeeze out all competition, it is an evil.

Secondly, the ban on copyright should not include the creation of AI tools which are genuine aids to creators in improving their own works and their own efficiency. I hope that I have explained above how Generative AI Works are not like previous steps forward in technology. But the development of AI tools, which assist humans, are like past developments in technology, which can be widely obtained and mastered, and serve to help humans create more and better work. The best way to explain what I mean by the tools I would advocate for copyright protection is through example. I am a visual artist and a big fan of animation, so I will go to those fields to produce my examples. Many current art programs such as Photoshop and Clip Studio Paint are already providing AI tools in their products. While I don't know what exact sources they used to develop their current tools (which could be an issue should they wish to seek protection under the scheme I propose), as long as they are ethically developed through the works of paid employee artists, they should be able to create and sell certain tools. These are things like line correctors: tools that can take a scanned sketch, now broken down to digital 1s and 0s, and be able to recognize that an artist is trying to create line art, which can be further developed into a finished piece. AI tools that can identify an artists intent in creating line art, and can then establish uniform line width, make those lines clear and dark, and remove all noise, are clearly beneficial tools in helping artists advance a work from the drawing stage to a finished piece. This is of genuine benefit to human creators, and can be obtained by many, if not most people at a reasonable price. The second example I would site is the use of AI tools to create in-between frames for animation. In most cases, the primary artists for an animation project to not literally draw every single frame. Instead, they draw "key" frames which create the most important elements of perceived movement, and then ship the work to other workers, considered less skilled or unskilled, to create "in-between" frames, drawings that are not meant to create new motion, but simply fill in the blanks between the primary artists key frames. There are already technologic tools designed to create key frames, though they are not yet ready to replace human work. While I am generally opposed to using AI to replace human work, creating in-between frames for animation has always been horrible work. It is massively underpaid, and workers are expected to crank out massive volumes of work, thousands and thousands of drawings that are totally bereft of their own creativity. Both American and Japanese animation traditionally shipped these jobs to Korea, but as Korea has become more prosperous, they are now going elsewhere in Southeast Asia, in a race to the bottom for the cheapest labor that can get the job done. Replacing this kind of work with AI tools is empowering, as it removes the need to exploit disadvantaged groups, and will make it easier for new studios and artists, who might be bogged down with creating in-between frames, allowing more work to be created by new voices. Hopefully, these example serve to highlight the difference between Generative AI Works and the development of genuinely valuable technology.

Conclusion

From the beginning, Copyright was established to allow new voices to create artistic works that would benefit all people through the development of culture, and to incentivize and reward those voices. While

some AI development can benefit humanity, Generative AI Works do not, and allowing them to be protected by copyright, and thus economically viable, would be disastrous.