

**U.S. COPYRIGHT OFFICE, LIBRARY OF CONGRESS**

**Artificial Intelligence Study**

**Written comments in response to notice of inquiry**

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I write in response to the Copyright Office's notice of intent regarding Artificial Intelligence and Copyright, and submit my comments as an individual and not on behalf of an organization. As a former communications professional, I have significant experience in a field wrestling with technology disruption accelerated by AI. My current academic training as a PhD student in American University's school of communication offers additional perspective on the potential impact of AI on copyright and the professional worlds of media and communication. As detailed in the responses below, I believe AI poses a significant risk to creative people and industries, however, there is a potentially greater risk that a policy overreaction based on copyright law has even more deleterious impacts.

**People in the communications could easily be hurt by increased adoption of AI (response to question #1 on potential benefits and risks of AI and #2 regarding AI's impact on industry)**

While I write as a nascent academic, prior to pursuing a doctorate I spent nearly 10 years in marketing and communications at several organizations, including T-Mobile, Vulcan Inc. (a hybrid wealth management and philanthropy organization based in the pacific northwest), and global PR firm WE Communications. PR industry-authored research<sup>1</sup>, like a recent report from WE and the USC Annenberg Center for Public Relations, takes a relatively sunny view of AI and leans into AI's potential as a supplement to human work and not a replacement. It does not address the potential threat to creative employees resulting from a greater reliance on AI for creative work. It is clear within other creative industries, however, that using AI to replace humans is, if not explicitly a goal now, certainly an option for which major corporations wish to reserve the right.

In his book *The Essential Guide to Intellectual Property*, copyright expert Aram Sinnreich described a conversation with an executive at a major music label in which said executive looked forward to the possibility that AI may represent a way to save on the labor costs associated with human employees<sup>2</sup>. Protections against writers and actors being replaced by AI tools are also at the heart of the recently resolved Writer's Guild of America strike and the ongoing Screen Actors Guild strike in Hollywood<sup>3</sup>,

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<sup>1</sup> *Fascinated and Frightened: How comms professionals view AI* | WE. (n.d.). WE Communications. Retrieved October 16, 2023, from <https://www.we-worldwide.com/insights/how-communications-professionals-are-viewing-the-ai-opportunity-ahead>

<sup>2</sup> Sinnreich, A. (2019). *The essential guide to intellectual property*. Yale University Press.

<sup>3</sup> Beckett, L., & Paul, K. (2023, July 22). 'Bargaining for our very existence': Why the battle over AI is being fought in Hollywood. *The Guardian*. <https://www.theguardian.com/technology/2023/jul/22/sag-aftra-wga-strike-artificial-intelligence>

thought it remains to be seen how much the fears from each group are actually warranted. Based purely on my direct experience, I believe the communications field has similar reason for concern, despite the somewhat rosier picture painted by industry research and thought leadership.

By way of example: in my time at T-Mobile from 2016-2019, I worked on a large of 100-150 designers, writers, and planners responsible for internal corporate communications and in-house creative marketing work. This group served as the nexus of T-Mobile's brand identity, creating unique visual and written assets that drove not only sales, but was the creative engine for T-Mobile's loud, in-your-face corporate culture (at least, relative to other telecom companies), at the time a point of significant differentiation in the industry.

With AI, the same creative teams responsible for the difficult work of creating an entire corporate culture and external identity nearly from scratch could easily be either first on the chopping block or, as an even smaller initial step, re-oriented toward working with AI first over humans first. Few business leaders at huge companies have visibility into the level of skill and effort required for outstanding creative work, and many would likely settle for a variation on brand assets that met a base, "good enough" requirement level produced by AI, if it means they can eliminate costly human employees (the controversial opening title graphics for Marvel's recent show, *Secret Invasion*, produced with AI, may represent just such a level of bland "okayness"<sup>4</sup>). And while it may not be a 1:1 replacement, if AI can produce creative work at a basically functional level, entry level roles could be replaced, while a more senior employee oversees several AI-integrated projects.

Over the last several years, large companies have invested significantly in bringing creative work in-house to reduce costs related to external vendors<sup>5</sup>. With AI producing "good enough" materials inside the walls of the company, there may be less work for external vendors which thrive on the creation of vast libraries of assets for marketing and communications campaigns. Corporate creative work also represents tremendous skilling opportunities for creative individuals who have access in the business environment to tools and technology which are otherwise cost prohibitive, especially for young creators. In my experience, I've seen creators take those skills and later apply them to their personal work, upleveling their creativity and creating new opportunities for themselves in the process.

Thus, the integration of AI with corporate creative teams may create a new headwind for artists and creative industry small businesses: a powerful force that prioritizes improving technology to create

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<sup>4</sup> *Marvel's Secret Invasion AI credits should shock no one*—The Verge. (2023, June 27). <https://www.theverge.com/2023/6/27/23770133/secret-invasion-ai-credits-marvel>

<sup>5</sup> Longacre, R. (2023, May 9). *In-house agencies: A new model of advertising and marketing*. Fast Company. <https://www.fastcompany.com/90892773/in-house-agencies-a-new-model-of-advertising-and-marketing>

works that seem more human over improving actually human skills, and one which makes opportunities to be even nominally creative while earning a living – already scarce – that much harder to obtain.

**Even with valid concerns about the future of the arts and creative industries, it's not clear that intervention via copyright is the correct response (response to question #5 asking if new AI-related copyright legislation is warranted)**

As is hopefully clear above, I am certainly concerned about how corporations integrating AI into their businesses could have negative impacts on the future of creative work. But it's not clear that copyright is the correct mechanism by which to rein in AI's explosive growth, despite significant pressure to lean on copyright emerging from well-known artists and creators<sup>6</sup>. The goal of the copyright office and/or policymakers should be to ensure not only that creators' copyrights are protected (to the extent that AI represents a new threat to that, if it does at all), but that any new policy or legislation does not add to an already maximalist copyright regime that delivers disproportionate benefits to major corporations.<sup>7</sup>

Already, copyright law too often serves as a hindrance to the very aims of scientific and artistic progress it was designed to advance. Legal scholar James Boyle has argued that we are in the midst of a "second enclosure movement" (nodding to the first enclosure movement whereby feudal lords in England fenced in formerly public property under the dubious guise of improving communal prosperity), as he describes the process by which everything from computer code to the human genome is being propertized and privatized through IP law, with the benefits unequally distributed<sup>8</sup>. Author and activist David Bollier has extensively catalogued the increasingly minute and mundane elements of our everyday lives which are subject to privatization through copyright and IP law and therefore less available to the broader public, including everything from floral scents to the letters "WWF"<sup>9</sup>. And Aram Sinnreich has noted not only how major media companies use copyright as a means to enrich themselves at the expense of both artists and the arts, but also the increasing use of algorithmically-driven mechanisms for enforcement of copyright law, with potentially grave consequences for both justice, privacy, and democracy<sup>10</sup>. All of the

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<sup>6</sup> *OpenAI Lawsuit: George RR Martin, Authors Allege ChatGPT Infringement*. (n.d.). Retrieved October 16, 2023, from <https://variety.com/2023/digital/news/openai-chatgpt-lawsuit-george-rr-martin-john-grisham-1235730939/>

<sup>7</sup> Sinnreich, A. (2019). *The essential guide to intellectual property*. Yale University Press.

<sup>8</sup> Boyle, J. (2003). The Second Enclosure Movement and the Construction of the Public Domain. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.470983>

<sup>9</sup> Bollier, D. (n.d.). Brand name bullies: The quest to own and control culture. (*No Title*). Retrieved October 16, 2023, from <https://cir.nii.ac.jp/crid/1130000795242369792>

<sup>10</sup> *Four Crises in Algorithmic Governance by Aram Sinnreich: SSRN*. (n.d.). Retrieved September 11, 2023, from [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3650593](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3650593)

above suggest treading carefully where potential expansion of privatization and corporate power via copyright law are concerned.

Another reason for caution is that it's also still unclear what, precisely, about AI would actually require legal intervention involving copyright. Just as Burrow-Giles Lithographic famously tried to argue that using an intermediate technology – a camera – invalidated a photographer's copyright of a photograph<sup>11</sup>, similar arguments are being and will be made today about what constitutes authorship and what constitutes a violation of copyright with respect to creative works involving AI. As those arguments unfold, it's essential to remember that AI is already here and has been here for a long time and, so far, the creative arts are still here too. For every group of well-known authors claiming their copyright has been violated by processes involving AI, another group of artists is already using AI without incident. Musicians, for example, have long been using modern AI tools to aid not only the writing and recording process, but everything from mixing and mastering to budgeting to the creation of album art<sup>12</sup>. Multihyphenate art collective and hard rock band The Armed recently used AI for their album artwork as an intentional affront to legacy notions of creative authorship<sup>13</sup>, and the musician Grimes recently offered a 50% share of profits to other artists who use her voice in any successful AI-generated song<sup>14</sup>. Depending on your lens, AI actually may be a boon to the arts, even as it upends other realms of creative work.

The challenge for regulators and policymakers now is to recognize that we already live with AI and to keep the goal of copyright – the promotion artistic and scientific progress – as their north star. They should avoid adding to an already onerous copyright regime, even as external pressures to act inevitably increase due to tech giant hype, justifiable worker concerns, corporations' never-ending search for new ways to squeeze profit from creative work, and the ongoing quotidian adoption of AI. We don't need another Digital Millennium Copyright Act – a legislative overcorrection created in a rush of corporate copyright-holder reactionism<sup>15</sup>. Rather, policymakers can learn from the creation of the DMCA and artistic progress in subsequent decades to recognize that technology can be game-changing without being world-ending. By bearing the original intention of copyright in mind over corporate media profits,

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<sup>11</sup> *Burrow-Giles Lithographic Company v. Sarony*, 111 U.S. 53 (1884). (n.d.). Justia Law. Retrieved October 16, 2023, from <https://supreme.justia.com/cases/federal/us/111/53/>

<sup>12</sup> *Musicians Are Already Using AI More Often Than We Think* | Pitchfork. (n.d.). Retrieved October 16, 2023, from <https://pitchfork.com/thepitch/musicians-are-already-using-ai-more-often-than-we-think/>

<sup>13</sup> *Behind the album art with cult enigmas The Armed*. (2023, September 21). Huck. <https://www.huckmag.com/article/behind-the-album-art-with-cult-enigmas-the-armed>

<sup>14</sup> *Grimes says anyone can use her voice for AI-generated songs—The Verge*. (n.d.). Retrieved October 17, 2023, from <https://www.theverge.com/2023/4/24/23695746/grimes-ai-music-profit-sharing-copyright-ip>

<sup>15</sup> Lessig, L. (2005). *Free culture: The nature and future of creativity* (Reprint). Penguin Books.

policymakers will be significantly better equipped to craft policies around AI, to the extent they are necessary at all, that benefit working people and the arts and sciences.