

The below is my personal response.

This response touches on questions 8, 9, 10, 15, 16, and 32, but primarily pertains to question 34, in that I suggest that patent law may actually be more applicable to this problem.

Issues surrounding AI generated content seem to mainly revolve around the substitution of this new technology for the hard-earned skill and labor of existing members of the workforce that rely on these skills to earn a living. This brings us to a fundamental question of whether these workers are having their labor effectively “stolen” by AI art generation and sold by a third party for a nominal fee. This results in the creator getting no compensation for their work, and no attribution, but directly undercuts the value of their works and labor by creating a cheap and plentiful competitor.

It is tempting to look only at labor and product and say that since these works of art and writing are not directly created by a person, but are, rather, generated by a computer program, that there is no theft involved, and no use of material without proper compensation, I believe this viewpoint to be shallow and deeply flawed. The key to properly understanding where the artist is being exploited without compensation comes less from an examination of product, and more from an examination of process.

As we know, novel processes are protected under the law. An artist or author is, in a very real way a curator of a personal creative process that is unique to themselves and not able to be easily replicated and certainly not able to be stolen... until now. In the past the inability to readily replicate these types of processes has made replicating them impractical, and registering them unnecessary and documentationally infeasible.

I would argue that the real problem with AI isn't as much that it is replicating a specific work, but that it is able to replicate process. When an artist so closely copies someone else's work that it is indistinguishable from the original, we call it forgery. When an artist attempts to accurately copy another's style while creating new works in the past it has generally had negligible impact on the original artist due to the limited productivity of an individual to create. The main problem now is that the productivity of an AI system has a very real ability to replicate these processes with an efficiency that directly devalues the process of the original artist.

This brings us to the question of how we protect the value of an individual artistic process that is able to result in a Picasso, a Van Gogh, a DaVinci. I would advocate the following framework to protect the unique processes that are being “decoded and replicated” by the AI system.

1. All works must be approved for use in a specific training set by their original creator(s) or current copyright holder(s) as representations of a utility process for the purposes of replicating and modifying said process. Any materials without an approval on file may be used for private research purposes only and may not be released to the public without liability.
2. All works in the training set, must have a corresponding compensation agreement on file indicating the rate of compensation for items in the training set, or an agreement for zero compensation.

3. The AI generation system must generate attribution down to and including the five percent threshold of source material for artistic process. For example, if a final AI generated product draws thirty percent of its final inspiration from work product of a specific creator the AI output would specify that the output is thirty percent based on the work/process of that creator. Several creators may be listed in this way with attribution.

4. The attribution percentages would effectively create a percentage-based communal license for each AI output managed by the service provider in accordance with the terms of the agreement.

4. Any attributed creators would, based on creation or use, receive an amount of compensation as set forth in the agreement distributed in amounts matching the attribution percentages.

5. Any creator that wishes to remove their work products from an AI dataset must be able to do so with reasonable notice. This would affect future generated works only, any previously generated AI works would exist under the terms and agreements in place at the time of their creation.

6. All works created in this way are not authorized for AI training use unless specifically agreed upon by all credited creators, as this would substantially devalue and compete with each creators unique process.

7. Users of the AI system do so as licensees and would be subject to the licensing system managed by the company responsible for the AI process.

8. The organization managing the creation of new AI works subject to a communal license would be able to negotiate fees or royalties for the works based on the agreement, and compensation to the creators would be based on the agreement and attribution percentages.

9. Rights under the license for these pieces is only transferable under the provisions of the agreement with creators and the provisions therein.

10. Infringement liability based on AI generated works would be based on the communal license holder and the agreement, and could likely follow existing patent/licensing law for the most part.

It is important to note that while copyright law may be clear on authorship and compensation, it is important to note that we understand on a fundamental level that using people's works without permission or compensation to create a system that undercuts the value of their work and process does result in a fundamental harm to the original creators; efforts must be made to identify a suitable legal framework to protect them from harm. If process protections are not currently sufficient for this process, it is our responsibility to modify or create a system so that these protections exist.