October 4th, 2023
Comments Regarding AI for the U.S. Copyright Office

I am writing this in response to the U.S. Copyright Office's request for comments regarding legislation for AI generated works. As an artist and writer myself, it's a developing technology which I have followed closely for the last few years. I feel that I have learned enough about the topic and the many facets behind generative AI to speak definitively on the matter.

I firmly believe that, for a multitude of reasons, AI generated works should not be granted copyright in this country with the technology in its current state. The most prominent of these reasons is the data set upon which current generative AI models are based. It is an unavoidable fact that the data sets used to train the largest generative AI models, such as Midjourney and Stable Diffusion, contained works already copyrighted by other artists without the consent from those who own those copyrights. Not only is this evidenced by the works they can produce, mimicking the styles of living, working artists, it has been admitted by the founders of these AI models themselves.

No matter how generative AI may alter or transform these copyrighted works, it is a direct violation to the creators themselves. This would not be an issue if the AI models were trained on data sets for which the respective companies owned the copyright, or if they were given permission by the copyright holders to use their work for training. However, the plain reality is that the copyrighted works of many creators were used without their consent, and especially without any compensation to them. Unless this aspect of the technology changes, I strongly believe this is a clear and definitive barrier to copyrighting the work of generative AI.

My other issues with generative AI are perhaps more ethical than anything else, yet I feel they are important for this matter nonetheless. Not only is the lack of creator consent a violation of existing copyright, it is also a violation of the creator themselves. Creators should have the ability to control the way in which their work and person are represented; artists should have control over what they illustrate, singers should have control over their voices, writers should have control over their words, and so on. Generative AI circumvents this right, and opens the possibility for an artist and their work to be misrepresented. To grant these works legal copyright would only exacerbate the issue of creator's rights, both artistic and personal, being violated.

Finally, I believe it is eternally important to highlight exactly what a copyright is: it is, as the name states, a right. It is the right for any person in the United States to create through their own volition, and to possess just ownership of that creation. Of course, this right extends to many entities, such as businesses and organizations, but that it remains in the hands of people first is a cornerstone of its function. I feel strongly that this well embodies the core values of this country, and has allowed many great artists and creators the facility to pursue their ideas and, in doing so, contribute greatly to their own lives and the lives of others. For these reasons, I cannot understand why a machine should also have this right.

Of course, generative AI cannot act without a human's input. Yet, the actual input from the user is relatively minimal; while they may enter prompts for their creation, the creation itself is ultimately the machine's doing. The user may have an idea of what they want, yet the machine will never provide them exactly that; rather, it will give them an amalgamation of things already in existence. Even with alterations or additions from the user, the core of the work is still machine-made. AI cannot truly create, as AI cannot imagine. All of the greatest pieces of art and media in human history have been made without generative AI. This is an irrefutable fact. In light of this, I must ask: in what way is generative AI contributing to the human experience of people in this country? In what way is art made by a machine enriching our lives?

Proponents of generative AI will argue that it allows those without talent to express themselves, and that it unlocks creativity for those that lack the mechanical skills. Any artist can attest, though, that this is a fallacy. Creativity does not need to be liberated; it is already free. No artist is born with natural talent. Rather, all acquire their skill through hard work and study. Because of this, they deserve to have ownership over what their skill produces. There is no secret. Absolutely anyone can do it. Generative AI merely allows its users to capitalize on the hard work of others. From my perspective, this goes against the entire purpose of copyright laws to begin with.

I understand this issue is one with many gray areas, and the complexities of copyright law are far beyond my current understanding. Even further, I don't expect generative AI technology to ever disappear. I feel strongly that, at the very least, works made by generative AI should not be granted copyright on the basis that they have been trained on existing copyrighted material for which they do not have permission or ownership. This is the most prominent issue with generative AI as it exists currently when not considering ethical implications, and I expect this will be the ultimate factor in the U.S. Copyright Office's decision.

I will concede that if generative AI models come to use data sets trained on works for which they have permission or exclusively copyright-free content in the future, then there will be a reasonable argument in favor of AI generated works receiving copyright. If this were to happen, I would not be able to deny the legality of the resulting work, and I would understand if the U.S. Copyright Office granted these works copyright. This would be far from a worst-case scenario. However, I hope that my subsequent ethical arguments would also be taken into serious consideration. I believe each of my arguments represent a strong case for why AI generated works as a whole should not be eligible for copyright in the United States at all.

Sincerely,

Lucas Iannucci