

**Before the  
U.S. COPYRIGHT OFFICE  
LIBRARY OF CONGRESS  
Washington, D.C.**

**Notice of Inquiry on Artificial Intelligence & Copyright (Dkt. 2023–6)  
Comments of Bon Alimagno  
December 6, 2023**

Thank you for this opportunity to reply to comments and submit my own. The following replies and comments focus on legal and commercial issues unique to the American comic book industry, in its publishing, licensing and general entertainment business aspects.

Generative AI ought to be a boon for the business of comic book companies, but instead it is being widely used to vacate trademarks, undermine exclusive licensing contracts, and violate copyrights at scale.

Any use of names and trademarks to prompt an AI art generator to create a specific output has only an illegal purpose: to profit from copyrighted material without license from the license holder to do so.

**2. Does the increasing use or distribution of AI-generated material raise any unique issues for your sector or industry as compared to other copyright stakeholders?**

Three key concerns:

- Generative AI introduces market confusion at scale, rendering the trademarks of American comic book companies generic, and the value of exclusive licenses for those trademarks worth less.
- Generative AI devalues exclusive contracts companies make with artists for their unique artistic styles, making it easy to mimic styles that in an open market would command significantly higher valuation for the artist.
- Generative AI confuses the attribution of copyrighted material at a scale and speed that makes it impossible to reassociate attribution.

Comic book publishers such as Marvel Entertainment (subsidiary of Disney) and DC Entertainment (subsidiary of Warner Bros Discovery) as well as other lesser known entertainment publishers have invested time and capital into scouting, recruiting and developing artistic talent, and signing free agent artists to exclusive agreements to work only for them, for fixed yearly terms and upfront signing bonuses.

Comic book publishers sign exclusive deals with artists so the artists work only with them and not their competitors. The expectation of the contract is the artist will consistently deliver a specific artistic style that adds value to their trademarked characters and stories – their intellectual property. In exchange, the artist receives higher pay (usually a page rate, a dollar

figure per single page of comic book art delivered to the publisher) than they would as a freelance agent.

Publishers bid against each other for the rights to that artist's style -- the publisher wants one style over another to be associated with their company's exclusive products, as they believe one will add more value to their trademarks than another. This creates the free market urgency that drives the artist's contract offers for exclusivity upward.

The art style becomes the product the publisher then sells to their customer. The publisher may apply that style across many characters and stories, effectively making that style identifiable with that publisher, and not with any other publisher, for that fixed yearly term.

Generative AI tools such as Midjourney and Stability Diffusion can generate artwork that mimics a specific artist's style by naming an artist as part of a written prompt, or inputting an image sample of that artist's work. While these generative AI tools can seem like slot machines or black boxes, more precisely targeted machine learning LoRA's and checkpoint software adds weight towards specific artistic results when incorporated as part of the prompt engineer's workflow. Instead of a black box, the prompt engineer is confident of the output, the workflow creates more deterministic results, making it easier to incorporate unique artistic elements into an output, effectively mimicking an artist's style -- whether the artist is legally contracted to a publisher or not.

One artist exclusive to Marvel Comics is Pepe Larraz<sup>1</sup>. An AI model developer going by "Ogkalu" created a LoRA labeled "comic diffusion"<sup>2</sup> that when used with the Stability Diffusion AI model creates comic book artwork roughly similar to Larraz's line art style (along with incorporating the coloring style of Marte Gracia<sup>3</sup>, also a Marvel exclusive artist). In this case the style of Larraz and Gracia is replicated closely enough that it's as if a more unpolished version of the artists drew this art, enough to fool many potential consumers.

Such a workflow (enabled by HuggingFace the marketplace that distributes the LoRA) renders Marvel's exclusive contract with Larraz vacated. At the same time, since Marvel has used Larraz to add value across many of its trademarks, the value of those trademarks loses licensing value and has its protection undermined. As more and more consumers use this LoRA and AI art generation software together without license, any comic book page drawn by Pepe Larraz, and the characters and stories depicted by Larraz on that page, become no longer copyrighted or trademarked by Marvel Entertainment and Disney.

To maintain the value of not just exclusive agreements but any agreement a publisher makes with an artist, mechanisms must exist to enforce the value an artist brings with them by using their art style to add value to a publisher's copyrights and trademarks.

---

<sup>1</sup> <https://www.instagram.com/pepelarraz/?hl=en>

<sup>2</sup> <https://huggingface.co/ogkalu/Comic-Diffusion>

<sup>3</sup> <https://www.instagram.com/martegraciacolor/?hl=en>

At the same time, those mechanisms must force any prompt engineer incorporating an artist's name in a prompt to credit the artists whose names were used to generate an output, so they publicize their names, and why a company or publisher desiring to add value to their trademarks would outbid another company or publisher for that artist's style and work.

\*\*\*

**5. Is new legislation warranted to address copyright or related issues with generative AI? If so, what should it entail? Specific proposals and legislative text are not necessary, but the Office welcomes any proposals or text for review.**

Trademarking art styles opens up a pandora's box of complications we can't foresee but there is already precedent in how the NCAA applies the right of publicity for student-athletes to share in the sponsorship revenue that had previously only been going to their academic institutions. (Senator Blackburn also makes this [argument](#).<sup>4</sup>) Name/Image/Likeness (NIL) guidelines can apply to artists and writers especially since their name and the unique renderings of images and the likenesses of characters and objects adds value to publishers, and now to the software companies creating AI art generators.

According to the NCAA<sup>5</sup>, NIL is defined this way:

*NIL: Name, image and likeness (or NIL) are the three elements that make up “right of publicity”, a legal concept used to prevent or allow the use of an individual to promote a product or service. For example, if an athlete’s photograph is taken while wearing an athletic brand, and that brand uses the photo to promote their products without the athlete’s consent, that athlete could claim the brand is in violation of the right of publicity.*

Among the ways the NCAA says student-athletes can now profit off of NIL includes:

- Merchandise
- NFTs
- Blogging
- Podcasting
- Music, art, etc.

The above are also all ways that writers and artists profit off the publicity of their name.

As such, there ought to be interpretations of current copyright and trademark law that protects an artist's unique means of creating their recognizable style. For example, every time an artist's name is used in a prompt to create artwork that mimics that artist's style, that event should be treated as any commercial licensing transaction or NIL agreement, with the original artist still retaining original rights to their work (as if the artist is a licensee) and being paid by another

---

<sup>4</sup> <https://www.regulations.gov/comment/COLC-2023-0006-8999>

<sup>5</sup> <https://www.ncsasports.org/name-image-likeness>

party to use their name and repackage it to the profitable benefit of both parties (as if that party were a licensor).

The key is ensuring that any artist can continue to profit off their name value (derived from their body of artwork) and feel protected enough to continue presenting that artwork on the open web for their own publicity purposes.

Writers and Artists should have:

- The right to control who can profit off their name, and has license to create mimicked art through direct use of a LoRA or checkpoint that the artist specifically trained on their own style
- The right to charge for use of that license, just as any copyright and trademark holder can, and just as any student-athlete can profit off of their name, image and likeness.

\*\*\*

## **6. What kinds of copyright-protected training materials are used to train AI models, and how are those materials collected and curated?**

### **6.1. How or where do developers of AI models acquire the materials or datasets that their models are trained on? To what extent is training material first collected by third-party entities (such as academic researchers or private companies)?**

For AI generated comic book art specifically, images are scraped from the open web and included in widely known datasets such as [LAION-5B](https://laion.ai/blog/laion-5b/)<sup>6</sup>. However it's not clear where these images were scraped from. My own cursory search queries of HavelBeenTrained.com indicate LAION's images were originally posted on Pinterest and blogs -- indicating they were cover and interior page samples posted for marketing and book review purposes, not for research purposes.

The comic book industry and publishing in general lack the resources for marketing their products to consumers. They rely on social media and blogs for free advertising to drive foot traffic to bookstores and webstores where mid-list and "indy" titles can find an audience. As such, these industries rely heavily on word of mouth from social media shares, and recommendations written on review sites.

Scraping material from publicity posted to these sites is not research. Instead this scraping repurposes, without consent, material that was solely meant to promote an original product, not act as the basis for research, and not to act as training materials for derivative unlicensed products. Publishers should not have to fear their trademarks are being undermined through the act of publicity. Artists should never fear their publicity materials are being recontextualized as research and used to train AI models without their consent.

---

<sup>6</sup> <https://laion.ai/blog/laion-5b/>

## 7.2. How are inferences gained from the training process stored or represented within an AI model?

## 7.3 Is it possible for an AI model to “unlearn” inferences it gained from training on a particular piece of training material? If so, is it economically feasible? In addition to retraining a model, are there other ways to “unlearn” inferences from training?

Are the AI models learning correct inferences?

If art in the models has not been correctly tagged, that mistagging lives on in the model, and any derivative models based on it.

The website [Midlibrary.io](https://midlibrary.io)<sup>7</sup> serves as a visual index for any prompt engineer looking for artist names to use in their Midjourney prompts. Users of the site will look at the displayed art samples and use it as inspiration for what art style they want to include in their AI generated output. If they do see something they like, they will use the artist name associated with the art sample in the prompt they use in Midjourney or similar software, to incorporate artistic elements they saw in the art sample into what they intend to see in the AI generated output.

However, the tagging is often incorrect, leading to art samples associated with the wrong artists or with the names of those who are not artists. For example the following writers have art styles associated with them, despite never having drawn anything resembling the associated style. What likely happened is the process of tagging the art with their names was done by webpage scraping bots, software that pulled book cover art and associated credit text from the webpage’s metadata without differentiating who was a writer and who an the artist. It’s also probable that the [manual human scrapers](#)<sup>8</sup> were wholly unfamiliar with the art they were looking at and made a best guess of who the artist was by looking at the placement of names on the covers. There is a high probability in instances where writer and artist names are co-mingled on book covers and in webpage metadata, that mistagging is common, and writers are being associated with artist styles, and artists are being associated with artistic styles that are not even their own, resulting in misattribution and stripping of copyright credit at scale and high speed.

Examples of writers who do not draw, but have attributed art styles:

[Alan Moore](#)<sup>9</sup>

[Robert Kirkman](#)<sup>10</sup>

[Geoff Johns](#)<sup>11</sup>

[Kelly Sue-Deconnick](#)<sup>12</sup>

[Brian Michael Bendis](#)<sup>13</sup>

---

<sup>7</sup> <https://midlibrary.io/midlibrary/beginners-guide>

<sup>8</sup> As in “tagging farms” described here: <https://time.com/6247678/openai-chatgpt-kenya-workers/>

<sup>9</sup> <https://midlibrary.io/styles/alan-moore>

<sup>10</sup> <https://midlibrary.io/styles/robert-kirkman>

<sup>11</sup> <https://midlibrary.io/styles/geoff-johns>

<sup>12</sup> <https://midlibrary.io/styles/kelly-sue-deconnick>

<sup>13</sup> <https://midlibrary.io/styles/brian-michael-bendis>

[Ed Brubaker](#)<sup>14</sup>

[Mark Bagley](#)<sup>15</sup>

[Mark Waid](#)<sup>16</sup>

[Rick Remender](#)<sup>17</sup>

#### **7.4. Absent access to the underlying dataset, is it possible to identify whether an AI model was trained on a particular piece of training material?**

It's much easier with comic book art than other materials as it's a simple eye test: for example the AI generated Batman comic art included [in this tweet](#)<sup>18</sup> very closely mimics art styles of [Brian Bowland](#)<sup>19</sup> and [Mike Allred](#)<sup>20</sup>. The prompt engineer only needed to type "Batman" to produce the resulting output. The model thus identifies Bowland and Allred's styles as equalling "Batman". Treating artist names and trademarked character names equally as just additional words in a prompt renders the original names without attribution and the trademarks generic. In this example, Warner Bros Discovery's trademark of the Batman character can be vacated quickly and at scale, and the art itself authorless and divorcing it from any previous origin.

#### **8.1. In light of the Supreme Court's recent decisions in *Google v. Oracle America* and *Andy Warhol Foundation v. Goldsmith*, how should the "purpose and character" of the use of copyrighted works to train an AI model be evaluated? What is the relevant use to be analyzed? Do different stages of training, such as pre-training and fine-tuning, raise different considerations under the first fair use factor?**

In regards to factor 3 of fair use, the artist name is the "heart" of the prompt and the "heart" of the AI generated output.

The goal of a prompt engineer at any stage of training a model against a specific artist is to create an output that is recognizably similar to the input: the artist's name or representative samples of the artist's body of work. Derivative outputs do not hold a transformed "purpose and character" from the input in these cases, as the goal is an output with recognizable and untransformed attributes associated with the original artist.

Transforming the input to be unrecognizable from the style of the artist named in the prompt would be contrary to the purpose of any training, prompting or use of that artist's name. The goal is to be as similar as possible, to the point of being able to create market confusion about who created the work in the first place.

---

<sup>14</sup> <https://midlibrary.io/styles/ed-brubaker>

<sup>15</sup> <https://midlibrary.io/styles/mark-bagley>

<sup>16</sup> <https://midlibrary.io/styles/mark-waid>

<sup>17</sup> <https://midlibrary.io/styles/rick-remender>

<sup>18</sup> <https://twitter.com/ammaar/status/1707975011049635983>

<sup>19</sup> <https://in.pinterest.com/pin/234327986831619530/>

<sup>20</sup> [https://batman60stv.fandom.com/wiki/Mike\\_Allred](https://batman60stv.fandom.com/wiki/Mike_Allred)

There is nothing stopping anyone from using Stability Diffusion and the “comic diffusion” LoRA to output “Batman by Pepe Larraz in the shape of a tote bag” to create art that is nearly ready to be used on a tote bag. This however would be something legally impossible due to Larraz’s exclusive contract with Marvel Entertainment and Disney, and Warner Bros Discovery’s exclusive ownership of the Batman trademark. The purpose and character of the output in this case is a brand asset that would otherwise be subject to paid license from Warner Bros Discovery to use on a tote bag, while violating Marvel Entertainment’s exclusive contract with Larraz for his artistic style.

**8.5. Under the fourth factor of the fair use analysis, how should the effect on the potential market for or value of a copyrighted work used to train an AI model be measured? Should the inquiry be whether the outputs of the AI system incorporating the model compete with a particular copyrighted work, the body of works of the same author, or the market for that general class of works?**

The body of works. Focusing on specific copyrighted works neglect stylistic elements that recur throughout a body of work, which through publicity become how an artist creates market value for their style. AI art generators instead allow an artist’s own body of work to face competition from a too similar body of work -- driving the monetary value of their uniqueness downward. An artist is in competition with themselves.

Returning to the example above, the value of Larraz and Gracia becomes greatly diminished not just to Marvel but to anyone who would hire them when mimicking their style becomes as convenient and quick as AI art generators make the process.

Why should any company pay Larraz and Gracia higher market value, the rate they get paid for exclusive rights to their talent, when anyone can acquire the same talent for nearly free just by typing their names into a text field of AI art generators? The open market for Larraz’s and Gracia’s work shrinks, and the value of their free agency is driven downward.

**9.5. In cases where the human creator does not own the copyright—for example, because they have assigned it or because the work was made for hire— should they have a right to object to an AI model being trained on their work? If so, how would such a system work?**

By assigning their work to a company as part of a work-for-hire agreement, the creator should expect the company to protect the rights over that work, and defend its own copyright, as they would any copyright violation. Otherwise, the company would not be acting as the author of the work, which they are legally obligated to do as part of any work for hire agreement. The company should file the same objections the creator would, using the same means the creator would to defend that copyright, otherwise the company has violated the terms of work for hire.

**10.4. Is an extended collective licensing scheme a feasible or desirable approach?**

A collective licensing scheme would solve a critical barrier to broad copyright enforcement related to AI art generators: most comic book creators have neither the time or capital to seek out copyright and trademark violations, nor the resources to constantly defend them. Typically, comic book creators have limited financial resources and sustain themselves job-to-job. They can't spend time defending their existing work when they need to move on immediately to the next job that will sustain their living.

Such a scheme could provide that defense broadly and persistently so comic book creators could focus on creating new work that makes them revenue instead of expending time and money seeking violations and defending previously published work.

A scheme would also allow these creators to make licensing deals at scale, instead of the current situation where each new work comes with its own distinct copyright protection concerns and licensing negotiations. A licensing scheme addresses this pain point by managing negotiations at scale so creators can feel confident the increased demand for their work that comes with the ease of use of AI generators can be managed and profitable for them.

However there would be unintended consequences for an extended scheme: licensing deals could be accepted or not without the consent of a copyright holder and the copyright holder may need to claim their licensing fees after the fact, and from parties they would not have licensed their work to.

### **13. What would be the economic impacts of a licensing requirement on the development and adoption of generative AI systems?**

Returning to the previous example: Marvel Entertainment invested a contracted amount of money and years into Pepe Larraz for exclusive rights to his artistic style. There is a specific dollar amount per comic book issue that the contract specifies. AI art generators' ability to closely replicate even a mediocre but still recognizable version of Larraz's art style devalues Marvel's investment in him, as if their licensed trademarks were being placed in public domain without their knowledge, and Larraz's contracted fees went to someone else entirely.

So while no one can define what good art is, Marvel Entertainment has defined the monetary value of each page and each comic book issue inclusive of Pepe Larraz's artistic style -- the dollar figure is on his contract. The decrease in revenue both to Larraz and the cost to Marvel's exclusive investment is measurable.

Meanwhile in the future, when Larraz's contract ends, and he re-enters free agency, DC Comics, a part of Warner Bros Discovery, may seek to outbid Marvel Entertainment for exclusive rights to Larraz's work. The existence of AI art generators that can mimic Larraz's artistic style, and apply it to a WBD trademarked character such as Batman, undercuts the urgency of bidding between the two, depreciating the open market for Larraz's art style. Larraz is then competing with himself instead of having Marvel and DC compete with each other. The free agency that should be the window for the most expensive contract of his career may be one of his worst.



Extending this example across the entire comic book industry means the value of any artist and their distinctive styles is greatly diminished. The competitive free market then becomes one not where publishers are trying to outbid each other for an artist's services, but one where publishers are contracting with AI models, specifically the owners of LoRA's and checkpoints trained on the real artists they would otherwise be signing to contracts.

Andreessen Horowitz in their [submitted comments](#)<sup>21</sup> describes an inherent monetary value to the copyrighted material used for training AI models of the startups in which the fund has invested:

*[O]ver the last decade or more, there has been an enormous amount of investment—billions and billions of dollars—in the development of AI technologies, premised on an understanding that, under current copyright law, any copying necessary to extract statistical facts is permitted. A change in this regime will significantly disrupt settled expectations in this area. Those expectations have been a critical factor in the enormous investment of private capital into U.S.-based AI companies which, in turn, has made the U.S. a global leader in AI. Undermining those expectations will jeopardize future investment, along with U.S. economic competitiveness and national security.*

On the contrary, the materials used for training were not available due to “settled expectations” as again they were posted to the open web as part of publicity for personal work. Recharacterizing this work as voluntarily posted for the use of training AI models is retroactive and akin to dumpster diving the web. Except the material they acquired was not disposed of – on the contrary it was posted because it was of great value to the creator to create even greater publicity value for their name.

If Andreessen Horowitz believes this material is worth “billions and billions of dollars” then the original creators should be compensated as they too were partners in building the startups they were investing in.

## **21. Does the Copyright Clause in the U.S. Constitution permit copyright protection for AI-generated material? Would such protection “promote the progress of science and useful arts”?**

No. Protection for AI generated material trained to accurately reproduce the art styles of specific nameable artists would lead those named artists to cease making their artwork publicly available. They would fear that their work would be immediately and without consent or compensation scraped for the purposes of ML model training. This would lead to fewer and fewer artists posting new works and an internet that becomes mostly previously reposted work – effectively rendering the progress of useful arts into stasis.

---

<sup>21</sup> <https://www.regulations.gov/comment/COLC-2023-0006-9057>

**23. Is the substantial similarity test adequate to address claims of infringement based on outputs from a generative AI system, or is some other standard appropriate or necessary?**

Without that artist name or artist example or character name being used as an input, resulting outputs would not be similar.

Returning to the example earlier about AI generated Batman art: Batman's facial structure, the way the mask and costume fits on his face and body, the "confidence" of the inking, the facial expression in the eyes -- these are elemental features of artistic styles associated with Brian Bolland and Mike Allred, and which have added value to the trademarks that Warner Bros Discovery has over Bolland and Allred's renditions of Batman. Bolland and Allred were contracted by DC Entertainment to bring their specific art styles to their trademarked character, in order to increase that character's worth, but also create additional copyrighted and trademarked art to license.

Whereas Warner Bros Discovery could license those same renditions out to be used on TShirts, tote bags, jackets, posters, and on and on, AI art generators lower the value of such licenses, because the same trademarked art can be mimicked by anyone looking to create a similar but unlicensed version of the same shorts, bags, jackets, posters, etc.

Without such a modified standard, market confusion increases.

What's necessary then is an interpretation of the current standard that recognizes the right of publicity for writers and artists who have their names, images and text used in prompts, and for publishers who own trademarks to be able to license intellectual property they own. This interpretation should protect specific examples of an artist's work and character depictions which would otherwise be used by copyright and trademark owners to generate revenue by licensing to train AI models.

**25.1. Do "open-source" AI models raise unique considerations with respect to infringement based on their outputs?**

Yes, but they create new opportunities as well. Open sourcing AI models creates incentive for companies to create software that provides artists the tools to train, fine tune and distribute AI models of their own work.

When operating in a way that respects copyright and trademark law, open source AI models can drive wealth creation among comic book artists, the same way online marketplaces cater to all consumers big and small, and create a long-tail of global demand that sustains small businesses of all purposes. Artists with any style and any size audience could then sustain a living without a publisher or outside investment capital by training AI models they own and can license.

Without respect for copyright and trademark law, black market AI models created for every possible purpose, criminal or not, will proliferate, and the artists, writers and publishers receive zero revenue from whatever is created from their names and characters.

Existing copyright law helps drive the creation of secure distribution methods for copyrighted material and developing software to detect violations and enforce copyrights. Enforcing copyright of art used to train AI models incentivizes creating similar new software, such as online marketplaces like Zillow or eBay or Amazon; and to create an incentive for the building of middleware that enforces the mutual rights of creators and publishers, while connecting them securely to distribution platforms. Applications like [Plaid](https://privacy.com/blog/what-is-plaid)<sup>22</sup> act as middleware that secures authorized transactions between banks and third party financial software, like tax software – enforcing protections would drive the creation of similar software.

**28. Should the law require AI generated material to be labeled or otherwise publicly identified as being generated by AI? If so, in what context should the requirement apply and how should it work?**

Just as not including a TM or R mark next to a logo can be interpreted as that logo and brand name being in public domain, just as a book has copyright notices from the author in the front of every book, so should generative AI art outputs have a mark that designates whether or not it has a legal owner and author.

**32. Are there or should there be protections against an AI system generating outputs that imitate the artistic style of a human creator (such as an AI system producing visual works “in the style of” a specific artist)? Who should be eligible for such protection?**

Just as a copyrighted work couldn't be copied without the original, so an output reliant on a text or image prompt couldn't be generated without invoking the “style of” an original artist. The original artist's body of work as legally representing their promptable style then deserves protections of equal force as copyright of a single work.

Protections should mean that artistic material used as inputs to train ML models are used with the consent of the artist, that they are compensated for the inputs' use as if the art was licensed for that purpose, the artist receives name credit, and the extent of the art's incorporation into the final output is transparent to any customers. Every artist should be eligible for this protection the way that every artist today is already entitled to copyright protection by being able to sell and license their work.

---

<sup>22</sup> <https://privacy.com/blog/what-is-plaid>