

I am Rob Rao the CEO of SCA Robotics, an AI development company developing innovative AI based solutions in medical, automotive and other fields. I am also on the board of two other AI companies. The United States is a leader in AI development. Strong intellectual property protection (including Patents, Trademarks, Copyrights and Trade Secrets) is critical for maintaining United States innovation leadership. Rapid AI developments raise interesting issues in at least the Patent, Copyright and Trade Secrets aspects of intellectual property.

The Copyright Office has requested public and industry comments some AI related issues and SCA Robotics would like to provide our input on at least selected aspects.

1. *The Office inquires “generative AI systems have the ability to produce material that would be copyrightable if it were created by a human author. What are your views on the potential benefits and risks of this technology? How is the use of this technology currently affecting or likely to affect creators, copyright owners, technology developers, researchers, and the public?”*

The Office utilizes the definition of “Generative AI: An application of AI used to generate outputs in the form of expressive material such as text, images, audio, or video.” It should be recognized that wide swaths of AI platforms fall within this definition. The potential benefits of AI platforms in medical, automotive and numerous other industrial fields is immense and literally revolutionary. Intellectual property law changes should be carefully implemented to not retard these technological advancements. Focusing on the constitutional framework of copyrights “to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries” seems essential and wise. In general, we believe when looking at AI generated works that would support copyright protection, focusing upon who had creative input into the subject work is the key to advancing sound policy. In our experience there will be many times that the creative aspects of the work (the output of a generative AI platform) will stem from the creators and trainers of the AI platform, and not the user thereof, nor *sua sponte* from the AI platform.

15. *The Office inquires “In order to allow copyright owners to determine whether their works have been used, should developers of AI models be required to collect, retain, and disclose records regarding the materials used to train their models? Should creators of training datasets have a similar obligation.”*

The information regarding records associated with training materials used for an AI platform is not limited to the copyright fields. For example in the medical field regulatory agency can have a distinct interest in the training sets (or the medical information therein) used to develop and train a medical AI platform. The medical information going into such data sets are not copyrightable as they are purely functional or utilitarian. The curation and formatting of this medical information into training sets may indeed have creative protectable inputs for the creators of the training sets. Any formal obligation to “collect, retain, and disclose records regarding the materials used to train [AI] models” for the stated purpose of allowing “copyright owners to determine whether their works have been used”, if implemented, should be limited to training sets having clear third party copyright protected subject matter.

17. Outside of copyright law, are there existing U.S. laws that could require developers of AI models or systems to retain or disclose records about the materials they used for training.

In our experience, the U.S. Food and Drug Administration release in 2021 of the agency's first Artificial Intelligence/Machine Learning (AI/ML)-Based Software as a Medical Device (SaMD) Action Plan may be relevant here. This action plan describes a multi-pronged approach to advance the Agency's oversight of AI/ML-based medical software.

Additionally, in obtaining valid U.S. Patents upon specific (new useful and non-obvious) AI platform developments, it is necessary to fully describe a claimed invention sufficient for those of ordinary skill in the art to make and use the disclosure (so that others may practice the patented invention after the expiration of the patent). This existing disclosure requirement may certainly include disclosure relating to records about the materials used for training, at least a full disclosure of the type of records used for training, if the record sets are not named expressly. The Patent Office guidance on enabling patent application disclosures may be relevant here.

18. Under copyright law, are there circumstances when a human using a generative AI system should be considered the "author" of material produced by the system? If so, what factors are relevant to that determination? For example, is selecting what material an AI model is trained on and/or providing an iterative series of text commands or prompts sufficient to claim authorship of the resulting output?

Clearly, in our experience, there are circumstances where a human using a generative AI system should NOT be considered the "author" of material produced by the AI system. Consider a medical AI platform reviewing MRI scans and identifying potential anomalies requiring further detailed review. Assuming that the manner/formatting in which the information is displayed has sufficient creativity to support copyright protection, and generally it would seem likely that it does for many platforms, the medical professional utilizing the AI platform would generally have no authorship into the copyrightable aspects of such an output. Alternatively, assume that the AI platform is a tool assisting an advertising agency develop a pitch for a potential client. In this later example, the human using a generative AI system would likely have substantial control over the protectable expression outputted by the AI platform. The factors seem to include the human user's control of the artistic expression outputted by the platform. Among the other factors relevant to this inquiry are the skill required or shown in exercising this control; the duration or iterations of the relationship between the user and the AI platform; the extent of the human party's discretion over accepting and/or modifying the outputted work; whether the human user is in business of creating protectable works. It would seem the factor list is unlimited and must be determined on a case by case basis.

We believe that the human generators (e.g., creators and/or trainers) of the AI platform are properly the authors of some generative AI systems, and that a similar analysis relating to the creative aspects of such works is appropriate to determine when human generators of the AI

platform are properly the authors of some generative AI systems. Again, it seems the determination must be on a case by case basis and publishing evaluating and guiding factors can be helpful.

20. Is legal protection for AI-generated material desirable as a policy matter? Is legal protection for AI-generated material necessary to encourage development of generative AI technologies and systems? Does existing copyright protection for computer code that operates a generative AI system provide sufficient incentives?

Stripping human authors (whether the User of an AI platform or the creators of such a platform) of otherwise protectable work for which they can be properly categorized as authors merely because an AI platform was implemented in this creation seems unwise. The US Copyright law has helped propel the US to the forefront of developing protectable works. Dismissing these advantages by eliminating a field of copyrights rather than address some complex issues of authorship that arise is shortsighted and unhelpful to the industry. Existing copyright protection for computer code that operates a generative AI system admittedly provides some protections, but the resulting work of the AI system may not adequately be addressed in such protection. We believe that the curation of unique training materials can, sometimes, result in training data sets that exhibit copyright protection, but the resulting work of the AI system may not be adequately be addressed in such protection as well.

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?

From a copyright standpoint, there seems to be little gain from added regulation and the enforcement issues raised from failure to properly mark. The FDA, FTC and SEC already or soon may have labeling requirements associated with select medical AI platform outputs or financial AI platform outputs, as hypothetical examples. One could imagine even the Lanham act aspects of false advertising could require labeling of some advertising implementations of prospective AI outputs. In short, US business already has a host of regulatory hurdles to jump, we should be reluctant to add more without substantial cause.

34. Please identify any issues not mentioned above that the Copyright Office should consider in conducting this study

As stated above, We believe when looking at AI generated works that would support copyright protection, focusing upon who had creative input into the subject work is the key to advancing sound policy. In most of the AI platforms developed by my company, the creative aspects of the work (the output of a generative AI platform) are authored by the creators of the AI platform. They do not flow from the user thereof or *sua sponte* from the AI platform. New rules for AI generated works should be cognizant of this possibility and should facilitate and not hinder the developer's ability to protect these works (or works made for hire in this context).

Rob Rao
CEO SCA Robotics
rob.rao@sca-robotics.com
510-912-2650