

AI and Copyright

First and foremost, the issue of copyright is a matter foundational to democracy established even from the The United States Constitution (Article I, s. 8): “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;”

Content shared among those in society should continue to foster innovations. Multiple countries would further support and be inspired by the established practices of the U.S. Copyright Office, especially other democratic countries. Early uses of AI have demonstrated major disruptions within creative industries, e.g., image generation displacing the jobs of many artists, and text generation opening the work of data scientists to virtually anyone, and even much more as advances move faster.

The U.S. President issued an Executive Order on October 30 (2023) to regulate the advancements and applications of AI. Part of that order has a sub-document declaring “Voluntary AI Commitments” by industry until full regulations are established, which states that companies will commit to, “...discussion of the model’s effects on societal risks such as **fairness**...” (emphasis added)

The nature of content itself is changing both rapidly and drastically. Consider a thought experiment in the likely near future... a humanoid robot that can take on the personality of a famous person—where the personality could be swapped out, or bought, suppose for a rental fee, for the purpose of entertaining the owners of the robot for a limited time.

Are the acts that such a robot could do yet more and more similar to the acts of a human considered performance? Or are such automated outputs copyright protected? These would be very similar to the copyright protected performances of real people, and yet currently the U.S. Copyright Office claims that no automated output can be copyright protected.

The technology of AI now makes it possible to effectively perform programming development in any natural language a person could care to want to use for themselves. This means that any written works are potentially input to AI services that would automate many kinds of output. However, this describes nearly the exact same efforts to that of a programmer using procedural-generation algorithms. Pure procedural-generation programs cannot currently be protected by copyright. Therefore, people’s artworks, designs, and writings should have protection from both input to AI systems as well as from usage as data for training of AI systems. Technology itself should be further designed to respect the licenses and choices of creators that are protected, as a standard, since so many other things can obviously be automated so easily now.

Further, “de minimis” would have trivial matters ignored by law, yet anyone with access to an AI service can create whole weeks worth of business’ content using only a few descriptions. Is it really someone’s own work to generate a perfect reference image and proceed to copy it nearly exactly, say for example using traditional painting techniques? What thought has really gone into such replicas of generated content unless the input prompts are somehow part of such work? Then consider when others

can generate similar content with a slightly different prompt.

Tony Stubblebine, CEO of Medium (an online platform for writing articles), wrote an article on September 28 titled “Default No to AI Training on Your Stories.”¹ which called for the creation of a coalition by non-profit organizations with vested interest in publishing to join together to protect writers in the face of AI advancements. They would call for efforts in three areas of rights:

- consent
- credit
- compensation

Stubblebine also perpetuates others’ call for a newer form of additional protection dubbed “creditright” which would ensure that others usage of AI would see citation of those whom contributed to the AI’s design or training. However, given the intense changes in the way people can create a work together with AI, the results become closer to the kinds of protections designed for performances, curation, and collections of other people’s works. A derivative work has limitations on the use of smaller portions to protect the original from which it is based. An AI model should thus be considered a collection of derivative works itself, since it generates derivatives—and can regenerate similar works given the same input, although slight variations happen from pseudorandom computations. Is this not more like a performance, with the random variations of the real world?

Ultimately, people will be faced with the decision of whether they can enjoy a work of content from a person, or the same kind of work from an AI system.

¹<https://blog.medium.com/default-no-to-ai-training-on-your-stories-abb5b4589c8>

As the outputs of the AI system cannot be protected by copyright, how then can the real person’s work be considered protected? If some of the most famous performers, such as Taylor Swift, are currently licensing the use of their personality for interaction as a virtual AI experience, then work to be considered above “de minimis” might well be a collection of traits of people themselves that others value. We read stories to be entertained, but once they are read, we often care more to know about the author than the original story we read. Authors can visit locations and interact with others at events. AI robots will soon be able to do the same. So, even this argument for greater copyright protection is likely frustrated.

Perhaps the only concession is for individuals to consider the underlying values they promote in their works, and which non-profit organizations would benefit from aligning together. Coalitions of agreeing organizations would compensate those that promote their values. The group together would have reason for a shared protection of copyright for their collective values. AI machines do not currently seek profit of their own volition, and do not organize themselves into groups, but copyright originated from one of the most essential forms of governance in democracy. We may do well to bring copyright back to its roots for what it was most meant to foster that is worth more than mere money.

Can the U.S. Copyright office encourage a diversity of values within organizations and across society? A diversity involving AI would promote more possibilities for work among so many people that exist with hopes to share entertainment and inspire the furtherance of knowledge.