

Comments from a concerned artist

1. As described above, 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?

My views on this are currently AI is high risk for the future of the creation of copyrighted material by real people. The ""skill level"" of AI can literally only depend on the art that is fed into it in the first place. We've already seen how rapidly capital has moved in to try to replace human artists by simply using AI as a way to steal from them instead. The problem is none of these generative technologies will show how they work. It's absurd that they can theorhetically get away with this when they have their own tech black boxed.

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?

Yes. in my own field not only is there a move to replace entire sectors of creative work, believing that the value of that work is directly tied to how much money it makes vs actually creating something of value. AI generated images are also flooding websites designed for artists to have a way to promote their work to the point where these industries have had to start charging additional fees to use them or simply were forced to quit taking submissions entirely because AI generated image submissions through botting.

4. Are there any statutory or regulatory approaches that have been adopted or are under consideration in other countries that relate to copyright and AI that should be considered or avoided in the United States? (40) How important a factor is international consistency in this area across borders?

I am not currently aware of any developing laws outside of the US. However I deeply think for the protections of the entire creative industry as a whole to not collapse entirely from generated images that were made from the very work human artists put out, we desperately need the US to take a lead in this factor. The US has a lot of influence on large industries where this would really matter. Particularly cinema and publishing.

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.

Absolutely yes. AI generated images need to show "proof of work". They can't simply deny the sourcing of those images when they're made from copyrighted materials. This is so blatent that ghosts of the artist signatures from the work that was used are often easily seen in generated images. These artists copyrighted works were taken and scraped off of their own portfolios without their consent to train these algorithms in the first place, artists should be able to sue for damages.

Training

If your comment applies only to a specific subset of AI technologies, please make that clear.

I am only commenting on image-generation AI systems

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

For artists these models scraped directly from high profile artist portfolios, many of which seem to be Behance.com or just googling the works of these artists and scraping the images from that. There are currently ongoing lawsuits from individual artists over this.

6.2. To what extent are copyrighted works licensed from copyright owners for use as training materials? To your knowledge, what licensing models are currently being offered and used?

Zero. I've not heard of a single case where an artist was paid licensing fees or even volunteered their work for training. No one involved in this technology was ever interested in doing this legitimately or with consent from artists. The "best" case I've seen is using materials that are public domain (such as classical art)

6.3. To what extent is non-copyrighted material (such as public domain works) used for AI training? Alternatively, to what extent is training material created or commissioned by developers of AI models?

As mentioned above, it is used in addition to copyrighted works. Usually it's the 101 well knowns such as Da Vinci, Van Gogh, Monet, etc.

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? (46) 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?

I feel like generated images by their very nature compete with copyrighted work. As an artist, if a program can take over your job trained with your own works, and anyone can sell generated images, the future of artists who haven't even begun to make a name for themselves is beyond bleak.

9. Should copyright owners have to affirmatively consent (opt in) to the use of their works for training materials, or should they be provided with the means to object (opt out)?

It NEEDS to be an opt in system. Opt out is absolutely not good enough. It is entirely the responsibility of the AI companies who use these images in the first place, not the artists who created the works that were stolen from them.

9.1. Should consent of the copyright owner be required for all uses of copyrighted works to train AI models or only commercial uses? (47)

Both. AI image generation companies are still making money off copyrighted materials just from

people paying to use their programs even if those images are not sold.

9.2. If an “opt out” approach were adopted, how would that process work for a copyright owner who objected to the use of their works for training? Are there technical tools that might facilitate this process, such as a technical flag or metadata indicating that an automated service should not collect and store a work for AI training uses? (48)

I'd love to know this too, because as an artist this seems unbelievably burdensome. There is no way I'd feel confident I'd be able to opt out of every image generator.

Additionally, I don't think just by using a platform where you upload images (twitter/facebook/tumblr/etc) should be able to automatically opt you into agreeing for content you post, writing/images/etc should be subject to scraping for AI.

9.3. What legal, technical, or practical obstacles are there to establishing or using such a process? Given the volume of works used in training, is it feasible to get consent in advance from copyright owners?

This is their burden to bear with their tech. It being feasible or not isn't the problem of copyright holders.

9.4. If an objection is not honored, what remedies should be available? Are existing remedies for infringement appropriate or should there be a separate cause of action?

They are not enough. DMCA takedowns are heartbreakingly useless past a certain point, and also require artists to expose their personal information to people who are potentially going to be malicious. Again, I feel like not enough responsibility is being put on the models/companies/individuals who stole these images to train their models in the first place. There is undue burden being put on artists who likely don't have the legal resources to fight back beyond simply asking something to be taken down through DMCA.

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?

I think future issues with this can be sorted by contracts for work-for-hire simply having AI clauses in them. However I think artists whose work was used this way should be able to legally pursue how their work was used and obtain compensation since this technology would not have been listed in the rights sold.

10. If copyright owners' consent is required to train generative AI models, how can or should licenses be obtained?

You simply don't use that person's works if you are unable to obtain a license. Just like every other industry.

10.1. Is direct voluntary licensing feasible in some or all creative sectors?

Possibly? I cannot really see this being appealing to any as an individual in my field, but I can see it being appealing to larger corporations who might hold the rights to the works that was made for them.

10.3. Should Congress consider establishing a compulsory licensing regime? (50) If so, what should such a regime look like? What activities should the license cover, what works would be subject to the license, and would copyright owners have the ability to opt out? How should royalty rates and terms be set, allocated, reported and distributed?

For the arts specifically? No. This sounds horrifying.

10.4. Is an extended collective licensing scheme (51) a feasible or desirable approach?

No.

10.5. Should licensing regimes vary based on the type of work at issue?

Yes.

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

Whatever the economic impacts AI systems have they are secondary to the current status of artists whose works are being used without permission by those systems.

Transparency & Recordkeeping

15. 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?

100% yes. I also fully believe AI models pushed themselves into public use as quickly as they possibly could in order to bypass copyright holders having these kinds of protections in place. They never wanted to pay for or fairly obtain this data.

15.1. What level of specificity should be required?

To start: Source name, artist name or company name/LL if applicable, date obtained, how many times the image has been used in generations.

15.2. To whom should disclosures be made?

Copyright holders so they can determine damages

15.3. What obligations, if any, should be placed on developers of AI systems that incorporate models from third parties?

It is fully their responsibility to assess for copyrighted materials.

16. What obligations, if any, should there be to notify copyright owners that their works have been used to train an AI model?

All of them. All of the obligations. Artists need to be able to know they were stolen from to seek damages.

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Copyrightability

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?

No. Any one person can "write" the exact same prompt for generation using the same model and get the exact same result. There is no universe that process should be copyrightable. There is no creative or unique input here, it's typing keywords (which coincidentally are also farmed off artists tagging or adding alt text to their own work) and they ultimately have no genuine creative control of the output since it can only generate based on the images that were fed into the model in the first place.

19. Are any revisions to the Copyright Act necessary to clarify the human authorship requirement or to provide additional standards to determine when content including AI-generated material is subject to copyright protection?

I think at this point yes regarding human authorship. I think AI generation trying to get around this rule by having a human make edits to a generated image is also a potentially significant problem.

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?

Going to go with No. Why does AI get to bypass laws literally every other industry has to consider. If anything AI training should be more regulated and forced to reveal how it works. If these technologies can only function by stealing data from copyrighted material then maybe they shouldn't get to exist.

20.1. If you believe protection is desirable, should it be a form of copyright or a separate sui generis right? If the latter, in what respects should protection for AI-generated material differ from copyright?

I think training data just shouldn't be able to profit or gain from copyrighted images based on existing rights. If specific language needed to be used, then so be it, but I don't see a reason those existing protections shouldn't apply here.

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”? (52) If so, how?

Infringement

22. Can AI-generated outputs implicate the exclusive rights of preexisting copyrighted works, such as the right of reproduction or the derivative work right? If so, in what circumstances?

Absolutely not, reproduction simply requires a copy of the original work, which can be provided by the original author. Derivative works don't require already-made compositions to be made, even if they are a close reference. An AI model cannot by the reality of the technology make derivative work because it cannot -create- anything.

24. How can copyright owners prove the element of copying (such as by demonstrating access to a copyrighted work) if the developer of the AI model does not maintain or make available records of what training material it used? Are existing civil discovery rules sufficient to address this situation?

Some models are so blatant in theft that signatures still exist in the generated images. I will also say as a creative, it's very easy to recognize even the echos of your own work, but I doubt that is be enough to require a discovery process. Also again, this is more fees and legal effort that victims of theft are being forced to endure. I don't know if current discovery rules are enough if there isn't a specific rule against the "black box" many of these models are hiding behind.

25. If AI-generated material is found to infringe a copyrighted work, who should be directly or secondarily liable—the developer of a generative AI model, the developer of the system incorporating that model, end users of the system, or other parties?

I pursuing believe individuals who are using generated images will be unhelpful in addressing the issue. The system that curated images for their generator that is being used should be the one liable for damages. An individual user cannot be responsible for the training data a model uses.

Labeling or Identification

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?

This I think would be difficult to pointless to enforce legally. Having images be watermarked would be

enough to dissuade people from submitting these image. Having built in watermarks would not be difficult. Someone could of course still remove these watermarks if the were incentivized to do so, but it's far better than nothing.

28.1. Who should be responsible for identifying a work as AI-generated?

The image generators. It should not be the responsibility of the general public to have to scrutinize the legitimacy of an AI generated image. This would not be difficult to impliment as a feature.

28.2. Are there technical or practical barriers to labeling or identification requirements?

No. This would be trivial.

28.3. If a notification or labeling requirement is adopted, what should be the consequences of the failure to label a particular work or the removal of a label?

Monetary damages should be able to be obtained by individual copyright holders.

Additional Questions About Issues Related to Copyright

30. What legal rights, if any, currently apply to AI-generated material that features the name or likeness, including vocal likeness, of a particular person?

None. I've seen professional voice actors absolutely horrified they have no way of persuing damages for people generating their voice without permission.

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? What form should it take?

Every artist deserves to have their work protected from this. For many people their brand and identity encompasses the entire selling point of their work. But to say a smaller artist doesn't deserve these same protections is absurd and goes against the entire point of having protections through copyright.