Before the
COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, DC

In the Matter of	)	
	)	
	)	**Docket No. 2023-6**
Artificial Intelligence and Copyright	)	
	)	
	)	

REPLY COMMENTS OF THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS ON ARTIFICIAL INTELLIGENCE AND COPYRIGHT

The American Society of Composers, Authors and Publishers ("ASCAP") hereby submits these reply comments pursuant to the Notice of Inquiry (the "Notice") issued by the Copyright Office on August 30, 2023, 88 Fed. Reg. 59,942 for written comments on copyright law and policy issues raised by artificial intelligence ("AI") systems.

ASCAP focuses its reply on three issues raised in commentary by members of the AI industry. *First,* while some commenters question the technical and economic feasibility of licensing as a tool to compensate creators for the use of their protected works, these speculative concerns cannot justify infringing creators' rights. Licensing models are dynamic and will adapt in the face of technological developments, just as they have done countless times in the past. *Second,* AI industry commenters have sought to downplay the degree to which AI tools threaten the livelihoods of human creators. While ASCAP welcomes the new creative possibilities introduced by generative AI, these possibilities must not obscure the real existential threat that AI tools pose to the artists, writers, composers, and others on whose work they depend as training input. *Finally,* while some commenters resist the need for a new federal right of publicity, a new

federal right is necessary to address the unprecedented scale on which AI tools facilitate the improper use of a creator's image, likeness, and voice.

1. Direct, voluntary licensing is feasible and necessary to protect creators' rights

Numerous comments from AI industry members raise doubts about the technical or economic feasibility of licensing as a model for the authorized use of protected content. But armchair speculations about the efficiency of licensing do not justify a rampant disregard for creators' rights. As they have done countless times in the past, licensing models will adapt to the evolving technical environment to ensure that creators are compensated for the use of their intellectual property.

First, several AI industry commenters have argued that the sheer volume of training data required for developing AI tools generally precludes direct voluntary licensing. *See, e.g.,* Comments of Andreesen Horowitz at 8-9; Comments of Anthropic at 9-10; Comments of R. Street at 5; Comments of OpenAI at 12-13. These concerns are overstated. For example, numerous large-scale AI tools have already been developed exclusively on the basis of fully licensed or otherwise legally obtained materials,[1] demonstrating that the development of generative AI technologies need not come at the expense of creators' rights. The data requirements for training AI tools should not be used as justification for AI developers to act with impunity with respect to legally protected content.

[1] For instance, the generative AI music tool Boomy was not trained on any copyrighted songs and "has never ingested any such data that may be subject to copyright in its models," https://support.boomy.com/hc/en-us/sections/17795127888909-The-Basics-. To the extent ASCAP's initial comments implied otherwise, those initial comments should be deemed amended. Getty Images recently launched Generative AI by Getty Images, which trains on its own library of licensed works, https://www.gettyimages.com/ai/generation/about; Stability AI launched the music generation tool Stable Audio, which was trained on music licensed from the AudioSparx music library, https://www.stableaudio.com/faqs; and Adobe trained its Adobe Firefly generative AI tool on Adobe Stock images, openly licensed content, and images in the public domain, https://helpx.adobe.com/stock/contributor/help/firefly-faq-for-adobe-stock-contributors.html.

Second, some commenters have argued that a licensing regime would shut out smaller or newcomer players from the generative AI market, consolidating AI technology in a handful of the best-resourced entities. *See, e.g.,* Comments of Meta at 17; Comments of Anthropic at 10. This concern is misguided as a matter of both policy and practice. As a policy matter, content creators should not be made to shoulder the cost of diversifying the AI industry. Insofar as a diverse ecosystem of AI developers is a desirable policy goal, it can be accomplished in numerous ways—e.g., grants or public funding—that do not exploit individual creators. And as a practical matter, licensing need not pose an insurmountable obstacle to smaller AI developers. Licensing models are not one-size-fits-all: for instance, ASCAP's licensing system is sophisticated and flexible enough to accommodate music users of every size, ranging from the largest streaming services on the planet to mom-and-pop neighborhood businesses. Given the flexibility of licensing models—together with other mechanisms like open-source AI models, sublicensing agreements, and lawfully sourced training data libraries—there is no reason that AI development must come at the expense of individual creators' rights.

Finally, numerous AI industry commenters have framed their opposition to licensing as purported concern for creators, arguing that it would be difficult or impossible to set licensing rates that meaningfully compensate individuals. *See, e.g.*, Comments of Anthropic at 10; Comments of Andreessen Horowitz at 10. This reasoning is misguided. First, a supposed concern that licensing will not compensate creators *enough* cannot justify a refusal to compensate them *at all*—as numerous AI developers flagrantly continue to do. The AI industry, like any other, must compensate creators for its use of their protected content. Second, there is no reason to suppose that a fair distributional model is out of reach. Throughout years of seismic shifts in the music industry—as the dominant sales model evolved from physical sales, to downloads, to streaming—

ASCAP has adapted its licensing approach to ensure fair compensation for each of its nearly one million members, regardless of genre, field, or audience reach. This time will be no different.

2. Generative AI tools pose a risk of replacement to human creators

Numerous commenters have lauded the creative possibilities introduced by generative AI tools, drawing comparisons to previous innovations like sound mixing, autotune, or digital photography. *See, e.g.,* Comments of Meta at 8-9, Comments of Peermusic and Boomy at 2-3; Comments of StabilityAI at 8. But generative AI is qualitatively different from these previous technologies, and poses the very real threat of supplanting—rather than supporting—human creativity.

No previous technology can do what generative AI has made possible: generating new content; near autonomously; at large scale; instantaneously; and at a level of quality that is increasingly indistinguishable from human work. The resulting threat to creators' livelihoods is not idle speculation, but a real and growing phenomenon. For instance, thousands of new AI-generated tracks flood streaming services every day, creating confusion for users and diverting valuable airtime and royalty streams from human creators.[2] In some cases, AI-generated replicas have already acted as effective market substitutes for the human creators on which their very existence depends.[3] *See* Comments of ASCAP at 11-13. And this problem will only get worse as AI tools grow increasingly sophisticated, including in their ability to exactly mimic human works and evade AI-detecting software.[4] It is therefore crucial to balance the "creative, interesting, and

[2] Anna Nicolaou, *Spotify ejects thousands of AI-made songs in purge of fake streams,* FINANCIAL TIMES (May 9, 2023), https://www.ft.com/content/b6802c8f-50e7-4df8-8682-cca794881e30.

[3] Ashley King, *Singaporean Singer Stefanie Sun's Career Hijacked by AI – "My AI Person Is the Current Hot Property*, DIGITAL MUSIC NEWS (May 30, 2023), https://www.digitalmusicnews.com/2023/05/30/singaporean-singerstefanie-sun-career-hijackedai/#:~:text=Singaporean%20singer%20Stefanie%20Sun's%20voice,Sun's%20voice%20has%20exploded%20online.

[4] Rhiannon Williams, *AI-Text Detection Tools Are Really Easy To Fool*, MIT TECH. REV., (July 7, 2023),

useful ways" in which AI tools may enhance human creativity, Comments of Meta at 7, against their very real exploitative and displacing effects on the human creators without which they could not exist.

3. A new federal right of publicity is necessary to adequately protect creators

Some AI industry members have commented in opposition to a new federal right-of-publicity law, arguing that such a law would hamper free speech or create unduly restrictive protections of artistic "style," and that existing laws at the state level sufficiently protect creators' rights. *See, e.g.,* Comments of Meta at 20; Comments of CCIA at 25; *see also* Comments of Google at 15. This overlooks the fact that generative AI technology introduces unprecedented possibilities for the unauthorized use of a creator's image, likeness, and voice; the existing patchwork of state laws were not written with this technology in view, and do not adequately protect creators.

First, generative AI tools—unlike human creators—are not merely "inspired," "guided," or "informed" by the protected works of others. Instead, these tools are based on the wholesale copying and ingestion of particular works by particular creators, whose content directly affects the behavior of the algorithmic model underlying the AI tool. *See* Comments of ASCAP at 23-24. When an AI music tool generates a song "in the style of" the Weeknd (through the use of the Weeknd's name in the prompt), it is because it has directly copied, ingested, and assimilated properties from particular Weeknd tracks. *Id*.

Second, generative AI tools are able to mimic a creator's voice or likeness—near-instantaneously and at large scale—in a way that is virtually indistinguishable from the real thing. For instance, AI-based voice cloning technology enables users to create new recordings that

https://www.technologyreview.com/2023/07/07/1075982/ai-text-detection-tools-are-really-easy-tofool?gad=1&gclid=CjwKCAjw6poBhAYEiwAgg2PgsPcNJuWRTS94GOh65RMWaOP2tf5tav9iW6N6YJPBndTqc6GCaDERRoC1SEQAvD_BwE.

exactly mimic the vocal pattern of existing artists. Equipped with nothing more than an artist's name—and for as little as $5 per month—users can employ such technology to, among other things, "import" the artist's voice onto a different existing track;[5] have the artist "perform" wholly new recordings;[6] or have the artist "say" whatever the user pleases, all without consent or compensation.[7] These AI tools that are built using exact copies of particular sound recordings of particular music creators enable mimicry of those creators on a scope and at a quality never seen before. Without allowing the artists and creators to control their voice and likeness, this technology will create both consumer confusion and serious financial harm to the original music creators. *See* Comments of ASCAP at 32-33. Dedicated legislation is required to adequately address these unprecedented threats.

Finally, the use of AI tools—and the harm resulting to creators from the unauthorized use of their name, image, likeness, or voice—is not neatly arranged along state lines. Federal regulation is necessary to provide clarity, consistency, and stability with respect to rights of publicity and to avoid difficult jurisdictional questions. *See* Comments of ASCAP at 6; 11-13.

[5] Matt Mullen, *Voice-Swap is an AI-powered platform that enables fans to legally clone artists' voices, and artists to monetize their own,* MUSIC RADAR (July 6, 2023), https://www.musicradar.com/news/voice-swap-ai-platform-vocal-clone.

[6] Lydia Spencer-Elliott, *'Your days are numbered': What songwriting could sound like in an AI future,* THE INDEPENDENT (Apr. 18, 2023); Chloe Veltman, *When You Realize Your Favorite New Song Was Written And Performed By . . . AI,* NPR (Apr. 21, 2023), https://www.npr.org/2023/04/21/1171032649/ai-music-heart-on-my-sleeve-drake-the-weeknd.

[7] Pranshu Verma and Will Oremus, *AI voice clones mimic politicians and celebrities, reshaping reality*, WASHINGTON POST (Oct. 15, 2023), https://www.washingtonpost.com/technology/2023/10/13/ai-voice-cloning-deepfakes/.

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Respectfully submitted,

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