Before the
UNITED STATES COPYRIGHT OFFICE
Washington, D.C.

In the Matter of:	
Notice of Inquiry on Copyright and Artificial Intelligence	**Docket No. 2023-6**
October 30, 2023	

Comments of the Recording Academy

Introduction

The Recording Academy ("Academy") appreciates the opportunity to submit comments regarding the U.S. Copyright Office's ("Office") Notice of Inquiry on Copyright and Artificial Intelligence. As the only music trade association that represents all music professionals, the Academy has long been working to protect the rights of all music makers including artists, performers, songwriters, composers and studio professionals. The Academy's nearly 20,000 members span all genres, regions, and career levels, and include thousands of independent music makers.

Copyright protection and enforcement has long been a top priority of the Academy and our members, and we are encouraged by the Office's interest in further examining the policy questions surrounding generative AI and copyright law. The Academy's comments will focus on the urgent need to protect human creativity in the wake of rapidly emerging generative AI technology, particularly when it comes to generative AI models using copyrighted work without consent or compensation for artists. As the Office begins to create new rules and regulations, it is pertinent that it considers the perspectives of creatives everywhere, especially the music community, and protect creators from the misuse and theft of their copyrighted works by generative AI.

Summary

Generative AI has already made a profound impact on music and music making. Through the power of technology, generative AI has revolutionized who can be a creator. At its core, it is an extension of creativity and another tool in the artist's toolbox—an evolution that connects back to other new technologies that have changed music making like drum machines, synthesizers, autotune, even the electric guitar. Many artists, songwriters, and producers already use generative AI as an instrument, or

are eager to explore how to utilize the technology to perfect and advance their craft. Such usage is not new, nor is it wildly disruptive.

But, unlike its predecessors, generative AI has the unique potential to threaten human creativity and upend the creative workforce and industries. Absent thoughtful guardrails and regulations, generative AI could displace or eliminate human creators.

Accordingly, the Academy urges the Office to study and implement regulations and rules that would better govern the use of generative AI—ensuring that the technology can be properly utilized, without threatening human creativity or infringing upon human creations. Through the NOI process, the Academy hopes that the Office will outline steps to stop the unprecedented theft of copyrighted works to train AI models and systems, while reinforcing the fundamentals of copyright laws that exist to protect human artistry.

Additionally, the Academy asks the Office to carefully consider the impact generative AI has on independent artists, songwriters, and other individual creators. Independent creators are critically important to the well-being of a healthy music and arts ecosystem but are uniquely powerless against the advancements of technology. Past attempts to regulate new technologies have failed independent creators, and the Academy urges the Office to avoid replicating such power imbalances.

Ultimately, the Academy calls on the Office to center any new regulations on protecting human creators. Absent stronger protections, generative AI models and systems will continue to use human artistry without consideration, compensation, or consent.

Recording Academy Governance on Artificial Intelligence

As the organization behind music's only peer-recognized accolade, the annual GRAMMY Awards, the Academy recently updated its award's rules to govern submissions created by generative AI. While not directly analogous to matters of copyright, the new rule helps reinforce and illustrate the Academy's policy perspective on AI and music.

The rule clarifies that only human creators are eligible to be submitted for consideration for, nominated for, or win a GRAMMY Award. In practice this means that only human creativity will be honored and celebrated, which reflects both the Academy's mission and serves as the fundamental principle that guides our answers to the following questions. Human creativity is vital to the music making process and must be protected. Our comments will reflect this perspective throughout our submission, and we encourage the Office to utilize this as their own North Star in crafting any new rules and regulations on the use of generative AI.

General Questions

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?

The Academy believes that generative AI systems offer many benefits that will influence music makers, consumers, and the industry for generations to come. However, these benefits must be balanced with the risks that come with this new technology. On one hand, generative AI's potential to redefine who can become a music maker is a wonderful prospect that reflects the Academy's mission to expand access to music and music making. As a relatively affordable and accessible technology—often free and readily available—existing AI tools eliminate many of the traditional barriers of entry to music creation, including costs and connections. This is also a much more equitable approach, empowering individuals and leading to a more diverse and global music ecosystem.

The benefits of generative AI are already bearing fruit. In fact, while the policy interest in AI may be new, the use of AI in music making goes back many years. Already these systems have been used to create and refine sound recordings and musical works. From songwriter ideation, to beat creation, to song starters, to sound mixing, generative AI is used by many within the industry. But these uses are intended to assist, not displace, human creativity.

The Copyright Office must take steps to mitigate against the risks to human creativity. This starts, first and foremost, by addressing the widespread infringement of sound recordings and musical works that has taken place, and continues to take place, in the form of training AI systems and machine-learning. These acts devalue creativity and are no different than other forms of copyright infringement that have siphoned billions of dollars from the creative community. Theft is theft.

Another risk the Copyright Office must address is the threat to the creative workforce when the outputs of generative AI directly compete against the work of human creators. The potential for generative AI music to act as a market substitute against music created by humans could chill the growth and prospects of the creative workforce. Artists competing against machines trained on their own art is a serious risk that can be prevented through regulations that impede infringement, promote data transparency, and require key disclosures.

This risk is particularly concerning for the legion of independent music makers who lack the legal and financial resources to combat widespread infringement. The power imbalance between an independent creator and a tech company leaves the creator extremely vulnerable and with limited practical recourses. The industry has witnessed this power dynamic play out time and time again with the growth of other technologies. And, we have seen weak or easily exploitable laws—notably Sec. 512 of the Digital Millennium Copyright Act—fail to effectively protect this creative class. The Academy

urges the Office and other policy makers to avoid these past missteps and put the onus on regulating generative AI systems to protect all creators.

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. While infringement hurts copyright owners across all sectors of the creative industries, music is particularly vulnerable to the increasing use or distribution of AI-generated materials. Music has always been the "canary in the coal mine" with new technologies—it is far easier to upload, distribute, and consume at a much larger scale than comparable industries. The Academy has already observed the consumer demand for AI-generated music, with consumers not shying away from streaming AI music that replicates human artists. Additionally, AI-generated music that is available for the public makes it a commercial use—each time a listener streams a machine-created track, a human creator loses out on the opportunity to earn income. An increase in the distribution of AI-generated music could lead to a future that displaces human created music.

The increasing use and distribution of AI-generated music also raises the unique concerns that come with the inherent nature of music copyrights—namely the fact that each song has two copyrights. This poses a much more complex licensing regime for the industry to wrestle with, and many nuanced policy questions for the Copyright Office and other policy bodies to weigh in on. For every clear-cut example of an AI-generated musical work being recorded by a human, there are going to be countless cases of songs partially written by machine, partly mixed and engineered by AI, or featuring performances that were partly computer-generated. Music in this grey area will still attempt to claim copyright protection, enter into licensing and distribution agreements, and generate royalties. The law and regulations will have to address the complex questions and uncertainty that accompany these works.

Last, as has been reiterated throughout the Academy's comments, the continued growth of AI-generated music will further raise concerns for independent artists and songwriters. In particular, the Academy is concerned that the licensing agreements that may be developed and agreed to will leave independent creators behind. Already, some of the larger companies within the music industry have been able to reach agreements and licensing deals with AI companies. This is not true for independent artists, labels, and publishers. And absent the incentive to reach a licensing deal, it is not unthinkable that only the major companies and major artists get fairly renumerated by AI companies.

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? How important a factor is international consistency in this area across borders?*

The Academy appreciates the global undertaking by policy making bodies to examine the impacts of generative AI on copyright. As a borderless industry, there must be

international consistency to protect human creativity across all continents. Such global consistency must be an important factor to ensure that all creators have a level playing field, particularly the independent artists who would otherwise lack the resources to fight against global infringement. Some of the early initiatives, including the Hiroshima AI Process, are important building blocks that could yield a strong, consistent and global rights regime that is centered on human artistry. The Academy looks forward to participating in this and other processes to establish a strong and consistent international system of rights.

Conversely, the Academy has been troubled by reports that certain nations were exploring overreaching text and datamining ("TDM") exemptions to their existing copyright laws that would protect AI companies over human creators. While some countries have reconsidered a TDM exemption, the Academy will remain proactive in ensuring such a policy is not implemented in the United States or in foreign markets.

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

At this time, the Academy believes that the Copyright Act is sufficient in protecting human creators and no new legislation is warranted to address copyright issues and generative AI. The existing law is clear that a copyright can only be granted to a human, and this has already been reaffirmed in decisions rendered by the Office. The Academy also believes that the law is flexible enough to address infringement by AI companies using copyrighted materials as inputs to train their systems. But the Academy reserves the right to reconsider its position and revisit the need for legislation in the future if courts misinterpret or misapply the law.

In terms of related issues, the Academy would support legislation to establish a federal right of publicity that protects a human creator's name, image, likeness, and voice from being misappropriated by generative AI systems. Additionally, the Academy would welcome legislation to ensure AI systems are more transparent and ethically above board with regard to data management, tracking, and disclosure.

Training

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

Almost any and all kinds of copyright-protected training materials, including song lyrics and sound recordings, are used to train AI models. At the very least, all digital forms of copyrighted materials have likely been used in some fashion. In some cases, the material is properly licensed with the permission of the author and there have been instances where an author voluntarily gives access to his or her material. But the

majority of material is likely to have been scraped from the internet without consent, compensation, or consideration.

8. *Under what circumstances would the unauthorized use of copyrighted works to train AI models constitute fair use? Please discuss any case law you believe relevant to this question.*

A fair use defense is always a case-by-case determination, and it would be hard to speculate on a theoretical unauthorized use. There is no blanket exemption for AI or any other use of copyrighted materials, nor should such a fair use exemption be established. The existing four-factor test must continue to apply independently to each unauthorized use of copyrighted materials.

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)?*

Yes, opt-in is the requirement under current copyright law and affirmative consent of the copyright owner must be received to use their works for training purposes. Absent the consent of the copyright owner—via an affirmative opt-in— any use of a work for training purposes would be an infringement of the owner's copyright. The Academy believes that affirmative consent is the only approach to give all creators equitable protection; as Sec. 512 of the DMCA has demonstrated, an opt-out approach is ineffective and leaves many creators vulnerable to infringement.

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

Yes. Consent of the copyright owners should be required for all uses of copyrighted works to train AI models. Commercial use should not be a determining factor.

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?

The Academy does not support the adoption of an opt-out approach. Opt-out approaches, even the best designed one, will be inefficient and incomplete. It shifts the burden of responsibility to the author, many of whom are at a stark disadvantage to handle such a responsibility. Opt-out approaches are a one-way path to creating an imbalance within the creative ecosystem between the haves and the have-nots.

The Academy has heard from its members that independent creators already feel like they are in a perpetual game of "Whack-a-mole" when it comes to digital content that is more traditionally uploaded by humans. This feeling of frustration reflects the seemingly insurmountable task of policing the internet for instances of infringement. Allowing AI-

generated content to follow a similar opt-out approach would shift this burden from insurmountable to impossible.

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?

While one cannot put the genie back in the bottle, future AI models and training systems can practically implement an opt-in approach. The onus should be on the developers to figure out the way to secure consent, which has been feasible in other distribution contexts via direct licensing. The Academy believes that an opt-in approach would serve as an incentive to enter into licensing agreements with artists or groups of artists, and ultimately benefit all parties.

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?

In such cases, the Academy believes that the copyright owner has the exclusive right, not the original author.

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

The company or individual behind the AI model should contact the copyright owner (or their designee) and obtain a license. Many AI models are already obtaining licenses this way and it has been the norm across many other examples within the music distribution ecosystem.

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

Yes, the Academy believes that direct voluntary licensing is feasible for the music industry. As mentioned already, there are numerous examples of the success of direct licensing, including from generative AI models where many creators are licensing their works for commercial AI uses. Direct licensing can also give independent artists and songwriters the opportunity to provide consent and secure compensation for their work.

10.2 Is a voluntary collective licensing scheme a feasible or desirable approach? Are there existing collective management organizations that are well-suited to provide those licenses, and are there legal or other impediments that would prevent those organizations from performing this role? Should Congress consider statutory or other changes, such as an antitrust exception, to facilitate negotiation of collective licenses?

The Academy supports direct licensing as the most desirable approach in most circumstances. In fact, direct licensing should be the default approach. The market should be allowed and encouraged to work, and licensing agreements should be

reached directly between parties to allow rightsholders the opportunity to secure licensing that reflects the full value of their work. However, the Academy recognizes there are some circumstances where direct licensing is inefficient or inaccessible with respect to independent songwriters and artists who lack the resources and leverage to successfully enter into such agreements. In these limited circumstances, voluntary collective licensing may prove beneficial for independent creators.

10.3 Should Congress consider establishing a compulsory licensing regime? 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?

No, the Academy does not think Congress should consider establishing a compulsory licensing regime. Compulsory licensing is not advantageous to creators, and in practice it has not always worked to ensure equitable and fair compensation for all music makers.

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

No, the Academy does not support an extended collective licensing scheme.

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

No. Regardless of whether it is a sound recording or a musical work, voluntary direct licensing is the preferred regime and the only proven approach to fairly compensate all artists, songwriters, and studio professionals.

11. *What legal, technical or practical issues might there be with respect to obtaining appropriate licenses for training? Who, if anyone, should be responsible for securing them (for example when the curator of a training dataset, the developer who trains an AI model, and the company employing that model in an AI system are different entities and may have different commercial or noncommercial roles)?*

The Academy sees no difference in obtaining an appropriate license for training from any other usage of music. As such there are no legal, technical, or practical issues that readily come to mind. And the responsible party to obtain the license should be the developer training an AI model, or any party taking part in the infringing ingestion of music without a license.

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

The Academy contends that licensing agreements within the music industry have sparked significant investments and had tremendous positive economic impact over the years. The growth of digital music streaming services demonstrates that proper

licensing is not a hindrance to development and adoption. AI systems should and could follow a similar path. Licensing is the most effective approach to bring creators and new technology services success. And such harmony mitigates legal costs and concerns.

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?*

Yes, the Academy believes that both AI model developers and the creators of training datasets should be required to collect, retain, and disclose records of their training models. Proper recordkeeping is the most effective way to ensure copyright compliance, prevent infringement, and encourage renumeration. Absent such recordkeeping, copyright owners would find it difficult to determine whether their works have been used.

15.1 What level of specificity should be required?

The level of specificity should ensure that a copyright owner is able to determine whether their works have been used by an AI model or creator of training datasets. The Academy would welcome the opportunity to further explore the level of specificity with experts and policy makers, but at a minimum, records should include copyright management information and metadata that readily identifies the title of a song, the featured artist(s), songwriter(s), producer(s), copyright owner (if assigned), and other common characteristics. Additionally, records should track how and when the use took place, by whom and for what purpose.

15.2 To whom should disclosures be made?

At a minimum, disclosures should be accessible to the rights holders. But the Office should explore the feasibility of making such recordkeeping publicly available to fully promote transparency.

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

The obligations for developers of AI systems that incorporate models from third parties should be consistent— transparent with proper recordkeeping outlined in 15.1. The Academy believes that developers must disclose the third-party models they incorporate in order to trace and track down potential infringements.

15.4 What would be the cost or other impact of such a recordkeeping system for developers of AI models or systems, creators, consumers, or other relevant parties?

The Academy is not positioned to estimate the cost of such a recordkeeping but believes that a proper recordkeeping system is a typical cost of doing business and is

consistent with the recordkeeping costs incurred by other content platforms and distribution models.

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

The obligation to notify a copyright owner is already well-established in existing law. Training an AI model does not change the obligation; the developer must seek permission or an appropriate license from the copyright owner.

Generative AI Outputs

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?*

Yes, the Recording Academy firmly believes that human creators are able to use generative AI to create music and still be considered the author of the work in situations when AI supports, and does not replace, the work of a human author. In this context, the use of generative AI should not disqualify an individual from claiming authorship. Many Academy members already use generative AI as a tool to assist them in creating new music. Creators are using these new systems and models to start a song, for ideation, to identify a chord progression, to create a chorus, to help mix a track, and so forth. There's also a growing market of generative AI systems, like Bandlab's SongStarter and Endel, that are solely focused on serving as an instrument of human creativity. These uses of generative AI are done in support of the human creator and in no way do they change or challenge the "author" of the creation.

Ultimately, determining authorship should be a question that is answered independently. Each track, each musical work, each circumstance is an independent creation. And it would be difficult to assert one set of factors, or a standardized test, to determine human authorship. At a minimum, there must be some clear human involvement in the creative process and a prevailing element of human creativity in the output.

As for the example in the final question, absent additional context of what the individual did with the text prompts, it is unlikely that the person demonstrated sufficient creativity to claim authorship based on prompts. Simply selecting materials or prompting what material an AI model is using would not typically merit copyright protections.

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?*

No. As alluded to in previous answers the Copyright Act is sufficiently equipped to address questions of human authorship, and any specific claims can be determined independently by the Copyright Office and/or the Courts.

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"? If so, how?*

As the Academy has alluded to in previous answers, existing law protects human creativity and authorship. As such, the Copyright Clause in the U.S. Constitution would permit copyright protection for AI-generated material assuming the creation is facilitated by an individual creator who is considered the author (see answer to Q18). It is our belief that the law is flexible enough to cover AI-generated material and those determinations can be made on a case-by-case basis.

Since the Copyright Clause was first drafted, there has been a continuous evolution of technology used to create music and art. Throughout those advancements, the law has been clear and consistent in how copyright protections are applied and how they must be enforced. AI is a relatively new technology, but its treatment should be no different than its predecessors.

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?*

Yes. If an AI-generated output is trained on copyrighted material and is substantially similar to that material, then the AI-generated output is likely to have implicated the exclusive rights of the preexisting work. This would be true in virtually all circumstances. The exact right or rights that are implicated would depend on the use of the AI-generated output and other factors.

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?*

Yes, the Academy believes that the substantial similarity test is an adequate means to address claims of copyright infringement. Other standards may need to be established in the future—such as a data standard that promotes transparency to identify training inputs—but the substantial similarity test would be able to hold generative AI systems accountable.

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?*

In such a circumstance, proving the element of copying will be difficult. As addressed in Q23, the substantial similarity test is one way to prove the output is infringement, which would bolster claims that the input copied a copyrighted work—but the test would be limited to outputs that are similar to the original work, and thus not a comprehensive test to address all elements of copying. This is why the Academy calls for effective data standards and recordkeeping, as it is the only way to effectively address circumstances where copyrighted works are copied and ingested by generative AI systems. Absent such recordkeeping, authors and copyright owners would be very limited in how to prove that their works were copies.

Since civil discovery is dependent on proper recordkeeping, the Academy does not believe that existing civil discovery rules are sufficient to address situations where copyrighted materials are copied.

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?*

As has been referenced in prior answers, existing law already sufficiently addresses copyright infringement, including infringement found in AI-generated materials. Per existing law, any of the parties could be liable. Questions on direct or secondary liability would be circumstantial and dependent on the incidence of infringement, but all the parties listed—the developer of the AI model, the developer of the system incorporating that model, the end users of the system, and/or other parties—could be found liable. The Academy reiterates that there is no blanket exemption for AI, and all parties must adhere to existing copyright law or be subject to liability.

25.1 Do ‘‘open-source’’ AI models raise unique considerations with respect to infringement based on their outputs?

No, the Academy does not view “open-source” AI models to be unique or to raise any unique considerations. These types of models are subject to the same liability questions as other platforms, models, and systems. If users of an open-source model create outputs that use copyrighted materials without permission, all of the parties involved may be subject to infringement claims.

26. *If a generative AI system is trained on copyrighted works containing copyright management information, how does 17 U.S.C. 1202(b) apply to the treatment of that information in outputs of the system?*

The Academy believes that 17 U.S.C. 1202(b) should apply to generative AI systems in the same manner that it applies in all other use cases. The law is clear that one cannot remove or alter CMI in order to infringe copyrighted materials. Sec. 1202(b) exists to help authors and copyright owners identify sources of infringement, and generative AI systems that violate this section must be held liable by the courts.

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?*

The Academy supports labelling of AI generated material as a good practice that promotes transparency to better inform the creative community, AI developers, and consumers. We applaud President Biden's recent Executive Order to direct the Department of Commerce to develop guidance on how to best label AI-generated content through watermarking and other content authentication tools. The Academy welcomes having further conversations with legislators, policymakers, and stakeholders to explore crafting new laws that require labelling with requirements that are effective and informative.

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

The Academy believes that the developer of the AI system would be responsible for identifying a work as AI-generated.

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?*

There are presently no federal legal rights that apply to AI-generated materials that feature the name, image, likeness, voice of a particular person. While Congress has explored establishing a Right of Publicity, including a recently drafted proposal by a bipartisan group of Senators, no such federal law exists. However, at the state level there is a patchwork of publicity laws that address many of the concerns raised by individuals who have had their likeness replicated by generative AI. Such laws are non-exhaustive and inconsistent across each state. Additionally, common law offers protection for individuals, but the Academy is unaware if these standards have been applied by the Courts in the context of generative AI.

31. *Should Congress establish a new federal right, similar to state law rights of publicity, that would apply to AI generated material? If so, should it preempt state laws or set a ceiling or floor for state law protections? What should be the contours of such a right?*

Yes, the Academy supports the establishment of a federal Right of Publicity, and we are actively advocating Congress to pass such a law. While we appreciate the Office raising this important question, since it falls outside the scope of copyright policy, the Academy will work with lawmakers and other stakeholders on questions about preemption, contours, and other requirements.

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?

Yes, the Academy believes protections should exist to protect against an AI system generating outputs that imitate the artistic style of a specific human creator. Artistic style is unique to the artist and should be protected, and any artist should be eligible for such protection. Similar to our response to Q31, the Academy will work with legislators and stakeholders to craft an appropriate protection.

33. *With respect to sound recordings, how does section 114(b) of the Copyright Act relate to state law, such as state right of publicity laws? Does this issue require legislative attention in the context of generative AI?*

Section 114(b) addresses a specific issue in copyright law related to sound recordings that is distinct and separate from the issues addressed by state right of publicity laws. The Academy does not believe that Sec. 114(b) has any impact on state law and this question does not merit additional legislative attention.

Conclusion

The Recording Academy appreciates the opportunity to comment on the Office's Notice of Inquiry on Copyright and Artificial Intelligence and help to provide important perspective and context on the many policy questions confronting the Office. As reflected in our response, the Academy urges the Office to craft guardrails that are centered on protecting human creativity. This is especially true for the legions of independent artists, songwriters, producers, and other creators who find themselves particularly vulnerable to the threats of generative AI. Protecting all human artistry must be the Office's North Star.

We welcome further opportunities to work with the Office and other stakeholders in shaping new laws, rules, and regulations that protect music makers and the creative workforce, enshrine the fundamental principles of existing laws and standards, and incentivize the creation of new music and art. Thank you for your consideration.