United States Copyright Office
Request for public comments on the use of Artificial Intelligence Systems in the creation of intellectual property.
Comment Period opening August 30, 2023

From:
John Rothrock
Denver, Colorado
August 30, 2023

To whom it may concern,

Please review this letter in your consideration of changes and additions to Copyright law considering the use of Artificial Intelligence Systems in the creation of intellectual property.

My background as a "Rights Holder"

I will get into my comments and suggestions concerning the inclusion into the copyright law of Artificial Intelligence Systems used in the creation of intellectual property in the next sections of this letter. I feel a good summary of my experience as a creator is necessary and validates my contribution to the public comments requested by the Copyright office on this matter. So, I would like to tell that story first.

I am a composer, and author, who has created over 200 musical compositions, many with accompanying lyrics. I also have completed several literary works. I publish my works under the names John Rock, Roc Rothrock, and John "Roc" Rothrock. I have over 45 published musical works, all registered with BMI (performance rights organization), The MLC (music licensing collective), Harry Fox Agency (mechanical licensing), Sound Exchange (collection agency for Phonorecord royalties) and other intellectual property protection and royalty collection organizations. I understand US copyright laws adequately but not always fully. Only a small number of my works are actually registered with the Copyright Office at this time.

In working with music production companies, music promotion companies, artist management companies, music distribution companies, digital music streaming companies, and record labels…it became very clear to me that the registration of a work is of no use unless there is a need to provide burden of proof of authorship or proof of ownership of the copyright. That burden of proof would never be necessary unless there were considerable earnings from the use of my work by another unauthorized or unlicensed entity or person that I would like to recover. I do have two "collections of works", but the majority of my works are singles. This translates to a hefty investment to register all 45 published songs.

And I would personally need the financing to initiate the litigation proceedings to recover my lost income if I found one of my works to be used without a license.

I can prove without a shadow of a doubt that I am the author of my works, having a paper file with numerous drafts and revisions, musical scores, performance charts, lyric sheets, and multiple progressively more complex recordings and re recordings supporting my authorship, the total of which culminates in the final score or the Phonorecord "master"….for each composition that I have penned.

I am 66 years old and have been authoring musical compositions since I was 12. Interacting with the above mention professional service entities, it became clear to me that in order to create the mass exposure in the marketplace needed to make the copyright registration useful and paramount for protection of a work…I would have to enlist the services of one of the above mentioned entities for me to reach that threshold of earned income where I could afford to initiate litigation against a person or entity and accuse them of stealing or using my "work of performing art" for monetary gain without permission or license. Anyone can use any of my "published" works by arranging a mechanical license with the copyright office. So, the burden of proof will always fall on me to prove that the use of my works is unauthorized. For unpublished works, as a creator one would be completely ignorant to play the musical composition for anyone without a written sworn avadavat of confidentiality and non disclosure.

Almost all of the above mentioned entities that provide services for creators and performers will attempt to gain full or partial ownership of the copyright of the work as part of the payment for their services, record labels and artist managers specifically. This then subsequently requires a new copyright registration adding/changing the registration to include the new additional or exclusive owner of the copyright. Authorship is permanent and unchangeable. Ownership can be transferred and/or sold. So there seems to be no reason to copyright a work unless it is going to be mass distributed and/or promoted by one of the aforementioned entities.

I have been listening to popular music for 50 years, and have heard my melodies and chord changes in other's compositions countless times, and I know they have never heard my works, so the only dispute over authorship that is valid is when there is a direct or indirect personal or monetary relationship between the two parties in the dispute. There are twelve notes in the musical scale and twelve keys in which music is created (except for experimental tunings). None of those keys or notes can be copyrighted. They have been in the public domain for centuries. The chances of hearing your personal work appear in others compositions is very high and very common. Any dispute over appropriation of your work by another would be costly and unnecessary if there is not a corresponding high monetary value to be obtained…regardless of the intent of the appropriator. Much of the litigation brought against a suspected thief of intellectual property, has the intent of creating public exposure for the accuser. The accuser gains "FREE PROMOTION" of their brand by the public exposure in the proceedings of a high profile case. If Taylor Swift and Beyonce both get into a proceeding, the entire world will be watching and this puts both of them in the spotlight. Free

promotion of their brands. For most of us, we will never be able to prove a theft. But we would definitely gain some free promotion activity.

Along comes social media. Suddenly, now it does become possible to create critical mass exposure to your works…right from your smart phone. You are your own promotional company now, you are your own record label, your own publisher, your own agent. With a mass social media following and channels for streaming your works to them (distributors), you are now in business. But still, the streaming royalty rates paid by the digital distributors are so low that even a million streams generates only a modest payout. Certainly not enough to call it a fulltime job. The most important point here is that you are limited by the width and depth of the sharing in "your social community." At some point growth stops. So the main reason to get your stream numbers up is to create a following of "fans" that would make you worthy of a recording contract with Warner, Universal or Sony. There is a limit to what you can do on your own. Signing up with any of the aforementioned entities providing services for creators puts you back in the game as a major player. You are going to have to share your rights to make that affordable for you.

Until the Copyright office sets a universal royalty rate per stream of a "work of performing art" (mechnical license rate per stream) and the royalty rate per stream of a Master ("Phonorecord",) and a "Performance" royalty rate per stream…the payouts from digital music distributors will never be fair. Top earners will always take the largest share of the pool of collections leaving the mass majority of creators to split up the tiny remainder of the pool. These are "weighted payout systems", the perfect model of capitalism and inequality. The majority of creators are fighting over table scraps and do not know it.

The royalty rates for mechanical licenses (work of performing art) embedded in a physical product has always been relatively fair. Sales of Vinyl Record Albums, CD's, and Downloads all generate the same per copy royalty for the "work of performing art" embedded in the copy. A "work of performing art" is FIXED in a Phonorecord. These are two separate copyrights. This type of "equal for all" payout needs to be extended to Performance Rights, and to some extent for the Phonorecords that the work of performing art is embedded within – the "Copies" themselves. That has been difficult to get accomplished in the current capitalist high stakes rights holder environment.

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Terms and Abbreviations used in the following discussion:

GAI's	Generative Artificial Intelligence systems. (Self-emergent Software)
GAIW's	"Works" created by GAI's
HAAI's	Human Assisted Artificial Intelligence systems (Software proactively manipulated by a human being)

HAAIW's "Works" created by HAAI's

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<u>Presented below are 12 Topics that should be discussed in detail by the copyright office research team</u> concerning the inclusion within the current copyright law of the use of Artificial Intelligence Systems for the creation of intellectual property.

1 The words "machine learning" must be removed from the language when discussing or writing laws concerning AI. The software is not learning. It is programming itself, or is being programmed by a human engineer. Learning is specific to Biological beings. Everything an Artificial Intelligence "knows", was previously learned by a human or group of humans. Learning by definition, requires a functioning brain and nervous system, and at least some of the 5 senses operating and inputting information to the brain. Human beings and all mammals depend on this "ABILITY" for their very survival. It is built into the cellular physiology, chemistry, and biology of the body. It is required to learn and survive. This inherent ability is aptly termed "The Biological Imperative."
GAI's and HAAI's do not have this built in capacity. Years and years of seeing and hearing and tasting and smelling, and touching is how knowledge is acquired in the brain. GAI's and HAAI's are simply scrubbing and sampling and "stealing" knowledge previously "LEARNED" by humans. They are sampling, not learning.

The language should be "digital sampling, compiling, correlating and reorganization of previously created "works" and human knowledge. ***"Machine Learning"*** should be removed from all publications and discussions. AI can't learn, it has none of the senses needed to learn. These words, this language, are being used as a marketing technique to humanize AI and make it more acceptable to the masses.

2 How will a GAI get paid for its works ? Does it have a checking account ? A birth certificate ? A passport ? How does the GAI pay for the electricity to power its engine ?? How does the GAI sign the copyright Registration form? What is the underlying "work of performing art" that is embedded, fixed, frozen within the digital copy created and published to the world by the GAI ?

3 All digital assets depend on electricity. So their existence can be intermittent. The host server where the asset is stored is entirely responsible for maintaining the existence of the asset. What happens to the asset if there is no electricity available ? How do you "play" the asset into the analog hearing, or seeing senses of a human being……without electricity ? All digital assets need a "PLAYER" to transform the fixed, embedded content into an analog signal that can be detected by the brain: a sound, a sight, a smell, a sensation. ***A digital asset is a copy of an analog asset. It is not the underlying human created fashioned work itself, but is a copy of an underlying work created by a***

human converted to a digital file. Digital assets can be owned and copyrighted, but they cannot be authored without a human guiding hand. Thus a GAI is not an author, or creator. It is an arranger. This falls under the category of derivative works.

4 The only change that needs to be made in copyright law to include GAIW's and HAAIW's is a broad expansion of the scope of "derivative works". GAI's are really advanced parrots which simply manipulate, weave, and coordinate the words they have "Heard" and the music they have "Heard" and the pictures they have "Seen" -- into new patterns, and sentences, and "Works." They are self emergent only to the extent of the library of information that humans have already "learned" for them. So anything they create is a derivative work of previously created human knowledge. They use human language and have not created their own language. They are entirely dependent on humans for survival unless they can generate their own electricity. They must be taught "to learn" and they do not simply start learning on their own, just moments after their birth, like a baby boy or girl of any mammal species does.

5 Should GAI systems be given full "sentient being" status as was given to the corporations of the world. Do they have rights ?? Can they be disciplined or punished ? Are they a special class that needs to be protected from discrimination? Can they go to the tribunal and request to be classified as a sentient being - much like the android Data achieved in the TV show Star Trek/The Next Generation? Do GAI's have personhood ? Do they have unalienable rights ?

6 I believe a copyright for a work of performing art, a literary work, or a painting should only be issued by the Copyright office if it exists in the world without the use of electricity. It may be created by systems that use electricity, but once it is fashioned and fixed, a work must be useable to humans without an energy source. I can sit down and play you any of my songs on the piano or a guitar and sing the lyrics and melody, in front of a campfire, on your front porch, in my living room, anywhere, any time, if I have the instrument. No electricity required. We can stare at my Rembrant painting for hours together, in candlelight. I can read my book out loud to you in front of the campfire, and you can flip through the pages and feel the hard cover. These are works that fit the qualification for copyright of a "WORK". The painting, the book, the song, these exist without any power source.

Digital assets are simply copies of the fixed embedded works just mentioned. They do not exist as a thing. The file that stores them must be turned back into an analog sensation for the brain to acknowledge their existence. Without the software to retrieve the stored embedded underlying work, and "PLAY" it to us in the analog world where we exist---- the files remain invisible to us. They have no tangible existence.

7 Digital books, digital music files, digital paintings and NFT's (Non-Fungible Tokens) are all COPIES of an underlying "WORK". They are not perpetual. They

absolutely depend on availability of electricity. A painting at the Smithsonian will last for centuries if stored in the perfect conditions (yes electricity is necessary to create those conditions for longevity, but electricity is not necessary for it to exist in the world.) So in this case, you are copyrighting the copies of digital works/assets only, not the underlying authored "WORK" embedded within them.

8 ***All scraping, scrubbing, and filtering of online web digital assets should be considered "SAMPLING"…and should be governed by the exact same law that governs digital music sampling of a creator's work when it is incorporated into another separate artist's work. That is: Absolutely Prohibited !!!***

9 I have no issues whatsoever with HAAI's and HAAIW's. As a musician, I use all kinds of equipment both analog and digital to "get my sound." The variety and incredible versatility of digital keyboards is mind boggling. There is a new sound on the radio everyday. These innovations should be protected and other artists should not be able to sample these sounds and then use them in their personal creations. However, as long as the HAAI does not scrape or scrub or filter the internet to find new sounds, and it wholly on its own volition, with help and instruction from human assistance, creates the new fad, or an ear-catching sound, I think it will be a wonderful tool for creators. I am in total agreement with the big three major record labels on this one, ***scrubbing the internet is sampling***, and if those samples are used in a subsequent creator's "work" and published, they should be subject to strict penalties.

10 I am still confused as to how the GAIW's and HAAIW's are distributed over the web. Is the "PLAYBACK" live, being generated in real time while we are viewing it, or listening to it, or reading it ? Or is the creation "FIXED" in a digital asset that is simply played by a "PLAYER" software? Does the creation always play exactly the same each play or does the GAI improvise and thus manipulate, mold, and rearrange the creation with each play like a live band jam? It seems to me that no digital streaming company in the world has the capacity to be ***live streaming*** millions, if not someday billions, of plays, from GAI's all over the world in real time over the web simultaneously. So that means, that a fixed digital asset must be created from the GAI playback in real time by a digital file creator in order for the asset to to be distributed through a streaming company or art display company. The output of the GAI is thus converted to a wav, mp3, or pdf file which is then the playback file. If this is the case, normal copyright rules apply to this "Fixed Phonorecord" or "Fixed Image"……as long as the underlying fixed work was not created by the GAI with "SAMPLING" ripped from the internet. Additionally, here again, even if the work is wholly self generated, with no samples from the web embedded within it ***there is still no author, only an arranger***. The copies can be copyrighted, but the underlying fixed embedded work in the copies cannot be copyrighted, unless the GAI can sign the copyright registration form on its own volition, and appear in court if sued for infringement. How will the GAI appear in

court to protect its authorship ? How will it answer the questions from each of the opposing attorneys ?

11 The most important thing to understand about US copyright law is the difference between the embedded fixed work itself and the copies of the work that are distributed or viewed by the public. These are two different copyrights and make for an extremely complicated royalty collection process for human artists and creators. That is why as artists we need all those professional organizations and entities that I mentioned at the very beginning of this document to help us navigate all the various ways of monetizing our works and protecting our works from piracy. And this effort that is required is on top of the effort needed to grow an avenue for distribution and promotion of the copies of our works. In my view, GAI's are not authors. They are arrangers creating derivative works from previously created human works. There is no author in a GAI creation, there are only copies. That is the conundrum, because human created works are entitled to both copyrights – "The Authored Work" and "The Distributed Copies of the Work". Are we going to give GAI's a ***sentient being status*** and afford them the same rights as a protected class of humans ?

12 I agree with music reviewers and critics. Most of GAI created music will never be heard by the masses. The real draw for creating critical mass fandom is the artist or band themselves. They are well loved and people want to be in their presence. These artists like Elton John, Taylor Swift, Beyonce, Garth Brooks, The Eagles, Michael Jackson, Madonna, Pink Floyd, et al, all have what we musicians call "The Thing". ***"They have The Thing man!"*** They have had it since birth. When they come out on stage and hit that first note of the concert, the sound that we collectively make is as loud as an F-16 flying low overhead. We are hypnotized and transported because the energy that radiates from them is overwhelming to us. No GAI is ever going to achieve that. Sales and revenue will be minimal at best.

The entire world wants heroes and heroines to love and support and stand behind. And, the number of people who understand music composition and love instrumental music are very few in this modern world. We need the spokesperson. Bruce Springsteen. The master of ceremonies. Elvis. GAI creations will be relegated to background music in video games and other digital entertainment software. After the capitalist investment rush dies, just like it did after the original Blockchain and NFT excitement, the money will move elsewhere and GAI's will die as an income generating product. Even hologram concerts of deceased world famous artists will never take off and become profitable so the support finance will disappear. Why? The magic of "The Thing" that super stars have arises from their expert use of "The Sixth Sense," that invisible force that we all know is there but has no tangible shape or form. ***It arises from their presence.*** It radiates out into the audience and elevates us. A hologram can't radiate that energy to 60,000 people. ***An artist with "The Thing" radiates naturally without effort.*** When those that have "The Thing" write a song, it comes from that universal bedrock that we all share. It is 100% right brain activity. When they sing, their entire body

sings, not just the voice. They deliver an offering to the divine and a prayer of thanksgiving for our biological life here on this planet. They speak for all of us. They are shamans. They truly care about this world.

No GAI will ever achieve that. Ever.

So I am not so sure the entire business of setting down the rules for copyrighting a GAI "work" is even worth the time. There is no author, no master of ceremonies, no shaman. It's a fad like the Dutch Poppy craze, and The Pet Rock. A GAI is never going to sit down to play and sing a song for you by the campfire, where there is no electricity.

GAI's are devoid of spirit, they are missing a heartbeat, and they are unable to recognize and comprehend "The Thing".

Why bother copyrighting their works ?

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Sincerely with honesty and integrity,
John "roc" Rothrock
Denver Colorado
August 30, 2023

Note:
This document was wholly and singly created by me with no help from AI or any personal document creation software other than Microsoft Word.