Cognitive Insights for Artificial Intelligence

Request for Comments on *Artificial Intelligence and Copyright*, U.S. Copyright Office, Library of Congress.
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Organization: Cognitive Insights for Artificial Intelligence (CIfAI)
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On behalf of Cognitive Insights for Artificial Intelligence (CIfAI), we write in response to the call for comments on Artificial Intelligence (AI) and Copyright by the United States Copyright Office, Library of Congress. We support the Copyright Office's efforts in seeking public comments on a study of the copyright law and policy issues raised by AI-enabled systems.

We at CIfAI provide strategic research-based solutions from a human-centered perspective to ensure the safe and ethical design, development, deployment, and management of AI-enabled autonomous systems across various industries. Our values-based approach is founded on accuracy, consistency, and context-dependency, and supports trusted data across every phase of the AI lifecycle to achieve confident and fair decision making.

Preamble

The outputs created by generative AI —a system capable of generating new content in response to a prompt entered by a user by analyzing common patterns and arrangements in large sets of data and using the information to create text, images, sounds, 3D models, animation or video— have raised significant questions for the copyright system. Some of these questions relate to the scope and level of human authorship, if any, in copyright claims for material produced in whole or in part by generative AI.

The central question of this debate is whether the creation(s) derived by generative AI is one of human authorship, with the computer merely being an assistive tool, or whether the traditional elements of authorship in the creation were entirely conceived of and executed by a machine.

The Copyright Office has already done considerable work on this issue with the AI Initiative Work, with many references, and a Current Inquiry, for which the Office seeks public input on four main issues: a) the use of copyrighted works to train AI models; b) the copyrightability of material generated using AI-enabled systems; c) potential liability for infringing on works generated using AI-enabled systems; and d) the treatment of generative AI outputs that imitate the identity or style of works by human creators.

Rather than providing particular comments to each of the 34 questions divided into 8 topics (general, training, transparency and recordkeeping, generative AI outputs, copyrightability, infringement, labeling or identification, and additional questions), we would like to take this moment to offer an alternative perspective on the issue of whether AI generative outputs such as text, images, video, animation, or sound, created by generative AI systems, would be considered copyrightable.

Although companies such as Microsoft[1] have provided in their Copilot Copyright Commitment guardrails to respect authors' copyrights by using technologies designed to detect copyrighted content infringement, we believe they are more focused to their business needs and are therefore insufficient for the broader copyright problem. As such, we provide a general and crucial statement, and nine (9) recommendations.

Our Crucial Statement and Bottom Line

Generative AI is not human. Such systems completely lack a human mind/brain, creative expression, emotion, consciousness and a sense of its surrounding environment. As such, only all kinds of works of human creation must be protected by the U.S. Copyright Office and any AI-generated output resulting from the model training of human creations is not copyrightable.

Should a non-human AI system as it stands today with its current characteristics and capabilities have the same or similar rights to humans in the context of authorship, ownership and copyrights?

Given that current U.S. Copyright Law pertains to the protection of works of human creation, the short answer is no, a generative AI system should not be granted copyright status. A generative AI system is incompatible with sovereign authorship rights and is not a recognizable human author. Giving protection to AI generated works will be a flagrant violation of the U.S. Copyright Law.

[1] Smith, B. Sep 7, 2023. Microsoft announces new Copilot Copyright Commitment for customers. Microsoft Corporation. https://blogs.microsoft.com/blog/2023/06/08/announcing-microsofts-ai-customer-commitments/

The long answer is one informed by a human-centered approach, and highlights the immature reaction to anthropomorphize a system simply because it mimics our intelligence on the surface. Today's generative AI systems are not genuine human-like systems with authentic beliefs, comprehension of the world, intrinsic and extrinsic emotions, and awareness of self. Crucially, these systems are trained on the very many outputs that we as sentient beings have produced and, in the case of AI generated text, for example, are simply predicting the most probable next word based on what they have learned from being trained on large sets of human-generated data. Therefore, it is unsurprising that behaviors like engaging in a back-and-forth conversation that moves from informal to literary to poetic and giving a semblance of having understanding, thoughts, sentience, and creativity are exhibited. To give an intuitive example of basic human behavior, take language and communication and consider what it means to us. It is not so much what we say, machines can generate language instantly and sound syntactically correct; the *what* of language, therefore, is a performable capacity. Instead, it is the *why* behind and *when* of what we say, and what we *do* with what we say that has a plurality of meaning for us.

Current generative AI systems do not have such above capabilities, there is no human-like involvement, and therefore generative AI systems do not have personhood; they are solely tools that function within the dictates of our human-provided data. On this assertion alone, *a generative AI system cannot contribute to a creation at the same level as a human because contribution to a creation entails an understanding of the utility, benefit and overall responsibility as an author of a novel creation. Specifically, being able to explain in detail both the contribution at the input stage as well as at the output stage to show how the creation was conceived and then reduced to practice necessitates an understanding of the physical world in which one inhabits. A generative AI system is at most a tool that assists in a creation*.

The Copyright Office was established more than a century ago and since then all works of human creation (e.g., paintings, photographs, illustrations, musical compositions, sound recordings, computer programs, books, poems, blog posts, movies, architectural works, plays, and many more) have been protected and copyrighted. As such, all kinds of AI-generated outputs should be rejected since they cannot receive copyrights.

Based on the above, which is indisputable, we provide the following recommendations to protect the rights of authors, artists, and creators more broadly:

Recommendation 1

Since a generative AI system is not human, any outputs of the system to be classified as writings or works of art cannot have rights, cannot be considered source material, and therefore cannot be used to undermine an author's or artist's credit, ownership and authorship.

Recommendation 2
Companies requesting creative services from authors or artists cannot mandate them to use generative AI systems when performing creative services. Companies must also disclose to the author or artist if any materials provided to the them have been created by a generative AI system or if AI-generated material has been incorporated in the material provided to the author or artist.

Recommendation 3
Any output created by a generative AI system must be labeled as such and include the names of the authors of the original works used to train the model of the system. Disclosure statements of AI-generated material should be standardized, whether through explicit text notification, watermarking, or the like.

Recommendation 4
The integration and exploitation of copyrighted works by developers/companies/organizations building generative AI systems must comply with existing intellectual property and copyright laws, and must require authorization from the authors, artists or rights holders in order to use human creations for model training.

Recommendation 5
U.S. Copyright Law must be enforced to ensure that works of human creations are never used to train the model of a generative AI system, unless those works have been explicitly granted authorization by the copyright holder(s).

Recommendation 6
Only the authors or rights holders of the original works used to train the model of a generative AI system, and thus the creation of a resulting AI-generated work, could be entitled to its copyright, after proof of ownership.

Recommendation 7
The issuance of a decree to establish the conditions for granting and withdrawing authorization by organizations managing the collective rights and royalties of authors and artists. These conditions must include a diversity of members, professional qualifications of leaders, and equitable representation of authors, artists, and individuals.

Recommendation 8
Create a fee-based system to ensure fair compensation for the use of materials created by authors and artists to train the model of a generative AI system. This will encourage innovation and diversity in the arts and creative sector more broadly.

Recommendation 9

Create a controlled open-source database for the registration of all kinds of works created by writers and artists. This necessitates a standardization system to record the different types of creative works (e.g., paintings, photographs, illustrations, musical compositions, sound recordings, computer programs, books, poems, blog posts, movies, architectural works, plays). These data already exist in the Library of Congress from all the creative works that have been copyrighted, and therefore are protected by U.S. Copyright Laws.

Recommendation 9a

Creators must comply by registering their creations in the database. This will ensure protection of their copyrights, notification of the possible use of their copyrighted work for opt-in or opt-out selection, and the payment of fees/royalties when consent is given for using a particular work to train the model of a generative AI system.

Recommendation 9b

Assign a distinct serial number, like that required for motor vehicles, appliances, and other mechanical devices. This serial number will be helpful in tracking and cross-checking creative works, together with the creators'/writers'/authors' consent, to be used for the training of the model of a generative AI system.

Recommendation 10

Other creations like scientific research that results in papers, articles, reports and the like that have not yet been published, and for which the authors retain rights to their works, should not be used for training the model of a generative AI system without the authors' written consent, at minimum.