SUBMITTER INFORMATION

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ImageRights International, Inc.'s

Responses to the

US Copyright Office's Artificial Intelligence Study

Dear Ms. Wilson and Ms. Strong:

ImageRights International, Inc. (ImageRights) is submitting the following response to the Notice of Inquiry on the subject of Artificial Intelligence and Copyright initially published on August 30, 2023 ("NOI").

Since 2009, ImageRights has worked with professional photographers, artists, and visual content creators worldwide, offering comprehensive services in the protection and management of their copyrighted works, including registration with the US Copyright Office and the detection and enforcement of unauthorized image use.

ImageRights has registered more than 1.3 million images on behalf of its visual arts clients.

ImageRights is a member of and/or actively involved with the Digital Media Licensing Association (DMLA), the Artists Management Association (AMA), the American Photographic Artists (APA), the Copyright Society, and the American Society of Media Photographers (ASMP), among others.

Given its significant stake in the realm of digital content and intellectual property, ImageRights is deeply invested in the discussions surrounding the impact of AI on copyright law. The company's expertise and vested interest in these matters make it a relevant and informed participant in responding to the Notice of Inquiry (NOI) issued by the U.S. Copyright Office.

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***?**

ImageRights recognizes the transformative potential of generative AI in enhancing creativity and efficiency. However, we are also acutely aware of the risks it poses to copyright holders, particularly in the fields of photography and digital art, where first their copyrighted works are being used to train these models without their consent and without receiving any form of compensation, and then ultimately being forced to compete with the onslaught of images generated by millions of users of these tools that would be able to do what they do without the ingestion of their works to begin with.

If the developers of these models feel so strongly the profound impact they will have on society, then they should be equally passionate about compensating those who made it possible to begin with, as an AI model is nothing without the content it was trained on.

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?

The ease with which AI can generate certain types of imagery at scale with incredible speed, low cost, and little skill will eliminate the jobs for certain types of photographers and artists (e.g. traditional lifestyle stock imagery). Unlike text or music, where AI-generated content might be more easily distinguishable, AI-generated images can be virtually indistinguishable from human-created works, so why pay a photographer to do a shoot or license a photo from a stock agency? And as the technology gets even better and trained on more copyrighted works, you will inevitably have consumers of content simply describe a photo or images they see to the AI and it will, with enough iterations, generate it. This blurs the lines of authorship and complicates the enforcement of copyright against infringers, and ultimately eviscerating the value of the original works.

3. Please identify any papers or studies that you believe are relevant to this Notice. These may address, for example, the economic effects of generative AI on the creative industries or how different licensing regimes do or could operate to remunerate copyright owners and/or creators for the use of their works in training AI models. The Office requests that commenters provide a hyperlink to the identified papers.

To view examples of how certain companies are compensating their copyright holders for using their works to train their models, see Shutterstock (https://www.shutterstock.com/press/20435), Getty Images (https://www.gettyimages.com/ai/generation/about), vAisual (https://vaisual.com/), and Bria (https://bria.ai/).

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?

ImageRights suggests examining the European Union's approach, specifically the EU AI Act (https://artificialintelligenceact.eu/documents/), as published by the European Parliament.

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.

ImageRights believes new legislation is warranted to address the unique challenges posed by generative AI. This legislation should clarify the copyright status of AI-generated works, establish norms for the use of copyrighted material in training AI models, and ensure that creators are fairly compensated.

Specific concerns that we have at ImageRights for our artists include:

- Protection of Photographers and Digital Artists: Ensuring that the rights of photographers and digital artists are not undermined by the proliferation of AI-generated content.

- Transparency in AI Training: Advocating for transparency in the datasets used to train AI models, especially regarding the inclusion of copyrighted works.

- Fair Compensation Mechanisms: Exploring mechanisms for fair compensation to creators whose works are used in training AI models.

- Legal Status of AI Outputs: Clarifying the legal status of outputs generated by AI, particularly in the context of visual works.

Training

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

ImageRights acknowledges that AI models are often trained using a vast array of copyright-protected materials, including digital images, which are core to our clients' business interests. These materials are often sourced from public datasets, online platforms, or directly from creators. However, there is a lack of transparency in how these materials are curated and the extent to which they are used with proper authorization.

6.1. How or where do developers of AI models acquire the materials or datasets that their models are trained on? To what extent is training material first collected by third-party entities (such as academic researchers or private companies)?

In our experience, developers of AI models typically acquire training materials from a variety of sources, including online databases, partnerships with academic institutions, and direct purchases or licenses. The extent of third-party involvement in collecting these materials is significant but often opaque, raising concerns about copyright compliance.

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?

ImageRights observes that licensing models for AI training are not yet widespread or standardized. While some developers seek licenses for copyrighted works, the practice is not uniform. This inconsistency poses risks to the rights of copyright owners, particularly in sectors where digital content is easily replicable. Even those that are emphasizing that they compensate rightsholders for using their works for training don't make entirely clear how they calculate that or how much they are ultimately paying out to these creators.

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?

While public domain and specially commissioned works are used for AI training, the predominant practice and #1 issue involves using copyrighted materials indexed or scraped from the internet on a massive and unprecedented scale, as exemplified by datasets like LAION-5B (https://laion.ai/blog/laion-5b/).

6.4. Are some or all training materials retained by developers of AI models after training is complete, and for what purpose(s)? Please describe any relevant storage and retention practices.

(Not Answered)

7. To the extent that it informs your views, please briefly describe your personal knowledge of the process by which AI models are trained. The Office is particularly interested in:

7.1. How are training materials used and/or reproduced when training an AI model? Please include your understanding of the nature and duration of any reproduction of works that occur during the training process, as well as your views on the extent to which these activities implicate the exclusive rights of copyright owners.

The largest models have acknowledged that training involves extensive use and reproduction of copyrighted works.

7.2. How are inferences gained from the training process stored or represented within an AI model?

Retention of Inferences refers to when an AI system is trained on copyrighted material, it develops 'inferences' or 'learnings' from that material. These inferences are essentially patterns, styles, or information that the AI has learned from the training data and are retained in the AI's model. Even after the training is completed, these inferences remain part of the AI system's knowledge base. This means that the AI might produce outputs that are influenced by, or similar to, the copyrighted works it was trained on.

7.3. Is it possible for an AI model to "unlearn" inferences it gained from training on a particular piece of training material? If so, is it economically feasible? In addition to retraining a model, are there other ways to "unlearn" inferences from training?

Difficulty in Unlearning refers to the fact that once an AI system has been trained on certain data, it's challenging to make the system 'forget' or 'unlearn' the specific patterns or styles it has absorbed from that training data. Unlike humans, who can consciously forget or disregard previous learnings, AI systems typically don't have a straightforward mechanism to selectively remove specific learnings or inferences from their knowledge base without retraining the entire model. This retraining process can be complex, time-consuming, and might not always be feasible.

The concern here is that even if the AI is no longer directly using the copyrighted material, the influence of that material persists in its outputs, meaning that the AI system could continue to produce content that is indirectly derived from copyrighted works without the ongoing permission of the copyright owners.

7.4. Absent access to the underlying dataset, is it possible to identify whether an AI model was trained on a particular piece of training material?

(Not Answered)

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.

Fair Use analysis is a fact-based analysis applied on a case-by-case basis. Therefore, you cannot simply declare AI Training per se to be Fair Use of the copyrighted works that are ingested.

8.1. In light of the Supreme Court's recent decisions in Google v. Oracle America and Andy Warhol Foundation v. Goldsmith,[j] how should the "purpose and character" of the use of copyrighted works to train an AI model be evaluated? What is the relevant use to be analyzed? Do different stages of training, such as pre-training and fine-tuning, raise different considerations under the first fair use factor?

(Not Answered)

8.2. How should the analysis apply to entities that collect and distribute copyrighted material for training but may not themselves engage in the training?

(Not Answered)

8.3. The use of copyrighted materials in a training dataset or to train generative AI models may be done for noncommercial or research purposes. How should the fair use analysis apply if AI models or datasets are later adapted for use of a commercial nature? Does it make a difference if funding for these noncommercial or research uses is provided by for-profit developers of AI systems?

(Not Answered)

8.4. What quantity of training materials do developers of generative AI models use for training? Does the volume of material used to train an AI model affect the fair use analysis? If so, how?

(Not Answered)

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? 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?

(Not Answered)

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)?

An opt-out system would impose an unreasonable burden on creators, obliging them to vigilantly track every instance where their work is used to train models, merely to exercise their right to opt out. This scenario is akin to expecting copyright owners to have immediate knowledge of every online appearance of their photos, particularly to initiate an infringement claim within the statute of limitations, assuming, hypothetically, the courts disregard the Discovery Rule for the start of the SOL period. This expectation is not just unrealistic; it places an excessive and impractical burden on the rights holder. Therefore, it is more equitable to require models to obtain affirmative consent from copyright owners.

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

Certainly, copyright owner consent should be mandatory for all commercial uses of copyrighted works in training AI models. This ensures that creators are fairly compensated for their work, especially when it's being used for profit-making purposes. For non-commercial uses, the situation is more nuanced. These should be assessed on a case-by-case basis, considering factors such as the nature of the use, the extent to which the work is used, and the potential impact on the market value of the copyrighted work.

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?

If an opt-out system were adopted, it should be streamlined and easily accessible for copyright owners. A feasible method could involve a centralized database where creators can register their works as "not for AI training." AI developers could be required to check this database before using any material. Additionally, embedding technical flags or metadata into digital files can signal to automated services not to collect or use these works for AI training purposes. However, the effectiveness of this approach hinges on the widespread adoption and respect of these flags by AI developers.

A commercial example of such a service that is available today is Digimarc SAFE Detection Software and Services (https://www.digimarc.com/products/digital-content-authentication/safe-software-services). The reality is that the genAI companies will need to be compelled to implement the software required to look for the Digimarc SAFE digital watermark that includes a flag identifying whether training has been approved for that asset embedded in the image it is looking to train on.

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?

One significant obstacle in establishing an opt-out system is the sheer volume of works used in AI training, making it impossible for creators to monitor and control the use of their works effectively. Additionally, the technical implementation of an opt-out system across various platforms and AI models can be complex.

Legal challenges include ensuring international cooperation and compliance, given the global nature of the internet and digital content.

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?

If an objection by a copyright owner is not honored, the existing remedies for infringement might be applicable, but considering the unique context of AI, a separate cause of action could be warranted. This specialized legal recourse could address specific damages or harms caused by the unauthorized use of works in AI training, providing a more tailored remedy for creators. However, as it is for quantifying the financial damages incurred by an online infringement of a photo today, it would be impossible to quantify the financial impact on the rightsholder for their works being used for

training without authorization. So there would have to be recourse for statutory damages and attorney's fees in order to impose a punitive, behavior-changing impact on the companies ingesting these works for training purposes.

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 cases where the human creator does not own the copyright of their work, either because it has been assigned or because the work was created as a 'work made for hire', they should not have the right to object to their work being used in AI model training. When creators assign their copyright or produce work under 'work made for hire' conditions, they effectively transfer or waive their rights, including control over how the work is used. Therefore, in these scenarios, the decision to permit or restrict the use of the work in AI training should solely rest with the copyright holder, who has the legal authority to make such determinations. Implementing a system that allows creators in these situations to retain control or influence over the use of their work could complicate copyright arrangements and potentially undermine the legal clarity and efficiency of copyright transactions.

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

Licenses can be obtained through direct negotiations between AI developers and copyright owners. This approach ensures specific and tailored agreements that respect the rights and intentions of the creators. Online platforms or portals can facilitate these negotiations, making it more efficient for both parties.

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

Direct voluntary licensing is feasible and preferable, especially in sectors where individual works have distinct value and require specific consideration, such as in visual arts. This approach allows for more precise control over the use of works and can cater to the specific needs and concerns of individual creators.

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?

While collective licensing schemes are effective in some sectors, they may not be as effective for visual works, as highlighted by ImageRights. Collective management organizations often struggle with accurately representing the diverse interests of visual 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?

Establishing a compulsory licensing regime could be considered, but it should be carefully structured to respect the rights of creators and the diverse nature of works. This regime should cover activities directly related to AI training and should allow copyright owners to opt out if they choose. Royalty rates and terms should be set in a transparent manner, with a system in place for equitable distribution and reporting. However, this approach may face challenges in addressing the unique needs and values of different types of works, particularly in the visual arts sector.

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

An extended collective licensing scheme, where licenses granted by a collective management organization extend to all rights holders in a particular category (unless they opt out), could be considered. However, for visual works, this approach might face similar challenges as traditional collective licensing, in terms of accurately representing the interests and rights of a diverse group of creators.

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

Yes, licensing regimes should vary based on the type of work. The nature of visual works, for instance, is distinct from literary or musical works in terms of usage, distribution, and the personal connection creators have with their works.

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 responsibility for obtaining appropriate licenses for training data should primarily fall on the curator of the training dataset. It's impractical for AI developers or the commercial entities utilizing the AI model to manage the rights for each piece of content used in training. Consider the complexity involved if a rights holder refuses permission: how does one 'untrain' the AI from that specific data? Technically, while it might be possible to remove the influence of a particular piece of content, doing so would likely be prohibitively expensive and inefficient, especially if this needs to be done repeatedly for various content pieces. This highlights the need for a systematic approach at the dataset curation level to ensure all necessary rights are secured in advance, thereby streamlining the process for developers and commercial users downstream.

12. Is it possible or feasible to identify the degree to which a particular work contributes to a particular output from a generative AI system? Please explain.

(Not Answered)

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

Mandatory licensing could impose significant costs on AI development. However, these costs must be balanced against the need to fairly compensate creators for the use of their works. Not unlike any other business that has ever existed that relied on the creative works of others.

14. Please describe any other factors you believe are relevant with respect to potential copyright liability for training AI models.

(Not Answered)

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?

ImageRights advocates for the requirement that AI developers maintain comprehensive records of training materials. This transparency is crucial for copyright owners to verify the use of their works and to protect their rights. Creators of training datasets should be held to similar standards, ensuring a complete chain of custody for all used materials.

15.1. What level of specificity should be required?

The records should be specific enough to clearly identify each work used, including details about the work's copyright ownership, extent of use, and any licensing agreements. This level of detail is necessary to provide copyright owners with clear and actionable information.

15.2. To whom should disclosures be made?

Disclosures should be made available to copyright owners upon request. Additionally, a centralized database accessible to copyright owners could be established to facilitate this process. Ensuring ease of access to this information is paramount.

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

Developers incorporating third-party AI models should be required to ensure that these models adhere to the same transparency and recordkeeping standards. Developers should verify the compliance of third-party models with these standards as part of their due diligence process.

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?

While implementing such a recordkeeping system may incur costs for AI developers, these costs are justified by the need to protect the rights of creators. Again, just like every other type of business is required to do when using licensed content, lest they face exposure for copyright infringement claims.

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

ImageRights supports the idea of notifying copyright owners when their works are being considered for AI training, not after they already have been used for training. This notification is crucial for transparency and enables copyright owners to exercise their rights effectively.

17. Outside of copyright law, are there existing U.S. laws that could require developers of AI models or systems to retain or disclose records about the materials they used for training?

Currently, there may not be specific U.S. laws that require AI developers to retain or disclose records about training materials. However, principles from related legal areas, such as data privacy laws, could offer frameworks for developing such requirements in the AI context. It is essential for new legal frameworks to evolve, reflecting the unique challenges and needs of AI technology and copyright protection.

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?

ImageRights believes that a human can be considered the author of AI-generated material under certain conditions. Key factors include the level of creative input and decision-making by the human, such as specific direction, choice of training material, and iterative input. In cases where a human significantly guides the AI's output, they should be recognized as the author, even if the initial iteration is the output of the generative AI model.

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?

Yes, revisions may be necessary to clarify the extent of human authorship in AI-generated content. Specifically, guidelines or standards could be established to determine when a human's input in the AI generation process is substantial enough to warrant copyright protection.

For the sake of the USCO Registration Specialists, this needs to be objective criteria, removing any subjectivity from the assessment. It creates uncertainty for the Specialists, I would imagine, slowing down their review of registration applications. And it certainly creates uncertainty for the rightsholders, especially given the price they must pay to submit a registration application. Especially, now that in recent years, the USCO has been rejecting registration out of hand without providing the rightsholders any opportunity to respond to the issue, forcing them into the decision of whether to appeal or not, yet the cost of appealing is $350. genAI content aside, this is an incredibly unfair development in the USCO registration application review process.

> *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?*

Legal protection for AI-generated material is critical. Professional photographers, as happens every few years, are being told to Adapt or Die. Except this time, if you adapt and begin using generativeAI to create works at a speed and cost to remain competitive, you don't actually receive ownership in the works you are creating because the US Copyright Office won't recognize it. How does that marketplace work, a market where there is no ownership and theft can occur with impunity?

> *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?*

A distinct *sui generis* right, as opposed to traditional copyright, may be more appropriate for AI-generated material. This specialized right could be tailored to address the unique aspects of AI creations, including the balance between human input and AI processing, as well as the nature of originality in the resulting output.

> *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?*

(Not Answered)

> ***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?*

AI-generated outputs can implicate exclusive rights, especially in cases where the output closely resembles or incorporates elements of preexisting copyrighted works. The degree of similarity and the extent of original material used are key 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?

(Not Answered)

> *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?*

Proving copying can be challenging without access to training materials. Transparency is essential.

> *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?*

Liability should be considered on a case-by-case basis, taking into account the role and intent of each party involved. Developers and end users may both bear responsibility, depending on their level of control and awareness of the infringement. However, if the curator of the training materials obtained all the rights in the first place, that would go a long way to mitigating this issue.

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

(Not Answered)

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?

(Not Answered)

27. Please describe any other issues that you believe policymakers should consider with respect to potential copyright liability based on AI-generated output.

(Not Answered)

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?

Yes, there should be a requirement to label AI-generated material. This transparency is crucial for consumer awareness and for maintaining the integrity of human-created content. It should apply in all contexts where AI-generated material is used or distributed. The Content Authenticity Initiative (https://contentauthenticity.org/), of which ImageRights is a member, has done incredible work in this space. Implementation of the C2PA (https://c2pa.org/) specs and compelling compliance with this standard for all media would go a long way in fighting deep fakes and other forms of misinformation and disinformation.

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

The responsibility should lie with the developer or distributor of the AI-generated material. They are best positioned to know the origin of the content and ensure accurate labeling.

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

Technical and practical barriers could include the integration of labeling systems into existing workflows and the potential for labels to be removed or altered. The barrier is cost, but it is a cost that must be born.

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?

Failure to label AI-generated material or removal of such labels should result in penalties or other legal consequences, including exposure to statutory damages and attorney's fees.

29. What tools exist or are in development to identify AI-generated material, including by standard-setting bodies? How accurate are these tools? What are their limitations?

(Not Answered)

Additional Copyright Questions

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?

AI-generated material featuring a person's likeness should be subject to state rights of publicity laws as any other work is.

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?

ImageRights advocates for a federal right similar to state law rights of publicity, particularly for AI-generated material. This right should set a baseline (floor) for protections, allowing states to provide additional protections if they choose. It should cover unauthorized use of a person's name, likeness, and vocal likeness, providing clear and consistent protections nationwide.

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?

There should be protections against AI systems imitating the artistic style of human creators, especially considering the potential for malicious use such as deep fakes.

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?

(Not Answered)

34. Please identify any issues not mentioned above that the Copyright Office should consider in conducting this study.

- The impact of AI on traditional copyright enforcement mechanisms, especially as AI-generated content becomes more prevalent and sophisticated.

- The need for international cooperation and harmonization of laws regarding AI-generated content, given the global nature of digital media.

- The role of ethical considerations in the development and use of AI in content creation, particularly concerning transparency and the potential for misinformation.

- The impact of AI on the economic rights of creators, including potential revenue loss and market disruption.

Respectfully submitted,

Joe G. Naylor

Founder & CEO

ImageRights International, Inc.