

Inquiry on Generative Artificial Intelligence

Submitted by: Jesse Ross- Owner of Non-Villain Media LLC

Summary of Idea in Brief:

The best and most expedient action for the US Office of Copyright at this moment in regards to new emerging technologies that incorporate generative artificial intelligence would be to expand the working definition of derivative works currently in use in its practices to incorporate such works that are derived from pre-existing copywritten materials. Expanding this definition should be fairly straightforward... simply put it to a vote (if needed) and incorporate the new language as an update. A new audit process will need to be established to ensure fairness and to preserve the intellectual property rights that each copyright owner expects to receive from the US Copyright Office and the Judicial Branch. Creating this audit process will be tricky though. Support from the Judicial Branch will be needed to hold accountable those parties currently publishing new works derived by using tools that exhibit generative artificial intelligence from old works and/or catalogs of copywritten materials and retroactively regard the use of these previously copywritten datasets/catalogs/works as copyright infringement.

About me:

Small business owner / record producer / musician / self-published author. PMP / Lean Management / Six Sigma (Black Belt) certified. Master's in Music Technology from NYU (2006), Bachelor's in Music Technology from GSU (2004). My understanding of artificial intelligence is intermediate at least. I regularly read articles and books on the subject, and keep tabs on MIT faculty about these and other emerging issues. I also use generative artificial intelligence apps in my administrative life (though not in my artistic compositions so far. My pursuits were greatly hindered years ago due to the lack of regulation regarding filesharing services such as Napster years ago. By comparison, tools that incorporate generative artificial intelligence seem to pose at least five times the amount of problems if left in their current regulatory state.

Questions:

#1: Benefits of these tools

The benefits are unlimited in a free market capitalist system. But capitalism we see needs a moral center of some sort. And it is the role of government to ensure this balance.

#1b: How is this technology likely to affect creators/et cetera?

In the immediate sense, 99.9% of creators will become immediately poorer and US Copyright owners will immediately have less control, and technology developers in the short term may experience certain opportunities but in a period of ten years or less will have almost no benefit. Researchers will probably experience some slight improvement in quality for their research. And

in general the consuming public will be poorer overall because they will eventually suffer through a decrease in quality despite an increase in quantity.

#2: Does the Increasing Use of AI / Generative AI raise any unique issues for your sector?

My sector(s) are music and literature. Yes. These sectors are at exceeding financial risk relative to other sectors because of tools that incorporate generative artificial intelligence without further regulation.

#3: Please Identify any papers on these subjects...

Supreme Court Justice Louis D. Brandeis wrote "The Right to Privacy" hundreds of years ago which serves as one of the foundational documents of intellectual property in America. Within this work he said "if man is to be free then his thoughts as well should be his own, otherwise his thoughts would be the property of the State... [which would make him] indentured to the State and thus not free" (more or less). Thus, if the US continues to bill itself as a "free country" then intellectual property must be the rightful possession of the individual and not the State and not some corporate entity or some publicly traded entity.

#4: Are there any statutory or Regulatory Policies in other Countries that should be avoided?

We should probably look to countries such as South Korea in the music industry because the proliferation of certain works (in the K-Pop genre for instance) are regarded with some seriousness because they generate so much revenue. In contrast, we should pay less attention to policies in China and other countries that regularly infringe on our Copywritten works in the US.

#5: Is New Legislation warranted to address Copyright or Related issues to tools that incorporate Generative Artificial Intelligence and if so what should it entail?

In this instance, new legislation IS warranted. However, this legislation should mainly be concerned with expanding previously existing legislation regarding derivative works. The definition of derivative works should be expanded to an artists' catalog, but not to their style. Style is never copyrightable under US Copyright law, however a publisher's catalog should be. Therefore, their works (in literature or music), their note sequences, their word patterns, and the attributable recognizability of them should (in many instances) be considered copyrightable and enforceable. However, it's important to recognize that a style is NOT enforceable whereas a timbre may in certain circumstances in music be considered enforceable. This is consistent with audio trademark practices currently in use for companies such as Zippo lighters and Harley Davidson. The use of those sounds in a new work should theoretically involve prior permission and licensing from those companies.

#6: What kind of training materials are used to train Artificial Intelligence Models and how are those materials collected and curated?

Any collection of works, or even a single work, or perhaps two single works by a single person or group of persons should be considered a "catalog". Therefore, any training on a tool that incorporates generative artificial intelligence derived/trained on a single work or catalog (of works) should be considered to produce a derivative work/deliverable. And therefore, these previously Copywritten works/catalogs should be protected from use without permission or applicable license. A newly composed work that is derived from previous works should also be copyrightable, but the use of previous works must be properly disclosed. "Sampling" in the hip-hop industry demonstrates this concept.

Without some sort of a license denoting prior or retroactive permission, tools that incorporate artificial intelligence should not be allowed to Copyright the new works that are derived from previously copywritten catalogs. If this is or has already happened, the new works should absolutely be treated as copyright infringement in the courts and they should be fined according to the statutes already in place for such infringements. Auditing this will be difficult though.

Additionally, those materials are already collected and curated whenever any artist/entity copyrights them in the US Copyright Office. They're curated by license. So... if you want to use it and it's already copywritten, negotiate and pay a license to the Copyright holder.

34: Identify any Issues not mentioned that the Copyright Office should consider

Without new regulation the use of these tools will seriously impact the US economy. We will all suffer a long-term degradation in quality as quantity increases just like we've witnessed with the news.

Auditing these tools will be very difficult. There is a lot of incentive for newer publishers to not disclose their methods of producing new intellectual property.

At some point in the future, these newly derived works will be better in quality than many of the older works, and general nostalgia will be geared more towards works generated with artificial intelligence than works composed otherwise. A massive shift in style, form, and approach will take place over time. Indeterminacy will be an opportunity for many.

There should be a stated difference between a work produced with a tool that uses this generative artificial intelligence and a work that was simply spell-checked and/or checked for grammar by one of these tools. Again, auditing this process will prove difficult.

Public Domain works and catalogs may need to have their definition expanded as well so that their use will be allowed by these new tools.

Thank you for your time and consideration. - Jesse Ross

