Artificial Intelligence and Copyright: Comments

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?*

As stated in the Introduction of the Supplementary Information portion, the past year has seen an explosive growth in generative AI technology, both in use and capabilities. The extent to which generative AI systems are able to produce various forms of media certainly spurs conversation of their capacity to benefit or injure the action of creation, a fundamental incentive of copyright that the U.S. Copyright Office itself highlights (U.S. Copyright Office). Of the benefits that *I* believe generative AI systems have, none are beneficial to our current use and understanding of copyright. One benefit of generative AI is that it can enable human creativity because it provides a human author with the ability to produce their work, even if they may lack the actual technical skills to do so. As long as the human author has the concept for their work, generative AI can bring their idea to life. Generative AI systems can also be beneficial to time and cost savings, especially for those who may need to create several projects with quick turnaround times, such as employees of large enterprises or freelance creators who are working alone but have many clients to serve. Automating tasks with generative AI technology can help businesses with efficiency immensely. Despite these benefits, I believe there are far more risks to generative AI technology, namely in their detrimental effects on creators and the role that copyright plays in society today. As stated previously, copyright originated to encourage people to create, as it ensured a creator that they can produce their work with protection from it being reproduced, distributed, sold, derived from or claimed without authorization (Sinnreich 4). I

believe that generative AI systems completely undermine this core characteristic of copyright protection because they *discourage* creation. One strand of generative AI systems is AI music generators, which are "software programs that use machine learning algorithms to analyze existing music," as described by Soundful, one of the more popular AI music generators (Soundful). AI music generators are not only capable of producing songs consisting of just beats and melodies; they can also synthesize songs featuring the reproduced voices of humans. Canadian musicians Drake and The Weeknd were victims of AI music generative technology when the song "Heart on My Sleeve" was created using their reproduced voices and the lyrics of a real person who goes by the name "Ghostwriter." Fortunately, Drake and the Weeknd are large enough artists that the AI generated song did not create financial injury to either of them, and was more just seen as an impressive and humorous use of our expanding technology. However, one can only imagine how harmful generative AI could be for smaller musicians who have their voices and/or styles reproduced. For artistic creators, their "creativity, skill and talent… is also their main means of creating wealth and jobs." (BOP Consulting 4) Another variety of generative AI systems are AI art generators which, similarly to AI music generators, ingest thousands of pieces created by human artists to produce their own images derived from the original works. If an AI system can just replicate creators' creativity and skill and be successful - sometimes more so than those human creators - how could copyrighting AI generated works possibly incentivize human artists to continue creating? The logic is easy to follow: if a creator knows that AI can just use their creations to generate a novel or painting or a composition, *and* without needing to be paid, the human creator will undeniably no longer feel encouraged to produce further works. This understanding applies to that of technology developers and researchers as well, as AI systems are not limited to creative generation; they can automate anything, ranging from code to

research papers to data collection - all items that can be copyrighted. If generative AI systems are allowed to register copyright for the materials they produce, I believe that copyright's foundational principle to incentivize creation will quickly expire under AI-inclusive copyright interpretation and that human creation will cease to have importance in our society that it does currently (or should I say, for now).

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

To address this question, I turn to *Rogers v. Koons*, a 1992 court case between plaintiff photographer Art Rogers and defendant sculptor Jeff Koons. Jeff Koons had used Roger's photograph *Puppies* to create a sculpture entitled *String of Puppies*. Koons claimed that his sculpture was to "comment critically both on the original photo and the political and economic system that created it." (U.S. Copyright Office, *Rogers v. Koons*) However, while offering commentary, Koons also displayed *String of Puppies* at a gallery and sold copies to collectors, ultimately making a profit from his sculpture. Rogers argued that Koons infringed on his copyright of *Puppies*, but Koons appealed that his sculpture was a fair use of Roger's photo. Ultimately, the court decided that Jeff Koons was not entitled to a defense of fair use because he had copied it in bad faith for profit and that he also "copied the essence of the photograph nearly *in toto* and exceeded a permissible level of copying under the fair use doctrine." (U.S. Copyright Office, *Rogers v. Koons*) When translating this case in regards to generative AI systems, I believe that the precedent *Rogers v. Koons* established in protecting creators from others using existing works to produce their own creations should apply to AI generated works as well. As I previously explained, generative AI technology absorbs thousands of already existing music,

paintings, illustrations, novels, etc. in order to produce content. While AI generated material may not be exact to the works it ingests as Koons's sculpture was to Rogers's photo, I believe that the method of analyzing previous works to create "new" art is a unique form of copying that generative AI technology presents. While human creators may be inspired by other creators' works, there is: 1) no algorithm that tells them exactly *how* to produce something and 2) potential for their creation to genuinely be completely original, whereas AI technology can *only* generate material by first studying existing works; generative AI technology does not exist without prior creations.

3. *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?*

The Copyright Clause does not permit copyright protection for AI-generated material. Along with the application of Rogers v. Koons to AI and copyright that I discussed in my last answer, I believe that AI-generated works are not copyrightable under the Copyright Clause's requirement of originality. In *Feist Publications v. Rural Telephone Service Co.,* the Supreme Court "held that originality, the '*sine qua non* of copyright,' requires that the work was independently created by the author and that it possesses at least some minimal degree of creativity." (U.S. Congress) While I understand that *Feist Publications v. Rural Telephone Service Co.* offered a relatively broad understanding of what constitutes "originality" and "creativity" for a work to be copyrightable, I believe that generative AI systems still do not allow for copyright since the ability of generative AI systems to create is based on the creativity of humans; there is no standard of originality present since AI-generated content is essentially connected portions of the

works that the AI have analyzed. If generative AI systems can register their works for copyright, then ultimately this will only expand the Copyright Clause's scope and enable unoriginal works by both humans and AI to be applicable for copyright, causing more conflict between creators and beginning the homogenization of creations. In this way, the Copyright Clause's intention to "promote the progress of science and useful arts" would no longer be realized.

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