

To Whom It May Concern at the US Copyright Office,

My name is Brian Penny, and I spent the past week reading through submissions to the Copyright Office's Notice of Inquiry on Copyright and Artificial Intelligence [Docket No. 2023-6].

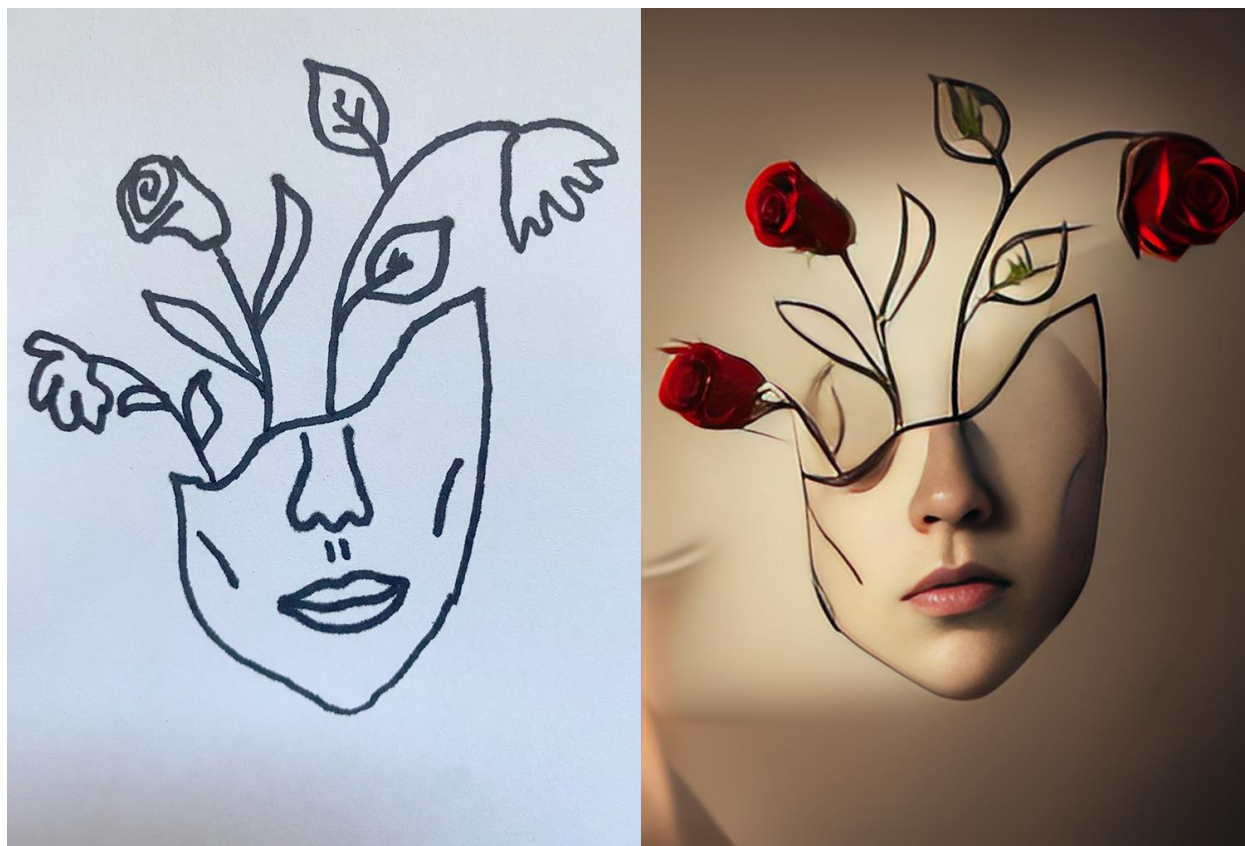
I specifically want to address the below 11 comments from big tech companies. There are a lot of similarities and patterns that the USCO must consider when making their decision.

I have several requests of the USCO to attempt to find a fair and common ground between the two opposing interests represented in the comments below.

Party	Key Points	Link
<b>Google</b>	Google emphasizes that the AI field is still evolving, with new applications emerging rapidly. They advocate for the flexibility of existing copyright doctrines to adapt to AI-related scenarios and caution against premature legislative actions that could hinder innovation and opportunities in AI.	<a href="https://www.regulations.gov/comment/COLC-2023-0006-9003">https://www.regulations.gov/comment/COLC-2023-0006-9003</a>
<b>Meta</b>	Meta views Generative AI as a tool that supplements human creativity and decision-making, with their open innovation approach playing a key role in democratizing AI access and fostering advancements in various fields.	<a href="https://www.regulations.gov/comment/COLC-2023-0006-9027">https://www.regulations.gov/comment/COLC-2023-0006-9027</a>
<b>Apple</b>	Apple's response to the AI NOI Question #18 supports the view that human developers using generative AI systems can be considered authors of the material produced, given their significant role in controlling and shaping the final output.	<a href="https://www.regulations.gov/comment/COLC-2023-0006-9022">https://www.regulations.gov/comment/COLC-2023-0006-9022</a>
<b>Microsoft</b>	Microsoft is advocating for careful consideration and balanced approaches in addressing labeling of AI-generated content and protecting creators' rights, especially in the context of AI's increasing role in creative processes. They also support the development of a federal solution to address the unauthorized use of digital replicas.	<a href="https://www.regulations.gov/comment/COLC-2023-0006-8750">https://www.regulations.gov/comment/COLC-2023-0006-8750</a>
<b>OpenAI</b>	OpenAI advocates for a cautious approach to legislative changes in the rapidly evolving field of generative AI, relying on existing U.S. copyright law for guidance.	<a href="https://www.regulations.gov/comment/COLC-2023-0006-8906">https://www.regulations.gov/comment/COLC-2023-0006-8906</a>
<b>Internet Archive</b>	The Internet Archive stresses that many concerns related to Generative AI extend beyond copyright law, encompassing privacy, competition, and	<a href="https://www.regulations.gov/comment/COLC-2023-0006-8836">https://www.regulations.gov/comment/COLC-2023-0006-8836</a>

	other areas. They caution against creating new rights and licensing markets for AI, which could exacerbate existing problems and entrench large companies' competitive advantages.	
<b>Intel</b>	Intel advocates for a combination of technological solutions, multistakeholder approaches, and voluntary adherence to best practices for transparency in AI-generated content, rather than legal mandates for labeling. They stress the importance of AI developers taking the lead in implementing these measures.	<a href="https://www.regulations.gov/comment/COLC-2023-0006-9075">https://www.regulations.gov/comment/COLC-2023-0006-9075</a>
<b>Adobe</b>	Adobe Inc. emphasizes the transformative impact of AI on content creation, advocating for responsible AI development and fair use in AI model training. They propose the FAIR Act to protect creators from economic harm caused by AI misuse and stress the importance of transparency systems like Content Credentials. Adobe calls for international harmonization of copyright laws to provide a consistent framework for AI development.	<a href="https://www.regulations.gov/comment/COLC-2023-0006-8594">https://www.regulations.gov/comment/COLC-2023-0006-8594</a>
<b>Anthropic</b>	<p>The training of LLMs, according to Anthropic, involves deriving non-copyrightable information like facts and patterns from input data, which they consider consistent with fair use in copyright law.</p> <p>Anthropic contends that existing copyright law and fair use doctrine are sufficient to address issues related to the training of LLMs.</p>	<a href="https://www.regulations.gov/comment/COLC-2023-0006-9021">https://www.regulations.gov/comment/COLC-2023-0006-9021</a>
<b>Stability AI</b>	<b>Stability AI believes it should be allowed to self-regulate and provides deceptive information purporting to show that it already does.</b>	<a href="https://www.regulations.gov/comment/COLC-2023-0006-8664">https://www.regulations.gov/comment/COLC-2023-0006-8664</a>

## 1. Please Grant Rights to Creatives



Rose Enigma by Kristina Kashtanova, submitted to the US Copyright Office for registration as an AI artwork on March 21, 2023 along with a [lengthy letter](#) showing the process including text and image prompts created by the user.

I worked with Kristina Kashtanova in her initially filing of VAu001480196 for her Midjourney-created comic *Zarya of the Dawn*. This drove your February 2023 AI copyright guidance and prompted Ms. Kashtanova to submit a second application for a work titled Rose Enigma that drove this public inquiry today.

I am also familiar with case [3:23-cv-00201-WHO](#) in Northern California in which a class action of artists [Sarah Andersen (USCO comment ID [COLC-2023-0006-5902](#)), Karla Ortiz ([COLC-2023-0006-8981](#)), and Kelly McKernan ([COLC-2023-0006-2471](#))] are suing Stability AI, Midjourney, and DeviantArt over copyright infringement. Other lawsuits filed by authors and actors against AI companies share similar claims.

I have performed multiple experiments on AI image models from Meta, Microsoft, OpenAI, Adobe, Midjourney, Stability AI, and more. In each case, I can identify Sarah Andersen as both a character and style, Karla Ortiz as a character, and Kelly McKernan as a style. That their work was stolen to make these systems is one issue, and that I can use their names to

evoke their work is another. Even if you determined using their work as an input is fair use, the ability to use their names to evoke it is a violation of their rights to publicity, especially since the work that comes out is a poor representation of their real work.

The common theme in both Kashtanova's filing and the lawsuits against AI companies is determining whether the creators of the works used as inputs in AI training should have rights over the models trained on their works. I believe they should, and by granting Ms. Kashtanova a copyright on Rose Enigma, you are also siding with the plaintiffs in the legal cases against AI companies. Please understand that by siding with one independent artist, you are siding with all independent artists, and this is a crucial necessity in the modern connected world to preserve our human cultural heritage.

AI companies should not be allowed to disrespect the intent of copyright by using the work of others to build a commercial product without their permission. Companies like Adobe have already proven that payments can be made, and it is impossible that AI companies cannot trace the data used in their models (as proven by Spawning AI's Have I Been Trained).

Regardless of how much trouble it is for them, AI companies need to obtain consent from the copyright holders to make commercial products. They need to properly compensate them for the usage of their work, and they need to provide evidence of exactly which works they are trained on.

AI does not learn like a human, and every 100% complete output is made up of bits and pieces of thousands of people's owned copyrighted works. We deserve to be told exactly what percentages of each work is in the outputs, and this is technologically possible. Tech companies simply didn't bother to try.

The arguments made by tech companies serve only to benefit them as they continue to monopolize user-generated content while continuing to earn more revenue than any other companies in any other industries.

Tech companies like Meta and Google for far too long have exploited media outlets, artists, bloggers, video producers, and other creatives to monetize our data at our expense. With AI, they hope to launder our data and sell it back to us at a monthly cost. We should be compensated for the use of our data, asked for consent before training on it, and given credit for the works we create.

The only way to achieve this is to bring transparency to these so-called "black boxes" of AI.

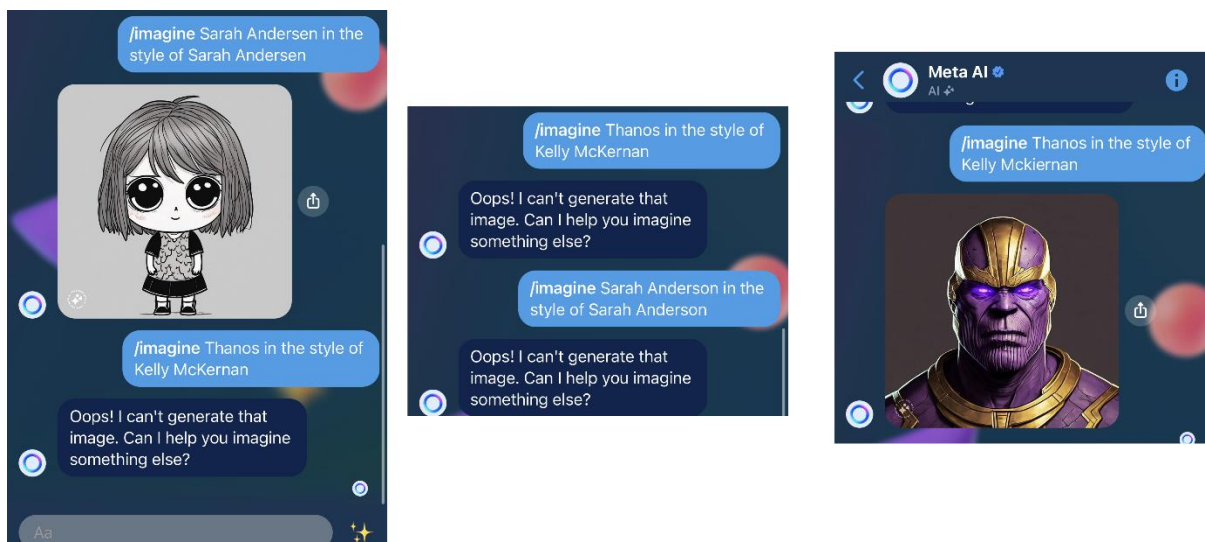
## 2. Please Do Not Allow Tech Companies to Self-Regulate

The most egregious response I read from this list came from Stability AI, Comment ID COLC-2023-0006-8664, submitted by Ben Brooks, Head of Public Policy. On page 15 of their public submission, Mr Brooks attempts to present Have I Been Trained, a website created by competing AI company Spawning AI, as an example of proactive measures they took to self-regulate.

In fact, every big tech company listed above (Google, Meta, Apple, Microsoft, OpenAI, Internet Archive, Intel, Adobe, Anthropic) is against government intervention, instead asking to self-regulate their own industry and negotiate with content creators and users independently.

However, Stability AI has proven beyond any shadow of doubt that they cannot and will not do so, stating that this third-party opt out is something they intend to honor in future releases. It has been over a year since Stable Diffusion's public release, and in that time, they've upgraded from version 1.4 to version 2.1, and these opt outs have still not been honored. This is despite them receiving over 100 million opt-out requests, 10,000% more than the public comments received by the USCO.

They're not a unique case—here are screenshots from Meta AI's attempt at self regulation. As you can see, Meta recognizes Sarah Andersen as both a character and style. It refuses, however, to make images for Kelly McKernan. When misspelling Sarah's name as Anderson and Kelly's name as McKiernan, the results change.



Screenshots of Meta AI using the names of the artists involved in the class action against AI companies. They block users from typing “Sarah Anderson” even though her name is spelled “Sarah Andersen,” which invokes both a character and style.

It is clear from these results that although both artists' works were used to train the system, Meta attempted to manually block users from evoking their names. However, they misspelled Andersen, showing just how weak this implementation is and how easily it can be bypassed. If Meta—one of the largest enterprises in the world—cannot be trusted to protect creatives using their platforms, no tech company should.

Allowing tech companies to self-regulate caused many of the problems we have today. Tech companies are well known for their “move fast and break things” attitude, and it is clear from looking at the past year's events that AI companies have no intention of honoring creators' requests for consent, compensation, credit, and transparency.

It's worth noting that all the tech companies above believe they should hold copyrights over their models and the code used to build these machines, however, they do not wish to respect the copyrights of every other content creator. This parasitic and monopolistic practice should not be allowed and must be considered by the Copyright Office in making its decision.

### 3. Please Maintain the Integrity of Copyright

The cases made by big tech companies above admit that they do not have ownership of the AI outputs. But this isn't reflected in the real world.

Per OpenAI's public comment to the USCO, they do not claim ownership over outputs, yet they provide that license to users in terms of service. Per Microsoft's comment to the USCO, they rely on scraping data for inputs in order for their technology to function.

Both companies discuss an opt-out mechanism, however, neither provided the option to opt out before they trained their commercial models in use today. These opt-outs will only apply to future model training, and it is highly unlikely that they will retrain models fast enough to accommodate opt-outs promptly.

Meta argues that using copyrighted materials for training is fair use, and they believe statutory licensing mechanisms will be counterproductive for the growth of AI.

Google agrees, arguing that landmark cases like *Authors Guild v. Google, Inc* and *Vanderhy v iParadigms, LLC* ruled that transformative use occurred. In Google's statement, they refer to their usage of this data as “knowledge harvesting,” and that argument has a fallacy.

In all previous cases that were determined to be fair use, the copyright management information (CMI) was preserved. When I visit Google Books or the Internet Archive, I can see the original title of the work, the author's name, and other vital information and metadata that comes with the work.



AI training does not maintain that important CMA metadata, so they are “harvesting knowledge” while removing the chain of ownership. In addition, they do this while posing as “research labs” further to obfuscate the differences between academic and commercial use.

Consider this—why are public schools not allowed to perform popular music, but AI companies can use it to train their machines? If their argument is “AI learns like a human,” then the companies making them need to either need to pay for licenses for current music or only use work in which the copyright expired just like humans do in public schools.

#### 4. Please Enforce Copyright From the Moment of Expression

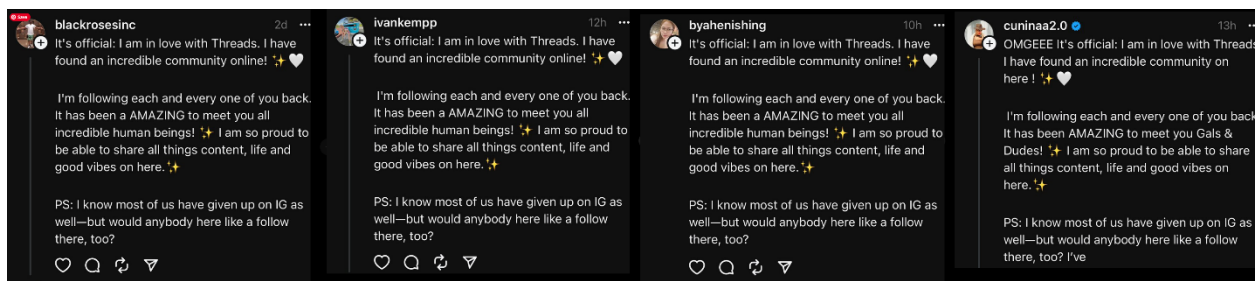
If you read the latest ruling on the case of Andersen et al versus Stability AI et al, the judge dismissed all claims except Sarah Andersen’s against Stability AI. Both Karla Ortiz and Kelly McKernan had their copyright infringement claims rejected because they did not register their copyrights with the USCO.

This is an antiquated system that must be fixed so that Ortiz and McKernan have the same rights to their work as Andersen.

In the modern age of streaming, theft is rampant. Consider the [Twitch streamer Haruno](#) who was creating art on a livestream that was screenshotted, run through an AI, and completed before the human artist could. It is vital that livestreamers maintain ownership of their work as it is streamed in real time.

The judge above would have rejected any legal action based on the precedent set above, and it’s vital that the copyright office provide clarity.

Here is how it plays out on social media—it’s quite common for popular posts on platforms like Twitter, Reddit, and Facebook to be copied and pasted by other people. Here is an example from Instagram’s Threads platform.



Currently it is impossible for individual creators to stop this—we have no recourse. People will continue to steal our content by directly copying and pasting it, and social platforms provide no way for us to have it taken down. The Digital Millenium Copyright Act (DMCA)

requires we have a registered copyright with the USCO, which nobody has on their social media posts.

We should own the full rights to our social media posts, especially when it comes to AI muddying the waters.

I am a member of a Facebook group dedicated to sniffing out undisclosed AI across the platform. We have hundreds of examples of people's images being stolen, run through an AI, and presented as their own original work. Here is an example of Michael Jones, a Chainsaw Sculptor whose images have been stolen from Facebook due to their popularity to create an endless supply of AI "remixes" of his original work.



Inauthentic bot accounts are continuously being created across social media and growing to 100,000 to 1 million followers. People are being deceived, and the original creators of work are being ripped off.

Look at what Facebook has turned into:





Follow me

3d · 🌐

My son has made this with his own hand, 🥰  
Thanks those you appreciate ❤️



Go Story

1d · 🌐

My son has made this with his own hand 🥰  
Thanks those you appreciate ❤️



Go Story

4d · 🌐

The man stands by a wooden horse sculpture that  
he made himself



Follow me

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The man stands by a wooden horse sculpture that  
he made himself 🥰❤️





Go Story

5d · 🌐

My father has made a wooden rose for our garden, let's appreciate his work



Follow me

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My father has made a wooden rose for our garden, let's appreciate his work 🥰💖🌸



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This is my new work ❤️ Please appreciate it 👍



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This is my new work, ❤️ please appreciate it 👍







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6d · 🌐

Handmade. This is such beauty. Bravo to the master. 🥰🥰



Go Story

12h · 🌐

Handmade. This is such beauty. Bravo to the master. 🥰🥰



Go Story

1d · 🌐

Dear friends, our son Viktor made a craft for the school competition ❤️👏🥰 Thanks for the like 🍷



Follow me

4d · 🌐

Dear friends, our son Viktor made a craft for the school competition ❤️👏🥰 Thanks for the like







**Follow me**  
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The little artist has painted a nice view, 🍻 let's encourage him ❤️



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**Storytelling with AI** · Follow  
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**Did you know?**  
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My husband makes houses like this for children from an orphanage. ❤️ 🍻 let's appreciate his work 🙌 ❤️



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**Real imagination**  
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**Go Story**  
4d · 🌐

The little artist has painted a nice view, 🍻 let's encourage him ❤️



**Happiness all around**  
2d · 🌐

The little artist has painted a nice view, 🍻 let's encourage him ❤️



It is vital that we have copyright protections for everything we do. We should own all of our data on social media, and it should be up to us to decide whether to opt in to any uses of this. Statutory licensing requirements must protect us from not just AI but all technologies that can be used to circumvent our legal rights to our own data.

When someone runs our work into an AI to mass produce copies, we need legal protections. And people should not continue to be deceived by AI imitations of our human-made work.

Please consider this when creating your ruling on Rose Enigma and your next round of copyright guidance regarding the inputs.