



COMMENTS FROM THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL

Nashville Songwriters Association International
1710 Roy Acuff Place
Nashville, TN 37203

October 30, 2023

The Nashville Songwriters Association International (NSAI) appreciates the opportunity to submit the following comments regarding Artificial Intelligence and Copyright. As a trade association exclusively representing songwriters, these comments will be limited in scope to the effect of and the interactivity with generative AI and musical works copyrights.

In early 2023, when generative AI began to permeate the internet and conversations among content owners, NSAI formed a task force of songwriters to evaluate the landscape and develop a set of general principles regarding generative AI. Initially, they settled on a set of five general principles that remain valid.

1. Human authors and their copyrights must be valued and protected.
2. The use of a creator's work as training material for an AI system is not fair use.
3. Generative AI is incredibly new technology and is changing and adapting on a daily basis. Any laws or regulations must be regularly reviewed and be adaptable as the technology advances.

4. Flooding the market with unchecked quickly-generated soulless AI music has the potential to strip the United States of its leading role in intellectual property and to devalue one of America's greatest exports.

5. There are potential creative opportunities associated with properly licensed and tracked AI.

Those overarching principles have more recently centered around an alliterative Four P's – permission, payment, penalties and proof – as the conversation has evolved around how to regulate generative AI. The following comments will all hearken back to these Four P's, but it is worth expounding on them to an extent to give further background.

Permission – The use of a creator's work in any fashion requires licensing, and thus, permission in an opt-in fashion.

Payment – Ingesting a copyrighted work without licensing and payment is categorical infringement. Copyright owners and creators must be compensated for the use of their material in training.

Penalties – Copyright owners must have the ability to seek penalties from bad actors who use their copyrighted material for training without licensing as well as damages when their work is infringed by the output of a generative AI model.

Proof – Generative AI models must be required to keep transparent and complete records of AI training material in real time. Additionally, a complete digital footprint of all usage must be kept including ingested material, human input and the output generated, referenced source material in relation to output, etc. In the event that a songwriter believes his/her copyright has been infringed and he wishes to bring suit, this information would be vital in proving access. Additionally, it would allow good-actor users to credit original authors appropriately where necessary.

Songwriters are the lifeblood of the music industry and must be protected. New technology has historically been built on the backs of creators without appropriate compensation in the name of "advancement." We have seen the effects of that on our creative class and must learn from past mistakes as new technology such as generative AI presents itself and its potential dangers for creators. As you consider all points of view in the answers to your questions, please keep in mind that there is no content on which to train generative AI without creators.

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 use of this technology currently affecting or likely to affect creators copyright owners, technology developers, researchers, and the public?**

While generative AI may be able to produce works that would be copyrightable by a human author, nothing it produces will ever be truly unique as it can only produce

material based on the human-generated material it has been provided for training. Therefore, there is a high likelihood for rampant copyright infringement to be present in generative AI works. Songwriters and copyright owners will be forced to file infringement suits in federal court costing thousands of dollars.

Of greater risk is the existential threat to the profession of songwriting. AI has the ability to ingest all available work of songwriters over generations and store it with unlimited memory to churn out an almost limitless amount of “new” music that will directly compete with the songwriters it learned from. In the content-hungry world we live in, a human author will never be able to compete with the quantity of songs AI can generate. The quality may not compare on a song-by-song basis, but the volume and efficiency will be beyond incomparable. Generative AI will be able to meet and likely exceed the demand for more and more content faster and faster, but we fear it will be at the expense of true art from humans who have felt heartbreak and pain, joy and excitement, exhaustion and fear.

While the risks of unregulated AI far outweigh the potential advantages, there are, no doubt, some benefits. As with any new technology, it has and will provide new and innovative ways for human authors to interact with it to create new music. Properly-licensed, good-actor AI systems could provide opportunities as revenue-generators for songwriters in several ways. If a licensing system, as will be proposed in a later response, were in place allowing songwriters to license works for training purposes, that could breathe new life into older copyrights that are not currently generating revenue. It could also provide work for hire opportunities for songwriters in cases where original work ingestion is desired. New revenue streams could be created at both the ingestion and end-product phase providing income opportunities for songwriters that could replace lost income from more traditional models in the new technological age.

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?

Billions of musical work copyrights are readily available on the internet for the taking in the current unregulated AI world we live in. Generative AI systems are ingesting them without permission, payment, penalty or proof. Commercial songs are relatively short and generally follow “rules of the craft.” These qualities make them particularly easy for an AI system to ingest large quantities of training material, learn from it and replicate it. Left unchecked (and it may already be too late), generative AI will directly compete in the market with the songwriters whose work it used to learn.

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?

The internet in many ways is without international borders, so international consistency

would be desirable. However, the United States is in a position to lead the rest of the world to regulations that will protect our creators as its Constitution uniquely calls it to do. James Madison, an author himself, wrote Article 1, Section 8 of the Constitution granting rights specifically to authors because the United States has always seen the value in the ideas of its citizens and to that end, sought to protect their intellectual property. The U.S. must look to its founding fathers who had the foresight to know that challenges would face America's creators in the future and that protecting them was of tantamount importance.

5. Is new legislation warranted to address copyright or related issues with generative AI? If so, what should it entail?

Legislation will be required to address copyright issues with generative AI. We legislate around human actions. When computers try to act like humans, it seems only logical that we would legislate around them as well. Comprehensive legislation regarding musical work copyrights and generative AI must include a free-market licensing model for training materials, tracking and transparency requirements for AI systems, statutory penalties for bad actors and a regular review requirement considering the rapidly changing landscape around generative AI.

Training

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

It is impossible to know exactly what training materials have been used to train existing AI models since there is currently no requirement for those companies to maintain any records of the training materials they ingest. It is, however, logical to conclude that any copyright found on the internet may have been ingested by one more AI model as training materials since we know that a popular method with many AI models is to "scrape" the internet for as much content as possible.

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?

It is important to note that there are a few good-actor AI developers who desire to do the right thing absent regulations around licensing. They are seeking licenses for training material directly from copyright owners and negotiating the terms around those licenses. Unfortunately, absent a regulatory framework, not all generative AI developers will voluntarily do the right thing. Developing regulations that require free market licensing of training material is the most straightforward and desirable path forward. The nature of AI requires that licenses be nuanced in how the copyright owner will allow their works to be used and because each AI system works a little differently, the applications will vary in their market value.

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 act of ingesting a song would require making a server copy, even if only for a limited time before the song was translated into the AI system's data language. Making an unlicensed server copy constitutes copyright infringement regardless of the length of time the copy is retained.

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

Without access to the underlying dataset, it would not be possible to eliminate the possibility that an AI model was trained on some specific copyrighted work. Mandated transparency is necessary to protect both copyright owners and generative-AI developers.

8.1. In light of the Supreme Court's recent decisions in *Google v. Oracle America* and *Andy Warhol Foundation v. Goldsmith*, 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?

The *Andy Warhol Foundation v. Goldsmith* decision made clear that there is no substantive argument that the use of copyrighted works to create other works that would compete in the same music market is strictly transformative and thus, not fair use. Thus, to the extent that an AI model is being trained on copyrighted material for the purpose of learning, at any stage, from that material to be able to regurgitate new material that could be used in the marketplace, it cannot be fair use.

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)?

OPT IN! Opt out approaches with respect to musical work copyrights have failed copyright owners in the past as will be expounded upon below.

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

The use of copyrighted material to train should be licensed in a free market for any use and thus require consent of the copyright owner by virtue of licensing.

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 work for AI training uses?

An opt out approach would not work well, if at all. Musical copyright owners have experience with opt out approaches in the form of notice/takedown in the Digital Millennium Copyright Act and statutory licensing requirements, both of which benefited the developers of new technology while placing creators and copyright owners at a distinct disadvantage in the marketplace. An opt out approach for generative AI training would likely look much like the abyss that the current notice/takedown system created whereby there is no real way to enforce it. Even if a copyright owner filed notice to opt out, there would be no remedies for the damages caused before the owner opted out nor would there be the practical ability to monitor and police every training model all the time to catch all instances. More difficult still, a copyright owner would struggle to identify when their works were used for training absent extremely stringent public transparency requirements. As poorly as it has worked for the music copyright community, notice and takedown can at least be monitored with a public search of whether a copyright is being used by an internet service since those services are public-facing. Internal-facing training materials would not be readily searchable for a copyright owner to even know they needed to opt out. Opt in licensing on the front end is the only workable option for copyright owners.

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?

The music industry has been successfully licensing musical works for synchronization uses in the free market for decades and that same model can be applied for AI training uses. An AI model would identify copyrights it wishes to license for training and would approach the copyright owners with a proposal to license those copyrights under specific terms. Both parties would agree on a fair payment for the use and the license would be granted. Further, it is always feasible to get consent in advance of use. Use without consent is theft and is a choice made by the user. Creators and copyright owners should not be victimized simply because technology companies think they should be able to move as quickly as they want without going through the legal process of licensing. No person or company is above the law and the law requires licensing for use of intellectual property.

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 the right to object to an AI model being trained on their work? If so, how would such a system work?

When a songwriter assigns their copyright to a publisher or in a work for hire model, the

contract associated with that assignment prescribes the parameters around which they may or may not have rights in certain decisions made regarding the copyright (e.g. moral rights). It can be anticipated that future contracts will specifically include parameters around licensing for AI uses, but will be on a case by case basis and in the private contractual market.

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

As previously stated, AI training material licensing should be handled in the free market much like licenses for music synchronization are currently obtained. Various AI models are substantively different from one another so there will be no appropriate one size fits all license. Each license request will need to be reviewed and negotiated by the copyright owners based on how the specific AI model works and how the training material will ultimately be used. These nuances can only be discerned in a free market negotiated licensing model.

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

Direct voluntary licensing as described in previous responses is the fair and feasible approach in the musical works copyright sector.

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?

As previously discussed, the nuanced differences between various AI models make statutory licensing and collective licensing by a CMO unreasonable. In order to create a marketplace whereby creators, copyright owners and generative AI models can all thrive, individual use cases as well as the relative value of the copyright in question must be considered and negotiated. That said, copyright owners often own interest in a large catalog of songs and could license their entire catalog at once in cases where it was desirable for both entities.

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?

Compulsory licensing would be entirely inappropriate for licensing musical works copyrights for AI training material. To be repetitive, AI models have nuanced differences in how they use and regurgitate their training material. There is no one size fits all license that would be appropriate in all instances. Even if there was today, which there is not, with the rate of speed at which AI models are evolving and coming to market, new uses would be advanced and different within months and a compulsory license

envisioned today would be obsolete before it could even be implemented. Free market licensing is the only way to allow the music industry to keep pace with the rapid development of generative AI.

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 or 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)?

Licenses must be obtained in free market negotiations with copyright owners before use of the copyright. Those licenses, much like synchronization licenses, would have specific parameters around which they were valid. To the extent that a desired use falls outside the parameters of the licensing agreement, a new license would need to be obtained to cover the new use case. This is not uncommon in synchronization licensing. A brand may license a song for use in their commercial that will only run on a digital channel for a limited time and pay a small fee for the use of that song. Later, after experiencing great success with the commercial, they may determine that they would like to air the same commercial during the Super Bowl. A new synchronization license would have to be negotiated appropriate for that use.

The Office points out appropriately in this question that there are a number of commercial and noncommercial roles that an entity may play in the generative AI landscape and those roles may change or evolve over time. This is precisely why the only appropriate licensing model for musical works used as generative AI training material is free market voluntary licensing where all variables can be considered and parameters specific to an entity can be constructed in a license. This is also the most malleable model for all parties as generative AI develops rapidly over the next several years.

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.

It is likely not possible to determine the precise degree to which a particular work contributes to a particular output. However, educated inferences can be made by requiring the employment of transparency practices by AI models. AI models should be required to keep records of the training material they use. Additionally, user accounts should maintain perpetually held, detailed search/input histories. For example, if a user employs a generative AI model to write a song, a historical record should be kept in their digital file similar to the below, which was generated using ChatGPT:

User: *"Write a country song about a tractor."*

AI: *"(Verse 1) Well, I woke up this mornin' with the sun risin' high, A clear blue sky and a*

twinkle in my eye. Gonna head out to the fields, no time for a nap, Fire up my trusty tractor, ain't nothin' gonna hold me back.

(Chorus) I'm just a country boy, with a heart that's true, My life revolves 'round this ol' tractor, that's you. You're more than just steel and gears, you see, You're a friend, a workhorse, and a part of me.

(Verse 2) With your rusty red paint and your tires all worn, You've plowed these fields since the day you were born. Through the mud and the rain, and the sweat on my brow, You've been my rock, my anchor, my one true plow.

(Chorus) I'm just a country boy, with a heart that's true, My life revolves 'round this ol' tractor, that's you. You're more than just steel and gears, you see, You're a friend, a workhorse, and a part of me.

(Verse 3) In the heat of the summer, and the cold of the fall, You've been there with me through it all. You've hauled the hay and the corn from the land, And with you by my side, I'm a farmin' man.

(Chorus) I'm just a country boy, with a heart that's true, My life revolves 'round this ol' tractor, that's you. You're more than just steel and gears, you see, You're a friend, a workhorse, and a part of me.

(Bridge) When the day is done, and the stars start to shine, I'll park you in the barn, and you'll be just fine. But tomorrow's a new day, and we'll start it together, Me and my tractor, in this country forever.

(Chorus) I'm just a country boy, with a heart that's true, My life revolves 'round this ol' tractor, that's you. You're more than just steel and gears, you see, You're a friend, a workhorse, and a part of me.

(Outro) Yeah, I'm just a country boy, with a heart that's true, With my trusty ol' tractor, we'll see it through. In this land of open fields and skies so blue, Me and my tractor, we'll make dreams come true."

User: "Rewrite it to make it sound like a song Luke Bryan would sing."

AI: *"(Verse 1) Well, I woke up this mornin' with the sun in my eyes, A clear blue sky and a grin, nothin' to disguise. Gonna hit those fields, baby, no time to take a nap, Fire up my trusty tractor, ain't no holdin' back, yeah.*

(Chorus) I'm just a country boy, with a heart that's true, This life's all about that ol' tractor, and you. You're more than just metal and gears, it's plain to see, You're my buddy, my workhorse, and you're part of me.

(Verse 2) With your paint all worn and those tires that have seen, Countless miles of soil and the places we've been. Through the mud and the rain, and the sweat on my skin, You're the rock, the backbone, in this world we're livin' in.

(Chorus) I'm just a country boy, with a heart that's true, This life's all about that ol' tractor, and you. You're more than just metal and gears, it's plain to see, You're my

buddy, my workhorse, and you're part of me.

(Verse 3) In the summer's heat or the autumn's fall, You've been there with me, givin' it your all. Haulin' that hay and the crops from the land, With you right by my side, I'm a farmin' man.

(Chorus) I'm just a country boy, with a heart that's true, This life's all about that ol' tractor, and you. You're more than just metal and gears, it's plain to see, You're my buddy, my workhorse, and you're part of me.

(Bridge) When the day is done, and the stars start to shine, I'll park you in the barn, you'll be just fine. But tomorrow's a new day, we'll start it together, Me and my tractor, in this country forever.

(Chorus) I'm just a country boy, with a heart that's true, This life's all about that ol' tractor, and you. You're more than just metal and gears, it's plain to see, You're my buddy, my workhorse, and you're part of me.

(Outro) Yeah, I'm just a country boy, with a heart that's true, With my trusty ol' tractor, there's nothin' we can't do. In this land of open fields and skies so blue, Me and my tractor, we'll make dreams come true, yeah."

This is an over-simplified example, but it illustrates the idea that having a record of the user input tied to the output from the AI system could help identify training material that was used to generate output. There are millions of country songs about tractors but with the knowledge that the user narrowed their input to request a song that sounds like Luke Bryan would sing it, it could be more easily determined that a particular song Luke Bryan has recorded may have been substantively used to generate the AI-created work.

Further, this type of user-based record keeping on a session-by-session basis could be used to determine the copyrightability of a work and whether credit may need to be given to an author of a work that was sampled or derived from. This idea will be expounded upon in responses to later questions specifically regarding transparency and record keeping.

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

There is an unfortunate history in the United States of prioritizing concern for the development and adoption of new technology over the fair and appropriate compensation of creators. From the invention of the phonograph, songwriters have been mandated to a federal maximum wage tied to ensuring that the sale of phonographs and wax cylinders would thrive and that a payment to songwriters would not be noticeable to a consumer of a wax cylinder. The rise of broadcast radio brought on consent decrees governing the Performance Rights Organizations ASCAP and BMI to ensure that the payment that broadcasters would be required to make to songwriters would not affect the business of radio broadcasting. When digital music services

became the hot new music technology, we experienced the same depression of songwriter rates in rate court for the good of the development of the technology. New technologies and their economic woes have long received a sympathetic ear from the government oversight thrust onto songwriters while the creators of the product they build their businesses on march slowly into extinction in the name of technological progress. The passing of the Music Modernization Act was finally a turn to more appropriately valuing creators. It is important that we maintain that value realization as we embark on this new era of generative AI technology. Development is a wonderful thing, but not when that development is reliant on the work of others for which they are not appropriately compensated.

The economic impacts of a licensing requirement on the development and adoption of generative AI systems is moot. Of greater importance is the economic impact on creators of not requiring a marketplace license for generative AI systems. Allowing the market to determine license rates and terms will ensure a healthy generative AI marketplace over time.

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

NSAI anticipates an increase in the number of copyright infringement claims that will be made as works created using generative AI becomes more prevalent. Since copyright infringement cases are heard in federal district court, the cost to a songwriter of bringing a legitimate case can often be cost-prohibitive and because the court often has no expertise in copyright infringement, overburdensome and errant. One consideration would be to form an expert panel to review copyright infringement cases before they go to trial to determine the merit of the case and provide something akin to a summary judgement that would be admissible at trial by either party. The Office has previously shown its concern for providing copyright owners a greater ability to defend their rights in its support of the establishment of the Copyright Claims Board for smaller claims. A remedy to the burden on those copyright owners who have experienced infringement of greater value should be considered, especially as we potentially face more challenges from infringement issues created by generative AI.

Transparency & Record Keeping

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?

Any technology that is using the content of others to learn should be required to keep meticulous records of where, how and when the content was accessed and how it was used. If a human “used” another person’s copyright and was accused of copyright

infringement, they would be asked to testify under oath during discovery regarding their potential access to the copyright in question. AI models should not be immune to such inquiry and should be held to the highest standard possible considering they have an unlimited ability to store their “memory” and recall it. Considering the technology and storage capabilities, it is hard to believe that an AI model that is not currently retaining records of its training materials is not doing so with intention.

15.1. What level of specificity should be required?

As referenced above, all possible details should be recorded and maintained. The capacity exists to collect and retain such information without undue burden.

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

Developers should be responsible for their own due diligence in obtaining and retaining records for the models they incorporate.

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

A copyright should never be used without prior permission and appropriate licensing. AI models should be required to license any copyrights they wish to use for training by contacting the copyright owners and negotiating a license.

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?

There are limited circumstances under which a human using a generative AI system could be considered an “author” of the ultimate output. The amount of human interaction must be weighed heavily to determine this and ironically, this “less-human” work will require more human review than a typical copyright submission. The Office could consider allowing copyright submissions claiming human authorship, but would have to require that any copyright submission that includes any amount of AI generation include the digital footprint (proof) associated with that generation so that it could be analyzed for its human interaction vs. machine generation. Similar to the example provided in response to question #12 above, the final product that the human AI user sought to copyright would be accompanied by a file of the AI prompts and responses plus the human’s additions, deletions and edits. The bar must be set high on the human

interaction side. Creativity is inherently human. Copyright Law is designed to protect creators and their works, not machines and their outputs.

To the extent that a generative AI user filed appropriately with documentation and appropriate credit to authors of works sampled or derived from via the AI technology, generative AI could be a tool that authors use as part of their creative toolbox. With appropriate licensing by the AI model and transparency in both the input and output, positive opportunities exist for creators.

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?

The Office would likely need to create new processes by which it considers these submissions and because the amount of authorship would be somewhat subjective, it might be prudent to have a review “panel” to make determinations.

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?

It is impossible that AI-generated outputs will not implicate the exclusive rights of preexisting copyrighted works in some cases. An AI model is only as smart as the information upon which it trains. When it trains on preexisting copyrighted works, it is inevitable that it will (given the right prompt) sometimes reproduce portions of those works or create a derivative work. To the extent that a user can identify the work(s) used from information provided by the AI system, the original author can and should be appropriately credited.

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?

Substantial similarity should be the baseline, but computer “brains” have the ability to know exactly what they reference to create outputs and they should be required to store and maintain that information to give copyright owners the ability to prove infringement.

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?

AI models must be required to maintain and make available records of what training material they use. They must also be required to license the training material they wish

to use. To the extent that some models have already trained on unlicensed material, if they cannot provide records of that material so that legal licensing can be done retrospectively, they should be required to erase their current training memory and begin again under a legal framework. The absence of specific current law to regulate an unforeseen technology should not give such technology a “free pass.”

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?

There is not a single answer to this question. The circumstances around the infringement may determine who should be liable, but the burden should accrue to the generative AI model.

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

Please see the answer to question #14 above as it applies to output as well.

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?

NSAI would recommend both digital watermarking and public disclosure in credits that a work was AI-generated whether in whole or in part.

Additional Questions About Issues Related To Copyright

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?

There are three states in the United States that consider name and likeness a property right as opposed to a right of publicity. Those state laws do not currently include vocal likeness as one of their protected rights. Tennessee’s law, for example, states that “the individual rights...constitute property rights and are freely assignable and licensable, and do not expire upon the death of the individual so protected”¹. Further, it holds “any person who knowingly uses or infringes upon the use of another individual’s name, photograph or likeness in any medium...liable to a civil action” and decrees that such action qualifies as a Class A misdemeanor².

¹ Personal Rights Protection Act, Tennessee Code §§ 47-25-1103.

² Personal Rights Protection Act, Tennessee Code §§ 47-25-1105.

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?

Congress should establish a new federal right similar to those state laws that consider name and likeness a property right and should extend that protection to voice as well. The federal right should act as a floor to allow states that desire a stronger law to protect the creators who reside in their state the ability to have one. The “NO FAKES” discussion draft recently released by Senators Coons, Blackburn, Klobuchar and Tillis provides a framework around which such a federal right should be built.

THE NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL

ABOUT NSAI

The Nashville Songwriters Association International (NSAI) is the world's largest not-for-profit trade association for songwriters. NSAI was founded in 1967 by 42 songwriters including Eddie Miller, Marijohn Wilkin, Kris Kristofferson, Felice and Boudleaux Bryant and Liz and Casey Anderson as an advocacy organization for songwriters and composers. NSAI has around 5,000 members and nearly 100 chapters in the United States and abroad.

The Nashville Songwriters Association International is dedicated to protecting the rights of songwriters in all genres of music and addressing needs unique to the songwriting profession. The association, governed by a Board of Directors composed entirely of professional songwriters, features a number of programs and services designed to provide education and career opportunities for songwriters at every level.

NSAI owns The Bluebird Cafe, a legendary songwriter performance venue in Nashville, Tennessee. The Music Mill, at 1710 Roy Acuff Place in Nashville, where the careers of Alabama, Reba McEntire, Toby Keith, Shania Twain and Billy Ray Cyrus were launched, serves as headquarters for the Nashville Songwriters Association International.