

**Comments of Artist Rights Alliance and Future of Music Coalition
in Response to
US Copyright Office Notice of Inquiry – Artificial Intelligence and Copyright**

USCO Docket 2023–6

December 6, 2023

As organizations representing musicians and music creators, we advocate for policies that support artists, strengthen the US creative economy, and move our culture and communities forward.

We strongly support the responsible development of AI applications that enhance human creativity, open up new artistic avenues and opportunities, and enrich our culture. The music community has led the way in embracing ethical uses of AI that put artists in charge of their own work and deliver profound new experiences for fans.

But not all AI is developing in this way, and some bad actors are pushing new applications to market in an AI “land rush,” seeking to avoid any constraints or guardrails. For this reason, we strongly appreciate this proceeding as well as the broader Biden-Harris Administration [Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence](#).

While the Notice of Inquiry covers many subjects, we focus on three foundational issues that will determine whether generative AI develops in responsible, ethical ways to promote the creative economy or whether it becomes a means for exploiting artists and devaluing their work. In the broadest terms, we urge the Copyright Office to support regulatory principles and guardrails for generative artificial intelligence applications that respect and protect individual creators’ fundamental rights to control how and on what terms their work is used.

First, we believe existing US copyright law, properly interpreted, already provides most of the guidance and protection that is needed to support the healthy and sensible growth of generative AI. Despite the spin from some AI Developers and their tech giant/venture capital industry backers, current law clearly holds that copyrighted works cannot be copied, analyzed, and used by generative AI models without rightsholders’ permission. Using copies of some or all of our songs and recordings to create new ones that compete with ours in the market is clearly not allowable under even the most expansive, wishful reading of “fair use.”

And that’s not just our opinion. AI pioneer Ed Newton-Rex recently [resigned his job](#) as Head of Audio at Stability AI because of the company’s bogus and flimsy claim that its operations could somehow be defended as fair use: “Today’s generative AI models can clearly be used to create works that compete with the copyrighted works they are trained on....so I don’t see how using copyrighted works to train generative AI models of this nature can be considered fair use.”

Playing off “space race” fears of losing the AI strategic competition, many AI developers have claimed that licensing inputs would not be practical and would hinder the development of artificial intelligence technologies. But we know that’s not true. Digital music services like Spotify, Apple Music, Tidal, and dozens more all rely on private sector free market licensing for their services – and there’s no reason AI developers couldn’t do the same. They simply don’t want to ask for permission or pay market value for what they use.

And there are more than commercial/economic values at stake. Free market, opt-in licensing is the only way artists can have a real and meaningful choice about whether and how they participate in this very controversial new technology. Some artists have made clear they like the idea of supporting AI. And it’s great they have that choice. But others strongly oppose having their work used by machines to generate competitors to their own original creations. And others still may oppose the AI project for values-driven reasons such as concerns about the ways AI engines replicate bias in the data they are fed or because of how the data is used in the outputs.

For all these reasons, we ask the Office to support core copyright-first principles: copyrighted creative works cannot be used by generative AI applications to create competing materials without the consent of the creator or rightsholder.

Second, we urge the Office to make a clear statement about the need for accurate and thorough recordkeeping and transparency by AI developers. In recent months, as artists and creators have begun to bring litigation to address unconsented AI use of their work, developers have managed to delay and disrupt the orderly progress of these cases by manufacturing uncertainty about the specific copyrighted works used by their systems. By hiding their activities under a shroud of secrecy, keeping inadequate and incomplete records (or declining to keep records at all), they have managed to obscure basic facts relevant to their potential liability. Too often, when artists and creators ask, “did you use my work in developing this model” the answer is “we have no idea.”

This is irresponsible as a business matter – no serious or responsible company intentionally refuses to keep accurate records of its processes and operations. And it’s unacceptable as a practical and legal matter. This manipulation disrespects artists and undermines the fair and evenhanded pursuit of justice through the courts.

We urge the Office to reinforce the need for thorough, accurate, and transparent recordkeeping of the use of copyrighted works by generative AI systems.

Third, where there are potential gaps in the law – such as the challenges of protecting individual identity and likeness from unconsented deepfakes, voice clones, and digital replicas – we support clear, strong remedies against the irresponsible and malicious models that enable these abuses.

This is obviously a problem for artists and performers, whose recordings and images are scraped off the internet, copied, and used to power invasive voice clone and digital replica applications that impersonate and misappropriate their creative individuality. From the notorious “Heart on My Sleeve” impersonation of [Drake and The Weeknd](#), to recent cases involving [Bad Bunny](#), [Tom Hanks](#), [Scarlett Johansson](#), and [many many more](#), both the moral assault on human identity and the commercial attack on the market for creative works and personal endorsements of these applications is extreme.

And the harms go deeper still. Just last week, [reports](#) surfaced of a generative AI engine used to create non-consensual pornographic images, including those depicting “several multiplatinum Grammy Award-winning singer-songwriters and Academy Award-winning actresses” among others. And reports of other forms of deepfake harms such as [cyber bullying](#), [impersonation scams](#), and [revenge porn](#) are well-known.

We strongly support legislation that empowers victims and their representatives to stop these unconsented voice clone, digital replica, and deepfake abuses and seek appropriate redress for victims from the AI models that power them.

While AI is a new issue, we take great comfort from recent polling that shows the public understands these issues and shares our core concerns. A recent [survey](#) by IFPI found that 79% of the US public feels that an artist’s music or vocals should not be used or ingested by AI without permission and 76% agree AI should not be used to clone or impersonate artists without authorization. Those one-sided majorities make clear just how far outside the mainstream the position taken by many AI Developers on these issues has become.

We thank the Copyright Office for its work charting a responsible path forward for generative AI – one that supports and strengthens creativity and culture.