New Meridian

To: U.S. Copyright Office, Library of Congress

From: Ashley Eden, Senior Vice President of State Partnerships

RE: Notice of Inquiry and Request for Comments (Docket No. 2023-6)

To Whom It May Concern:

We appreciate that the U.S. Copyright Office is requesting input relevant to copyright law and policy issues raised by recent advances in generative artificial intelligence (AI). New Meridian is a nonprofit organization that designs and develops state educational assessment systems. We are committed to making high-quality assessments affordable and available to more states and districts. New Meridian offers secure assessment content exchanges to enable states to participate in the development and sharing of high-quality assessment content much more cost-effectively. We see the advancements of AI as a pathway to doubling down on this commitment, and it is through this lens that we have answered the notice's General Questions, numbers one and two.

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?

One potential benefit of this technology are the cost savings that it offers for state and local education agencies. Generative AI can greatly reduce the cost of developing assessment items (test content and questions), allowing education agencies to put funding that would have gone to assessment development toward other programs that serve students, families, and educators. Time savings are another potential benefit of AI. Even before state reviews and field testing, a single item takes up to six months for assessment developers to write and review. Generative AI could shorten this timeframe to one to two months, or potentially even less.

Additionally, AI could lower the cost and time required to develop items used in educator resources. A key insight from recent focus groups and empathy interviews with educators is that they want to see examples of assessment items. These exemplar items provide educators with a better understanding of the instructional rigor called for in academic standards. This understanding better equips teachers to support and personalize student learning. However, it is expensive and time-consuming to provide high-quality exemplar items for field use. AI has shown promise in receiving parent items and quickly generating

new items that measure identical skills, especially for math assessment. The ability to create these exemplar items in a timely, cost-effective manner would benefit our clients and the educators they serve.

New Meridian understands that, per the [Copyright Review Board](), copyrightable work requires "sufficient creative input or intervention by a human author." We believe that items developed with the support of AI do meet this standard. To achieve the level of quality that state clients expect, assessment developers who leverage generative AI to author items require the direction of assessment content experts who provide parent items and establish clear constraints for the technology. These authors work from specifications that identify the items' key characteristics and standards alignment—specifications that require significant creative activity to develop. Furthermore, every item, AI-generated or not, must undergo multiple rounds of human review and editing for accuracy, clarity, style, and accessibility. All of these processes represent creative work that enhance the items and make them original to the authoring entity.

Providing assessment developers with copyright protection for items created with the assistance of AI can empower them to produce better assessments for state clients. Denying copyright protection could hinder their capacity to do so.

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?

Items for statewide assessment must remain secure per U.S. Department of Education regulations. If an assessment company developed items with the support of generative AI, the company or client state education agency would need to have exclusive copyright ownership of that item to ensure item security and to prevent the unauthorized reproduction and distribution of secure content. Copyright ownership is the only way to ensure test security, which is critical given the high-stakes nature of statewide assessment.

While operating an assessment program, vendors release example items and previously used items for public consumption. These items, although publicly available, remain copyrighted. However, given the public's access to these items, there is significant potential for them to be used as training data for AI systems. New items generated through an AI trained on that data would constitute derivative works of the original intellectual property, created without the knowledge or consent of the copyright holder. Given this risk, we believe a potential solution could be to mandate that developers of these AI systems disclose the sources of their training data.

Bias in AI was confirmed by multiple researchers—[Brookings (2023),]() [Mullainathan et al. (2019),]() [Angwin et al. (2016)]()—and is another risk of this technology. However, this risk presents an opportunity to maintain the human element to item writing that our

organization and clients value. Even with the additional support that generative AI provides, it remains imperative for educators to review items to check for bias and sensitivity issues and ensure that content measures the appropriate skills and knowledge. Human review ensures every item undergoes thorough evaluation to provide an equitable testing experience for all students and a clear picture of student knowledge. These reviewers can leverage generative AI to automate and improve the alignment of items to different state standards. To further ensure assessments serve all students fairly, AI can help test developers enhance accessibility, such as by generating alt-text, converting text to speech, and powering voice recognition software for speech-to-text answers.

New Meridian will continue to use technological advancements to ensure high-quality assessment content is widely available for states and districts. It is our position that, with the right policy conditions as identified above, generative AI will improve the field of K-12 measurement. We are grateful for the opportunity to provide recommendations and look forward to future opportunities to engage with the U.S. Copyright Office.

If we can provide additional assistance, please contact Ashley Eden at aeden@newmeridiancorp.org.

Sincerely,

Ashley Eden
Senior Vice President of State Partnerships