Response to the Copyright Office
Notice of Inquiry and Call for Comments

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Nature of Comment

Olga V. Mack & Kassi Burns, submit this Written Comment in their individual capacities. This submission is deeply rooted in the authors' multifaceted more than 40 years of collective experiences at the vibrant intersection of business, law, and disruptive technologies. Their motivation to submit this comment stems from a desire to pave the way for a more inclusive, equitable, and forward-thinking technological future, where fairness stands as a cornerstone in the development and implementation of disruptive technologies.

Executive Summary

The debate on copyright for AI-generated creations is intensifying. Many now agree that these creations, born from human expertise and innovation, should be protected by copyright, just like traditional tools have enhanced creativity in the past. Today's creators are using AI to drive innovation, and this practice deserves legal safeguards. Moreover, using AI to build on existing works, albeit at scale, is a contemporary twist on a time-honored tradition, enriching our cultural diversity.

Therefore, it's crucial to rethink the roles of the US Copyright Office and the US Library of Congress during this transition. Digitally transforming both institutions would create a unified database for copyrighted works and their related information. This, along with updates to policies and laws, would bring these institutions in sync with modern technology, encouraging collaboration, innovation, and fairness in AI and copyright.

This comment addresses the following U.S. Copyright Office Notice of Inquiry (Docket No. 2023-6) Questions: 10, 10.3, 13

Tool Regulation: A Misguided Approach to Copyright Law

In the ongoing debate about whether AI-generated creations should have copyright protection, the argument against it, claiming a lack of authorship, is puzzling. The idea of human oversight and control is at the heart of this argument. It's essential to recognize that AI tools and technologies are unquestionably designed, programmed, or controlled by humans.

The content produced by these tools directly reflects human ingenuity and expertise, which drive the creation and development of these AI systems. It reflects our innate inclination to identify, build on, and categorize patterns. Using an AI system properly is an ongoing process, where previous work is built upon to refine the results until they align with the artist's vision. Therefore, AI creations essentially extend human creativity and effort, deserving protection accordingly[1]. Moreover, using tools has long been a crucial aspect of artistic mastery and creativity, a tradition that continues even in the digital age. If we look at the history of copyright in the US, these rights were expanded numerous times to accommodate emerging technologies. The same principle should apply to AI. When a modern creator chooses to employ an AI tool to

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[1] For further analysis on AI-assisted works and authorship, see Lee, Edward, Prompting Progress: Authorship in the Age of AI,. 76 Fla. L. Rev. (forthcoming 2024) (currently available at the following URL: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4609687)

enhance their creativity, it's similar to a painter selecting a brush, physical or digital, to craft a masterpiece.[2] This decision embodies both mastery and creativity, justifying legal protection.

Refusing copyright for AI-generated content risks stifling innovation in the US. It could discourage American innovators and creators from utilizing AI tools due to concerns that their work will remain unprotected, potentially hindering the emergence of new art forms and expressions. Historically, creations produced with various tools have enjoyed copyright protection. For example, photographs taken with cameras are copyrighted despite the camera being a tool used to create them.[3] This precedent should naturally extend to AI tools' creations, confirming their copyright protection eligibility.

Imitating Masters in the Digital Age: Upholding Time-Honored Training Traditions Through AI

In creative expression, using AI to imitate and build on the work of established masters, albeit at scale, is a modern version of a well-established tradition in various fields governed by copyright. This tradition, often described as "standing on the shoulders of giants," has allowed artists, writers, and creators throughout history to refine their skills and develop unique styles by studying and occasionally recreating the works of recognized masters.[4] The practice has been a fertile ground for fostering innovation and the evolution of art and literature over many centuries.[5]

In today's landscape, it's clear that employing AI to build on the works of masters at scale isn't a departure from tradition but rather a contemporary adaptation of this time-honored practice. This adaptation, in turn, encourages the emergence of new and diverse forms of creative expression, contributing to a more culturally rich and inclusive tapestry.

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[2] Consideration could be given to a study prepared for the European Commission's, which outlines a four-part test that could be used to determine if an AI-assisted work could be considered for copyright protection. See *Trends and Developments in Artificial Intelligence: Challenges to the Intellectual Property Rights Framework, Final Report*, European Commission, https://www.ivir.nl/publicaties/download/Trends_and_Developments_in_Artificial_Intelligence-1.pdf (last visited Oct. 30, 2023).

[3] Additionally, some smartphone cameras leverage AI via Machine Learning to "optimize" the results of certain photo settings. See *Samsung's Moon Shots Force Us to Ask How Much AI Is Too Much*, Wired, https://www.wired.com/story/samsungs-moon-shots-force-us-to-ask-how-much-ai-is-too-much/ (last visited Oct. 30, 2023).

[4] The writer Hunter S. Thompson is known to have typed books in full, such as The Great Gatsby, as a training exercise to "know what it felt like to write a masterpiece". See *Hunter S. Thompson Typed Out The Great Gatsby & A Farewell to Arms Word for Word: A Method for Learning How to Write Like the Masters*, Open Culture, https://www.openculture.com/2017/06/hunter-s-thompson-typed-out-the-great-gatsby-farewell-to-arms.html (last visited Oct. 30, 2023).

[5] Picasso's painting style was heavily influenced by African art, "using it as a point of view to express his own art." See *Stealing beauty*. The Guardian, https://www.theguardian.com/artanddesign/2006/mar/15/art (last visited Oct. 30, 2023).

Additionally, this approach carries significant economic value. Training AI with a more extensive and diverse set of sources reduces the risk that the resulting AI-generated works would not undermine the economic worth or market of the original creations. Instead, it encourages the development of works that draw from multiple influences, standing as distinct and original creations in their own right.

Furthermore, this technological progression should be seen as a natural evolution, similar to the printing press's transformative role in disseminating knowledge. This evolution highlights the need for legal consistency and adaptability, urging the law to evolve harmoniously with technological advancements. The introduction of AI's "at scale" capabilities does not necessitate a new approach but instead encourages the adaptation of existing principles to embrace the contemporary realities of creation and innovation because it is now even less likely that using it to train the model would affect the market for the original because many more works are involved.

Comprehensive AI Training on All Data is a Social Good

In the rapidly changing world of AI, the potential to bring about significant positive change lies in training AI models comprehensively using all available data. This approach isn't just a technical upgrade; it represents a public good that offers numerous benefits in line with our societal values[6].

At its core, this approach promises improved accuracy and reliability. By tapping into a wealth of information, we enable AI models to be more nuanced and capable of making informed decisions, promoting a society that values knowledge and precision. Additionally, it ensures that AI models represent a diverse range of human experiences and knowledge, promoting inclusivity.

From an ethical standpoint, this approach aligns with the principles of transparency and openness, which are fundamental in a democratic society. It encourages the responsible and ethical use of technology harmoniously with the broader goals of social justice and fairness.

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[6] An example of AI Data as a Social Good is the use of robust data sets to train AI models for medical services, not to replace doctors but to act as an additional resource for stressed communities. See generally, Lee, Peter et. al.,The AI Revolution in Medicine: GPT-4 and Beyond (2023). For a specific medical study, see *AI-Doctor's accuracy in retinal disease detection redefines medical diagnosis*, News Medical, https://www.news-medical.net/news/20230925/AI-Doctors-accuracy-in-retinal-disease-detection-redefines-medical-diagnosis.aspx (last visited Oct. 30, 2023).

Fostering Equity and Innovation: The Case for a Statutory License System to Train AI Models

Introducing a statutory license system could be a game-changing strategy in the rapidly advancing field of AI. It aims to reshape the relationship between creators and AI developers to ensure fair compensation for creators. This move recognizes the value of their contributions and creates a robust mechanism for them to share in the economic benefits generated when their works are used as training data.

This type of system builds upon the existing mechanical license system designed for composition copyrights. It encourages creators to willingly provide their data for AI training by offering compensation as an incentive. This broader participation enriches the data pool and improves the effectiveness of AI models. Additionally, it brings legal clarity and simplification, reducing the likelihood of legal disputes related to creative works.

Implementing a statutory license system could set a global standard for data use in AI training. It serves as a model other countries may follow, promoting a consistent approach to data usage and creator compensation worldwide. This initiative also has the potential to inspire creators to produce high-quality content, which, in turn, contributes to the development of more advanced and effective AI models.

A New Blueprint: Reimagining the Roles of US Copyright Office and Library of Congress

As we anticipate introducing a statutory license system for using data in training AI models, it's crucial to update the responsibilities of the US Copyright Office and the US Library of Congress to oversee, regulate, suggest best practices, encourage innovation, and enforce this evolving ecosystem. The Copyright Office should consider recommending to Congress that it amend the Copyright Act to create a statutory licensing system for using copyrighted works to train AI tools. Such recommendations would establish the role of the Copyright Office and the Library of Congress in facilitating and overseeing this system.

One key aspect of this transformation could involve digitizing and integrating databases from various stakeholders, creating a unified digital space that offers easy access to a vast collection of copyrighted works and historical documents. Additionally, implementing tools to streamline the copyright registration process, monitor the use of copyrighted materials, ensure compliance, and facilitate prompt compensation for creators could become new functions for these institutions.

Establishing sandbox environments is essential to foster an environment conducive to innovation and collaboration. These collaborative hubs would bring together leaders from the tech industry, content creators, and legal experts to experiment with and test new compensation models for data usage in AI training. At the same time, launching educational programs and workshops could serve as platforms to enhance understanding of the evolving landscape of copyright law in the AI era.

In conclusion, these strategies offer a balanced and equitable framework for modernizing the roles of the US Copyright Office and the US Library of Congress, promoting innovation, and compensating creators. They also aim to guide the industry toward a future marked by innovation, collaboration, and fairness while charting a smooth transition into a modern copyright management system as we innovate and grow our economy.