

**Before the
UNITED STATES COPYRIGHT OFFICE**

In the matter of Artificial Intelligence and Copyright

Docket No. 2023–6

COMMENTS OF EPIDEMIC SOUND

Epidemic Sound is a global music tech company. We are the market-leading soundtrack innovation platform. Empowering creativity is at the heart of what we do. Our model paves the way for video creators (small to large) to use music to take their content to the next level, whilst simultaneously supporting the musicians we work with, both financially and creatively. Our company was co-founded in 2009 and operates across the globe, with offices in New York, Los Angeles, Amsterdam, Seoul, and headquarter in Stockholm.

We would like to start by thanking the U.S. Copyright Office (the “Office”) for conducting the study regarding the copyright issues raised by generative artificial intelligence (“AI”) and for the opportunity to provide comments on these questions. In this document, we would like to provide our views on certain matters relating to copyright and generative AI that we deem are of highest importance to consider at this point in time as generative AI tools are being developed at a fast pace. The opportunities with AI are immense and we are very excited about the different possibilities the technology will offer, however, it’s important that AI is developed responsibly and ethically.

As a company with a large focus on music, our comments are provided primarily from a musical copyright perspective.

Training

We believe that it is important to foster a licensing market in relation to training of generative AI models, to entitle copyright owners to remain in control of their catalogs and decide if, when and under what circumstances they would like their catalogs to be used for generative AI training. The intention here is not to stifle technical development but rather to allow a fair licensing market to develop (or rather continue to develop as the market has already started to evolve) also in the area of AI, as it has in other areas of technical development, and not diminish the value of human-made works.

In relation to **question 8** regarding fair use it is our opinion that any exemptions to copyright should be interpreted narrowly.

We do not see how using copyright protected works to create artificial content that serves substantially the same purposes and thereby can compete with the content it was trained on, could be seen to fall under the fair use exemption. Such use can in our view not be deemed to satisfy the factors that would allow it to qualify as fair use.

We believe that in certain cases the fair use doctrine could provide a fair balance between technological development and copyright, for example where training on works can be of benefit to important research¹. However, using human made music to create artificial music that competes in the same market as the human created music it was trained on, is not one of those cases and can in our view not be deemed as fair. For such training, developers need permission from copyright owners and not be able to rely on the fair use exemption.

In response to **question 9**, it is our opinion that copyright owners should have to affirmatively consent (opt in) to the use of their works for generative AI training, both for commercial and non-commercial uses.

Should the Office consider applying any form of opt-out mechanisms for certain use cases, such a mechanism must provide copyright owners an *easy* way to *effectively* opt out. We believe that it will be very difficult in practice to implement any such opt out system that is effective and not too burdensome for right holders. Also for these reasons, opt in systems are preferred.

In response to **question 9.1**, consent from the copyright owner is needed for training both when it comes to commercial and non-commercial uses.

It cannot be deemed impossible or overly burdensome for AI developers to obtain such consent for the use of musical works as training data. Licensing large amounts of musical content is possible for other use cases and cannot be deemed impossible for AI developers. As mentioned above, a licensing market for generative AI training is already developing.

As regards **question 9.5**, it is the copyright owner of a work that has the exclusive right to object to the use of the work. However, there can of course be other, non-copyright reasons for the human creator to approve certain usage, such as training for the purpose to create artificial vocal or image likeness.

¹ Each case must of course fulfill all requirements of the fair use doctrine and should include safeguards to prevent so-called “data laundry”.

As mentioned above it is important that copyright owners remain in control of their catalogs and can decide if and under what circumstances they would like the music to be used for AI training. Consent to AI training should be obtained via direct, negotiated licensing agreements.

In relation to **questions 10.1-10.5** we would like to underline that direct voluntary licensing through negotiated agreements is already possible in the music industry, even for large amounts of works. Again, it cannot be deemed impossible for generative AI developers to license musical works that they want to include in training.

Any collective licensing schemes should be on an opt in (and not an opt out) basis.

No compulsory licensing regimes should be implemented. We strongly oppose forcing copyright owners into any kind of licensing schemes. Copyright owners shall be free to choose how to administer their rights.

As mentioned above, we deem that AI training should be licensed via direct voluntary licenses or voluntary collective licenses on an opt-in basis for those who wish to administer their rights collectively. We are not in favor of opt-out systems. *Should* however the Office consider any extended collective licensing scheme for certain types of AI training, it is of great importance that such mechanisms can only be used in certain limited, well-defined use cases of training. Extended collective licensing should not apply in general for generative AI training and in our opinion never for commercial usage, nor any use cases where the output would compete with the training data. It is also essential that rightholders are given an effective opportunity to at any time exclude their works from such extended collective licensing scheme. As mentioned above we deem that such opt out systems will be very difficult to implement in an effective manner and hence we deem opt in mechanisms as the better solution when it comes to collective licensing.

Transparency & Recordkeeping

Copyright owners must be able to determine whether their works have been used for training in one way or the other, without having to initiate costly and time consuming legal proceedings and discovery processes. In response to **question 15** we would like to stress that record keeping and transparency obligations for developers of AI models are important. We deem that that developers of AI models should *at a minimum* be required to make available summaries of the content used in the dataset used to develop their models and upon request be able to provide more detailed information on the collection and content of the data set in order to enable copyright holders to verify if their works have been used for training. Regardless of how the transparency obligations are formulated and the level of transparency and recordkeeping that will be required, the result must be that copyrights holders are given a practical, effective

possibility to get information on whether their works have been used for training (and if so be able to take action against unauthorized usage).

As generative AI, the different generative AI tools, and the market for artificial content are developing and as the legal framework around AI is evolving, many questions will need to be discussed along the way. Some answers are clear now and some need further consideration as we move forward. We would very much like to keep working with the office going forward in these matters.

Respectfully submitted,

Caroline Ekstöm

VP Global Licensing and Regulatory Affairs, Epidemic Sound