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Artificial Intelligence and Copyright Comment Submitted to the U.S. Copyright Office November 15, 2023

StakeOut.AI, a nonprofit seeking to prevent economic disempowerment caused by artificial intelligence (AI), encourages the U.S. Copyright Office (USCO) to issue regulations addressing the current state of generative AI. Currently, AI platforms allow AI models trained on fair-use-violating copies of copyrighted works to produce competitive output at negligible cost, without the copyright owners' consent, compensation, or credit. This is especially concerning given the generative AI industry's trajectory towards increasing occupational replacement. OpenAI, the creator of ChatGPT and arguably the world's leading generative AI company, has the mission of creating "highly autonomous systems that outperform humans at most economically valuable work".¹ Without further regulation, the use of generative AI platforms will inevitably lead to worker exploitation and disempowerment: currently for creatives such as writers, artists, and graphic designers; and eventually for an increasing array of human occupations.

Generative AI has the potential to unfairly displace creatives, leading to lost work and lower wages. Creatives are traditionally compensated for their work, which often requires a great investment of time, training, and skill. However, when generative AI models are trained on fair-use-violating copies of creatives' work without their compensation, this training enables these models to produce competitive output, in only moments, for a negligible cost. For example, thanks to generative AI, businesses that would normally hire artists to create logos or advertisements can now forgo hiring artists and instead use generative AI platforms to obtain logos or advertisements for free. Even for artists whose clientele choose not to replace them with generative AI, simple laws of supply and demand predict that a widespread replacement of artists' work with generative AI will reduce the demand of human-created artwork, pushing compensation downward in an already often precarious workforce. People who work in creative industries will suffer from market dilution caused by free, mass-produced, AI-generated works, inevitably lowering the value of human-created works.²

While countless examples of technological innovation displacing workers exist throughout U.S. history, increased automation of telephones, textiles, factories, and farms was not enabled by technology reliant on the past use of what those workers created. To be clear, those who support AI regulation should not be dismissed as Luddites who are concerned about technology displacing workers more generally. The use of creatives' copyrighted work without

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their consent, compensation, or credit, to generate output for commercial use, is a contemporary problem, and the U.S. Copyright Office can be part of the solution.

The Authors Guild, the oldest and largest community of writers in the country, advocates for requiring permission for the use of writers' works in generative AI; compensating authors who wish to allow their works to be used in the "training" of generative AI; creating transparency obligations for AI developers to disclose what works they use to "train" their AI; requiring permission and establishing compensation for authors when their works are used in outputs, or when their names or identities or titles of their works are used in prompts—whether through adding a new economic right under copyright law or as a *sui generis* right, and/or through a broad, well-articulated federal right of publicity law; and requiring authors, publishers, platforms, and marketplaces to label AI-generated works and otherwise identify when a significant portion of a written work has been generated by AI.³ The Authors Guild's suggestions specifically call for a change to copyright law, a safeguard that would protect all workers, not just those who are organized and can collectively bargain for restraints on the use of AI, such as the terms that the Writers Guild of America recently negotiated for and won.

The USCO could require generative AI platforms to obtain the consent of the writers, artists, and all other creatives whose work is utilized to train AI models. A requirement like this would be stronger than an opt-out model because creatives may not know that their work is being scraped from the internet, and it would be unreasonable to expect creatives to monitor all current and future AI platforms to identify models that may be trained using their work. Copyright experts such as Professor Lawrence Lessig suggest creating a compulsory license-like structure for compensation, a promising possibility with a fast regulatory method and vigorous remedies.⁴

Additionally, at least several major sources that train generative AI models invoke copyright concerns themselves. For example, AI researchers have found that generative AI training sets consist of files downloaded from pirate book repositories such as Library Genesis and Z-Library.⁵ It is unclear whether courts would see the pirated origins of datasets like Books3 and Common Crawl as relevant to the issue of fair use, but the USCO has the authority and expertise to rein in models that effectively distribute works derived from illegally pirated copyrighted materials.

Finally, it is important to note that the United States has already committed to a human-centered AI framework which states that AI should be transparent and drive inclusive growth, so the USCO should act in the spirit of that commitment. Specifically, the U.S. has endorsed the Organization for Economic Cooperation and Development (OECD) Principles on Artificial Intelligence. Principle 1.2 reads: "AI actors should respect the rule of law, human rights and

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democratic values throughout the AI system lifecycle. These include freedom, dignity and autonomy, privacy and data protection, non-discrimination and equality, diversity, fairness, social justice, and internationally recognized labor rights.”⁶ Dignity, fairness, and social justice demand regulation of AI systems to prevent the worker exploitation and disempowerment they would otherwise cause.

Endnotes

¹ *OpenAI Charter*, OPENAI (April 9, 2018), <https://openai.com/charter>.

² *Andersen v. Stability AI Ltd.*, 3:23-cv-00201 (N.D. Cal. Jan. 13, 2023).

³ *Artificial Intelligence*, AUTHORS GUILD, <https://authorsguild.org/advocacy/artificial-intelligence/>.

⁴ Nilay Patel, *Harvard professor Lawrence Lessig on why AI and social media are causing a free speech crisis for the internet*, THE VERGE (Oct. 24, 2023), <https://www.theverge.com/23929233/lawrence-lessig-free-speech-first-amendment-ai-content-moderation-decoder-interview>.

⁵ *Authors Guild v. OpenAI Inc.*, 1:23-cv-8292 (S.D.N.Y. Sept. 19, 2023); *see also* Kate Knibbs, *The Battle Over Books3 Could Change AI Forever*, WIRED (Sept. 4, 2023), <https://www.wired.com/story/battle-over-books3/>.

⁶ *Recommendation of the Council on Artificial Intelligence*, OECD (May 21, 2019), OECD/LEGAL/0449.