



U.S. Copyright Office, Library of Congress
101 Independence Ave SE
Washington, DC 20540

Re: Generative Artificial Intelligence and Copyright

About Take Creative Control

Take Creative Control is a creator-informed and creator-focused education and advocacy organization building a multicultural community of creator-advocates. Our work is centered on creators of color whose livelihoods depend on effectively sharing, protecting, and monetizing their work, most of which is shared online. With education, resources, and community convenings, we build power with creators to advocate against policies and practices that impede their ability to tell their stories, compete in the economy, and collectively thrive.

Take Creative Control (“TCC”) welcomes the opportunity to offer the following comments to help inform the Copyright Office’s study on prospective legislative and regulatory steps to best protect and address generative AI tools and their usage of copyrighted works.

Comments

Creativity is fundamental to humans. It serves as a form of expression that enriches society. And within a capitalist society, creators have been able to leverage their craft to help support the national economy, where their labor and artistic works serve as important commodities. Technological innovations have always served as a pressure point, forcing workers to adapt to structural change, and the creators are not immune.

A large portion of the creator economy now lives online. Creators develop, edit, collaborate, and distribute their work online, using social media platforms. This online creator economy provides income for over 10 million Americans, and it is projected to grow exponentially in the coming years (Take Creative Control, 2022). Therefore, it is important that we understand how technological change will impact this key part of the U.S. economy. With

the advent of generative artificial intelligence (“AI”), we are faced with new and renewed questions about the resiliency of our existing copyright laws. Regulatory bodies in other Western economies have already taken steps to address AI and copyright, and the U.S. should and can follow suit.

As an advocate for creators of color nationwide, TCC hears from creators each year. TCC carries out a regular survey that collects stories from the community about the economic challenges they face. Their experiences with AI and social media algorithms have been among the top concerns for the community (Take Creative Control, 2021). Creators understand that a world with AI is inevitable and many view generative AI as a powerful addition to their creative toolset. At the same time, creators understand that a world without proper protections from AI innovation will disincentivize and stifle creativity, creating a chilling effect on a growing economy.

The following outlines two main issues related to AI and the creator economy: the impact of AI on input uses and output uses. Input uses refers to the use of creative works as data inputs for AI training, while output uses include works that are created using AI tools (European Commission. Directorate General for Communications Networks, Content and Technology. et al., 2022). Both of these issues, if not adequately addressed by regulatory bodies, will greatly impact the creator economy.

Input uses: Generative AI’s unauthorized use of artistic works in training datasets

As we have come to learn, many of these AI tools have been trained on images, audio files, and text corpora that included artistic works that were protected by copyrights and were used without proper compensation or authorization (*Generative AI Systems: Impacts on Artists & Creators and Related Gaps in the Artificial Intelligence and Data Act*, 2023). Copyright laws date back to 1790, serving as a critical legal tool for creators, ensuring that one’s creative imprint is protected and rightfully attributed and compensated. These laws provide incentives for creators, while serving as a strong stimulus for the economy. Without regulatory bodies enforcing these laws, there is potential for a chilling effect against the dispersion of artistic works online. Creators may not want to share their works online, for fear of companies unauthorized use of their works for the purpose of AI training.

Creators of color already face a myriad of challenges when sharing their works online. For example, some Black and Brown creators find that their artistic works are often stolen or co-opted by white creators without proper acknowledgement (Lorenz, 2020; Sung, 2021). Others have credibly argued that social media giants deploy algorithms that are racially biased against them (McCluskey, 2020; Steele, 2002). With AI tools serving as yet another

barrier for creators, our community is advocating for stronger protections to ensure their creative contributions are acknowledged and compensated.

Output uses: AI tools ability to replicate or imitate the style of online creators

AI tools can now create, replicate in style, and generate images, stories, TV scripts, audio/music clips, and paintings with little involvement from humans. While not perfect at the moment, the technology is only advancing and “getting smarter.” Therefore, creating a clear distinction between what is AI-generated and what is human-generated is necessary. While some creators have used AI tools to complement their work, the question of what is considered original or what is directed by humans is still outstanding.

In the EU, there is no clear definition for who is considered to be the owner or author of computer-generated works. It is up to the EU Member States to make their own definition, however, it is assumed that the author is “the flesh-and-blood, natural person who conceived and executed the work” (European Commission. Directorate General for Communications Networks, Content and Technology. et al., 2022, p. 171). However, in the UK and Ireland, government bodies have attempted to make a distinction for works that are created without human involvement. In those cases, the author is decidedly the one who directs or makes arrangements for the creation. This distinction has not gone without criticism, resulting in the UK revisiting this issue. The issue here is that the line for what is considered human involvement is ill-defined. A threshold definition of some kind is needed to better protect the original works of others.

Policies to consider to protect online creators

Online creators acknowledge that there can be a world where creators and AI can collaborate, but regulatory bodies must be vigilant in ensuring protections.

1. Legal distinction between originators - Provide a legal distinction between works of arts created via generative AI and works created by humans.
 - a. The UK and Ireland have created a distinction between the two originators. For example, works of art created by generative AI are given shorter-term copyright licenses (European Commission. Directorate General for Communications Networks, Content and Technology. et al., 2022).
2. Increased transparency - platforms should document and make publicly available a summary of the use of training data protected under copyright law.
 - a. This would result in increased access to datasets, incentivized cooperation with rights holders, and the potential standardization of opt-outs.

3. Path to Monetization - Future policies should consider how independent creators can be fairly compensated if their works are used for training purposes.
4. Arts funding - Provide more funding for underrepresented creative entrepreneurs to help them understand and participate in copyright systems.

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