

Hannah Powell

AI Copyright Comments

I will first preface my comment by stating that I am an artist, not an AI developer. I have been a hobbyist artist for almost 10 years, and have almost 8 years of experience with online artistic spaces. My knowledge and views are based on the effects of Generative AI that I have seen firsthand within the artistic community.

I also want to thank the Copyright office for looking into this issue and asking for public comments. One of the great frustrations, which I have heard from others and felt many times since the rise of AI in creative fields, is the sense that no one is listening to human visual artists, musicians, writers, and voice actors on this matter. I sincerely hope that this whole inquiry will be very productive and helpful for you.

1) What are your views on the potential benefits and risks of Generative AI systems? How is the use of this technology currently affecting or likely to affect creators, copyright owners, and the public?

I believe that the use of Generative AI in fields such as medicine and scientific research could be possibly beneficial to the progression of those fields. It could also be useful for extremely tedious tasks that do not require much spontaneous thought or creativity. However, I do not believe that the use of Generative AI in creative fields is adding anything to that field. In fact, considering the current (largely unregulated) usage and practices of Generative AI, I see it to actually be detrimental to the rights and wellbeing of human artists. Generative AI in most cases is trained using internet data of all kinds without the knowledge or consent of the data's owners. Because there is the risk of Generative AI being used as a "substitute" for human-made art at the cost of professional artists' jobs, those artists should have a right to request that companies who operate Generative AI do not use their own original art to fuel the AI tool which replaces them.

On a different note about art in general and its cultural value: As an artist, the point that I wish to communicate most strongly is that AI-generated art does not, and cannot, replace me. Art is not just an eye-catching picture or a complex piece of writing. A fundamental aspect of art is rooted in the very process of creation. A human artist observes and reflects on the world, makes insights based on their own unique perspectives, and puts those thoughts on paper with the intent to connect with fellow humans on a deeper level. The act of sharing and appreciating

art is a vital societal activity—it builds bonds between people of different backgrounds, records history, comments on important issues, and allows for spontaneous emotional expression.

A machine will likely never be able to recreate this one-of-a-kind human experience. It cannot comprehend the difference between “taking inspiration” and plagiarism. It may someday be able to follow prompts so accurately that its products are indistinguishable from human works, but it will never be able to add anything of its very own—it will always remain an imitation of others before it.

This is why human-made art deserves to be protected on a legal level. The undervaluation and commercial exploitation of the arts is not a new problem, but it is a problem with solutions. Implementing protective regulations on this new and complex technology will reinforce the message that making art requires time, effort, resources, and skill, and that those who choose to make art deserve to be respected and compensated accordingly.

6) What kinds of copyright-protected training materials are used to train AI models, and how are those materials collected and curated?

My understanding of the process is this: if an image of any kind is publicly viewable on the internet, it is at risk of being “scraped” by AI and used to train it. Websites like Pinterest are already notorious for making it very easy to separate an artwork from its original source and thereby use it without credit. Generative AI uses these websites to collect original artwork, but it also uses more art-centered websites like ArtStation, where it can “learn” more about image generation by studying a particular artist’s style and the descriptions they often attach to their work. AI tools like this are often actively encouraged by users to learn from established, skilled artists because that will improve the visual quality of the generated images, which means that professional artists displaying copyright-protected art for marketing purposes will have their work scraped as well.

Overall, this is a difficult question to answer from the outside because, at this point, Generative AI developers are largely not required to disclose the type or quantity of the content that they train their tools on. This is one of the major issues which I believe ought to be addressed as soon as possible.

8) Under what circumstances would the unauthorized use of copyrighted works to train AI models constitute fair use?

I argue that there is no circumstance in which this is acceptable. This is with the consideration that AI-generated art is often used for profit, not just for casual entertainment or “concept art” generation. There is currently no way to discern what a user of Generated AI intends to do with the images they generate, so no copyrighted art should be entrusted to the tool on good faith that a user will respect it.

8.3) *The use of copyrighted materials in a training dataset or to train generative AI models may be done for “noncommercial or research” purposes. If AI models/datasets are later adapted for use of a commercial nature, does this still count as fair use? Does it make a difference if funding for these “noncommercial or research” uses is provided by for-profit developers of AI systems?*

I believe that if an AI model alters the purpose for which it generates its content, at any point in its existence, then its handling of the training data should change as well to reflect any financial benefit from the use of that data. If there is profit to be gained in a venture, and the labor of artists has contributed to the success of the venture, then they are entitled to a share of that profit.

9) *Should copyright owners have to affirmatively consent or “opt in” to the use of their works in training materials, or is it enough to be provided the means to “opt out” of training?*

My concern with the “opt-out” option is that this normalizes the casual use of art and other creative content in Generative AI. Realistically, another potential concern is that while a Generative AI tool may be legally obligated to allow artists to opt out, they may not go to much effort to make this an obvious or easy option, because their tool will likely perform less well with less data to learn from. Changing to an “opt-in” system encourages artists to actively seek out and research Generative AI before consenting to contributing their work. But the “opt-out” system does nothing to protect artists who may not be aware of Generative AI’s practices, because the developers of the AI tools have the potential excuse of reading their silence as consent. I feel that an “opt-out” system actually requires more work to implement, because in order to be effective, every platform capable of hosting art (not just art-centric sites or Generative AI sites, but Facebook, Instagram, X, etc. as well) must include a disclaimer to its users about AI scraping and an option to opt-out. Opting in can be done in a much more localized, concentrated way, and if AI tools wish to recruit more artists, they can advertise themselves in art communities.

9.5) *In cases where the human creator does not own the copyright— i.e. they have transferred rights or the work was made for hire—should they have a right to object to an AI model being trained on their work?*

This is a complex question, and others may disagree with me on it, but I believe that yes, artist should have the right to object. They may list it in their terms of service if working for hire, for example. Personally, as an artist who objects to Generative AI art on principle, I feel that someone using any of my work to train it is something I should be able to object to.

However, as a more moderate option, if an artist is agreeing to a transferral of their copyrighted work, they should be fairly informed *beforehand* if that work is to be used to train AI. That at least gives them the opportunity to refuse or renegotiate before fully losing the rights to their art.

15) *In order to allow copyright owners to determine whether their works have been used, should developers of AI models and/or creators of training datasets be required to collect, retain, and disclose records regarding the materials used to train their models?*

Yes. I strongly believe that this is necessary and very possible. With more documentation and accountability, this may also encourage Generative AI developers to address issues like inherent racial/gender bias in their tools. Because AI is only as good as the data it draws from, it often risks unintentionally mimicking biases in the content it creates, such as generating more images of white people than black, or producing sexualized images of women without even being told to. Knowing exactly where the training data comes from could help developers to work against biases and balance the training of the machine to make it more ethical.

Of course, any additional data on copyright owners must be protected and used appropriately, just like all other private data. But many artists, myself included, feel that art itself can be extremely personal and private, and I would prefer that it be treated as such even if that means the collection of extra information.

18) *Under copyright law, are there circumstances when a human using a generative AI system should be considered the “author” of material produced by the system? Is selecting what material an AI model is trained on and/or providing an iterative series of prompts sufficient to claim authorship of the resulting output?*

If a user of a Generative AI tool can prove that none of the material used to generate a prompt is copyright-protected, it could be argued in a technical sense that they are the author

and “own” the resulting content. I am also told that some degree of practice and skill is beneficial to crafting an effective prompt. However, there still remains the question of the generated content’s originality, and as I said before, all content generated by AI is a direct imitation of content made by others, or a crude collage thereof--- no matter whether the training material is copyrighted or not. Amateur human artists are capable of copying another artist’s work, but that does not grant them authorship of the copy, and they would not be permitted to publicly claim the idea as their own or profit from it.

In summary: Generally speaking? No, I don’t think a Generative AI user can claim authorship of generated content. Legally speaking? Perhaps, in certain circumstances.

21) In the Constitution, the justification behind the Copyright Clause is to “promote the progress of science and useful arts.” Does this clause permit copyright protection for AI-generated material, and would such protection promote the useful arts?

The idea that this clause protects AI art implies that it is being used in majority to actually benefit science and “useful arts”. The reality is that OpenAI and other AI development companies have made millions of dollars off of their AI products by allowing them to be used commercially, privately, and by individuals however those parties see fit. OpenAI started out as a non-profit organization, but it has since changed course and is actively competing with other companies to release the most popular and lucrative AI tools on the market. Meanwhile, their regulation of how their tools are used has not kept pace in the slightest. Human artists not only risk having their work stolen, but their livelihoods as well, because more and more large corporations are racing to involve themselves in what they see as a good investment without considering how it effects their long-standing creative employees.

28) Should the law require AI-generated material to be labeled or otherwise publicly identified as being generated by AI? If so, in what context should the requirement apply and how should it work?

Absolutely. I feel that every piece of content generated by AI must indicate clearly in some way how it was made, either by watermark (my favorite, because it’s permanently connected to the content), attached credits, a notice by its creator, etc. This seems like a great time to bring up another way in which Generative AI has damaged the artistic community. Because AI content is not obligated to proclaim itself as such, a huge number of individuals have shared it online with the claim that it is regular art they made themselves. They are attempting to take credit not just for the work of a machine, but of the work of the artists who

unwittingly fed that machine. In most creative circles, obscuring the fact that an artwork is AI-generated is considered very bad practice. And furthermore, a side-effect of this behavior which I have witnessed firsthand is a devastating erosion of trust, both between artists and non-artists, and among artists themselves. I have seen artist accused of using AI and being forced to show “proof” that they made their art with their own hands, with very little evidence that they might have done otherwise. Artists with certain styles that “resemble” AI art tend to be targeted more often than others, even though the reason their styles are similar is because their art may have been used to train the AI tool in the first place. In a misguided attempt to denounce Generative AI, people have only succeeded in attacking and discrediting the artists themselves who are a victim of AI. I believe that requiring AI users to clearly state the origin of their work would take great strides towards clearing away this counterproductive air of suspicion and healing the injury it has done the creative community.

In closing, I'd like to share an article, which others may have already shared with you, about the current problems with Generative AI. It says some of the same things I said in this document, but far more thoroughly and eloquently than I could manage. Here is a link:

<https://dl.acm.org/doi/10.1145/3600211.3604681>

Also, I wish to raise a word of concern on behalf of my colleagues in video game development. The game dev community is not free from the issue of Generative AI either, and increasingly I have seen studios implementing AI-generated assets into their games instead of hiring freelance or full-time game artists, as was previously the standard. I hope that any policies proposed as a result of this inquiry will take game development into consideration as much as any other art form.

And finally, although this may not be within the scope of a legal inquiry, I wanted to share with you my most heartfelt message to the developers of Generative AI: *I do not make art so you can take it.* I make art to express myself and to explore deep thoughts and emotions. My art is a part of me. But more than that, for me, art is connection. I dearly want to give my art as a gift to the world, in the hopes that it will have a positive impact on someone else. But I cannot safely do that when a corporation who does not know my name (and didn't ask) uses my artwork to feed a machine which generates a weak imitation of it for the sake of money. I will never consent to that, and I deserve the right to say as much and have my wishes respected. *All*

artists do, and all writers, and voice actors, and anyone who dedicates themselves to their creativity.

Once again, thank-you for this opportunity to comment on Generative AI.