Artificial Intelligence and Music Mash-Ups: Monetizing an Opt-In Closed Universe Database to Preserve Royalties and Credit for Composer and Sound Recording Rights Holders

Michael M. Epstein

ARTIFICIAL INTELLIGENCE AND MUSIC MASH-UPS: MONETIZING AN OPT-IN CLOSED UNIVERSE DATABASE TO PRESERVE ROYALTIES AND CREDIT FOR COMPOSER AND SOUND RECORDING RIGHTS HOLDERS

MICHAEL M. EPSTEIN, J.D., PH.D.*

This Article charts the development of an opt-in database of music publishing and sound recording catalogues that would allow music industry stakeholders to profit from those who use artificial intelligence to generate new creative content from existing intellectual property. The database would be a portal to content that rights holders would consent to include in a library made available to the public. The database could be advertiser-supported, allowing for no-cost access by the public, or users could pay for a blanket license or per-search fee. Proceeds from the database would be distributed to rights holders based on the content elements "scraped" from the database in answer to the user's AI prompt. The Article proposes an "ingredient box" that would list the AI elements, proportionally, in the final product. With industry buy-in, stakeholders who participate in this system could receive royalty payments and credit acknowledgments for their work; in return, members of the public who use the system would get a safe harbor from copyright liability for use of the database content.

I. INTRODUCTION

The use of artificial intelligence (AI) to develop content based on the existing work of composers and artists raises profound legal, economic, and ethical questions. Generative AI leads to creative expression that everyday listeners and industry observers agree can be quite good.[1] But it is an innovation that is not based on the new; rather, in every case, it is a mash-up of existing

---

1. Jake Terrell, *How Songwriters, Artists and Labels are Evolving in the AI Era*, BENLABS (Aug. 21, 2023), https://www.benlabs.com/resources/ai-in-music-industry/ [https://perma.cc/F88T-P8WY] (discussing the benefits of AI, the VP of Music and Brand Partnerships at BENlabs shares how some artists and songwriters are using AI to enhance creativity, including adding generated vocals to demos to help artists envision the final product before recording); Tyler Cowen, *My Review of Suno, AI-Generated Music*, MARGINAL REVOLUTION (Mar. 25, 2024, 3:13 AM), https://marginalrevolution.com/marginalrevolution/2024/03/my-review-of-suno-ai-generated-music.html [https://perma.cc/C8D8-LPZQ] (arguing Suno AI-generated music impressively mimics certain genres and shows promise, though it still lacks the memorable melodies that define great music); Nigel Powell, *I Tested Suno vs Udio to Crown the Best AI Music Generator*, TOM'S GUIDE, https://www.tomsguide.com/ai/suno-vs-udio-7-prompts-to-find-the-best-ai-music-generator [https://perma.cc/WR28-9NWD] (Apr. 30, 2024) ("AI music makers are crushing it right now. . . . [AI] generate[s] astonishingly good music tracks from nothing more than a basic text prompt."); The Learning Network, *What Students are Saying About A.I.-Generated Music*, N.Y. TIMES (May 11, 2023), https://www.nytimes.com/2023/05/11/learning/what-students-are-saying-about-ai-generated-music.html [https://perma.cc/46XE-2C2J] (sharing teenage students' perspectives that they would be willing to listen to AI music but do not believe it would ever replace human artists); Jason Scott, *AI Generated Music Has Taken a Huge Leap*, FRACTAL AUDIO SYS. (Mar. 2, 2024), https://forum.fractalaudio.com/threads/ai-generated-music-has-taken-a-huge-leap.202337/ [https://perma.cc/XW6A-T9U3] ("I'm really impressed with the progress that AI is making in generating music from scratch."); In the Know, *AI in Music Production: Enhancing Human Creativity or Replacing It?*, MUSICIANS INST. COLL. OF CONTEMP. MUSIC (May 24, 2023), https://www.mi.edu/in-the-know/ai-music-production-enhancing-human-creativity-replacing/ [https://perma.cc/XBC5-EB3F] (arguing AI in music production offers significant benefits, such as quickly generating new ideas for artists, personalizing the listening experience for listeners, and potentially streamlining the creative process for artists); *see also* David Brooks, Opinion, *Many People Fear A.I. They Shouldn't*, N.Y. TIMES (July 31, 2024), https://www.nytimes.com/interactive/2024/07/31/opinion/ai-fears.html [https://perma.cc/23E9-K65G].

creative elements from musical compositions and sound recordings that have been scraped from data available on the internet.[2]

As generative AI becomes more widely available, two distinct uses will challenge the status quo of the music industry. The first use is when a computer user prompts AI to generate a counterfeit expression that is passed off as the original artist's authentic work. This type of use has already become an issue for top artists like Bad Bunny, Drake, The Weeknd, and Kendrick Lamar.[3] In most cases, passing off "fakes" as authentic music usually involves fans or scammers looking to make a quick buck.[4] That is the easy case, with remedies available in copyright,[5] right of publicity,[6] and fraud,[7] among other actions.

But the second type of AI use is more insidious—and very expensive to litigate. Typically, it involves rights holders for one artist suing a second artist for substantial similarity under the Copyright Act. As a legal matter, presenting existing music elements as new is relatively straightforward,[8] even for AI that generates content that samples guitar riffs, percussion, or chord progressions introduced by others. Recent cases brought by Jay-Z and Concord Music

---

2. *Revolutionary AI Mixing App Creates Mind-Blowing Musical Mashups with Your Favorite Artists*, STUDYFINDS (Aug. 1, 2023) [hereinafter *Revolutionary AI*], https://studyfinds.org/mixing-app-musical-mashups/ [https://perma.cc/9VC8-X55E]; *see also* Marco Ramponi, *What AI Music Generators Can Do (And How They Do It)*, ASSEMBLYAI (Sept. 22, 2023), https://www.assemblyai.com/blog/what-ai-music-generators-can-do-and-how-they-do-it/ [https://perma.cc/VA73-WZMG].

3. *Rapper Bad Bunny Lashes out over Viral AI Copycat Hits*, REUTERS, https://www.reuters.com/world/rapper-bad-bunny-lashes-out-over-viral-ai-copycat-hits-2023-12-05/ [https://perma.cc/6BLH-ZQUB] (Dec. 5, 2023, 6:40 PM); Geoff Mayfield & Jem Aswad, *AI vs. the Music Industry: With the Internet Full of Fake Drakes and Eminems, Who Gets Paid?*, VARIETY (May 3, 2023, 7:55 AM), https://variety.com/2023/music/news/ai-vs-music-industry-fake-drake-eminem-who-gets-paid-1235601494/ [https://perma.cc/N3RA-68T8].

4. *See* Elias Leight, *Is the Music Industry Losing Money to Sped-Up Remixes?*, BILLBOARD (Nov. 1, 2023), https://www.billboard.com/pro/music-business-losing-money-sped-up-song-remixes/ [https://perma.cc/U4P4-UU7T].

5. 17 U.S.C. § 5.

6. Armand J. Zottola & Channing D. Gatewood, *The Right of Publicity*, VENABLE LLP (2023), https://www.venable.com/insights/publications/ip-quick-bytes/the-right-of-publicity [https://perma.cc/7BH9-BNEL].

7. 40 U.S.C. § 123.

8. *See* Robert Kirk Walker, *Ghosts in the Hit Machine: Musical Creation and the Doctrine of Subconscious Copying*, AM. BAR ASS'N (Mar. 1, 2017), https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2016-17/march-april/ghosts-hit-machine-musical-creation-doctrine-subconscious-copying/ [https://perma.cc/HTQ8-QW8W] (explaining that copyright infringement can occur subconsciously without intent); *see, e.g.*, Arjumand Syed, *Queen & David Bowie v. Vanilla Ice*, GEORGE WASH. UNIV. L. SCH., https://blogs.law.gwu.edu/mcir/case/queen-david-bowie-v-vanilla-ice/ [https://perma.cc/S5W5-6MPE] (discussing how Vanilla Ice used David Bowie's "Under Pressure" bassline when creating "Ice Ice Baby").

Company closely align with the copyright infringement arguments made famous in cases involving Led Zeppelin, Robin Thicke, or George Harrison because they rely ultimately on song elements that are arguably identifiable in the defendants' finished expression.[9] With generative AI, stealing or inadvertently copying another artist's music can thus be addressed by existing legal remedies,[10] though litigation costs can be an issue for artists without resources.

Mainstream reliance on generative AI, however, presents new problems that make existing remedies out of reach for most composers and sound recording owners. Because AI scrapes a massively large amount of data available on the internet, one notable problem is that the mash-ups that are generated may use existing musical elements that are not readily identifiable.[11] If a user, for example, prompts an AI program to generate content in the style of the Merseybeat, it may not be clear whose copyrighted works were used.[12] It would create a threshold question of who should sue. Would it be rights holders to the Beatles, Gerry and the Pacemakers, or some other less known Liverpudlian band?[13] And because the expression created is only limited by the imagination put into the prompt, it may be possible to create a host of mash-ups that would combine the Merseybeat with 90's Alt Rock[14] and minimalism in

---

9. *See* Jem Aswad, *Universal, Concord, ABKCO Sue AI Company Anthropic for Copyright Violation*, VARIETY (Oct. 18, 2023, 2:46 PM), https://variety.com/2023/music/news/universal-concord-abkco-sue-ai-company-anthropic-copyright-violation-1235761250/ [https://perma.cc/5C5E-3VEV]; Jordan Runtagh, *Songs on Trial: 12 Landmark Music Copyright Cases*, ROLLING STONE (June 8, 2016), https://www.rollingstone.com/politics/politics-lists/songs-on-trial-12-landmark-music-copyright-cases-166396/the-beach-boys-vs-chuck-berry-1963-65098/ [https://perma.cc/3Y65-L5JN] (discussing famous cases of copyright infringement).

10. *See supra* notes 5–7 and accompanying text.

11. *See* Nico Grant & Cade Metz, *The Push to Develop Generative A.I. Without All the Lawsuits*, N.Y. TIMES (July 19, 2024), https://www.nytimes.com/2024/07/19/technology/generative-ai-getty-shutterstock.html [https://perma.cc/Y6SZ-VSWC].

12. *See* Shaun Curran, *'John Lennon Was Violent. He'd Fight About Anything': The Inside Story of Merseybeat, the UK's Early Pop Explosion*, GUARDIAN (June 14, 2023), https://www.theguardian.com/music/2023/jun/14/john-lennon-the-inside-story-of-merseybeat-pop-explosion-beatles-gerry-and-the-pacemakers [https://perma.cc/6TE8-BV9Y] ("Merseybeat was a short-lived phenomenon that reverberated around the world. The sound of young working-class Liverpudlians recasting their love of American R&B, rock'n'roll and doo-wop in their own image, it was the scene that birthed the Beatles . . . .").

13. *See id.* (describing Liverpool's Merseybeat scene as a "significant contribution to pop music history," that inspired other music scenes beyond the UK during the 1960s).

14. *See* Dave Whitaker, *Music in the '90s: When Alternative Became Mainstream*, POPMATTERS, (Sept. 30, 2012), https://www.popmatters.com/1990s-music-alternative-mainstream-feature [https://perma.cc/386X-K7T9] (describing the "dynamic" impact that the alternative rock music genre had on the '90s).

the "style" of Philip Glass.[15] Extracting the ingredients that contribute to the flavors in an AI-generated creative stew may be impractical because the manner in which content is scraped is unknown and the final user-end result could change even with identical prompts.[16] And even if the content scraping could somehow be traced and identified in court, it would be so expensive that only the wealthiest plaintiffs could afford to litigate.

Some plaintiffs, rather than suing individual creators of AI, have turned to suing the big AI companies themselves, like OpenAI and Microsoft.[17] For example, in 2023, comedian and actress Sarah Silverman filed lawsuits to protect her copyrighted work from being scraped by AI companies without proper licensing.[18] Also, the New York Times is suing Microsoft for use of its copyrighted news content.[19]

Other than being expensive, pursuing legal action against generative AI presents additional challenges, particularly due to the technology's substantial non-infringing uses and the potential defense of fair use.[20] Generative AI can be utilized for legitimate purposes such as education, research, and personal creativity. It can also be used to scrape content that is in the public domain or licensed.[21] These uses complicate arguments that the program infringes on copyright laws. Moreover, the fair use doctrine permits the transformation of

---

15. *See Philip Glass: Complex Minimalist*, NAT'L PUB. RADIO (Oct. 3, 2008, 5:44 PM), https://www.npr.org/2008/10/03/95313989/philip-glass-complex-minimalist [https://perma.cc/W5A4-56ZQ] (describing the minimalism music style and composer Philip Glass's preference to describe his composition style as "music with repetitive structures").

16. Fergal McGovern, *Why Does GenAI Give Different Answers When You Ask the Same Question?*, LINKEDIN: THE HUM. FACTOR (June 6, 2024), https://www.linkedin.com/pulse/why-does-genai-give-different-answers-when-you-ask-same-mcgovern-yrlqe/ [https://perma.cc/AQL2-ASRX].

17. Matt O'Brien, *ChatGPT-Maker Braces for Fight with New York Times and Authors on 'Fair Use' of Copyrighted Works*, ASSOCIATED PRESS, https://apnews.com/article/openai-new-york-times-chatgpt-lawsuit-grisham-nyt-69f78c404ace42c0070fdfb9dd4caeb7 [https://perma.cc/UQR5-69GT] (Jan. 10, 2024, 3:05 PM).

18. Emma Aistrop, *The Generative AI Battle Continues: Comedian Sarah Silverman May Have Won the Fight, but Will OpenAI Win the War?*, LOYOLA MARYMOUNT UNIV. L. SCH. (Nov. 1, 2023), https://entertainmentlawreview.lls.edu/the-generative-ai-battle-continues-comedian-sarah-silverman-may-have-won-the-fight-but-will-openai-win-the-war/ [https://perma.cc/AX4Q-VW53].

19. First Amended Complaint, New York Times Co. v. Microsoft Corp., No. 23-cv-11195, 2024 WL 4425258 (S.D.N.Y. Aug. 12, 2024) ; *see also* Michael M. Grynbaum & Ryan Mac, *The Times Sues OpenAI and Microsoft Over A.I. Use of Copyrighted Work*, N.Y. TIMES (Dec. 27, 2023), https://www.nytimes.com/2023/12/27/business/media/new-york-times-open-ai-microsoft-lawsuit.html [https://perma.cc/9A64-2ZRB].

20. Aistrop, *supra* note 18.

21. Kate Knibbs, *Here's Proof You Can Train an AI Model Without Slurping Copyrighted Content*, WIRED (Mar. 20, 2024, 12:00 PM), https://www.wired.com/story/proof-you-can-train-ai-without-slurping-copyrighted-content/ [https://perma.cc/N77D-J56D].

original works for purposes such as commentary, criticism, or parody, which could protect AI-generated content.[22]

II. BACKGROUND: THE CHALLENGE OF MACHINES LEARNING TO CREATE CONTENT

The rise of music mash-ups created by generative AI has surged in popularity since 2020, captivating millions of users across the globe.[23] These AI-driven creations, blending the distinct styles and genres of various artists, have become a cultural phenomenon, particularly on platforms like TikTok and YouTube.[24] Their viral nature has ignited widespread discourse on the intersections of creativity, technology, and intellectual property, reflecting both enthusiasm and apprehension within the music industry.[25] The underlying AI technology, which analyzes and mimics vast datasets, is transforming how music is produced and consumed, challenging traditional notions of artistry and ownership.[26] Despite these challenges, proponents of AI argue that the technology can positively impact creativity by providing new tools for artists to expand their artistic abilities.[27] Indeed, some artists, like Grimes, have openly welcomed the use of their copyrighted content by AI, viewing it as an opportunity for innovation and collaboration.[28]

Generative AI functions by training on extensive datasets, often scraped from diverse online sources such as music streaming platforms, social media,

---

22. *See What is Fair Use?*, COPYRIGHT ALL., https://copyrightalliance.org/faqs/what-is-fair-use/ [https://perma.cc/SJ8D-DULB]; O'Brien, *supra* note 17.

23. Leight, *supra* note 4.

24. Elias Leight & Kristin Robinson, *5 Ways AI Has Already Changed the Music Industry*, BILLBOARD (Aug. 4, 2023), https://www.billboard.com/lists/ways-ai-has-changed-music-industry-artificial-intelligence/ [https://perma.cc/V6EQ-2PJ7]; Leight, *supra* note 4.

25. *See, e.g.*, *AI-Generated Music: A Creative Revolution or a Cultural Crisis?*, ROLLING STONE: CULTURE COUNCIL, https://council.rollingstone.com/blog/the-impact-of-ai-generated-music [https://perma.cc/3XGR-YZEW].

26. *Revolutionary AI*, *supra* note 2.

27. *See How Generative AI Will Impact the Animation Industry*, ANIMATION XPRESS (Feb. 5, 2023), https://www.animationxpress.com/animation/how-generative-ai-will-impact-the-animation-industry/ [https://perma.cc/TDP8-JLY6] (discussing how generative AI can foster greater efficiency and new ideas in animation, positively impacting creativity).

28. Mia Sato, *Grimes Says Anyone Can Use Her Voice for AI-Generated Songs*, VERGE (Apr. 24, 2023, 10:01 AM), https://www.theverge.com/2023/4/24/23695746/grimes-ai-music-profit-sharing-copyright-ip [https://perma.cc/E699-G27L]; Jewly Hight, *AI Music Isn't Going Away. Here Are 4 Big Questions About What's Next*, NAT'L PUB. RADIO (Apr. 25, 2024, 5:00 AM), https://www.npr.org/2024/04/25/1246928162/generative-ai-music-law-technology [https://perma.cc/HL3M-B7VL].

and publicly available audio databases.[29] Machine learning algorithms dissect patterns within this content, including melody, rhythm, and lyrical structure, to generate outputs that closely mimic human creation.[30] While this technology has opened new frontiers for creative expression, it simultaneously raises significant ethical and legal questions about the unauthorized use of copyrighted material, spotlighting the tension between innovation and intellectual property rights.[31]

A significant point of contention surrounding generative AI is its disregard for obtaining consent from those whose content is used in its training processes.[32] This practice impacts not only professional creatives but also ordinary individuals who share content online.[33] For instance, Meta (formerly Facebook) took legal action against Voyager Labs, an AI company accused of creating nearly 40,000 fake Facebook accounts to scrape user data—including posts, likes, photos, and friend lists—from over 600,000 Facebook users.[34] This case is part of a broader trend of data scraping[35] that underscores the urgent need for stringent regulations to safeguard individual privacy in the digital era.

In creative industries, the unauthorized use of content by AI has led to a growing number of copyright infringement claims.[36] Silverman, in her lawsuit, alleged that OpenAI copied her memoir "without consent, without credit, and without compensation" after ChatGPT, OpenAI's chatbot, generated a detailed synopsis of her book.[37] Similarly, visual artist Kelly McKernan, who is trying to parlay a large following into a financially sustainable career, joined a lawsuit against image-generating AI technology that allegedly scrapes digital art from

---

29. *Revolutionary AI*, *supra* note 2; *see* Thom Waite, *What is AI Image Scraping, and How Can Artists Fight Back?*, DAZED (Jan. 20, 2023), https://www.dazeddigital.com/art-photography/article/57996/1/what-ai-image-scraping-how-can-artists-fight-back-meta-getty-stable-diffusion [https://perma.cc/KV5U-XCUW].

30. *Revolutionary AI*, *supra* note 2; *see* Waite, *supra* note 29.

31. Hight, *supra* note 28.

32. Waite, *supra* note 29.

33. *See* Jonathan Vanian, *Meta Sues Voyager Labs, Saying it Created Fake Accounts to Scrape User Data*, CNBC, https://www.cnbc.com/2023/01/12/meta-sues-voyager-labs-over-scraping-user-data.html [https://perma.cc/K94Z-ZV8N] (Jan. 12. 2023, 5:52 PM).

34. *Id.*

35. *See, e.g.*, *id.*

36. O'Brien, *supra* note 17.

37. Matt O'Brien, *Sarah Silverman and Novelists Sue ChatGPT-Maker OpenAI for Ingesting Their Books*, ASSOCIATED PRESS (July 12, 2023, 1:56 PM), https://apnews.com/article/sarah-silverman-suing-chatgpt-openai-ai-8927025139a8151e26053249d1aeec20 [https://perma.cc/H358-XQ36].

the internet to create competing derivative works.[38] In the music world, artists are not only pursuing legal action against companies that enable AI-generated mash-ups of their songs but also against those who use AI to mimic their voices.[39]

The trend of using generative AI for creative experimentation is still in its nascent stages, yet its impact has already been significant. While fostering innovation and creativity is important, it should not come at the expense of artists' rights and livelihoods. Both established and emerging artists are calling for stronger regulations to protect their work from exploitation by AI. In response to these concerns, a coalition of artists has formed the Human Artistry Campaign, dedicated to ensuring that AI technologies are developed in ways that support human culture and artistry rather than supplanting or undermining them.[40] These artists are resolute in their legal battles against AI, and tech companies should be prepared to defend their practices if they intend to continue leveraging existing works for AI development.

III. RIGHTS VIOLATIONS POSED BY ARTIFICIAL INTELLIGENCE

A. Seeking a Remedy in Copyright

The emergence of generative AI in the music industry has brought with it a wave of legal challenges, primarily centered around issues of copyright infringement. To establish copyright infringement, a plaintiff must demonstrate ownership of a valid copyright and that the defendant unlawfully copied protected material.[41] Copyright law, as set forth in the 1976 Copyright Act, protects a variety of original works, including literary, dramatic, musical, choreographic, pictorial, audiovisual, sound recordings, and architectural creations.[42] The Copyright Act grants copyright holders exclusive rights to reproduce, distribute, create derivatives of, perform publicly, display publicly, and transmit their work digitally.[43] In a landmark decision, the U.S. Copyright

---

38. Jocelyn Noveck & Matt O'Brien, *Visual Artists Fight Back Against AI Companies for Repurposing Their Work*, ASSOCIATED PRESS, https://apnews.com/article/artists-ai-image-generators-stable-diffusion-midjourney-7ebcb6e6ddca3f165a3065c70ce85904 [https://perma.cc/AT99-NUUE] (Aug. 31, 2023, 1:55 PM).

39. *Torry* Threadcraft, *Roc Nation Files Takedown Notices to Remove Jay-Z Deepfake Videos from YouTube*, OKAYPLAYER (Apr. 29, 2020), https://www.okayplayer.com/news/jay-z-deepfake-takedown.html [https://perma.cc/Z4CY-48GD].

40. Hight, *supra* note 28.

41. Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361 (1991); Rogers v. Koons, 960 F.2d 301, 306 (2d Cir. 1992).

42. 17 U.S.C. § 102.

43. *Id.* § 106.

Office recently clarified that copyright protection extends only to "product[s] of human authorship,"[44] emphasizing that the law protects "the fruits of intellectual labor" rooted in human expression.[45]

In the realm of music, composers, and sound recording, owners are increasingly arguing that the use of scraped content to train AI models violates their exclusive rights to reproduce and create derivative works.[46] Under the standard of substantial similarity, AI-generated mash-ups may meet the threshold for infringement if they significantly replicate protected compositions and sound recordings.[47] This type of obvious mash-up might reproduce entire sections of songs or rely heavily on a protected work when responding to AI prompts, potentially constituting a derivative work.[48] For instance, an AI-generated song "in the style of Nick Cave" may, despite featuring new lyrics, be recognizable as a Nick Cave composition by heavily relying on his distinctive dark, biblical imagery.[49] Such an unauthorized work may contain sufficient substantial similarity to infringe on Cave's right to create derivative works. This issue is highlighted in a complaint filed by music publishers Universal, Concord, and ABKCO against the AI company Anthropic, alleging unlawful copying and dissemination of vast amounts of copyrighted works.[50] The complaint claims that Anthropic's AI model generates significant portions of copyrighted lyrics in response to prompts and even produces copyrighted lyrics without specific requests, infringing on the publishers' exclusive right of reproduction.[51]

---

44. Letter from Robert J. Kasunic, Assoc. Reg. of Copyrights & Dir. of Registration Pol'y & Practice, U.S. Copyright Off., to Van Lindberg, Taylor English Duma LLP 1 (Feb. 21, 2023), https://www.copyright.gov/docs/zarya-of-the-dawn.pdf [https://perma.cc/UTX7-REKJ] (regarding Zarya of the Dawn; Registration No. VAu001480196); Victoria Thornton, *U.S. Copyright Law Protects Only Human Works*, JDSUPRA (Aug. 22, 2023), https://www.jdsupra.com/legalnews/u-s-copyright-law-protects-only-human-4254611 [https://perma.cc/4M4E-H4D5]; *see* Mayfield & Aswad, *supra* note 3; *see also* Urantia Found. v. Maaherra, 114 F.3d 955, 958 (9th Cir. 1997) (finding that copyright does not extend to a purported extra-terrestrial's authorship).

45. Letter from Robert J. Kasunic to Van Lindberg, *supra* note 44, at 4 n.4 (quoting Trade-Mark Cases, 100 U.S. 82, 94 (1879)).

46. Aswad, *supra* note 9; *see* Noveck & O'Brien, *supra* note 38; Blake Brittain, *Stability AI, Midjourney Should Face Artists' Copyright Case, Judge Says*, REUTERS, https://www.reuters.com/legal/litigation/stability-ai-midjourney-should-face-artists-copyright-case-judge-says-2024-05-08/ [https://perma.cc/85XV-CLV7] (May 8, 2024, 12:30 PM).

47. Henry H. Perritt, Jr., *Robots as Pirates*, 73 CATH. U. L. REV. 57, 84, 86–90 (2024).

48. *See* Thom Waite, *Nick Cave Has the Fire of Hell in His Eyes, and It's ChatGPT*, DAZED (Jan. 17, 2023), https://www.dazeddigital.com/music/article/57964/1/nick-cave-has-fire-of-hell-in-eyes-its-chatgpt-artificial-intelligence-lyrics [https://perma.cc/G4P4-27UV].

49. *Id.*

50. *See* Aswad, *supra* note 9.

51. *See id.*

Even if an AI creator's finished product could somehow be traced back to copyrighted elements, that creator would likely argue that the finished product is so transformative that the infringing use would be covered by fair use.[52] In *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, the Supreme Court ruled that Andy Warhol's use of Goldsmith's photograph of Prince was not sufficiently transformative to qualify as fair use, concluding that Goldsmith's commercial interest in the use weighed against such a finding.[53] A court, in theory, could use *Goldsmith* to rule that a finished product contained so many elements of an original work that the original creator had a commercial interest in exploiting the transformed version. But *Goldsmith* involved an artistically enhanced transformation of an underlying photo that could be clearly identified.[54] With AI, the mash-ups may scrape atomized elements from many artists, and the elements used are not clearly identified. There may be too many prospective plaintiffs trying to assert de minimis or non-existent commercial interests.

Although the too-many-plaintiffs-with too-small-a-claim theory has not yet been tested in a music industry dispute, a recent ruling in a case involving a news content provider underscores the uphill battles music rights stakeholders may face. In *Raw Story Media, Inc. v. OpenAI, Inc.*, a publisher of breaking news articles sued the owner of ChatGPT for violating a provision of the Digital Millennium Copyright Act (DMCA) that protects Copyright Management Information (CMI), content that identifies author, title, and copyright ownership.[55] According to the plaintiff, ChatGPT scraped content from thousands of news articles, including plaintiff's, without proper attribution under the DMCA.[56] On November 7, 2024, Judge McMahon dismissed the case for lack of Article III standing.[57] While the case does not directly address copyright infringement or fair use, Judge McMahon explained that the massive amount of content processed by ChatGPT makes Raw Story Media's harm, and presumably any other plaintiff's harm, too remote.[58]

---

52. *See* O'Brien, *supra* note 17. It is possible that some minimal transformativeness generated by AI may receive fair use protection if it facilitates internet functionality. *See* Kelly v. Arriba Soft Corp., 280 F.3d 934, 941 (9th Cir. 2002) (using the plaintiff's image as a thumbnail image in an internet visual search engine was held to be a fair use because the thumbnails were much smaller, lower-resolution images that served an entirely different function—that being improving access to information on the Internet—than the function of plaintiff's original image).

53. *See* 598 U.S. 508, 551 (2023).

54. *See id.* at 522.

55. 756 F. Supp. 3d 1 (S.D.N.Y. 2024); *see also* 17 U.S.C. § 1202(b).

56. *Raw Story Media, Inc.*, 756 F. Supp. 3d at 3.

57. *Id.* at 5–6.

58. *Id.* at 7.

The logic of Judge McMahon's reasoning underscores the challenge that music industry stakeholders would face in a claim on the merits for copyright infringement against an AI platform. In her ruling, the judge recognizes that the harm for any one plaintiff is not readily identifiable.[59] This problem of identifiability may be even more of a challenge in a music case, where the compositional and recording elements may be even more atomized than it would be for news. If identifiability is an issue for word salads made from bits of news stories, imagine how much harder it would be to determine not only words scraped from lyrics, but also all the other elements that comprise a composition or a recording. Indeed, two cases filed by UMG Recordings have been slowed by the complexity of the litigation.[60] One case, against Udio, a service that scrapes popular sound recordings, has been focused on the appointment of a special master to handle pretrial issues;[61] the other case, against a similar sound recording AI generator, Suno, is also likely to remain in the pretrial stage for an extended period.[62]

While concerns about generative AI platforms' alleged infringement of copyright are valid, proponents of AI argue that the technology offers substantial non-infringing uses.[63] This places AI platforms in the continuum of cases which make a distinction between the purpose and functionality of a device or software, and individuals who use a platform to infringe on copyright.[64] Although AI platforms are often cited as engines designed to

---

59. *Id.* at 7.

60. *Record Companies Bring Landmark Cases for Responsible AI Against Suno and Udio in Boston and New York Federal Courts, Respectively*, RECORDING INDUS. ASSOC. OF AM. (June 24, 2024), https://www.riaa.com/record-companies-bring-landmark-cases-for-responsible-ai-againstsuno-and-udio-in-boston-and-new-york-federal-courts-respectively/ [https://perma.cc/9SPN-HZKW]; Dylan Smith, *The Major Labels' Udio Infringement Suit Isn't Getting a Trial Anytime Soon—Proposed Schedule Would Take the Dispute Deep into 2025*, DIGIT. MUSIC NEWS (Aug. 20, 2024), https://www.digitalmusicnews.com/2024/08/20/udio-umg-copyright-lawsuit-schedule/ [https://perma.cc/HU49-6K7Y].

61. *See* UMG Recordings, Inc. v. Uncharted Labs, Inc., No. 24 Civ. 4777, 2024 WL 4986962 (S.D.N.Y. Dec. 5, 2024).

62. *See* Joint Motion to Amend the Amended Scheduling Order, UMG Recordings, Inc. v. Suno, Inc., No. 24-CV-11611 (D. Mass. June 26, 2025), ECF No. 108.

63. *See, e.g.*, Joshua Levine, *Don't Let Copyright Kill American AI*, FOUND. FOR AM. INNOVATION (Nov. 25, 2024), https://www.thefai.org/posts/don-t-let-copyright-kill-american-ai [https://perma.cc/TR7S-47HN].

64. *See* 2 THOMAS D. SELZ, MELVIN SEMENSKY, PATRICIA ACTON & ROBERT C. LIND, ENTERTAINMENT LAW 3D: LEGAL CONCEPTS AND BUSINESS PRACTICES § 16:180 (2024 ed. 2003) (explaining a manufacturer or distributor is not liable for contributory copyright infringement if their product is capable of substantial non-infringing uses, unless they induce users to infringe or the product is good for nothing but infringement).

permit or encourage copyright infringement by its users, [65] generative AI is not a secondary infringer like Napster or Grokster.[66] The AI platforms do not appear to be inducing copyright infringement.[67] Nor are they dependent on copyright infringement for their business models.[68] Under the logic of the Google Books case, it would arguably be permissible to scrape elements of copyrighted content, just as Google's search engine does with book content.[69] Though Silverman and others may argue otherwise, an AI platform's scattershot use of copyrightable elements may be too diffuse to be actionable as protected expression. Indeed, a good argument could be made that generative AI programs are staple articles of commerce that accelerate the processing of information not only in the arts, but also in science,[70] medicine,[71] and industry.[72]

In the entertainment industry, for example, AI has streamlined processes in animation that were once painstakingly manual, such as hand-drawing every frame.[73] This technological advancement has not only accelerated production but has also enhanced the quality of animation, introduced new techniques, and

---

65. *See* Gil Appel, Juliana Neelbauer & David A. Schweidel, *Generative AI Has an Intellectual Property Problem*, HARVARD BUS. REV. (Apr. 7, 2023), https://hbr.org/2023/04/generative-ai-has-an-intellectual-property-problem [https://perma.cc/2DNB-BJKD]; *Part 14: Copyright and AI: How to Protect Yourself in Practice*, VISCHER (Apr. 16, 2024), https://www.vischer.com/en/knowledge/blog/part-14-copyright-and-ai-how-to-protect-yourself-in-practice/ [https://perma.cc/4YJU-M5JR].

66. *See* 2 SELZ, SEMENSKY, ACTON & LIND, *supra* note 64, § 16:177 (explaining that platforms like Napster and Grokster have been found to be secondary copyright infringers because they "[s]upply[] proprietary software, a search engine and the means of establishing a connection between users that permits the sharing of MP3 music files" constituting a sufficient contribution to the infringement).

67. *Id.* § 16:179 ("To establish a claim for inducement, a plaintiff must show that the defendant (1) engaged in purposeful conduct that encouraged copyright infringement, (2) with the intent to encourage such infringement.").

68. *See* 2 SELZ, SIMENSKY, ACTON & LIND, *supra* note 64, § 16:178 ("Vicarious liability can be imposed when a party has the right and ability to supervise the infringing activity and also has a direct financial interest in such activities." (footnote omitted)).

69. *See* Authors Guild v. Google, Inc., 804 F.3d 202, 207, 229 (2d Cir. 2015).

70. *See* David Elliott, *'AI Will Likely Make Drugs Cheaper and More Accessible for Everybody on the Planet'—3 Technologists on AI and Scientific Discovery*, WORLD ECON. F. (July 5, 2024), https://www.weforum.org/stories/2024/07/technologists-ai-scientific-discovery/ [https://perma.cc/WR59-4C3Q].

71. *See generally* Yan Chen & Pouyan Esmaeilzadeh, *Generative AI in Medical Practice: In-Depth Exploration of Privacy and Security Challenges*, 26 J. MED. INTERNET RSCH., 2024.

72. *See generally* MICHAEL CHUI, ERIC HAZAN, ROGER ROBERTS, ALEX SINGLA, KATE SMAJE, ALEX SUKHAREVSKY, LAREINA YEE & RODNEY ZEMMEL, THE ECONOMIC POTENTIAL OF GENERATIVE AI (2023).

73. *See How Generative AI Will Impact the Animation Industry*, *supra* note 27.

fostered creativity and collaboration.[74] Advocates believe that similar positive impacts can be realized in the music industry.[75]

Even so, generative AI software can be used to replace writers, editors, and even performers, a prospect that became a sticking point in entertainment industry union negotiations in 2023.[76] From a union perspective, AI needs to be regulated to protect jobs; an important consideration but not one that directly implicates copyright or right of publicity—assuming that studios use AI to generate a finished product that is entirely new or sufficiently transformative.

Given this reality, some artists have decided to create their own AI programs. Grimes, for example, has embraced the technology, even launching her own software to help users create AI-generated songs using her voice, with the promise of sharing royalties on successful tracks.[77] Holly Herndon has similarly introduced "Holly Plus," an AI tool that allows users to create new versions of songs using her voice.[78] Additionally, some record labels see the potential for generative AI to be used in marketing strategies, as seen with South Korean artist Lee Hyun, who released a single in six languages using AI-generated versions of his voice.[79]

Some AI-generated songs clearly mimic the voices and styles of well-known artists, but the Copyright Act does not protect voice mimicry.[80] The quick removal of the AI-generated song "Heart on My Sleeve," which mimicked the voices of Drake and The Weeknd, was not due to the voice copying, but rather due to the unauthorized use of Metro Boomin's producer tag.[81] Future AI-generated songs may avoid this type of copyright infringement

---

74. *See id.*

75. *See e.g.*, Andrea Zarczynski, *How Musicians Are Fashioning Creativity with AI*, FORBES (Jan. 31, 2023, 7:00 AM), https://www.forbes.com/sites/andreazarczynski/2023/01/31/how-musicians-are-fashioning-creativity-with-ai/ [https://perma.cc/5VLV-3T2U].

76. *See* Winston Cho, *The Hollywood Jobs Most at Risk from AI*, HOLLYWOOD REP. (Jan. 30, 2024, 6:05 PM), https://www.hollywoodreporter.com/business/business-news/ai-hollywood-workers-job-cuts-1235811009/ [https://perma.cc/PD5Z-WCFP].

77. Vanessa Romo, *Grimes Invites Fans to Make Songs with an AI-Generated Version of Her Noice*, NAT'L PUB. RADIO (Apr. 24, 2023, 7:21 PM), https://www.npr.org/2023/04/24/1171738670/grimes-ai-songs-voice/ [https://perma.cc/U4YU-2JZ6].

78. *See* Sato, *supra* note 28.

79. Elizabeth de Luna, *This K-pop Artist Uses AI to Sing in 6 Languages*, MASHABLE (May 15, 2023), https://mashable.com/article/ai-music-midnatt-hybe [https://perma.cc/NEJ6-JZZH]; *see* Transcript of Proceedings at 118, *In Re* Copyright and Artificial Intelligence Music and Sound Recordings Listening Session (U.S. Copyright Off. May 31, 2023).

80. *See generally* 17 U.S.C. §§ 101–1511.

81. *See* Bill Donahue, *After Fake Drake Debacle, Expect More AI Songs. But Are They Legal?*, BILLBOARD (Apr. 18, 2023), https://www.billboard.com/pro/drake-the-weeknd-fake-song-ai-generated-music-illegal/ [https://perma.cc/EX2B-CT6R].

while still replicating the voices of major artists. Universal Music Group (UMG) argues that tech companies should be required to obtain licenses to use copyrighted content and artists' voices.[82] This type of requirement arguably would only help artists represented by a company big enough to issue licenses; lesser-known artists without the backing of major labels would be left unprotected.[83]

Ultimately, courts would call upon plaintiffs to prove whether specific copyrighted material was used to train the AI, which can be challenging. The Ninth Circuit's decision in *Williams v. Gaye*, which found that the "feel" of a song could constitute copyright infringement,[84] complicates matters further. This case expanded the scope of what could be considered infringement, raising questions about how courts will handle opaque AI-generated content that may evoke the style of a particular artist without directly copying any specific elements.[85] Still, without transparency in how AI models are trained, it may be nearly impossible to determine whether an AI-generated work has improperly relied on an artist's original material. It may depend on forensic code experts to convince a jury that too much of a plaintiff's copyrighted content was used to create the mash-up.[86] Music experts would, of course, still need to show that the finished product included identifiable elements of a plaintiff's work that would meet the high bar of "substantial similarity."[87]

B. *Potential Right-of-Publicity Claims*

State right-of-publicity statutes may also provide a remedy for an AI-generated mash-up's unauthorized commercial use of an individual's name, voice, likeness, signature, or photograph—albeit with variations in coverage and degree.[88] Notably, California's right-of-publicity law shields individuals from such exploitation,[89] and New York offers more limited protections, though

---

82. *See* Nilay Patel, *Google and YouTube Are Trying to Have It Both Ways with AI and Copyright*, VERGE (Aug. 22, 2023, 3:25 PM), https://www.theverge.com/2023/8/22/23841822/google-youtube-ai-copyright-umg-scraping-universal [https://perma.cc/H4ZN-VKZE].

83. *See id.*

84. *See* 895 F.3d 1106, 1119 (9th Cir. 2018).

85. *See id.* at 1120.

86. *See* 2 SELZ, SEMENSKY, ACTON & LIND, *supra* note 64, § 16:173 ("Expert testimony is appropriate in an analysis under the extrinsic test" under Ninth Circuit precedent).

87. *See id.*

88. *See* Kristin Robinson, *Major Labels to Send 'Takedown Notices' to Streaming Services for AI Soundalikes*, BILLBOARD (May 16, 2023), https://www.billboard.com/pro/major-labels-streaming-services-take-down-ai-soundalikes/ [https://perma.cc/4CMN-DSHR].

89. CAL. CIV. CODE § 3344 (West 2024) (extending commercial protection for a person's name, voice, signature, photograph, and likeness, and allows for the recovery of actual damages, profits from the unauthorized use, punitive damages, statutory damages of $750 per incident, and attorney's fees).

its statute specifically addresses unauthorized exploitation of performers for commercial purposes in the digital environment.[90] As a general matter, state right-of-publicity statutes differ on a number of details, including whether the right survives posthumously and whether it is inheritable or assignable.[91]

In situations where artists may not have a strong claim under a state right-of-publicity statute, asserting a federal trademark right may also provide a remedy for generative AI.[92] The Lanham Act provides a cause of action for false designation of origin, false endorsement, and misappropriation, making it a valuable tool for addressing concerns similar to those covered by state right-of-publicity statutes.[93] For instance, the Lanham Act prohibits passing off products as those of another company in a way that misleads consumers, suggesting false endorsements by celebrities or public figures, or misappropriating commercially valuable aspects of another's business for personal gain.[94] While primarily intended to protect businesses and individuals in commercial contexts, the Lanham Act can complement state-based right-of-publicity claims by preventing unauthorized uses of an artist's identity that imply endorsement or affiliation. The Lanham Act, though not sufficient on its own to protect an artist's identity and public image,[95] provides a means to safeguard artists' commercial interests by preventing consumer confusion.

---

90. N.Y. CIV. RIGHTS LAW §§ 50–51 (McKinney 2024) (focusing on unauthorized use of a person's name, portrait, picture, likeness, or voice; offering remedies such as injunctive relief and actual damages, but does not provide for statutory or punitive damages or attorney's fees); *Right of Publicity*, N.Y. DEP'T OF STATE, https://dos.ny.gov/right-publicity [https://perma.cc/7JRK-6AR6]. While artistry itself is typically not deemed a commercial use, a prompter who forges counterfeit content to collect streaming revenue is arguably not an artist.

91. *Right of Publicity*, INT'L TRADEMARK ASS'N, https://www.inta.org/topics/right-of-publicity/ [https://perma.cc/TUK4-XL3Y]; *see Right of Publicity Statutes & Interactive Map*, RIGHT OF PUBLICITY, https://rightofpublicity.com/statutes [https://perma.cc/3JW2-MNJA] (California provides protection for deceased individuals' likenesses for seventy years after their death and allows for rights to be transferable or assignable; Washington continues right of publicity protection for ten years upon the death of the rights holder and allows for rights to be transferable and assignable; New York allows posthumous rights to be transferred to heirs, beneficiaries, or those designated in a will or trust and offers right of publicity protection to deceased personalities for up to forty years after their death; Texas allows rights to be assigned during a person's lifetime and extends rights for fifty years after their death).

92. *See Right of Publicity*, *supra* note 91; 15 U.S.C. § 1125.

93. 15 U.S.C. § 1125. Federal preemption by the Copyright Act of state right of publicity claims based on copyrightable elements leaves many artists without a remedy. *See* Laws v. Sony Music Ent., 448 F.3d 1134, 1135–36, 1141, 1146 (9th Cir. 2006). The closed database proposal provides a remedy through revenue sharing and credit, where one may not otherwise exist.

94. 15 U.S.C. § 1051.

95. *See* CHRISTOPHER T. ZIRPOLI, CONG. RSCH. SERV., IF12456, AN INTRODUCTION TO TRADEMARK LAW IN THE UNITED STATES (2023), https://crsreports.congress.gov/product/pdf/IF/IF12456 [https://perma.cc/HG8T-C7KR].

Several notable cases underscore how public figures with high-profile identities can use the Lanham Act to address false endorsement and the resulting damage to their economic interests. Singer and actress Bette Midler successfully sued Ford Motor Company and its advertising agency after they hired a sound-alike to sing one of her songs, "Do You Want to Dance," in a commercial following Midler's refusal to participate.[96] The agency's decision to mimic Midler's distinctive voice could have easily led audiences to believe that Midler endorsed the product. The court ruled in favor of Midler, holding that the unauthorized imitation of her voice for commercial purposes constituted a misappropriation of her identity.[97] Similarly, musician Tom Waits won a lawsuit against Frito-Lay, Inc. after the company used a sound-alike in a commercial, suggesting that Waits endorsed its product.[98] Waits, who had a strict policy against commercial endorsements, argued that the use of a sound-alike violated his right-of-publicity.[99] The court sided with Waits, concluding that the use of a sound-alike amounted to false endorsement and misappropriation of his identity.[100]

Further, the Ninth Circuit's decision in *White v. Samsung Electronics America, Inc.* extended game-show hostess Vanna White's rights to an exploitation of her identity that is significantly more transformative than voice mimicry.[101] In this case, Samsung ran an advertisement that paired reference to a "game show" with an image of a blond-wigged robot wearing jewelry and a gown posed in front of *Wheel of Fortune*-style letters.[102] The court's decision emphasized that even greatly transformative content that misappropriates someone's identity for commercial purposes could be actionable.[103]

Whether mimicry of an artist, in the absence of an implied false endorsement, is commercial misappropriation under the Lanham Act may be an open question. This argument of commercial misappropriation under the Lanham Act has been the adopted approach of major music label groups that are seeking to protect the rights of their artists from AI-generated soundalike recordings.[104] While applying commercial misappropriation seems straightforward, the offending elements in a sophisticated mash-up may be hard

---

96. *See* Midler v. Ford Motor Co., 849 F.2d 460, 461 (9th Cir. 1988).

97. *See id.* at 462–64.

98. *See* Waits v. Frito-Lay, Inc., 978 F.2d 1093, 1096 (9th Cir. 1992).

99. *See id.* at 1100.

100. *See id.*

101. *See* 971 F.2d 1395, 1399 (9th Cir. 1992).

102. *See id.* at 1399.

103. *See id.*

104. *See* Robinson, *supra* note 88.

to identify.[105] Generative AI may be capable of producing new musical compositions and recordings derived, in part, from scraped copyrighted content, but it typically relies on the market value of high-profile artists to gain clicks.[106]

Without regulation, the trend of exploiting artists' voices and identities to reach large audiences is likely to continue, leaving rights holders to the original creations vulnerable to what eventually may become a counterfeit marketplace. As creators of new AI-generated content seek to monetize their illicit streams, the original artists whose work and identity have been misappropriated, or their representatives, are left with little recourse except the prospect of expensive litigation, which, like a copyright case, may be hard to win.

Is the legal battle worth the effort? For powerful industry stakeholders, the answer may be yes. But even a wealthy superstar backed by the resources of a record label may find it challenging to bring an infringement suit for an opaque AI mash-up, let alone win one. Potential defendants are plentiful and hard to find, an issue that will likely explode as AI use becomes more widespread. And many defendant prompters will be judgment proof, meaning as soon as litigation shuts one down, there may be dozens or perhaps hundreds of new potential defendants ready to jump into the fray.

To help the many artists who do not have access to an army of lawyers, a compromise could be fashioned that would provide stakeholders with some degree of credit and royalties, without the need for protracted litigation. Ghostwriter, the creator behind "Heart on My Sleeve," sees generative AI as an opportunity for artists to license their voices for additional income and marketing reach, and for songwriters to share their talent and earn extra income.[107] Finding a balance between protecting artists' rights and allowing technological innovation to flourish is crucial in navigating the future of AI in the music industry.

---

105. *See supra* Section III.A.

106. *See supra* Section III.A; *see also* Robert Levine, *The Real Problem with Fake Drake, Billboard*, BILLBOARD (Apr. 26, 2023), https://www.billboard.com/pro/fake-drake-song-generative-ai-music-debate-problems/ [https://perma.cc/FQK5-RR9N].

107. Kristin Robinson, *Ghostwriter, the Mastermind Behind the Viral Drake AI Song, Speaks for the First Time*, BILLBOARD (Oct. 11, 2023), https://www.billboard.com/music/pop/ghostwriter-heart-on-my-sleeve-drake-ai-grammy-exclusive-interview-1235434099/ [https://perma.cc/2V77-86HD].

IV. PROPOSING AN OPT-IN, CLOSED-UNIVERSE DATABASE

To strike a balance between the music industry and generative AI, this Article proposes the creation of an opt-in database of music publishing and sound recording catalogs. This database would allow music industry stakeholders to profit from AI-generated content that draws on existing intellectual property. Similar models are already emerging, such as the generative-AI app Aimi, where users can personalize and control their music creation experience while ensuring monetization for artists.[108] Aimi exemplifies how AI can be harnessed to foster creativity while compensating content creators, offering a blueprint for the proposed database.

This proposed database would consist of musical compositions, sound recordings, and, where applicable, artists' voices, all submitted by artists and rights holders who opt-in. A song composition includes music and lyrics, typically authored by a composer and lyricist.[109] A sound recording captures a performance, whose owners may include record producers, performers involved in the recording process, recording engineers, and record companies.[110] By participating, artists would authorize the use of their works for generative-AI purposes within a controlled environment. This would enable users to generate new content without the risk of copyright infringement or violating artists' rights of publicity, while ensuring that rights holders are compensated for the use of their content.

The proposed database would operate as a closed-universe system, meaning that the AI would only have access to content that has been expressly authorized for use. Participating artists and rights holders would submit their content to the proposed database, creating a "safe harbor" for users to generate new works without fear of legal repercussions. For example, a user might remix a song, create a new track in the style of an existing artist, or even generate a song using an artist's voice—all within the bounds of the proposed database's authorized content.

The proposed database would also make it easier to identify and trace the use of copyrighted material. One of the main challenges in current copyright infringement claims involving AI is the difficulty in determining whether and

---

108. *See* John Koetsier, *Generative AI Music Platform Creates Forever Songs with Artists' Unique Sounds, Melodies, and Beats*, FORBES (Apr. 14, 2023, 1:41 PM), https://www.forbes.com/sites/johnkoetsier/2023/04/14/generative-ai-music-platform-creates-forever-songs-with-artists-unique-sounds-melodies-and-beats/ [https://perma.cc/R8YL-VYXJ]. The "small claims" process under the Copyright Act may also offer an alternative avenue for some claimants without resources. But a remedy for a de minimis copyright claim would not help those seeking protection of trademarks, rights of publicity, or credit.

109. 17 U.S.C. § 102(a)(2).

110. *Id.* § 101.

how much a claimant's content was used in the AI's training or output.[111] The proposed database would address this by providing transparency about the amount and type of content used in generating AI-created works. Doing so would align with the Human Artistry Campaign's call for "algorithmic transparency," which is essential for building trust in AI, informing consumer choices, and protecting creators and rights holders.[112]

In response to recent legal challenges, some tech companies are already moving toward building their AI models using proprietary data.[113] For instance, Getty Images and Shutterstock are developing AI image generators based on their licensed content to avoid infringement claims.[114] These companies recognize that lawsuits are a costly distraction and are taking steps to minimize legal risks by adopting closed-universe systems.[115] Getty, for example, has committed to compensating photographers when their images are used to train AI models, setting a precedent for fair compensation in the industry.[116]

A database with a closed-universe system would allow for the transparency one receives when reading food ingredient labels. On food ingredient labels, consumers can see which ingredients are included in the final product. In its scraping process, a closed-universe system may trace all the content used, much like the way food ingredient labels list out ingredients. The content used may be listed out in order on an "ingredient label" based on how much of the original copyrighted material was used in generating new content, in descending percentages. In addition to listing percentages of original source material used, the "ingredient label" would also specify the type of material, whether it is a sound recording or song composition. And just like a food ingredient label, the closed-universe system would offer credit transparency—prominently displayed and easy to read.

---

111. *See* Mayfield & Aswad, *supra* note 3; Tahir Khan, *AI-Generated Content and Copyright: Evolving Legal Boundaries in English Law*, THE BARRISTER GRP. (Oct. 17, 2024), https://thebarristergroup.co.uk/blog/ai-generated-content-and-copyright-evolving-legal-boundaries-in-english-law [https://perma.cc/JN6U-JQXY]; Dan Pollock & Ann Michael, *News and Views: How Much Content Can AI Legally Exploit?*, DELTA THINK (Dec. 10, 2024), https://www.deltathink.com/news-and-views-how-much-content-can-ai-legally-exploit [https://perma.cc/YZ2J-2Z79].

112. *See* Jem Aswad, *AI and Copyright: Human Artistry Campaign Launches to Support Songwriters and Musicians' Rights*, VARIETY (Mar. 17, 2023, 7:17 AM), https://variety.com/2023/music/news/ai-copyright-human-artistry-campaign-musicians-songwriters-artificial-intelligence-1235557582/ [https://perma.cc/3S6N-VSSM].

113. *See* Grant & Metz, *supra* note 11.

114. *See id.*

115. *See id.*

116. *See id.*

A. Compensation Models

Discussions are already underway about how artists and rights holders should be compensated for the use of their copyrighted material in AI-generated content. One frequently proposed solution involves rights holders issuing a blanket license to AI models, allowing them to use artists' catalogs for a predetermined period.[117] This license would be managed by a Performing Rights Organization (PRO) on behalf of the rights holders,[118] but it is essential that artists retain the option to opt-out of participation.[119] Additionally, there is an ongoing debate about how to compensate artists for the use of their work that has already been used to train AI models.[120] For instance, Peloton Interactive recently settled a lawsuit with a music publishing trade group over the unauthorized use of songs in its workout videos,[121] setting a precedent for compensating artists for unauthorized use of their copyrighted material. Music industry executives are considering whether it might be more efficient to address the ongoing issues with generative AI before tackling compensation for past unauthorized use.[122]

Four methods would be available for compensating artists and rights holders for the use of their copyrighted material within the proposed database. Each method assumes that AI technology can identify and quantify the specific copyrighted material used in generating new content. This concept aligns with the Human Artistry Campaign's call for "algorithmic transparency," as discussed above.[123] The ability to trace and quantify the use of copyrighted material within the opt-in database would enable efficient and fair compensation for participating artists. The four methods a database could use to compensate artists include the following:

1. **Flat Rate Compensation:** One method for compensating artists and rights holders is to establish a flat rate for users upfront. Users would pay a fixed

---

117. *See* Mayfield & Aswad, *supra* note 3.

118. *What is a Blanket License?*, Songtrust, https://help.songtrust.com/knowledge/what-is-a-blanket-license [https://perma.cc/83KU-JS83]. A blanket license may be an economic necessity for stakeholders, given the enormous volume of content protected by copyright.

119. *See* Mayfield & Aswad, *supra* note 3.

120. *See id.*

121. *Peloton Settles Music Publishers' Lawsuit Over Songs Used in Workout Videos*, Reuters, https://www.reuters.com/article/us-peloton-interactive-lawsuit/peloton-settles-music-publishers-lawsuit-over-songs-used-in-workout-videos-idUSKCN20L2AL [https://perma.cc/BDS2-LM57] (Feb. 27, 2020, 9:55 AM).

122. Mayfield & Aswad, *supra* note 3. The extent of an artist's compensation and control may depend on the economic rights retained by the artist.

123. *See supra* note 112 and accompanying text.

fee for each search or use of the proposed database. While this method provides uniformity, it may discourage users from fully engaging with the proposed database, as paying a fee for each search could limit their experiences with generative AI. Because one goal of the proposed database is to encourage creativity and innovation, this method might be the least effective in achieving that goal.

2. **Prompt-Based Compensation:** Another method involves charging users based on the specific terms they include in their prompts. This could be facilitated by using Interested Party Information (IPI) numbers, which are unique identifiers assigned to songwriters, composers, and music publishers.[124] PROs use IPI numbers to track performances and pay royalties,[125] and the proposed database could leverage these numbers similarly. Royalties could be issued whenever a prompt includes a specific artist, a phrase like "in the style of," or direct references to copyrighted content such as lyrics. The rates for prompt terms would be predetermined and transparent, allowing users to understand the costs associated with their AI-generated content.

3. **Subscription-Based Compensation:** A third method involves charging users a licensing fee to access the proposed database for a specific term, similar to subscription-based services. Users could choose from monthly or annual payment options, with the potential for renewal. The proposed database could also offer tiered subscription options, where higher tiers provide access to more comprehensive scraped content. For example, a lower tier might only offer access to song compositions, while a higher tier could include both song compositions and sound recordings. This approach could benefit artists who prefer to restrict the use of their sound recordings while allowing access to their compositions.

4. **Ad-Supported Compensation:** This method for compensating artists and rights holders involves generating revenue through advertising. In this model,

---

124. *All About IPI Numbers*, ASCAP, https://www.ascap.com/help/registering-your-music/ipi-faqs [https://perma.cc/N32D-3TWN]. My thanks to Danielle M. Langella for this insight.

125. *Id.*

users would access the proposed database for free, with revenues shared based on prompt inclusion,[126] a flat rate, or a combination of both. This method may be the most attractive to users, as it allows them to explore and create without incurring costs. Additionally, a free, ad-supported generative-AI database could attract a large user base, which would, in turn, incentivize companies to advertise on the platform generating greater revenue for artists and rights holders. This model may prove to be the most effective in balancing the interests of both the music industry and AI technology companies.

Each of these compensation methods offers a different approach to balancing the need to protect artists' rights without limiting the revolutionary potential of generative AI as an engine of creativity. The choice of model—or a combination of models—could be tailored to the specific needs and preferences of the stakeholders involved.

B. Impacts

Creating a database with a closed-universe system that allows artists and rights holders to opt-in and authorize the use of their content offers significant benefits, providing a safe harbor for users against claims of copyright infringement and right of publicity. Most of the legal claims against AI-generated content revolve around unauthorized use of copyrighted material to train AI models.[127] Defendant companies often rely on fair use defenses, arguing that their use of content is for purposes such as research or that the AI-generated content is sufficiently transformative.[128] However, this technology is not foolproof, and there have been instances where AI-generated content includes significant portions of copyrighted material, leading to legal disputes.[129]

In a closed-universe system, users of the database are shielded from the necessity of making these fair use arguments. By restricting the AI to only use content from participating artists and rights holders who have explicitly authorized their work for this purpose, the database creates a controlled environment where both users and rights holders can operate with clear

---

126. Whether an artist is included in an AI prompt may refer to identifying an artist by name, but it could include reference to genre, song compositions, or sound recordings that may be identifiable to the artist.

127. *See* Brittain, *supra* note 46.

128. *See* Aistrop, *supra* note 18; O'Brien, *supra* note 17.

129. *See* O'Brien, *supra* note 17.

expectations. This not only removes the legal uncertainty for users but also ensures that artists and rights holders are compensated fairly for the use of their material.

This system also encourages creativity by giving users the freedom to explore and generate new content without fear of legal repercussions. The new content generated through this database can also serve as an effective marketing strategy for artists, potentially introducing their work to new audiences or reinvigorating interest in their existing catalog. By fostering a collaborative environment where both creators and technology can coexist, this approach offers a compromise that satisfies the interests of both sides. It prevents the unfair exploitation of artists while allowing technological innovation to continue, potentially leading to new and exciting developments in the music industry.

V. ADDITIONAL CONSIDERATIONS: CREDIT AND CONTROL

Beyond compensation, providing proper credit and maintaining control over their works are crucial for artists and rights holders involved in AI-generated content. A database with a closed-universe system offers an opportunity to ensure that these essential aspects are upheld.

A. Credit for Contributions

In a closed-universe system, an algorithm could be developed to trace and identify the copyrighted works used in each user's creation. This feature would not only determine which artists and rights holders are compensated but also ensure that they receive appropriate credit for their contributions.[130] Each piece of AI-generated content could be accompanied by an "ingredient label" that lists the contributing artists and rights holders whose copyrighted works, including song compositions, sound recordings, and even vocal performances, were used in the creation process.

Providing credit in this manner offers several benefits. First, it ensures that artists and rights holders are rightfully acknowledged for their influence on the final creation. This recognition is important for preserving the integrity of artists' and rights holders' works and reputations. Second, it can serve as a marketing tool, potentially encouraging listeners to explore the artist's and rights holder's broader catalog, thereby expanding their audience. Proper

---

130. This is a significant benefit of the closed database for some artists because the Copyright Act does not require credit, unless otherwise provided by contract. Federal law requires credit only for artist attribution rights under the Visual Artists Rights Act (VARA), 17 U.S.C. § 106A, and for cropping a photo credit under the Copyright Act, 17 U.S.C. § 1202. *See, e.g.*, Murphy v. Millennium Radio Grp., 650 F.3d 295 (3d Cir. 2011).

crediting can be a powerful way to bridge the gap between traditional and AI-generated content, reinforcing the value of the original work while promoting new innovations.

B. Control and Derivative Works

The U.S. Copyright Office's decision that copyright protection only extends to "human-made" works of authorship presents challenges for AI-generated content, which currently lacks guaranteed copyright protection.[131] This limitation could affect the control that original authors have over their copyrighted material. Because the original AI content cannot be copyrighted, an author may be unable to claim protection for derivative works under current law.

This issue was highlighted during the Copyright Office's listening session on AI, where industry experts expressed concerns about the difficulties of policing future unauthorized use of rights holders' material.[132] Without some form of copyright protection for AI-generated works, it would be challenging to prevent other AI systems from being trained on and replicating content based on outputs from ethically operated AI databases.[133] This lack of protection could lead to a situation where artists and rights holders struggle to track and control the use of their material, potentially resulting in inadequate compensation.[134]

To address this, artists and rights holders should be granted the ability to claim AI-generated content as a derivative work if their material was used in its creation. Extending this right to all contributing artists and rights holders would provide stronger protection, ensuring they receive adequate compensation and giving them standing to bring copyright infringement claims against unauthorized uses.

A database with a closed-universe system could facilitate this by providing transparency over the original copyrighted material used in AI-generated content. With clear records of how copyrighted material was utilized, artists and rights holders could more easily identify and claim generated content as

---

131. *See supra* note 44 and accompanying text; *see* Mayfield & Aswad, *supra* note 3.

132. *See* Transcript of Proceedings, *supra* note 79.

133. *See id.*

134. *See id.* If the author of a musical composition terminates its grant after thirty-five years, then presumably the material could be removed from the database. Derivative works created in the AI database before termination would not revert to the original creator.

derivative works, reinforcing their control and ensuring fair use of their creations.[135]

C. Administration by Industry Organizations

To ensure that artists and rights holders receive proper credit and maintain control over their works, industry organizations like the American Society of Composers, Authors, and Publishers (ASCAP) or the Recording Academy could administer the process. These organizations are already involved in protecting music stakeholders from exploitative AI use through initiatives like the Human Artistry Campaign.[136]

One of the Campaign's principles is that rights holders must maintain exclusive control over how their content is used.[137] They argue that AI should not receive exemptions from copyright law or other intellectual property laws, ensuring that any system providing credit and control to rights holders is not undermined by "special shortcuts or legal loopholes" that allow AI to exploit rights holders.[138] By involving established industry organizations in the administration of credit and control processes, the proposed database could reinforce the integrity of the music industry while fostering an environment that encourages continued artistic innovation.

VI. CONCLUSION

As artificial intelligence becomes increasingly integrated into creative fields, it is crucial to establish regulations that balance technological innovation with the protection of human artists' integrity and creativity. While well-known artists like Bad Bunny, Drake, and The Weeknd have the resources to defend their rights in court, smaller and lesser-known artists, such as Kelly McKernan, may struggle to do so. For these artists, an opt-in database with a closed universe system offers a secure platform to earn royalties and protect their work without resorting to costly litigation.

This proposed database provides a safe harbor for individuals who wish to use existing art to express their creativity through music mash-ups, covers, or new compositions. By charging reasonable fees, licensing access, or generating revenue through ads, the database ensures that participating artists and rights holders are compensated for their contributions. This system not only protects

---

135. Because content uploaded to the internet stays there forever, there is a question of license duration. One model would be to provide revenue sharing and credit to owners of the original content for the duration of copyright protection for a derivative work.

136. *See* Mayfield & Aswad, *supra* note 3.

137. *Id.*

138. *Id.*

artists, but also increases the visibility and value of their work, potentially expanding their audience.

The proposed database could also help avoid the complex and time-consuming legal battles over rights of publicity or whether the AI-generated content is transformative enough to survive copyright infringement claims. By offering a copyright safe harbor, the proposed database bypasses the issue of transformativeness, allowing users to legally use copyrighted material while ensuring that artists and rights holders receive royalties and credit.

For this to work, there must be significant buy-in from industry stakeholders, especially record labels, music publishers, and investor groups controlling composition and recording catalogs. But the stakes are high. Artificial intelligence is an unstoppable force that will continue to evolve, becoming smarter, faster, and more efficient. Music industry leaders would be wise to create frameworks that allow individuals to explore their creativity using AI without undermining the value of the raw talent and creative effort that goes into work created by human artists.