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In June 2024, Recording Industry Association of America (RIAA) sued AI startups Udio and Suno for copyright infringement as they trained their AI model on copyrighted music, while Udio and Suno argue the training is a case of fair use. While the lawsuit goes on, this essay will argue that **neither RIAA and AI companies is completely morally right by using utilitarian ethics**. It will first discuss four factor of fair use in deciding whether it is fair use in this scenario. It will then analyze the three philosophical foundation of Intellectual Property (IP) and whether they support the RIAA's case. It will then consider the role DMCA plays and how composer could license the work for AI training using Common Creative license.

There are four factors in determining whether the use of copyrighted work is a fair use. **First factor is the purpose of use.** We see that Udio and Suno's product are clearly **for profit**, as they charge a subscription to use their AI model, while providing only a limited number of prompts for the free version. However, we do see that their works is **transformative** as they changed the traditional music production to an automated process. **The second factor is the nature of the copyright work.** The music is clearly considered to be more creative rather than factual. **The third factor is the amount of the work used.** For the AI training, the key features of music is extracted via some complicated data-preprocessing, and the question about what amount of original music is "remained" in the final trained neural network, is hard to measure and argue about. AI companies like Suno are dodging the question about the amount and types of work used in their product (Reference, Verge) **The fourth factor is the effect on the market value.** Currently, the AI model produced by Suno and Udio, although are approaching human produced music, still have not reached the level where it could compete with human composer. Yet, given the possibility that the AI model might evolve in future and becomes competitive, it might compete with the market share of these copyrighted music, and the actual effect on market value depends on specific music albums. From the above four factors, we see that **it is unclear whether the training of AI model on copyrighted music could be considered as fair use**, as although it is transformative and might not have effect on market value of copyright value recently, the creative nature of the nature, profitable purpose, and the amount of copyrighted work used make it questionable to whether it is fair use.

There are three philosophical IP foundations: labor theory, utilitarian theory, and personality theory. Labor theory thinks that all property is the natural right given to the laborer, including IP. In the RIAA's case, for the generated work, it has both the labor of the original music composer and the AI company, as the labor spent by former provide the data necessary for training and the labor spent by latter makes the final model into fruition. In this sense the IP of the AI model should be shared by both the AI company and all the composer. Personality theory thinks that IP is an moral right, an extension to the creator and one's personality. In this case, the works produced by AI model could be thought as a "collective mixture" of the extension of all the composer, and in the case the IP of AI generated work should belong to all the composer.

Utilitarian theory thinks that IP is an artificial right granted to promote innovation which benefits the society, this is part of the utilitarian ethics, which judges whether one is moral by the consequence of one's actions. In this case, we see that if the AI companies is a fair use, then they could create more powerful AI models that generates near human level authentic music in the future. Then, everyone with a small subscription fee, could use the AI model for more expressive creations. However, if such future happens, a lot of composer will be replaced by AI model, and the unemployment and potential economical hardship for the composer will also be a consequence. On the other hand, if the RIAA wins, then the development of AI model will be greatly hindered as these AI companies might be directly sued into bankruptcy, and the potential loss in the technological progress could be considerable. **By utilitarian ethics and its theory on IP, whether AI companies or RIAA is correct is an moral dilemma and could not be easily determined.**

DMCA could greatly support RIAA sides for the lawsuit. DMCA prevents the circumvention of the technology that protects the copyrighted music. In this case, the unmentioned usage of copyrighted music, either by downloading or web scrapping it, could be a violation of DMCA, and be used as a reasoning in court. Composer could license their music by Common Creatives license, one type of CC license, called CC-0, grants unrestricted way of using the artwork. (Reference: Common Creatives)

Reference

<https://www.theverge.com/24186085/riaa-lawsuits-udio-suno-copyright-fair-use-music>
<https://creativecommons.org/public-domain/cc0/>