



**BEFORE THE  
INTERNATIONAL TRADE ADMINISTRATION**

**Request for Comments on Artificial  
Intelligence Export Competitiveness**

**Docket No. ITA-2022-0007**

**COMMENTS OF THE COPYRIGHT ALLIANCE**

The Copyright Alliance appreciates the opportunity to respond to the International Trade Administration's (ITA) August 16, 2022 [request for comments](#) on the current global Artificial Intelligence (AI) market and stakeholder concerns regarding international AI policies, regulations, and other measures that may impact U.S. exports of AI technologies.

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 2 million individual creators and over 15,000 organizations in the United States, across the spectrum of copyright disciplines. The Copyright Alliance is dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. The individual creators and organizations that we represent rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of copyrighted works for the public to enjoy.

AI and related technologies are not new but are evolving at a rapid pace. The Copyright Alliance supports the responsible development of these AI technologies. We appreciate ITA's careful consideration of the implications of AI-related trade policies on *all* U.S. stakeholders, especially the creative communities. Gathering evidence and gaining a deep understanding of the issues from all participants in this innovative space allows for effective and sound policies and strategies to ensure the position of the United States as a global leader in AI.

Creators and copyright holders are involved in the AI export market in myriad ways. There are already organically developing and robust licensing markets for copyrighted works as AI-related exports and goods. For example, copyright law enables independent to large-scale creators and rightsholders to author and produce high-quality works that are ideal for training AI machines to generate high-quality output, including through techniques such as text-and-data mining (TDM).<sup>1</sup> Copyright law also incentivizes creators and rightsholders to lawfully enhance and aggregate copyrighted works—such as through semantic enrichment, metadata tagging, content normalization and data cleanup—which makes the copyrighted works even better suited for developing AI applications. Copyright law also ensures that creators and rightsholders can secure proper licenses for works, reducing uncertainty for AI developers who may otherwise incur significant risks. It is essential that these effectively functioning licensing markets not be upended and that copyright protections be preserved as part of any AI trade policies or broader AI framework.

### *1. What foreign/international AI policies or regulations exist?*

There are several international treaties and agreements and foreign policies and regulations that govern use of copyrighted works, and thus affect AI uses of copyrighted works.

*International Agreements:* The Berne Convention for the Protection of Literary and Artistic Works<sup>2</sup> is the primary international agreement governing protection of copyrighted works and the rights of their authors. The Berne Convention establishes a test that any exception to copyright protections must satisfy, including any exception that might be considered for emerging technologies like AI. That test, which is commonly referred to as the three-step test, is enshrined in Article 9(2) of the Berne Convention. It provides that countries may allow for exceptions to copyright protection only in (1) “certain special cases,” (2) in which that the exception “does not conflict with a normal exploitation of the work” and (3) “does not unreasonably prejudice the legitimate interests of the author.”<sup>3</sup> Because the three-step test has been adopted by the Agreement on Trade Related Aspects of Intellectual Property (TRIPS), an international AI policy or regulation that fails the test can result in a signatory country being sanctioned under the World Trade Organization’s (WTO) dispute resolution system.<sup>4</sup>

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<sup>1</sup> Text and data mining involves analyzing or essentially “learning” from copyrighted works to ascertain trends, develop algorithms, and generate other works. This can involve culling the expressive, copyrightable value contained in the copyrighted works that are used as the inputs.

<sup>2</sup> See Berne Convention for the Protection of Literary and Artistic Works, art. 9(2), Sept. 9, 1886, 1161 U.N.T.S. 3.

<sup>3</sup> *Id.*

<sup>4</sup> See Agreement on Trade-Related Aspects of Intellectual Property Rights, art. 9, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994) [hereinafter TRIPS Agreement]. Specifically, the TRIPS Agreement states that: “Members shall confine limitations

*Foreign Policies and Regulations:* Very few countries have considered AI regulations and policies with respect to copyright laws. Hong Kong,<sup>5</sup> South Korea,<sup>6</sup> Australia,<sup>7</sup> and Canada<sup>8</sup> have each considered creating copyright exceptions for TDM. Significantly, each country has declined to take action, postponed decision making as premature, or otherwise not taken action. In varying degrees, only the European Union,<sup>9</sup> Japan,<sup>10</sup> Singapore,<sup>11</sup> and the United Kingdom<sup>12</sup> have AI policies and regulations within their copyright laws. One example of a country with a troublesome AI regulation is Singapore,<sup>13</sup> which overbroadly permits unauthorized TDM of copyrighted works, including for pirated works, for any purpose with no ability for rightsholders to opt out. Policies such as Singapore's severely undermine the fundamental ability of creators and rightsholders to

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or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder." *See Id.* at art. 13.

<sup>5</sup> *See* COMMERCE AND ECONOMIC DEVELOPMENT BUREAU, UPDATING HONG KONG'S COPYRIGHT LAWS: PUBLIC CONSULTATION PAPER, 31-32, (Nov. 24, 2022), *available at* [https://www.cedb.gov.hk/archive/assets/resources/citb/consultations-and-punblications/\(Eng\)%20Consultation%20Paper%20on%20Copyright.pdf](https://www.cedb.gov.hk/archive/assets/resources/citb/consultations-and-punblications/(Eng)%20Consultation%20Paper%20on%20Copyright.pdf).

<sup>6</sup> *See* Amendment to the Copyright Act, Bill No. 2107440, The 4<sup>th</sup> Plenary Session of the 384th National Assembly, (Jan. 15, 2021), *available at* [https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC\\_Q2T1M0X1D0M4W1T4M3O0R3Y4C7O3D2](https://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_Q2T1M0X1D0M4W1T4M3O0R3Y4C7O3D2).

<sup>7</sup> *See* AUSTRALIAN LAW REFORM COMMISSION, COPYRIGHT AND THE DIGITAL ECONOMY: DISCUSSION PAPER 79, 8.41-8.63, (May 2013), [https://www.alrc.gov.au/wp-content/uploads/2019/08/dp79\\_whole\\_pdf.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/dp79_whole_pdf.pdf).

<sup>8</sup> *See* INNOVATION, SCIENCE AND ECONOMIC DEVELOPMENT CANADA, A CONSULTATION ON A MODERN COPYRIGHT FRAMEWORK FOR ARTIFICIAL INTELLIGENCE AND THE INTERNET OF THINGS, 7-10, (2021), <https://ised-isde.canada.ca/site/strategic-policy-sector/sites/default/files/attachments/2022/ConsultationPaperAIEN.pdf>.

<sup>9</sup> *See* Directive 2019/790, of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market and Amending Directives 96/9/EC and 2001/29/EC, 2019 O.J. (L 130) 92, 113-14, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2019:130:FULL&from=EN>.

<sup>10</sup> *See* Chosakukenhō [Copyright Act], Law No. 48 of 1970, art. 30-4, *translated in Japanese Law Translation*, [https://www.japaneselawtranslation.go.jp/en/laws/view/4001#je\\_ch2sc3sb5at4](https://www.japaneselawtranslation.go.jp/en/laws/view/4001#je_ch2sc3sb5at4).

<sup>11</sup> *See* Copyright Act of 2021, No. 22, Part 5 Division 8, (Oct. 8, 2021), <https://sso.agc.gov.sg/Acts-Supp/22-2021/Published/20211007?DocDate=20211007&WholeDoc=1#pr243->.

<sup>12</sup> *See* Copyright, Designs and Patents Act, 1988, c. 48, § 29A, <https://www.legislation.gov.uk/ukpga/1988/48/section/29A>.

<sup>13</sup> Singapore's exception is fairly new and so the impacts on the creative community remain to be seen. However, compared to the U.S. Singapore's economic priorities are not as focused on its creative economies. According to a 2020 report, Singapore's creative economy was valued at around \$1.27 billion USD, translating to only 0.4% of the country's GDP. *See* MINISTRY OF CULTURE, COMMUNITY AND YOUTH, *Government's Funding for the Arts Sector and the Sector's Contribution to GDP and Job Creation*, (May 11, 2021), <https://www.mccy.gov.sg/about-us/news-and-resources/parliamentary-matters/2021/may/government-funding-for-the-arts-sector>; *see also* MINISTRY OF CULTURE, COMMUNITY AND YOUTH, SINGAPORE CULTURAL STATISTICS 2020, <https://www.mccy.gov.sg/about-us/news-and-resources/statistics/2019/jan/-/media/FF26A25C0D5B4511AB8FB8D0B3728FED.ashx>.

be compensated for the use of their copyrighted works, discouraging them from creating the works and depriving them of the fruits of their labor. The United Kingdom is also considering following this troubling precedent, which has been met with great opposition.<sup>14</sup>

As noted above, the creative sector supports the responsible development and use of AI. Harmful regulations that degrade copyright protections also impede AI innovation and the trade flow of AI products by discouraging creation of robust works that can aid in the creation of AI technologies, or by creating uncertainty, such as the potential for litigation and international trade sanctions.

***2 & 3. What trade barriers currently exist in the AI space? What remedies could resolve these trade barriers? What challenges are there when it comes to exporting AI products or services?***

ITA should monitor for and oppose AI policies and regulations that impede copyright protections and undermine creators' or rightsholders' fundamental ability to license and be compensated for the use of their copyrighted works. We noted some concerning international developments in our answer to question 1. Since U.S. creators and rightsholders frequently partner with counterparts in other countries to provide AI exports and works as previously mentioned, opposing AI policies that undermine copyright law is a critical part of ensuring U.S. AI competitiveness. Unfavorable domestic and international AI policies create confusion in the market and discourage creators and rightsholders from creating and innovating, hindering an industry that has helped propel the United States as a global, economic leader. The core copyright industries contributed more than \$1.5 trillion to U.S. Gross Domestic Product (GDP) and employed 5.6 million people, according to a 2020 report by the International Intellectual Property Alliance.<sup>15</sup> Moreover, creative professionals from the United States would have difficulty working with and operating in countries that are key trading partners with the United States if the regulatory environment does not foster and protect

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<sup>14</sup> See *Consultation Outcome: Artificial Intelligence and Intellectual Property: Copyright and Patents: Government Response to Consultation*, UNITED KINGDOM INTELLECTUAL PROPERTY OFFICE, (June 28, 2022), <https://www.gov.uk/government/consultations/artificial-intelligence-and-ip-copyright-and-patents/outcome/artificial-intelligence-and-intellectual-property-copyright-and-patents-government-response-to-consultation>. Many U.K. creator and rightsholder groups have opposed the proposal to expand TDM exceptions in U.K. copyright law. See e.g., The Design and Artists Copyright Society, *DACS Warns That New Text and Data Mining Exception Will Undermine Licensing Opportunities for Visual Artists and Weaken Copyright*, <https://www.dacs.org.uk/latest-news/dacs-warns-that-new-text-and-data-mining-exception?category=For+Artists&title=N>; Letter from UK Music to George Freeman MP (July 8, 2022), available at <https://www.ukmusic.org/wp-content/uploads/2022/07/UK-Music-Letter-to-Culture-Secretary-on-AI.pdf>; Letter from The Association of Learned & Professional Society Publishers to Adam Williams, Director of Business & International Policy at the IPO (Aug. 24, 2022), <https://www.alpsp.org/news/alpsp-response-to-ipo-tdm-copyright-exception-august-2022>; PUBLISHERS ASSOCIATION, PUBLISHERS ASSOCIATION BRIEFING ON TEXT AND DATA MINING (TDM), (Aug. 26, 2022), <https://www.publishers.org.uk/wp-content/uploads/2022/08/22-8-Briefing-note-for-IPO-on-TDM.pdf>.

<sup>15</sup> See COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2020 REPORT, INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE, 7-11(2020), <https://www.iipa.org/files/uploads/2020/12/2020-IIPA-Report-FINAL-web.pdf>.

copyrights. Without the proper copyright and AI frameworks to support their creativities, creators and rightsholders would find it challenging to export AI products and services. Tolerating trade barriers that degrade copyright laws discourages and impedes innovation and makes U.S. AI exports less competitive.

#### ***4. How could international AI regulations impact future product or service design and development?***

As previously noted, any AI regulation can impact U.S. creators and rightsholders' abilities to create, innovate, and export AI services and products when copyrights are not respected and are being undermined. Thus, international AI regulations must also respect copyright law to continue promoting the robust creation and export of copyrighted works for AI. Ensuring creators' and rightsholders' abilities to continue creating and distributing copyrighted works results in better training and development for AI technologies to provide high-quality products and services. International AI policies that undermine copyright would instead impede AI innovation.

#### ***5. What trade policies could be helpful in supporting small-to-medium sized enterprises that export AI products and services?***

Authors, software coders, songwriters, performing artists, graphic artists, illustrators, photographers, and filmmakers, publishers and many other creatives in the copyright community often operate as small-to-medium sized enterprises. As explained above, these creators and rightsholders provide a variety of products and services that are vital to the development of AI technologies. Trade policies can support these small-to-medium sized enterprises when they export AI products and services by abiding by the following principles:

1. *Trade policies must preserve the integrity of intellectual property (IP) rights and markets—especially copyright law.* The copyright community already has vibrant businesses and licensing models in place and primed for AI innovation. Ensuring that trade policies foster and protect these dynamic licensing markets ensures that creators and rightsholders exporting AI products and services can continue doing so. It would be harmful, especially to these small-to-medium sized enterprises, to support or instill trade policies that compromise the copyright law foundations which fuel AI innovations in the first place.
2. *Trade policies must promote respect for the value and importance of copyright in the context of AI.* AI is a nascent technology, and it is vital that stakeholders share common understanding and vocabulary around the characteristics and scope of AI, including the particular applications of AI and the way they implicate copyright. This ensures that AI is respected and responsibly used and that trade policies are factoring in all potential ramifications of this developing technology.

3. *Trade policies must recognize that AI applications' impact on copyrighted works cannot be overly generalized and will need to be properly contextualized.* Given that the term “AI” encompasses many technologies and use cases, policies should not overly generalize particular applications of AI to copyrighted works to avoid creating unintended risks and consequences to the creative community and in areas outside of copyright law, including increasing privacy and security risks. Beyond generally respecting and protecting the fundamental rights of creators and rightsholders, trade policies should consider how different AI technologies implicate copyright law in their specific factual scenarios.

***7. What challenges does your organization face with regards to protecting your AI intellectual property (IP), especially during overseas dealings?***

Creators and rightsholders of copyrighted works are concerned about protecting use of their works, such as through TDM. Creators and rightsholders must be compensated when their works are used as commercial training inputs for AI and they must give permission for such use. Failure to do this will result in market failure. Creators and rightsholders currently license their copyrighted works for TDM and support AI markets. Thus, it is vital for both them and for AI innovators that our government to continue supporting strong copyright laws in trade policies to preserve these rights and markets.

***8, 12. What can the U.S. government do to best foster and protect IP rights for U.S. AI technologies in overseas dealings? What can the International Trade Administration do to create more opportunities for U.S. AI technologies in the global marketplace? What impactful actions can ITA take to reduce or remove challenges, risks, and barriers to help U.S. AI technologies compete in the global marketplace?***

In overseas discussion on AI, ITA should continue to champion and protect the values and virtues of strong copyright laws. Copyright law is an engine of economic growth, creativity, and innovation, not a barrier. As noted above, U.S. creators and rightsholders generate incredible economic and cultural value through the works they create. As a leader in AI technologies, the U.S. Government has not deemed it necessary to enact or recommend any new exceptions to copyright law for AI purposes. And for good reason: licensing to support AI application in the United States is robust. As mentioned previously, the high-quality copyrighted works that U.S. creators and rightsholders create and distribute for AI development are fueling high-quality AI innovation and output and reducing risks for AI developers and users, including the risks identified most recently in the Office of Science and Technology Policy's (OSTP) *AI Bill of Rights*.<sup>16</sup> To the extent that the United States is a model of innovation in this area, it is because the AI licensing

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<sup>16</sup> See OFFICE OF SCI. AND TECH. POLICY, BLUEPRINT FOR AI BILL OF RIGHTS: MAKING AUTOMATED SYSTEMS WORK FOR THE AMERICAN PEOPLE, 5-7, (Oct. 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf>.

market has been organically developing through our country's existing commitment to strong copyright laws.

The ITA should continue to amplify the message that copyright is crucial to making America competitive in AI exports and continue to work with other countries to ensure that sustainable market environments are not undermining fundamental rights and the market of creators and rightsholders.

***13. How can AI be incorporated into existing and future trade agreements to ensure the competitiveness of U.S. industry?***

To the extent AI is addressed in any existing or future trade agreements, we reiterate that it is vital for the ITA and for other policymakers to preserve the integrity of copyright law and the markets for copyrighted works, which have propelled the U.S. as a global cultural and economic powerhouse. Copyright laws cannot be cast aside in favor of new policies obligating creators to effectively subsidize AI technologies under a belief that doing so is necessary to incentivize AI technologies. It is also essential that those using copyrighted works to develop AI systems not be allowed to devalue the rights and interests of creators and rightsholders (many of whom themselves also use AI), and that AI is not used as a tool for weakening copyright protections.

It is critical to AI innovation that the creative contributions and impact of the creative community to AI are acknowledged. As the ITA studies the AI market to make America competitive in this space, we urge the ITA to champion and deliver the message that any policy decisions, trade discussions, or analysis concerning AI should not degrade the rights to the underlying works that fundamentally shape, train, and develop AI technologies—specifically, the copyrights and creativities of creators and rightsholders.

We thank the ITA once more for the opportunity to submit these comments. Please let us know if we can provide any additional input or information or address any further questions.

Respectfully Submitted,

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