

House Judiciary Subcommittee on Courts, Intellectual Property and the Internet Holds Hearing on Artificial Intelligence and Intellectual Property, Part I

LIST OF PANEL MEMBERS AND WITNESSES

DARRELL E. ISSA:

By the way, Mr. Irwin, I've got big font up here too, so you're not the only one. [laughter] No, no, that's fine. The committee will come to order. I want to welcome our guests and welcome the members to what is undoubtedly going to be the first of many AI hearings. My staff, in preparation for this, knows one of my favorite jokes on artificial intelligence, which I was telling long before it becoming a direct issue for this committee, and that is that artificial intelligence is what members have when their staff prepares their opening statements.

[laughter] So yes, today we stand at the intersection of two rapidly evolving domains: generative artificial intelligence and existing copyright law that must adapt to it. The advent of generative AI technologies has sparked a profound transformation in the creation, distribution and consumption of a new form of creative work.

As we embark in our legal journey, along with the administration in their regulatory powers, it is vital that we explore the complex relationship between generative AI and copyright law, recognizing both the challenges and opportunities that lie ahead. Generative AI holds immense potential for innovative and artistic expression.

It empowers creators to explore new frontiers, fueling their imagination with AI-generated content. Yet with the power that comes with it comes responsibility, responsibility for negative activity on the web and of copyright laws being trampled. Copyright laws were designed to protect intellectual property.

Copyright laws also exist under our Constitution specifically to encourage and then reward for creations. It's that encouragement that in fact creates the right of ownership, not the right of ownership having some core item. In this hearing, we aim to strike a delicate balance. Let me rephrase that in spite of what it says here.

In this hearing, we recognize there's a delicate balance. And we would hope that our panel today represents both a diversity of views and a possible collaboration. We must consider, though, that there will be individuals on each side who will not want to move. There will be companies which will include some of the household words Microsoft, Meta--which is not yet a household word, but Facebook is--and -- and in fact Google that are on both sides of this issue, being both massive creators of their own copyright and massive users of others'. It is our duty to adapt refined copyright laws to accommodate the transformative potential of generative AI while safeguarding the interest of existing creators and of the right of the society as a whole to benefit.

Generative AI presents both challenges and opportunities for creative works and copyright holders. It requires thoughtful consideration and ongoing discussion with stakeholders to strike a balance between protecting intellectual property rights, encouraging creativity and fostering innovative content, AI-generated included.

Today all of us here understand that generative AI is nascent. As we receive briefings, we hear about first-generation, second-generation, third-generation, now fourth-generation. And by the way, the -- the education of this young child is profound from something that was hard to understand to something that said the wrong thing to

something that now is so usable that we might -- we might often forget to fact check its output because it seems so good.

But we must first and foremost address properly the concerns surrounding unauthorized use of copyrighted material, while also recognizing the potential of generative AI can only be achieved with massive amounts of data, far more than is available outside of copyright. By embracing a forward-thinking approach, we can establish guidelines to promote responsive -- responsible and ethical pra -- practices in the realm of generative AI. As we embark on our legal journey, let us approach it with a spirit of collaboration, as those who were on the call the other day clearly were doing.

Let us find common ground, seeking solutions that promote flourish -- the flourishing of both creative expression and intellectual property protection. The stakes couldn't be higher, and the outcome will shape the future landscape of art, technology and copyright. Today, let us navigate this uncharted territory to ensure that interpret -- that generative AI and copyright laws foster in the future a fairly harmonious and vibrant ecosystem for generations to come.

In closing, I might say that we clearly could have substituted patent or other areas of innovation and use just as easily, and we would have been having substantially the same hearing, perhaps in some cases with different witnesses. And in that sense, I think it's important for us all to -- to -- to look at this.

I will close by saying that it has come to my attention that, for once, Congress may not do either of the things we're known for, which is nothing at all or overreact. But that's not true around the world. Spain is moving forward with what I think might be a very restrictive interpretation. Japan believes apparently that all information that goes into the teaching is in frac -- fact free of any copyright restriction in its use.

I do not believe that today's discussion will take us down either road. I believe that we will measure carefully and find middle ground that respects existing copyright law while allowing the future of generative AI to flourish. And with that, I yield back and recognize the ranking member for his opening statement.

HANK JOHNSON:

I thank the Chairman for holding this hearing. I would assure those who are listening that Congress is getting more and more information about artificial intelligence and discussing the ramifications in all enterprises of -- of human behavior, and I share your prediction that we -- we will act and we will do so in a reasonable way.

I don't know if we'll do the Japanese hardline position on inputs, though. I want to thank you for holding this hearing. Artificial intelligence is a promising technology with the potential to revolutionize a range of industries, but with that promise also comes potential peril, especially to the creators of art and other copyrightable works.

It is critical that we think through the many ways that AI will change our lives and whether our existing laws are up to the challenge. I'm glad that we are beginning that process today. Among the many questions that we must confront as artificial intelligence takes on a larger role in our society is how our copyright system should view AI, both in terms of how we should treat copyrighted works that are used to train an AI model--in other words, the inputs--and whether the new work that is generated by AI--in other words, the outputs--should be eligible for copyright protection itself.

Just as AI machine learning is a complex process, so too is our inquiry today, as there may not be simple answers to any of these questions. First, let's consider the inputs used to train AI systems. A typical generative AI system is fed vast amounts of human-authored work on which to train. This may include written word, visual art and music.

The model then processes this information with the help of various algorithms to detect patterns and probabilities. A foundational principle of copyright law generally requires users of copyrighted works to obtain the permission of the copyright owner. But while much of the input into generative AI system -- systems tends to consist of works that are protected by copyright, these works are typically used without seeking consent or a license.

Some argue that this constitutes fair use, and indeed this question is being litigated in the courts as we speak, but I'm hard-pressed to understand how a system that rests almost entirely on the works of others and can be commercialized or used to develop commercial products owes nothing, not even notice to the owners of the works it uses to power its system.

Even if we determine that AI systems must seek permission to use copyrighted works, that only leads to more questions. For example, what sort of licensing system should be required, and what would represent fair compensation for these works. Other questions arise as well, such as what degree of transparency should be built into AI models and how can we ensure that proper credit is attributed to copyrighted works.

On the other side of the equation, we must consider the status of the works, the outputs that are generated by the AI model. Should a purely AI-generated work be eligible for copyright protection if it does not otherwise meet the definition of infringement? What if there was significant human creative involvement in generating the AI work?

What about works that may be of a hybrid manner, consisting of both human authorship and elements that are purely AI? Whether or not an AI-generated work is eligible -- is eligible to be copyrighted, such works will compete, and indeed are already competing, in the marketplace against human-authored works.

No examination of AI is complete without considering the impact that AI works will have on human creators. How do we balance the need for innovation with the need to protect human creators? None of these questions have simple answers, and that's why I'm pleased that we are joined by such a distinguished panel of witnesses to help guide our subcommittee's inquiry into important copyright issues raised by the use of artificial intelligence.

I'm interested to hear your perspective on these questions as well as whether our existing copyright framework, including recent guidance issued by the US Copyright Office is sufficient to address these questions or whether legislation is needed. I thank the Chairman for holding this important hearing again, and I yield back the balance of my time.

DARRELL E. ISSA:

Thank the gentleman. In lieu of the Chairman's opening statement, in addition to the opening statement I read, which was a hybrid of GPT and my staff, I also will put a pure opening statement that was done through regenerative AI into the record, and without objection it will be placed in the record. I now recognize the ranking member of the full committee, Mr. Nadler.

JERRY NADLER:

I thank the gentleman. Thank you, Mr. Chairman, and thank you for holding this important hearing. Yesterday some of us were privileged to attend a briefing by Sam Altman on generative AI. Thirty years ago, as the Internet was in its nascent stage, we were forced to grapple with a series of questions about how that then-emerging technology would change our society and whether our laws were sufficient to address these new challenges.

We are still wrestling with many of those issues today. Now a new technology, artificial intelligence, has emerged that has a similar potential to transform many aspects of our lives. And once again, as our technology evolves, we

must determine if our laws must evolve as well. Although AI gives rise to a myriad of issues, today we are focusing on the intersection between artificial intelligence and copyright.

Even within this limited sphere of the law, I find myself with far more questions than answers as we begin this inquiry. At its core, the fundamental question we must ask is how can we promote innovation and further development of generative artificial intelligence models while also protecting the rights of creators whose works are the engine that fuels these models and who must compete with AI-generated work in the marketplace?

This is not an easy balance to strike, and many answers just lead to more questions. For example, a typical AI model trains on vast quantities of data, analyzing the underlying text, images or music as it learns to make predictions based on that information to generate new works. Much of the information on which these generative AI systems rely is found in copyrighted works.

But typically, these works are used without seeking the permission of the copyright holder, and worse yet, there is little transparency as to which copyright works are used, thus preventing creators from asserting their rights. In fact, AI systems are generating new content based on their work, content that may one day directly compete with their work, but without their knowledge or consent and certainly without compensation.

This is a troubling development, but -- but the solutions are far from clear. What is the proper way to license these works and to monitor compliance? And what sort of transparency and accountability should be built into these systems? It's time to begin considering these important issues. As we wrestle with these questions about how to treat the inputs into a generative AI system, there are equally thorny questions about the outputs.

How should the copyright laws treat works that are generated by an AI model? The Copyright Office recently offered guidance in that question. According to the guidance, only works of "human authorship" are eligible for copyright protection. He goes on to explain that it is necessarily a fact-specific inquiry to determine where the line is between human work that is merely assisted by AI technology and works in which the traditional elements of authorship were actually conceived and executed by the AI model itself.

To add further complexity, in some cases certain aspects of a single work may be eligible for protection, while others are not. We must consider whether the Copyright Office has the tools and resources it needs to evaluate AI-related applications and to enforce existing rules. Finally, there are important questions about the impact that AI-generated works will have on the market for human-authored works, works that may have served as the foundation for generating the AI work in the first place.

While we work to promote innovation in the AI realm, we must also ensure that artificial works do not displace human creators or threaten the ability of the creative class to thrive. Already, creators like the members of -- of the Writers Guild of America are uniting to speak up for their own rights and to ensure that they are not replaced by AI systems.

All these issues lead to a final set of questions. What, if anything, should Congress do to ensure that we strike the right balance between protecting creators and promoting innovation [audio cut 32:40] these complex issues? Should we wait and see how AI technology evolves before taking any action or let these issues play out in the courts?

There are no easy answers, but I appreciate the opportunity to be thinking through these important questions with our distinguished panel of witnesses. I thank the chairman for holding this hearing, and I yield back the balance of my time.

DARRELL E. ISSA:

I thank the gentleman. Gentleman yields back. I now ask unanimous consent that an article titled, Will AI Value Human Creators? Now the Time to Decide the Future of Our Culture -- put it into the record, and I now ask that that be placed in the record. I additionally ask and I'll distribute copies for unanimous consent that ChatGPT's answers for when we asked it to argue for regulation and when we asked it to argue against regulation be both put in the record, and I will say that it's a convincing argument in both directions.

[laughter] And with that, I now have the honor of introducing our distinguished panel. Mr. Sy Damle is a partner in copyright practice at Latham and Watkins. He is a former software engineer and specializes in technology matters, including those involving computer systems and networks and artificial intelligence.

He is previously general counsel at the Copyright Office. All of those reasons and more is why you're here.

Welcome. Mr. Callison Burch is an associate professor of computer and information science at the University of Pennsylvania. He is also a visiting research science -- scientist at the Allen Institute for Artificial Intelligence.

And welcome. Mr. Ashley Irwin. Mr. Irwin is President of the Society of Composers and Lyricists and an Emmy Award-winning music director, conductor, composer, arranger and producer with -- who has scored over 30 featured films, 300 hours of television and over 3000 commercials. And I suspect the commercials probably made you the most -- the most [laughter] as that sometimes goes.

Mr. David Navarro. Mr. Navarro is a Grammy-nominated songwriter, singer, recorder, artist, voice actor. His former -- he was formerly in the duo Lowen & Navarro, released 13 albums and performed over 1500--this was done by my staff, not by AI--gigs [laughter] and is currently a solo artist who tours constantly but has blessed us with a day off the road with no compensation.

And for that, we're very appreciative. Mr. Jeffrey Sedlik -- Sedlik is the President and CEO of PLUS Coalition, which is a global nonprofit initiative to make it easy and fast to search for, find, communicate and understand information about photographs and visual artworks. Mr. Sedlik is also a member of the Joint Committee on Ethics in AI and a -- and a professional photographer.

I want to welcome all of our witnesses. Recognizing that this is a Judiciary committee, I'm going to ask you to all rise to take the oath and raise your right hand for the camera. Do you solemnly swear or affirm under penalty of perjury -- perjury that the testimony you will give will be the truth, the whole truth, and correct to the best of your knowledge, so help you God? Thank you.

Let the -- please be seated. Let the record indicate that all witnesses answered in the affirmative. As you may know from watching C-SPAN, your entire record will be placed -- your entire statement will be placed in the record along with, without objection, any extraneous material you see fit now or in the next five days to include, so that as we go through this, if you realize there's something you should have said, would have said, or wanted to say you'll be allowed to supplement.

With that, Mr. Damle, you're -- you're first up for five minutes. Because we have a lot of people up on the dais that want to ask you questions, I will ask that each of you try to limit right to that five minutes or less. Gentleman is recognized.

SY DAMLE:

Chairman Issa, Ranking Member Johnson and members of the subcommittee, thank you for inviting me to participate in today's hearing. I'm a former software engineer, former general counsel of the US Copyright Office and currently a partner at the law firm Latham Watkins LLP. I'm here testifying solely in my personal capacity and not on behalf of my law firm, any of the firm's clients or the US Copyright Office.

My testimony today will focus on the copyright implications of AI training, but first I would like to put those issues into context. The AI tools of the present and near future will impact almost every aspect of the human experience. They will improve our science and our medicine. They will make our military more effective.

They will make our businesses more efficient and productive. They will enable anyone to more fully unlock their creative potential. In short, AI has the potential to transform our economy and improve our society as a whole, but that outcome is not guaranteed. The way we regulate AI will directly determine whether the United States will continue to lead the world in AI development or whether another country will take up that mantle.

In considering whether to impose intellectual property-based restrictions on AI innovation, Congress should carefully evaluate whether those restrictions will hamper the development of AI here in the United States. At the same time, artists, writers and other creators have expressed genuine concern that the rapid development of AI will displace human authors.

Policymakers should take those concerns seriously. But taking a step back, it's important to appreciate that every new technological development has caused similar fears. And in hindsight, we can see that those fears have not come to fruition. To just take one example, when photography was invented in the mid-1800s, one prominent critic dismissed the medium as "the refuge of every would-be painter too ill-endowed or too lazy to complete his studies." And he predicted that photography would "corrupt art altogether." Now I'm sure Mr. Sedlik can tell us how much he disagrees with that sentiment as a -- as an accomplished photographer.

And of course, society embraced the camera as a creative tool and photography blossomed as an art form that deepened rather than diminished the field of human creativity. There is no reason to believe that generative AI is any different. Like the camera or the many creative tools adopted since, generative AI will be an engine of human creativity, not a replacement for it. So with that context in mind, I want to make two points today.

First, copyright's well-established fair-use doctrine is the best way to balance the competing interests in the AI space. For the reasons I explain in detail in my written testimony, the training of AI models will generally fall within the established bounds of fair use. While some AI models may very well exceed those bounds, our courts are well-equipped to handle those situations.

The concerns that some have raised that AI models can replicate artistic styles are completely understandable. But the solution does not lie in copyright law, which does not and has never granted monopolies over artistic or musical styles. Second, some groups have proposed a collective licensing regime for AI training data.

Such a regime would eliminate fair use in this area, replacing it with a rigid assumption that AI training is infringing. I believe that would be a mistake. But if Congress were nevertheless interested in setting up a collective licensing regime, it should be aware of some of the serious practical challenges it will face.

I detail those challenges in my written testimony, but fundamentally they are rooted in the fact that successfully training an AI model requires using many billions of pieces of content. That's many orders of magnitude larger than the number of works covered by any similar scheme in the history of American law.

In short, Congress has already adopted a copyright law that is technology neutral and flexible enough to balance the need for a dynamic domestic AI industry with the rights of creators. I look forward to answering your questions today.

DARELL E. ISSA:

The gentleman yields back early. Mr. Burch -- Professor Burch.

CHRIS BURCH:

Chairman Issa, Ranking Member Johnson, distinguished members of the subcommittee, thank you for the chance to testify on this important topic. My name is Chris Callison Burch. I'm a professor at the University of Pennsylvania, a visiting researcher at the Artificial Intelligence -- the Allen Institute for Artificial Intelligence and the Deputy Chair of the Board of Advisors of the Johns Hopkins University Human Language Technology Center of Excellence.

Generative AI had its breakthrough moment in November of last year with the release of OpenAI's ChatGPT. This brought my field of research into the public eye and generated -- generated a huge amount of enthusiasm. I had access to OpenAI's large language models about a year and a half before the public. Despite having worked in this field for over 20 years, I was shocked by its capabilities.

My first encounter with it pitched me into a career existential crisis. The technology had seemingly solved many of the problems that I was researching. It could translate texts from Russian into English. It could write coherent summaries of long documents and then answer questions about them. I wondered whether there was any room left for academic research in light of the fact that these large language models require Google-sized data centers to train.

So I asked myself, should I just drop out of computer science and become a poet? But of course the next week I downloaded 15,000 poems from the Internet and trained the system to write much better poetry than I ever could. I've subsequently calmed down and I do not think that my job is at imminent risk of being replaced by ChatGPT. But I understand that many other people are experiencing the same sense of panic that I had.

Artists and writers are worried about their work being devalued. I worry that careers like a paralegal might go the way of a lamplighter. I think that, at its core, what we're talking about today goes far beyond copyright. It's about the value of work. This is a truly transformative technology that will shape many aspects of our lives.

I hope that it is for the better. I optimistically believe that AI will enable us to be more productive workers and to allow more people to realize their creative visions. In my testimony today, I hope to offer my expertise in the technical aspect of generative AI, and I promise to explain it in a way that doesn't require a PhD in computer science, answers to any questions that you have about the potential for legislation impacting on innovation in this field and advocacy for retaining fair use for the purposes of training generative AI systems.

In my written testimony, I provided an overview of how these systems work. I'm happy to explain during the hearing today how they do or to have one-on-one meetings with you or your staff at a later date. To briefly summarize the points that I want to highlight from my written testimony, generative AI is trained on huge amounts of data.

Large language models are now trained on roughly 1 trillion words. Image generators are trained on hundreds of millions of images. Much, or even most, of that data consists of copyrighted works that have been gathered by automatically crawling the web. It's important to remember that from this -- from these copyrighted works, AI systems learn.

This learning process is called pre-training, which is the P in GPT. Pre-training AI systems is different than how we teach our children to learn, but the effect is similar. AI systems learn how to use language. They learn facts about the world. They learn ideas and opinions, they learn visual concepts, they even learn some rudimentary commonsense reasoning skills.

This pre-training happens on copyrighted data, which is then set aside as models are fine-tuned to perform more specific tasks. For instance, a large language model can be fine-tuned on a much smaller purpose-built set of data in

order to become an intelligent tutor or a computer vision system can be fine-tuned in order to detect cancerous growths in mammograms.

These systems could not be as easily adapted to these specialized tasks without the general knowledge that they acquire from the copyrighted data that they're pre-trained on. I believe, like Sy, that pre-training these systems squarely falls within fair use and that internet-era court precedents likely established that this is the case.

Although, as the ranking member mentioned, this is currently being litigated in the courts, I do believe that the output of generative AI systems can infringe on copyright. And it's worth Congress considering legislation to better shape copyright to govern things like copyrightable characters and possibly to extend copyright to cover things like right of publicity.

I look forward to discussing this topic with you today.

DARRELL E. ISSA:

Thank you. Mr. Irwin.

ASHLEY IRWIN:

Chairman Issa, Ranking Member Johnson, distinguished members of this subcommittee, thank you for the opportunity to testify today on the important issues involving artificial intelligence and the impact on the creative industries. My name is Ashley Irwin and I am currently serving my sixth term as President of the Society of Composers and Lyricists.

I'm here today to advocate for my members who are -- who are already feeling the negative impact of generative artificial intelligence on their craft and its potential threat to their profession. First, some background on me and on the SCL. In my 40-plus years as a composer, arranger and such, I have written music for over 1,000 hours of film and television and more than 3,000 commercials.

Since 1990, I've provided musical compositions and arrangements for 23 Academy Award shows and been part of several Emmy-winning teams. I've had the pleasure of collaborating on many films with Oscar winners such as Clint Eastwood and Bill Conti. Over the years, my arrangements have been performed on numerous occasions for presidents Clinton, Bush, Obama, and one of my choral orchestrations was performed during President Ronald Reagan's state funeral service.

The SCL Background. The Society of Composers and Lyricists is the premier organization for music creators working in all forms of visual media. With chapters in Los Angeles, New York and Nashville, the SCL operates as the primary voice for over 3,000 members who work as creators of scores and songs for film, television, video games and theater.

While the SCL advocates for our members on several different fronts, the issue that has consumed the majority of our time recently has been generated by AI. The rapid introduction of generative AI systems is seen as an existential threat to the livelihood and continuance of our creative professions unless immediate steps are taken on legal, interpretive and economic fronts to address these emerging issues.

I want to be very clear. My goal is -- in raising these issues pertaining to the rights of writers and creators is not to block AI research and usage. We're simply advocating for the creation of a policy framework that ensures generative AI is developed and utilized responsibly, ethically and with respect for human creators and copyright so that the creative arts that are the real engine of generative AI can continue to flourish.

The SCL believes that AI companies and their generative models should adhere to the fundamental three C's: consent, credit, and compensation. Consent by creators for the first use of their works in generative AI media, credit wherever audiovisual creators' works are used, and compensation at fair market rates for the ingestion of any portion of human creators' copyrighted works by AI generative machines and the subsequent output of new derivative works.

I'd like to highlight three challenges posed to music creators by generative AI, potential solutions to which I've offered in my written testimony. Issue one: Generative AI has been equipped using copyright-protected human-authored works and programmed to mimic those works without consent, compensation or credit issued.

Issue two: Copyright information metadata has been removed during the ingestion process of these models. Issue three: The market will be diluted due to AI-generated works. As a result, copyright protection should not be granted to AI-generated works. In closing, I thought I should address why America's success is important to me. As you can no doubt tell by my accent, I'm not originally from the United States.

I came here from Australia as a young man because I wanted to be a part of the vibrant culture that is the US entertainment industry. However, the rise of generative AI poses a threat to this unique American art form. If we do not protect and nurture our human creators, we risk losing one of our greatest exports and its profound influence.

It's essential to prioritize policies and regulations that safeguard the intellectual property and copyright of creators and preserve the diverse and dynamic US cultural landscape. The protection of creators is not now nor has ever been in conflict with technological development. Our founding fathers recognized that the only place the term "rights" is mentioned in the Constitution is with regard to intellectual property.

Specifically, the rights granted to authors and inventors in Article 1 Section 8 Clause 8 are to promote the progress of science and useful arts. Respect for copyright and development of AI should go hand in hand. That way, all of humanity can benefit. I believe this committee has the power, authority and motivation to lead that charge, and I look forward to working with every one of you to achieve that common goal.

DARRELL E. ISSA:

Thank you. Mr. Navarro.

DAN NAVARRO:

Good morning, Chairman Issa, Ranking Member Johnson, and esteemed members of the subcommittee, thank you for the opportunity to appear before you today. My name is Dan Navarro and I've been a songwriter, recording artist, session singer, voice actor and music activist for over four decades. Throughout my career, I frequently have been asked, how did you come up with that song?

And while I often feel like saying it just came to me, the truth is all my work reflects a lifetime of personal emotions, rich experiences and even shattered dreams. In other words, it's complicated. Sometimes it's a moment. The song that saved and sustained my career, We Belong, recorded by Pat Benatar 40 years ago came to me right as I was giving up a career in music and a longtime collaboration with my best friend was decaying.

We decided to give it one more shot and I started with the end of the song and soon we were trading lyrics back and forth. It worked for us in one way or another. Two estranged friends found a space to connect, and a song that people have enjoyed for the last 40 years was born in 90 minutes. That human alchemy can't be fully explained, but it's the heart of music creation.

For generative AI, the answer to the question, "Where did that come from?" is in many ways much simpler. These machines have no emotions or experiences or dreams of their own to draw from. All they have are millions and millions of imported songs and lyrics, most copyrighted, hoovered off the internet without permission.

Training AI to mimic professional performers or generate new works based on millions of copies of published songs and recordings presents a host of legal implications, from copyright infringements to violations of rights of publicity and trademark to name, voice, and like -- likeness abuses. And it's a long-term threat to music itself.

By marginalizing and ultimately abandoning the fundamental human spark in music creation, we are inviting a future that sees fakes as real and that debases our art and culture with soulless brown food product, mediocrity. Does anyone think a computer-generated song can give you goosebumps or comfort? Abandoning -- or become a theme song to the loves of our lives?

That's our song. How can AI give a goosebump if it can't get a goosebump? That's human. To fight for human creativity, I was proud to help launch the Human Artistry Campaign in March and I'm here today as a supporter of that initiative. Now boasting more than 100 organizations globally, representing all kinds of arts and creativity, it is the global center of gravity advocating for the rights of creators in the age of AI. This coalition believes AI is exciting and promising, but can never replace human artistry and soul.

It's based on seven core principles that I support wholeheartedly. First, technology has long empowered human expression, and AI will be no different. Musicians will use this technology to do great things. Second, human-created works will remain essential on our -- in our lives. At the heart of the connection between the artists and the audience are shared lived experiences only humans can relate to and convey.

Third, the use of copyrighted works for AI purposes and the use of voices and likenesses of professional performers requires permission. Like all predecessor technologies, AI must be subject to authorization and free market licensing from all rights holders and creators. Fourth, government should not create new copyright or other IP exemptions that allow AI developers to exploit creators without permission and compensation.

People looking to make a fast buck from technological change routinely ask policy makers to pick winners and losers. Here, that would be devastating. Fifth, copyright should only protect the unique value of human intellectual creativity. The copyright clause of the Constitution exists to incentivize humans to create.

Machines don't need incentives. Sixth, trustworthiness and transparency are essential to the success of AI and the protection of creators. Without transparent AI, we will have no idea whether the inputs AI systems were trained on were licensed, leaving us no way to enforce our rights. Seventh, creators must have a seat at the table, not just developers.

Our creativity, our rights, our livelihoods are at stake. If AI is allowed to take away the ability of authors and artists to control and make a living from their art, we will lose all authenticity in our expression. We'll lose culture itself. The next decision by the courts and Congress in this area will decide our cultural future, and it's your responsibility to make sure the cultural promise of reward for human genius remains viable.

Guided by the principles of -- of the Human Artistry Campaign, we can look forward to the real emotions, experiences and dreams of future generations of creators, perhaps facilitated by AI, but never silenced by it. I thank you and I look forward to answering your questions.

DARRELL E. ISSA:

Thank you. Mr. Sedlik.

JEFFREY SEDLIK:

Chairman Issa, Ranking Member Johnson, distinguished members, thank you for the opportunity to testify here today. I've been a professional photographer and filmmaker for 37 years. I'm a professor at the Art Center College of Design, the former President of the American Photographic Artist and the current President of the PLUS Coalition.

As mentioned by Chairman Issa, PLUS is a global nonprofit organization focused exclusively on simplifying the identification of visual works. PLUS is currently developing a global nonprofit visual registry in -- and, in cooperation with the IPTC, updating our widely-adopted metadata standards to allow artists to declare AI-related permi -- permissions and prohibitions in their image files.

You can learn more about that at plus.org. As a professional visual artist, I make my living by creating and, most importantly, licensing my works. My ability to create new works, sustain my business, support my family depends directly on my exclusive rights to reproduce, distribute, publicly display and adapt my original works.

These fundamental rights are the core of my business, providing a strong incentive to create new works. In fact, they're the only way that I can afford to create new works. Unfortunately, many AI developers and platforms have built their businesses by exploiting billions of visual works without authorization from or compensation to copyright owners.

The theft and exploitation of visual works by AI platforms displaces a common longstanding practice in which creators and their agents offer and sell artist reference licenses, permitting the u -- use of works for reference and creating new derivative works. AI ingestion falls squarely within this reference license category.

In fact, stock photo agencies routinely sell reference licenses to AI platforms, permitting the use of visual works for AI ingestion. A market clearly exists for these licenses. The unlicensed ingestion of photographs by AI systems usurps that market and forces human creators to compete with machine-made derivatives of their own original works.

Many AI platforms are trained on copies of creative works scraped from websites that display those works without the knowledge or permission of the copyright owners. I've found thousands of unlicensed copies of my works in open databases used by AI -- AI systems to support image ingestion and generation.

It is clear that many generative AI platforms were founded on copyright infringement. In defense of their actions, AI developers attempt to apply blanket claims of fair use counter to the spirit and letter of the Copyright Act. Fair use is not a right. It's an affirmative defense requiring a fact-specific inquiry on a case-by-case basis.

AI developers claim that AI-generated works are not substantially similar to source works, and thus can't be infringements. But this ignores the fact that the exclusive reproduction right is a standalone right under Section 106 of the Copyright Act. The creation and use of copies for AI ingestion purposes is copyright infringement on a massive scale.

AI developers further suggest that photographers' use of cameras is the creative equivalent of drafting prompts for generative AI. They minimize the creative process in photography and attempt to frame photographers as mere button pushers. This is a false equivalency. We photographers are visual storytellers.

Our creative decisions are guided by our life history and our unique combination of training, experience, personality, esthetic sensibilities, dreams, memories, search and other factors. When creating our works, we

anticipate and respond dynamically to the subject matter and shooting environment. We exercise control over the visual rendition of the scene.

We decide which elements to include and exclude and where to place those elements within the frame. We determine how to juxtapose people, objects and other compositional elements for a desired creative effect. We control the placement and interplay of color, tone, texture, contrast, light and shade. We control the perspective distortion, depth of field and selective focus to guide the viewer's eye through the image.

And we select the precise moment at which to create the ultimate photograph. This substantial creative human expression is not the equivalent of submitting a text prompt instructing a machine to generate a work. Copyright law affords protection only to human expression. The output of an image by machines in response to prompts is and should remain ineligible for copyright protection.

Policies must favor -- must not favor machines over human creators. AI developers must be required not only to obtain advanced permission to ingest and exploit creative works, but to compensate creators whether directly or through collective licensing organizations such as the American Society for Collective Rights Licensing.

AI Technologies must be developed and used in a manner that is responsible, respectful and ethical, upholding the underlying goals and purposes of our copyright system. I appreciate the opportunity to testify and I look forward to answering your questions.

DARRELL E. ISSA:

Thank you, and I thank all our witnesses. I'm going to forego my questioning until the end or near the end. And so I'm going to go to Mr. Fitzgerald, somebody who understands what it is to own copyright in his former life. Gentleman's recognized for five minutes.

SCOTT FITZGERALD:

Thank you, Mr Chair. Mr. Damle, the Supreme Court has held, since 1884 case *Burl-Giles Lithographic Co. v. Sarony*, that photographs can be entitled to copyright protection where the photographer makes decisions regarding creative elements of the work. You were quoted in your testimony as saying society embraced the camera as a creative tool and photography blossomed as an art -- as an art form that deepened rather than diminished this whole field of creativity.

There's no reason to believe AI is -- is any different, I think was your point. The Copyright Office has disputed this comparison. Instead, comparing the generative AI to a client who hires an artist to create something because users do not exercise ultimate creative control. What's kind of your response or your thoughts to copyright comparison?

And do you believe that Copyright was correct in denying copyright for lack of the ultimate creative control as they did in their decision in *Zarya of the Dawn*?

SY DAMLE:

Congressman, thank you. Thank you for that question. So the way I would start by framing this issue is -- the point I was trying to make in my testimony is that generative AI can be a tool that humans use to enhance their creative output. And so the copyright -- what the Copyright Office has said is where that tool is doing all of the work of creative output, then that's a situation where we don't need the economic incentive that -- that the Constitution has as -- as an incentive for creating that output.

But I think that's sort of one end of the spectrum of the question. There's going to be a big gray area where there's going to be basically human and AI together creating output. I think that's going to be a very common situation going forward. And I think in that situation, I would say where the human is exercising some control over the AI and its output, where there is a sort of iterative process between what the generative AI produces and what the human produces, then that is a situation where you should have copyrightable output, that the -- the output of that process should be copyrightable to some degree.

And it's no different, I think, than a -- than a camera, than a photographer's interaction with a camera. They're -- they're adjusting the settings on the camera, they're choosing the framing of the image, they're employing a lot of choice. Yes, the camera is the one that's actually recording the image, but the human has control over that process.

And so by the same token, where a human has that level of control over the generative AI process, as I think will happen in many cases, then the output of that should be copyrightable in the same way that a photograph is copyrightable.

SCOTT FITZGERALD:

To reiterate that, do you think Copyright got this correct in the way that they had -- came up with their determination?

SY DAMLE:

I think in the particular instance and the particular things that they said, I think they got it right, but they're addressing a very -- just sort of extreme example where the human is not actually providing anything other than a simple prompt to the generative AI system. And then they've decided in that instance, the output is not copyrightable.

I think that's going to be very different than the mine-run of cases using generative AI. The mine-run of cases are going to involve much more involvement of human authorship than just providing a simple, you know, one-sentence prompt.

SCOTT FITZGERALD:

Yeah, so it just -- because I just have one minute left actually. So what other situations do you think could emerge that Copyright would then have to deal with where -- where you do find this mix of artistry along with what AI has capabilities of doing that could somehow, you know, put us in a place where no way it can be undetermined who actually is -- is the creator.

SY DAMLE:

So I think those are going to have to be determined on a case-by-case basis. And the Office actually in its guidance provided some examples, some -- some -- a few examples, but some examples of where there would be sort of a creative -- enough creative human authorship, for instance, where the -- you provide a prompt, it generates an image and then you adjust that image.

The human actually takes that image as a starting point and then adds more creative authorship to that image. That's one example. I think another example that you might see is where you start with an image that you have. I'm using an -- image ones as an example, but you start with an image, you feed it into the generative AI and then generative AI helps you make changes to that image in certain ways, in the same way that you might use Photoshop.

I think in those circumstances you're going to have situations where the output is copyrightable and then there may be questions about how much of it is copyrightable, how much of it was generated by the AI. But those can be dealt with on a fact-by-fact basis.

SCOTT FITZGERALD:

Thank you very much, and I would yield back.

DARRELL E. ISSA:

I thank the gentleman. We now recognize the ranking member of the subcommittee, Mr. Johnson, for five minutes.

HANK JOHNSON:

Thank you, Mr. Chairman. The other day I was in my car cruising and there was an interview with Smokey Robinson on the radio. And Smokey Robinson was saying that his big hit Cruising took in total about five years to -- to come to the final product. I'd like to ask you, Mr. Irwin, Mr. Navarro and Mr. Sedlik, your works can be scraped from the Internet in a matter of seconds for AI ingestion.

Can you explain what goes into creating a single work of art and how long that process might take, starting with you, Mr. Irwin?

ASHLEY IRWIN:

I'm sure it's -- kind of the answer is how long is a piece of string. To be honest, it's always different. When we're working in an audiovisual space, be it film or television or something like that where you're commissioned to work, you have deadlines and you have to come up with the goods by a certain time, you know, and deliver them.

When you're working as a songwriter, more like Dan does, you have a little more freedom and you can work on a lyric, you can work on a song, you can collaborate, you can have a half-written song and then bring someone else in. But -- but everything takes time. Nothing is the push of a button. There is no push button music up to this point that's any good anyway.

I mean, most of it's just, you know, not -- not usable.

HANK JOHNSON:

Mr. Navarro? Thank you.

DAN NAVARRO:

I'd like to affirm what Mr. Irwin says. I made reference to my big hit song that took 90 minutes to write. The emotions that led to my contributions and the contributions of my late partner took three years to percolate, to run through my emotions and my system, be expressed, be wept, be verbalized, be internalized before they came out in an evening blast when everything was ready.

It didn't take 90 minutes. It took several years. I've had songs take seven years, I've had songs take seven days. It varies depending on what it takes to sit and look at something and go, it's done, now it's done.

HANK JOHNSON:

Thank you. Mr. Sedlik.

JEFFREY SEDLIK:

Thank you. There are many genres of photographers, each of whom works in a different way, including within those genres. Personally, I'm very controlling in my photography. Every aspect of every photograph that I take is something that is planned and controlled, whereas another photographer might be more spontaneous.

In my process, I use free association first. It will take weeks, months, even more than a year. I use free association, come up with ideas, make thumbnail sketches, make iterative sketches, do tests, do planning, set the whole thing up, test and then during the process I control it, whereas a photojournalist might make all of those decisions in an instant.

It's their lifetime of experience and all their capabilities that lets them accomplish the same thing. Thousands of decisions in a second.

HANK JOHNSON:

Let me ask you this, Mr. Sedlik. Can you compare the process of creating works -- your works through -- or can you compare that to works created through generative AI?

JEFFREY SEDLIK:

Yes, so the same goes for AI. There's the full spectrum.

HANK JOHNSON:

And if you could tell me also how it feels as an artist to have your work used without your permission to serve as the basis for a product that might then compete against your product.

JEFFREY SEDLIK:

Yes.

HANK JOHNSON:

If you could leave some time for Mr. Navarro and Mr. Irwin to respond to that question also. Fifty-eight seconds, go ahead.

JEFFREY SEDLIK:

So I'll answer your second question first. So photographers are used to the advancement of technology. We've been using technology for 179 years and we're usually first in using it. So we anticipate that technology is going to continue to develop, that new opportunities for creation are going to advance, that it's going to be easier to create great works and we accept that.

That's not our pro -- our concern here. Our concern is that our works are being used without our permission and without any compensation, the creative process --

HANK JOHNSON:

--Thank you. Let me go to Mr. Navarro. Appreciate it.

DAN NAVARRO:

I feel the same way. I think AI is a tool that I myself could use. My partner in my duo passed away. I could maybe impersonate his voice and put out a brand new Lowen and Navarro record, but permission, credit, compensation.

HANK JOHNSON:

Thank you. Mr. Irwin.

ASHLEY IRWIN:

We've been using elements of AI as tools for -- I -- I've certainly been using them for almost 30 years, but always with the control of -- of what the output is. Quite often create the initial piece of music that you're going to work with. Then you process it in a particular way, and you make the decisions of what is the final product going to be. Some of the options you are given are not usable.

You know, it's -- it's a matter of taste and only humans have that kind of discerning taste.

HANK JOHNSON:

Thank you, Mr. Chairman, I appreciate the indulgence. And, Mr. Callison Burch, I would -- if I had time, I'd be asking you about the value of work that you see as so critical for us to think about. But thank you.

DARRELL E. ISSA:

I thank the gentleman, and we will make sure we get that answer. The gentleman from Oregon, Mr. Bentz.

CLIFF BENTZ:

Thank you, Mr. Chair, and thank all of you for being here today. So my question is -- I'm not sure which one of you to ask, but the -- the issue is whether our technology is such that we can actually do what I think many of you want us to do. And I'm just thinking of the Led Zeppelin situation that took years to sort out whether or not "the descending-chord sequence" had been used for centuries and whether or not it had been stolen.

And of course, it ultimately was decided after five or six or seven or eight years of litigation that Led Zeppelin had, for various reasons, not -- not usurped it. My question to you is, and I'm going to ask it of you, Mr. Navarro, if you think that we have the technology available to sort these things out after the fact?

And if not, what would you be suggesting that we do to try to prevent it in -- before it happens? I just want to know, given the nature of music, and I'm a very bad musician, but I know what a guitar is, how in the world do you sort this out? Do we have the technology available?

DAN NAVARRO:

I'm not sure we're qualified to determine how it's sorted out. I know that I, as a creator, if I get too close to something I pull back. If I get a little too close to Ray Charles, I pull back. If I get too close to John Lennon I pull back and if I don't do it right, there are legal remedies. Just ask George Harrison or Robin Thicke.

CLIFF BENTZ:

Mr. Damle, I don't know if -- I'm not sure I pronounce your name correctly, but could you address the question?

SY DAMLE:

Thank you, Congressman, you got it exactly right. So I would point to the -- the sort of cases that you're talking about--like the Led Zeppelin case, like the Blurred Lines case-- as examples of instances where copyright did not stay within its proper bounds, where courts det -- decided that borrowing somebody's musical style counted as copyright infringement.

And I think when those decisions came down, it really threw the music industry into -- into chaos. I'm a music lawyer, in addition to being a technology lawyer. I know that the music industry really grappled with those decisions, and you had artists saying that they were afraid to create because they were worried that they were, inadvertently perhaps, borrowing the style from somebody else.

And it -- it got to the point that even the rights owner groups started criticizing those decisions, saying they went too far, they did not allow artists to express themselves as freely as they should be able to. And I think -- thankfully, I think we've seen a return back to those core principles of the Copyright Act, which is ideas, styles should be able to be used by all.

So that's what we've seen in these recent decisions involving Ed Sheeran--a return back to that -- that principle of being faithful to the Copyright Act, faithful to the Constitution's mandate for what the Copyright Act is supposed to do. And so that -- that -- that would be my response to that issue.

CLIFF BENTZ:

And -- and thank you for your answers. And with that, Mr. Chair, I yield the rest of my time to you.

DARRELL E. ISSA:

I thank the gentleman for yielding, and I'll continue along somewhat an earlier line. The -- Mr. Navarro, you know, we talked about credit, we talked about permission and we talked about compensation, or you did. Credit would seem to be one that Congress could mandate that the database input could be searchable so you would know that your work or your name or something was in the database.

Fairly easy, probably doable. You know, it's quite an index of billions or trillions in some cases, but that would be -- the output might be a little more complex, and we'll talk about that later. The compensation is a question I want you to opine on and -- and maybe both ends of the -- the question. If there are 10 billion or 10 trillion inputs, and let's just assume for a moment that there are a billion copyrighted, we all know what it's like to get that big check from Spotify for -- for the 100 or 1,000 times you were played and it comes out in pennies.

Ok. What is the division of a billion pieces of music, and how would it in fact -- assuming that that was part of the output, how would you actually quantify it because we have to put a number on it at some point?

DAN NAVARRO:

It's a difficult thing to do. I believe in free market negotiations with regard to this. I know that that can be cumbersome. I don't believe in compulsory licenses, especially as regards this particular issue. The compulsory licenses I'm used to, whether it's at SiriusXM or in the use of a song that I've already recorded, which is a compuls -- compulsory license for someone else to use, benefits me directly.

When my stuff is part of a large number of stuff that's scraped, it supersedes my work. It doesn't even just compete with it. That's a foot race. It supersedes it. And in that context, I believe in free market.

DARRELL E. ISSA:

And we will undoubtedly be asking that question of others in another forum. With that, we go to the chairman of the full committee, Mr. Nadler.

JERRY NADLER:

Thank you, Mr. Chairman. Mr. Irwin, according to reports, OpenAI, the company behind ChatGPT -- GPT, is valued at \$29 billion and Stability AI, the company behind Stable Diffusion, was valued at around \$1 billion late last year. By way of comparison, can you give us an idea of how much the average composer salary would be?

ASHLEY IRWIN:

It's very difficult to say because the way compose -- first of all, we are not governed by any kind of collective bargaining. We're not a union or anything like that. So we're very much independent contractors. It's -- it's easier to talk about ranges for television shows, an hour of television, a feature film.

Those sorts of budgets are easier to quantify. And then, of course, it comes into the experience of whether you're an entry-level person or very experienced high-level person. All of those change the rates. And then, of course, on the backend where we get our royalty streams, which -- where a lot of us make our money, the performing royalties that are collected by the societies like ASCAP, BMI, and SESAC, they are -- are dependent completely on the number of performances of those works that include your music.

And that's the same for audiovisual and for streaming and everything. So it's very hard to say. You know, some years it's like -- it's almost like a farmer. Some years you have a bumper crop, next year you might not see much at all.

JERRY NADLER:

I see. Mr. Sedlik, what about the average photographer? Same -- what about the average photographer? The average salary? If you might --

JEFFREY SEDLIK:

I don't have statistics on that, Representative Nadler. However, many photographers make as little as \$20,000 to \$40,000 a year and amounts greater than that outside of certain spaces are -- can be unusual.

JERRY NADLER:

Ok. Thank you. Mr. Irwin, can you talk a little more about what threats generative AI poses to composers and -- to composers and songwriters? What actions do you think we should take to ensure that your work and artistry is protected? Actually, we've talked about the threats.

ASHLEY IRWIN:

Yeah, I can talk -- do you want to talk about the threat or you want to talk about the solution?

JERRY NADLER:

I think you've talked about the threats. What --

ASHLEY IRWIN:

Yeah, the -- some of what's in my written testimony -- one of the things that the music industry has done particularly well in this area is collective licensing. And they have -- as I just mentioned, for ASCAP, BMI, SESAC, they have a way to monitor performances for mechanical royalties, which are the physical royalties that you have sound exchange.

And then there's streaming royalties as well through the Music Licensing Collective, and there are reciprocal organizations set up all over the world. So--

JERRY NADLER:

--How would we apply that to open it --

ASHLEY IRWIN:

Well, I think -- I think, you know, music is probably more easily -- it's more easily applied to music than it possibly is to some of these other art forms because every piece of music that's registered has a registration number, a work number, a recording number. Every artist has their own number. I have what's called an IPI number.

Dan has one. So they're already in the system. You don't need to reinvent them, you just need to make sure that they are attributed to those works as they're being used or -- or -- or logged, or however -- however you want.

JERRY NADLER:

How do you determine what works are used in generative AI?

ASHLEY IRWIN:

Well, that's -- that -- that's I think something that will need to be determined. I mean, I write music, I -- I'm not a technologist.

JERRY NADLER:

Ok. Maybe, Professor Callison Burch, transparency in AI training models is a concern, but transparency to the end user that the media they are viewing is AI-created is critical as well. I see that in your testimony, you know, that parts of it were composed using ChatGPT. Should so -- some sort of disclosure like that be required?

And currently, how are individuals alerted to the fact that they're hearing or viewing an AI-created work, if at all?

CHRIS BURCH:

Thank you for the question. So disclosure of AI-generated works I think is valuable, I think especially with their potential for societal harms through generating deepfakes or works that could be used to influence elections by mocking up in -- instances like Trump being arrested in New York. I saw it being generated by Midjourney.

Certainly just --

JERRY NADLER:

Or generating a fake speech by me.

CHRIS BURCH:

I think that this is an important issue that touches on the output of generative AI systems, and that is where I think that regulation is deserved.

JERRY NADLER:

And how are individuals alerted to the fact that they're hearing or viewing an AI-created work, if at all?

CHRIS BURCH:

I'm sorry, repeat the question, please.

JERRY NADLER:

How are -- currently, how are individuals alerted to the fact that they are hearing or viewing an AI-created work, if at all?

CHRIS BURCH:

There's a variety of technological devices that our field is innovating in order to mark AI-generated works, similar to a watermark on a stock photography site. This is not an established industry-wide practice, but it is something that our field has been discussing. At the moment, it's up to the -- the user of the AI system who's generating it to disclose to people who they're transmitting that image to that it was generated.

JERRY NADLER:

Thank you. My time is well expired, and I thank the chairman for his indulgence.

DARRELL E. ISSA:

Mr. Chairman, you gave me the similar indulgence when you said -- sat in this chair, so I'm only returning the favor. I thank you. We now go to the gentleman from Virginia, Mr. Cline.

BEN CLINE:

Thank you, Mr. Chairman. I want to follow up on that line of questioning about existing technologies that are there to identify digital works, enhance copyright protection. Mr. Sedlik, digital watermarks, tags, metadata, what challenges are you aware of in the use of these types of technologies for works that are used in training AI?

JEFFREY SEDLIK:

We have mature, very capable technologies to identify digital works, including image recognition and what's called steganography, which is burying signals in a -- in the image to identify it. Creators use embedded metadata to -- to pass information into their images so that as their images are distributed, their images can be identified.

A big problem for us is that all of that information is stripped out by the social media platforms and other platforms when images are used. We would very much benefit from a change and improvement to the law to make it illegal to remove embedded rights metadata, even if it's not done for the purpose of infringement.

Right now under Section 202, it's only illegal if it's done intentionally for the purpose of inducing, enabling, concealing or facilitating infringement.

BEN CLINE:

Mr. Irwin, what about music?

ASHLEY IRWIN:

Sorry?

BEN CLINE:

What -- do you have any comments on that?

ASHLEY IRWIN:

Yes, there is watermarking and fingerprinting used in music technology over and above the identifiers that I talked about. There's technology that allows -- currently allows music to be identified even within a program that has dialog and sound effects over the top of it. You can still identify that music.

So, you know, the technology is there for this to be done. It's just a matter of having the will and sitting with the -- the -- the organizations who are doing it and -- and getting this discussion going. I have no doubt that -- that there's a way to -- to track this stuff correctly.

BEN CLINE:

Professor, you -- you commented on that and talked about the trending toward use of this technology by industry. Is -- is that something that's happening too slowly? Is that something that needs involvement from government? What do you think?

CHRIS BURCH:

So I think at the core, the problem with an idea like a compulsory license, and Mr. Issa's suggestion of, like, what is the value of one over a trillion when you think about the volume of this work, and I can say that -- definitively that the value of one over a trillion is going to be vanishingly small.

And so I think another key that is a practical consideration here is, unlike compulsory licenses which are based on performance -- so the WMA, where Spotify plays music, Taylor Swift gets more money than some random person in the catalog because her songs are played more. There's no equivalent here for generative AI. It's hard -- it's impossible to understand how much of a system's output is due to Stephen King versus a random Reddit poster who's written a paragraph in the collection.

So I think the lack of that performance is key to one of the tricky things about establishing a com -- compulsory license here.

BEN CLINE:

Mr. Irwin, some have suggested that imposing IP-related obligations on AI developers would hobble development because of the inability to feasibly use copyrighted content for training purposes. Would you be willing to license your works for training purposes and do you think other creators would also be willing?

ASHLEY IRWIN:

If -- if I was being compensated for them, absolutely. Yeah. I -- I don't have a problem with the technology at all. I have a problem with the -- the stealing of the -- the material.

BEN CLINE:

And, Mr. Navarro, you indicated your willingness to use AI and --

DAN NAVARRO:

A similar answer. The ability to approve or disapprove of a particular use is why I oppose compulsory licenses. I don't oppose blanket licenses, which might make -- streamline the process, but I still have the ability to say yes or no and opt out.

BEN CLINE:

Now, in your testimony you advocated against granting AI any special IP exemptions. Depending on how some lawsuits turn out, courts may decide that AI doesn't need special exemptions, and training AI with copyrighted music is not infringement under current law. In that event, would you advocate for changing the law to make training AI with copyrighted works a type of infringement?

DAN NAVARRO:

I'm not sure that I am qualified to answer that. It's a very technical question. I do believe that as we're looking at guardrails, guardrails used to be made of wood, then they started becoming made of steel. Now as cars get faster and more powerful, maybe they need to be -- be made of titanium. As these technologies progress and as its scope increases, our guardrails need to be modified and improved.

BEN CLINE:

Thank you. I yield back.

DARRELL E. ISSA:

The guardrails of the future will be software driven. [laughter] And with that, we go to the gentleman from California, my colleague, Mr. Lieu.

TED LIEU:

Thank you, Chairman Issa and Ranking Member Johnson for holding this important hearing. As a recovering computer science major, I am enthralled with AI. I believe it has and will continue to revolutionize society. It can also cause us harm and it creates all sorts of unanswered questions. So I'd like to walk through some examples so that the American public and I can better understand how artificial intelligence interacts with copyright.

I'd like to ask Mr. Damle this example. Let's say I create a generative AI Internet application related to music. I do it for commercial purposes, and to train it, I scrape the entire Internet of all songs, including every one of Taylor Swift's copyrighted songs without her permission. Your view is I wouldn't have to compensate her in any way, is that right?

SY DAMLE:

So I think it would very much depend on the particular way in which you train the AI models. Not all AI models are constructed the same way. Some are constructed in -- in ways that might very well exceed the bounds of fair use. And so it's inevitably going to be a fact by -- case by case determination of whether a particular model is going to exceed those bounds or not.

TED LIEU:

Let's just use ChatGPT's model.

SY DAMLE:

So -- so in -- in an instance where what you have done is extract unprotectable facts from any copyrighted work -- so stepping aside and generalizing this point to any kind of work -- when -- if what you've done is extract unprotectable facts from those works and then use those facts to generate a new work, then under well-established principles of copyright law, that is not infringe -- infringement.

TED LIEU:

I'm not -- I mean, I'm not generating -- I'm just about training the model.

SY DAMLE:

Just on the training side, if that's all that happens, then -- then under -- under a long line of cases that I've laid out in my written testimony, that is fair use.

TED LIEU:

But to train the model, you need to actually download the Taylor Swift songs?

SY DAMLE:

That's correct. That's correct.

TED LIEU:

And that -- do you view that as fair use?

SY DAMLE:

That would be fair use. The premise of any fair use case is going to be --

TED LIEU:

Right. So -- so Internet applications like YouTube pay a licensing fee to Taylor Swift when they download her songs. What -- what is the difference?

SY DAMLE:

Well, the difference would be the -- in those instances, what they're doing is they're taking the work and then they're taking that work and they're streaming it to end users. So that's a -- that's a public performance of her work.

TED LIEU:

So -- so let's say ChatGPT lets you just put out Taylor Swift lyrics, what's the difference?

SY DAMLE:

Yeah, I think that would be -- that -- that might be an issue that exceeds the fa -- bounds of fair use where you're --

TED LIEU:

Now, let's say I take my model, and I generate a new song similar to a Taylor Swift song in terms of lyrics. Is that a copyright infringement?

SY DAMLE:

That -- that's correct, Congressman.

TED LIEU:

It would be infringement?

SY DAMLE:

It would not be infringement.

TED LIEU:

It would not be infringement.

SY DAMLE:

Because one of the basic principles of the Copyright Act, which I discussed earlier, is replicating somebody's style -- writing a song. If I were to write a song in the style of Taylor Swift, I would not be committing copyright infringement. That's one of the founding precepts of copyright.

TED LIEU:

Now, as you know, voice cannot be copyrighted. But let's say my model also generates voice very similar to Taylor Swift, and I have this brand new song similar to Taylor Swift's voice, similar to her lyrics. You believe that that would not be copyright infringement.

SY DAMLE:

I think you would have to look at other bodies of law to -- to -- to determine whether that would be illegal. I think as a matter of copyright law and just the basic principles of copyright law, that would not be copyright infringement, which is not to say it's not concerning in other -- for other reasons, but in just looking at the copyright law itself, that's not --

TED LIEU:

--And -- and finally then, in fact you believe I could then copyright this Taylor Swift-like song with voice like Taylor Swift that I generated by scraping the Internet with Taylor Swift copyrighted songs I didn't pay her for, right?

SY DAMLE:

I don't -- I don't know that that would necessarily be the case and certainly as -- as we were discussing earlier, the Copyright Office has taken the view that AI-generated works like that may not be subject to copyright protection at all.

TED LIEU:

Ok, thank you. So my remaining time, I have a question for Professor Callison Burch about disclosure, and (unintelligible 1:35:50) asked about this. Many creators already use AI, right, in their creative works. I mean, there's a whole bunch of algorithms that make your songs sound better. They don't disclose that, right?

How would you even define what kinds of AI they need to disclose that help them with their particular creative work?

CHRIS BURCH:

That's a great question. If you'll indulge me, I want to answer your question to Sy as well. So that -- your question about, if I download Taylor Swift's songs and I learn from it could be equally well-posed to a teenage pop star who's learning how to sing. So if that person learned from Taylor Swift, the decision of whether or not they're violating copyright is not at the time when they're listening to the songs and learning to perform music, it's when they release an album and whether that album is sufficiently similar to say -- Taylor Swift's song.

So if we release -- instead of Taylor's version, we release ChatGPT's version of the album, that's infringement. But the learning from it is not. In terms of the disclosure of use of copyrighted -- of generative AI and materials, I think there's an interesting inaccuracy -- ill-advised guidance from the Copyright Office that works that involve substantive use of generative AI are not copyrightable at the moment.

I believe that AI is going to be used in a collaborative way with humans and the human using it deserves that copyright. Whether or not they acknowledge it I think depends on the use of it. So there was a law passed that political ads must disclose if they're using generative AI to create images of politicians.

That seems like a very valid case to disclose. If I'm creating a comic book, seems less high stakes, so probably not necessary.

TED LIEU:

Thank you. I yield back.

DARRELL E. ISSA:

I thank the gentleman. We now go to the gentleman from Texas, Mr. Gooden.

LANCE GOODEN:

Thank you, Mr. Chairman, and that was very interesting. I'd like to maybe keep going along those lines. It seems as if, as this develops, we'd like to perhaps see more transparency in the process. Is it -- is it unrealistic to think that the -- the songwriters, the people, the American people, whoever, could kind of see what goes into these -- these sources of what has an influence on the AI? Mr. Callison Burch, I'll give it to you.

But I don't think the average person, myself included, understands the technology, but is it unrealistic to ask that we know if a particular song got more influence from Taylor Swift or whoever and how that process comes about?

CHRIS BURCH:

So I think this is a super interesting question that, again, involves the output of a generative AI system rather than the training per se. I think that there is a valid case to be made that copyright should be reshaped to protect against a case where I as a user of an AI system ask it to generate something that mimics a particular artist.

Like, this concern that artists have I think is 100 percent valid that you can currently, say, generate the -- generate a comic strip in the style of Sarah Anderson and it produces something similar in style but does not reproduce any of her published works. That to me seems more like a right of publicity style concern than current copyright law is addressing.

I do think it's an ethical issue that we should consider as an industry, and I think that there should be an opt-out mechanism for artists to explicitly exclude their work from the vast amount of training data that we have. But, again, I want to make this distinction clear: What AI systems are learning from their training data is more akin to facts and patterns and statistical correlations than it is memorization or directly lifting from copyrighted works.

LANCE GOODEN:

Mr. Damle--please forgive me if I've mispronounced your last name--do you believe that there -- there will be more of a push to actually copyright some of these AI works? I feel like that will be controversial and a tough sell for those on the other side of your table. But could you explain the thought process behind that?

SY DAMLE:

I think there's going to be a lot of hard questions that get raised. Just as there are many ways in which to train an AI model, there are many, many ways in which to use an AI model in the creative process. And I think we're really at the very, very early stages of trying to figure out, where do you draw the line between an AI-generated output that we don't think deserves copyright protection under -- you know, under sort of the constitutional precept of what copyright law is about and what creative output that is assisted with an AI deserves copyright protection, and it's necessarily going to be fact by fact.

I agree with the -- with the Copyright Office's view that the principle here is that you need sufficient human authorship, sufficient human input into the creative process in order to warrant copyright protection. That's -- that's almost a constitutional requirement, but exactly how that plays out in any given case is going to require overtime over the next few years and more looking at every case that comes and trying to decide, Ok, is this on one side of the line or the other?

LANCE GOODEN:

Ok, thank you. This -- it's -- maybe it's a far-fetched analogy. But many years ago when I was in the state house, we passed a bill -- I authored it -- that restricted the use of drones over people's backyards and the drone industry was against that. And they said you should be able to fly a drone over anyone's house and park it and watch them all day.

A helicopter can do that, so what's the difference? And I said, well, a helicopter is operated by an individual. It can't stay up there forever, and you know if it's there because it's loud and big. And so I thought of that as you were talking about your example of the middle school child who sings like Taylor Swift compared to the AI that sounds like Taylor Swift and how there's no difference.

The difference is -- is that's a middle school child, and I'm not real worried about a middle school child taking over the music industry. So I think we have to differentiate between the two. I yield back.

DARRELL E. ISSA:

Will the gentleman yield?

UNKNOWN:

This gentleman?

DARRELL E. ISSA:

Yeah, would you gentle -- yield for a second?

UNKNOWN:

Oh, of course. Please.

DARRELL E. ISSA:

Thank you. At some future time, I'd like you to talk, and particularly Mr. Navarro, about how you view the difference between a cover band and AI and where the -- where the guidelines are similar and when they'd be different, and the same obviously from a legal standpoint. I won't ask to have it answered at this time, I'm out of time.

Thank the gentleman for yielding. We now go to the gentlelady from North Carolina, Ms. -- Ms. Ross.

DEBORAH ROSS:

Thank you, Mr. Chairman, and thank you to all the witnesses for being here today. We've heard multiple perspectives today on whether training AI on unlicensed copyrighted material should be permitted through the fair use doctrine and the Copyright Office considers several factors in e -- in evaluating this question of fair use.

But one of those factors is the amo -- amount and how substantial the copyrighted work was that was used and the guidance notes that in some con -- contexts, using an even small amount of copyrighted work was determined to not be fair because the selection was an important part or actually the heart of the work.

So it could be just very small, but so -- have such an imprint. And that strikes me as a key factor in the consideration of AI training as well. AI is built upon creative works, whether it's art or music or writing. And AI would not exist at all if it couldn't learn from human beings. So the work that AI learns from seems to me to constitute the heart of AI itself.

Now the Copyright Office also considers whether the unlicensed use of copyrighted work would harm the existing or future market for the work, and we've heard about that. And we've heard from the creators today about how AI is already doing that. Mr. Altman has been with us this week and I'm quoting him when he says, "When we're working on new models, where if an AI system is using your content or if it's using your style, you get paid for that." And I hope that he's going to follow through on that because as Chairman -- Ranking Member Nadler told us, Mr. Altman has a lot of money to pay you.

But my first question is for Professor Callison Burch.

Is -- is it a common industry practice to keep a careful record of how and whether copyrighted works, performances, and license -- and likenesses were used to develop or train an AI data set?

CHRIS CALLISON BURCH:

Thank you, Congresswoman. Yes, it is. In fact, there was a Washington Post interactive feature published about two weeks ago, sort of provocatively named the Secret Lists of Websites That Make ChatGPT So Smart. That was produced in collaboration with researchers at AI2, where I'm currently taking my sabbatical.

It lets you exactly search for which websites were included in the training data of a very common training set, not necessarily the one that Chatgpt uses, but the one that many people in our industry do use.

DEBORAH ROSS:

And just as a follow up, do you think that would make it easy to devise a compensation system since we have that trail of what's been used?

CHRIS CALLISON BURCH:

That's a great question. So, I think the tricky part about creating a compensation scheme is once again, there are a trillion words worth of text in our training data sets. Each author represents a vanishingly small portion of that. We do not reperform any of the songs or texts that are in our corpus. It's not a performance-based compensation -- compensation scheme that would be possible.

So instead, it would have to be something to do with the volume of each person's contribution to that work. And again, I think if you do the math, it'll end up being -- everyone gets a check for \$0.02, which doesn't make sense.

DEBORAH ROSS:

We have similar things in the music industry though, so -- but I -- I want to get on to my--

CHRIS CALLISON BURCH:

But those -- those are orders of magnitude smaller.

DEBORAH ROSS:

-yeah, to my next question. And this is for the -- all three of our artists and creators. Some AI developers have suggested that if using copyrighted works is not deemed to be fair use it -- it would stop the development of AI. But I imagine that most copyright owners would be willing to license their works, you know, to people who they would consent to license their works to, given the opportunity.

So, if a company wanted to license your work for AI, would you be willing to grant permission, if you could agree on reasonable compensation. And you go in whatever order you would like to go?

ASHLEY IRWIN:

Absolutely, yeah, of course. That's -- we're professional people. We get paid to do what we do. So, why wouldn't we want to license our work, you know? And the more work we get out there, the better it is for -- for -- it makes more incentive for everyone to create, if there's -- if there's compensation to have created.

DEBORAH ROSS:

Ok. Mr. Navarro.

DAN NAVARRO:

The "if" is the big part of it. If we can agree, absolutely. And if we can't agree, then I retain the right to withhold it.

JEFFREY SEDLIK:

I agree, copyright protection is automatic. This can't be an opt out. It shouldn't require an opt in. We are protected by copyright, and most visual artists are willing to license their works for various usages. I personally have offered my works for AI training licensing for years. And stock agencies increasingly do sell licenses for AI training.

DEBORAH ROSS:

Thank you, Mr. Chairman. I yield back.

DARRELL E. ISSA:

I thank the gentlelady. We now go to my colleague from California, Mr. Kiley.

KEVIN KILEY:

Thank you, Mr Chair, and thank you for putting together today's hearing, which is a -- a very important and timely topic. I have a very open mind on these matters. I'm extremely sympathetic to the concerns raised by the artists, and the predicament that they're now in. At the same time, I understand the practical difficulties with some of the ideas that are being proposed, the potential impediments they might pose to innovation.

And I'm also wondering whether copyright law is well suited to -- to the matter at hand, in a lot of respects, as clearly the copyright clause and the body of law around it did not anticipate sort of a capacity for creation that is -- is non-human in origin. So, just to sort of start out, I want to try to analogize this to the process of human creation as best as possible.

So, Mr. Callison Burch, you've drawn a distinction between the training process and the output. You mentioned earlier, how a child, who's learning how to sing by studying Taylor Swift, there's no infringement there. It's the output that is going to be judged. And all of the artists here, I'm sure could cite people, artists who have been influences on their style as they developed.

So, I mean let's take another analogy. Let's say that I'm writing an essay on -- on Abraham Lincoln, and arguing how he ranks among US Presidents. So, I go to the library, I check out every book I can possibly get on Abraham Lincoln, I learn all about him, and then I reach an opinion, and I write an essay about it. And of course, I'll cite to sources when I'm quoting them directly or for specific facts.

But that learning process by which I form my opinion, I'll -- this is for you Mr. Damle, is it -- is there any copyright claim that is specific to that process?

SY DAMLE:

I think that if -- if to just modify your hypothetical slightly, if you were to go to a library and make photocopies of books, right, that's a copy that you're making of those books. That would be copyright infringement, if you didn't have a fair use defense. But I think in your hypothetical, that would be very clearly within the scope of copyright infringement.

You're making those copies, not to -- for the only -- only purpose for which to learn the facts that are being -- that are being conveyed in those copyrighted materials. And then yes, you're producing an output that might borrow and -- and those facts into a new work. But that work -- as long as that work does not infringe the original work that you copied from, that's quintessential fair use.

KEVIN KILEY:

And so, a court that would sort of study any copyright claim, would they look at my learning process, or would they just sort of judge the output? Maybe they would if it's like about intentionality, or a damages claim or something, but the core copyright claim -- infringement claim itself, would they study my learning process, or would they just look at my work product?

SY DAMLE:

I think it would be all of the above. These -- these copyright cases, having litigated a lot of these, really delve into a lot of the facts. So, the Google Books case, for example, it looked at the way in which the manner in which Google had acquired the copies. But then the outcome was -- was driven mainly by the fact that all that Google was doing was providing a way for you to search within those books, and not providing you the whole book.

Was providing you just snippets of the book, and said, looking at that whole process we're going to call the copying and retention of the -- of the copies for that end purpose to be fair use.

KEVIN KILEY:

Interesting. And so, one of the things that Mr. Altman said is that he thinks we're moving towards a stage where really most of the training is based upon synthetic data that's generated by the AI itself. Maybe an analogy to this is sort of when you know DeepMind was training, its Go-playing AI. At first, it studied the Masters games, but then it eventually just learned how to succeed by playing itself.

So, does that impact the analysis? This is for either you Mr. Damle or Mr. Callison Burch. Do you have thoughts on that?

CHRIS CALLISON BURCH:

This is a very interesting question. So, I've done a thought experiment regarding to training AI systems on completely synthetic data. So, after having been a panelist on the US Copyright Office listening tour, I thought about like what -- "What about our training data do we need in order to learn the facts about the world that we care about, and learn the language patterns?" So, we need examples of language in order to learn the structure and grammar of language.

And we need some -- some anchor into how people discuss the world in order to learn facts about it. There's no obligation that that be human written text, now. I think that in my little armchair experiment, we may have reached a copyright escape velocity where in theory, you could have a system like ChatGPT generate a trillion words worth of text, which current copyright would be not copyrighted.

And then retrain a subsequent system, where you throw away the original one entirely. It's not derived from copyrighted works at all, but still is likely just as performant as the original.

KEVIN KILEY:

So, yeah, and my time is up, so I'll just say in closing, you know, I kind of worry that many of the issues we're talking about here might sort of be obsolete within a matter of years, especially as the capabilities of these systems advance. I do think that there will always be a desire for works of purely human creation.

I don't know, this is a bad analogy, but you know you have the grocery store organic and then the non-organic sections. So, I think that that is an argument for making sure that we have transparency throughout the process as to when you're dealing with something that was created by an AI versus a human. And that maybe well into the future,

we could have different markets or -- but I -- I do believe there will always be a desire for the works that are produced by -- the kind of works that are produced by the artists that are here today.

Thank you very much.

DARRELL E. ISSA:

I thank the gentleman. I -- I might note that after we all saw the movie WarGames and found out that the outcome of tic tac toe ultimately is nobody wins, we still have generals, colonels, captains, soldiers and some -- some of them fighting in Ukraine, as we speak. With that, I go to the former US attorney and my colleague from California, Mr. Schiff.

ADAM SCHIFF:

Thank you, Mr. Chairman, but I -- I should correct the record. I was an Assistant US attorney, so as not to think I was promoted more than I was. But thank you.

DARRELL E. ISSA:

Humility is also one of the traits I admire in your -- you.

ADAM SCHIFF:

Thank you, Chairman. The explosion of -- explosion of everyday AI use practically overnight has caused -- caught the attention of many in the IP space and for good reason. As many of you know, my constituents in Hollywood and the entertainment industry and more broadly in California, are particularly impacted by the rise of AI. And we eagerly look to see how it will affect the creative industries.

A recent analysis of ChatGPT's training sources by The Washington Post, found that 11 percent of the model's input data comes from arts and entertainment, including movies and television, art and design, and entertainment events. Mr. Navarro, I want to echo a remark that you submitted in your testimony today.

Technology has long empowered human expression and AI will be no different. It's true that new technologies have the potential to complement or augment art, and have certainly done so in the past. AI can be used to enrich the work of those in the creative industries, but behind all of that work are human artists, people.

The copyright system is the foundation for the entire economic marketplace that allows American artists and creatives to earn a living and American companies to create jobs for the sake of producing art. Copyright law must continue to incentivize and protect this activity in the United States and beyond.

Blanket AI exemptions do not exist in current law, nor should they for copyright infringement. I wanted to ask two questions. One, Mr. Navarro, and -- and that is, under what circumstances would you be interested, or do you think other artists would be interested in licensing their work for AI? Or do you think there's a broad enough concern about moving away from human generated music that -- that you think artists shouldn't sell their works to be used for AI, is one question?

And then another question for the broader panel, and that is, disinformation is a grave concern with AI. It may very well affect people in the political world, but it will also affect people in the arts. How do you see disinformation about artists, or about their works, being a danger, and how do you think that can be addressed?

DAN NAVARRO:

I think certainly the area of disinformation is underscored by the rise in the last few years of the deep fake phenomenon, which I know you -- I was at your talk at SAG-AFTRA. I'm on the national board of SAG-AFTRA And this is a tremendous issue in terms of right of publicity. But even just putting faces on bodies that are doing things, those bodies wouldn't do. I don't think that there's a single answer to whether it should or should not be allowed, but what might be right for somebody to have their face put on a body that suddenly is a war hero, might be Ok.

But to have a face put on a body that's doing something pornographic would not be Ok. And I -- I don't mean to be indelicate in that. But these are some of the concerns. With regard to music, it's probably a little different. I think that every individual has their own line of demarcation as to what should or should not be done with their work.

And I think certainly when you're dealing with the physical countenance of somebody, that the standards and the strictures are going to be greater.

ADAM SCHIFF:

Thank you. And we held an open hearing in the intelligence community years ago on Deep Fakes, and among the most chilling observations was that once you see a deepfake, even if you're later persuaded that what you saw was a fake, you never completely lose the lingering negative impression it left with you.

So, the damage is done when you see it. But would others like to comment on the -- the danger of disinformation to artists?

JEFFREY SEDLIK:

There's a very important initiative called the C2PA. It's the Content Authenticity Initiative, and it's led by Adobe and others. And they've determined a way to track any changes made to images, whether by AI or otherwise. So that, especially when it comes to photojournalistic images, people can be confident in the provenance of the images that they're looking at. That's C2PA.

ADAM SCHIFF:

Thank you.

ASHLEY IRWIN:

I was just going to say that certainly in my own experience, and I'm sure for the other people here, you put in a lot of hours from a very young age to try and -- to do what you do, and become really good at it. And you know, to dismiss that in any way, I think that's the problem that a lot of us are having is, you know, I think it was Malcolm Gladwell who wrote you know, 10,000 hours, 10,000 hours, you start to know what you're doing.

If the machines can do it that quickly, what is the incentive for us to keep going? What really is it? I mean, for years and years and years, for as long as you can remember, go back to the court composers, the arts people have been traded on, or they'll do it, they'll do it because they love doing it. They love doing it, and it's true.

We do love doing it, but at some point, the love doesn't feed your family. And that's -- that's the real harm here, is -- is there has to be a way for us to coexist. That's all we're looking for really.

CHRIS CALLISON BURCH:

Mr. Chairman, may I add a comment because I'd like to highlight agreements on this issue.

DARRELL E. ISSA:

Quickly.

CHRIS CALLISON BURCH:

I am in absolute agreement with the artists on the panel here that this is an important issue and people should not be allowed to imitate another person through deepfakes or through imitation. And I think the right of publicity is something that's very worth considering as you consider legislation on this.

DARRELL E. ISSA:

I thank the gentleman. We now go to the gentleman from South Carolina, Mr. Fry?

RUSSELL FRY:

Thank you, Mr. Chairman. Thanks for having this hearing today. This is a really interesting topic, right? I mean we look at this, I have not ever in my practice done IP work. AI is the -- the next wave of -- of or the wave of the future, if you will, of what we're -- what we're going to be dealing with in this country really on all spectrums.

Mr. Burch, I got a kick out of reading your bio where your PhD students joke that whenever they ask you anything, your first response is, "Did you ask ChatGPT for that?" I think that really kind of sums up why we're here, right? Mr. Damle, I want to ask you something. Can you -- and -- and I've been bouncing around in committee hearings all day, so I may have missed this, but can you identify inadequacies of our existing laws to address copyright protection of AI?

SY DAMLE:

I -- I think that there's a lot of questions that still need to be answered about whether AI output is protectable by copyright, and the circumstances in which it is. This is such a new issue. The Copyright Office has put out guidance, but that guidance really addressed kind of one end of the spectrum of the question, which is where there is virtually no, or minimal human input into the creative process, does the output qualify for copyright protection?

And the office says no. But that's just one end of the spectrum. There's a whole area from there to, you know, somebody sitting with a paintbrush and paint, painting on a canvas, where you're using technology to assist you in the creative process, whether that's autofocus on a camera, whether that's Photoshop, or indeed whether that's generative AI. And I think generative AI, properly understood, is going to be a tool for human creativity.

And if you talk to artists that really have incorporated generative AI into their creative process, they don't see it as a substitute for their own creativity. They see it as a way to enhance their own creativity. And so, we're going to have a lot of hard questions in that space where there is really a iterative process between the human author and the generative AI system, to determine whether the output of that process is copyrightable.

RUSSELL FRY:

Do you think we need a completely new set of rules? Does existing contract law maybe cover this, or is it possible for this to fit in with existing law?

SY DAMLE:

I -- I think existing law is well-suited to deal with all of the questions we've been talking about today. You know, Congress had the wisdom in the 1976 Act and various amendments since then, to build a technology neutral,

flexible copyright regime. And I think it's proven time and time again that no matter the new technology that comes along, the laws are able to adapt to them.

And there are instances where perhaps they're not. And Congress can step in and act in those circumstances. But in general, and I think in this space, I think our existing copyright laws are well-suited to handle the questions that -- that -- as they arise in this space.

RUSSELL FRY:

When I was reading the guidance for this, and reading the CRS report that was issued kind of surrounding this, what struck me was it -- it reminded me of a test in law on whether somebody was an independent contractor, or an employee of a company, right? So, the test that they look at is the degree of control in which somebody exercises over that individual on whether they're an employee.

You can call them an independent contractor all you want to, but if you're the one doing the schedule, you're the one putting in all these requirements and what they do, they're not actually an independent contractor. They're actually an employee, at that point. And so to me, there was some similarities there that when we're talking about the degree in which, you know, there's litigation on, "Hey, create a song that sounds like this," and there's no input.

But where do we go? Should we be looking at it in that terms -- or in those terms? Is the degree in which we provide input to AI, to the generated product, as -- as a test?

SY DAMLE:

Thank you, Congressman. I think that's a really useful analogy. And in fact, there is a part of copyright law called the Work for -- Work for Hire Doctrine that really asks that exact question. The extent to which you exercise as an employer, control over the creative output of your employee, or to the extent that they are able to do things on their own, and that determines whether it's a work made for hire or not.

And I think that we are -- the people that are copyright lawyers, are looking at that body of law already as a way to draw analogies in this space, considering the AI as -- as an employee, or is it an independent contractor? Is it off running on its own, or does the human author actually have some control over what the AI is outputting?

So, I think it's a very, very useful analogy. You've sort of anticipated where -- where copyright lawyers already are on this.

RUSSELL FRY:

Thank you, Mr. Chairman. With that, I yield back.

DARRELL E. ISSA:

I thank the gentleman. We now go to the gentlelady from California, Ms. Lofgren.

ZOE LOFGREN:

Thank you, Mr. Chairman. This has been a -- a very useful hearing, and I appreciate the testimony of each of these witnesses. You know, I believe that AI is going to upend a lot of careers. And in fact, the House of Representatives has had three bipartisan Congress wide briefings on AI in the last two weeks.

It's going to upend the practice of law. It's going to upend the practice of medicine. It will probably upend engineering. The difference for creators, at least you have some protection in the law, which is copyright, which is

absent other professions. And the question is, "How will that work to protect creators?" I was glad that Mr. Altman in his testimony indicated that creators should be compensated and do have rights and that recognition.

But you know, the technology is complicated, and how that is going to work, we don't know yet. I'll disclose it. A number of months ago, I put together some creators with the AI people to see if we couldn't have discussions. And I was thinking honestly about the Music Modernization Act, which I think was very successful in reaching negotiations so that creators could be compensated.

And I'll express some disappointment that progress that I expected to have been made by now, has not yet been made. So, I'm hoping that those discussions will re-energize. But here's a question, I guess, for Mr. Burch, Professor Burch and maybe Mr. Sedlik, since you represent different ends of the knowledge base here.

We've got basically two questions. You got the input question, which is basically lines of code that have been assembled, and then you've got the output question which is how much of this is infringing? Is it in your judgment even possible to reach an agreement like the Music Modernization Act did, so that creators can be fairly compensated?

CHRIS CALLISON BURCH:

I think that there are a number of practical issues that make this very difficult to imagine, not least of which is the fact that we're not performing anything when we're outputting something from a system. It's not simply a collage where we're combining elements of existing work. It's genuinely been distilled into a form that's completely different than the original.

That I think is going to be the crux of what makes this difficult. I think that there might be a market for licensing images and songs and things like that, that companies end up voluntarily -- voluntarily entering into. But I don't think that the practical implementation of such a thing will be as easy as it was for the MMA, which I understand was already very complex.

JEFFREY SEDLIK:

I don't think that most photographers are concerned or whining about the fact that AI is going to affect -- its going to compete with them in terms of it's easier to create images with AI than it is to create a photograph. It -- it is. What they're -- what they're concerned with is the use of their works in that system, grinding it up, and spitting it out as generated AI, based on their works, and the fact that they're not compensated, and it's done without their authorization.

Images are data, but they're not merely unprotected facts. An image, my image, is my depiction of a fact, applying my creative expression to depict it. And so, the copying of that under 106, irrespective of anything else is -- is an infringement. It's copied into a system, that's infringement right there.

In terms of -- in terms of the output, that output may or may not resemble my work. It may or may not infringe on my work, but the -- the input, copying the work under 106, would be an infringement unless fact specifically it's fair use.

ZOE LOFGREN:

I -- I thank you for that. As I was listening, I was thinking back to my prior service as a staffer to my predecessor in office, Congressman Don Edwards and his partnership with Bob Kastenmeier in the 1976 Act, and how the work

that they produced has endured to this day to protect the creative forces, but obviously we need to meld technology to help that protection.

Adobe, which is located in -- in my district, actually did the watermarking of their tagging. We actually used that in the January 6th committee to prevent our material from being altered. So, I think there's some real possibilities here. I think we've got a long road ahead, but I'm hoping that the discussions that are ongoing, can ramp up a little bit because I think that's probably the most productive way to reach a successful conclusion.

And with that, Mr. Chairman, I yield back.

DARRELL E. ISSA:

I thank the gentlelady. We now go to the gentleman from Texas, Mr. Moran.

NATHANIEL MORAN:

Thank you, Mr. Chairman. I know that all of you have been sitting there for quite some time. So, before I ask my questions, I'd like to pause for a quick musical interlude.

UNKNOWN:

I got my heart on my sleeve, with a knife in my back, what's with that? Aye 21 I love him, that's my brother, that's my slatt, aye.

NATHANIEL MORAN:

I know that was just a short interlude and all of you would no doubt like to hear the rest of that song. It's -- as you heard, it is a rendition of something by Drake and The Weekend. And many of you, I would suspect maybe all of you, believe that that is likely that their true voices, and in fact a musical -- a musical song written and produced by both the Drake and The Weekend.

But in fact, it was computer generated using only snippets of those artists' original voices. Even the most ardent fans of Drake and The Weekend, and I'll admit, they're not my first choice. I'm more of a TobyMac and Steven Curtis Chapman guy, but even the most ardent fans, didn't realize that that was not their voice in -- voices.

And in fact, in just a few short days, that song garnered over a half a million streams on Spotify, before it was ultimately taken down. I'll also admit that I'm profoundly blown away by the artistic value sitting at this table, but then also concerned about what's going to happen to the creativity if we don't get ahold of this artificial intelligence issue and protect the creativity of human development.

Just like what Drake and The Weekend need protection for, all of human creativity needs protection from, I think, what we're seeing from the artificial intelligence community here. I'm curious if any of you knew that story about that song. Were you all aware that that had happened? And did you guys hear that song before you knew that it was not actually Drake and The weekend?

Yeah, it's amazing to me that it sounds exactly like them. Mr. -- Mr. Navarro, I want to ask you a couple of questions. Mr. Irwin mentioned three primary issues to focus on: consent, credit, and compensation -- compensation. I appreciated the fact that you mentioned those. Mr. Navarro, as a generational singer and songwriter, why is it not enough just to give credit to an artist if AI uses your voice or prior works as a basis to create something new?

Why is credit not--?

DAN NAVARRO:

First of all, I'm very familiar -- I'm very familiar with this particular case. Royalties were generated. I serve on the Unclaimed Royalties Oversight Committee of the Mechanical Licensing Collective under the Music Modernization Act and the US Copyright Office. Where do those royalties go? Who really -- who do they go to? They didn't authorize the use of their voices.

AI could be used to put abhorrent words into their mouths. They didn't get their permission. They have contractual relationships with Universal Music, and this operates in violation of it. Many, many entities are harmed by using this without going through whatever the proper channels are. And no means no. If they had said no, no means no.

NATHANIEL MORAN:

Yeah, because you mentioned it earlier, even if you have credit and compensation without the consent, it's really nothing more than compulsory licensing. Is that true?

DAN NAVARRO:

Yes.

NATHANIEL MORAN:

Do you consider, Mr. Navarro, derivative AI works from your original works that sound like you to be works in competition with you?

DAN NAVARRO:

I think their work's superseding me.

NATHANIEL MORAN:

Mr. Damle, I want to ask you a couple of questions because I wrote down some quotes that you had throughout the testimony today, and I couldn't follow some of the -- the consistency in them. I want to give you -- read you back some of your quotes. You said at one point, "Existing law is well-suited for everything we are dealing with today." But then at another point, you said, "People should not be allowed to imitate other works." And then you answer the question -- you said earlier, "We need to look at other areas of the law other than copyright in order for--," examples like the Drake and The Weekend example that I just gave you, for -- for protection and examples like that.

So, are we perfectly suited under existing law, or do we need additional laws to protect artists like the ones sitting at the table?

SY DAMLE:

Thank you, Congressman. And just to clarify, I'm not sure all of those quotes were mine. I think only a couple were.

NATHANIEL MORAN:

All of those quotes were yours.

SY DAMLE:

So, the question of whether copyright law needs to be changed, I think the answer to that is no. I think that our copyright law is -- I'm a copyright lawyer, so I sort of focus my -- my testimony on -- on copyright law. I think

copyright law is well-suited, flexible enough to deal with the copyright questions that are -- that are being raised.

Now, I acknowledge that there are concerns like with this -- with the Drake and Weekend track that are legitimate and -- and need to be considered. I think copyright law is really a blunt instrument, too blunt an instrument, to deal with that. And so, it may be worth looking at other areas of law outside of copyright.

Professor Callison Burch mentioned right of publicity. There's trademark law. There are other areas of law that I'm not expert in, that may be better suited to deal with these situations than copyright law.

NATHANIEL MORAN:

Ok. And you may be right. Professor Burch may have said people should not be allowed to imitate other works. He may be the one I need to attribute that quote to. So, I stand corrected. Not my first time in Congress. Won't be my last time. Thank you, gentlemen for your time today. We appreciate it. It's a complicated issue.

We want to get this right. Thank you.

DARRELL E. ISSA:

I thank the gentleman. We now go to the gentlelady from Pennsylvania Ms. Dean.

MADELEINE DEAN:

I thank you, Chairman Issa, Ranking Member Johnson, for holding this important and very interesting hearing. It's also very pleasant to be in the company of this talent, and to have us really getting along very, very well because of the subject matter. So, thank you. Thank you. It's been a real pleasure for me. I know this won't be the last of our hearings.

It's really among the first. There's so much to learn. There's so much for me to learn. But we know as lawmakers, we can't wait after widespread societal use to come back and say, "What did we do right? What should we have done in advance?" We've learned that from other technologies. I want to lay a couple of my biases on the table.

I taught for ten years at a different Philadelphia University. I taught writing. All different levels of writing, to students at La Salle University. And to very much what most of you have said, Mr. Navarro in particular, I always taught my students, yeah, know your craft, understand the mechanics, break the rules when it makes sense, but make sure you place your humanity in whatever you write.

That is the genius of what you create. Placing humanity in it. My other bias is I'm a copyright holder, myself. My son, Harry Cunnane and I wrote and published a memoir, of his struggles with addiction, our family's struggles with his disease of addiction, but much more importantly, the power and the hope in recovery.

We also wrote a children's version of that book, and it was made into an audio book with the extraordinary generosity of Mr. Paul Williams, writing and producing and performing the background music for our children's book. My Son, Pat Cunnane is a television writer and movie screenwriter. And so, when some of you talk about how long some of this stuff comes -- takes to come, I keep saying to Pat, "Where's the movie?" It's years, but maybe we will see his name.

He's -- He's done real well. I bring those biases to -- to the -- to the -- fore. When I consider what we've seen of generative AI, two questions seem glaringly obvious. So, if you'll help me with these. The first is, "Is the creation of these models being done in a way that respects the rights and interests of authors, musicians, artists, content creators?"

To your very point, consent, credit, compensation?" If I frame it a different way, "Is anybody doing this right?"
Maybe I'll start here with Mr. Sedlik. Anybody doing it right?

JEFFREY SEDLIK:

I -- I think that I'm seeing a silver lining on the cloud. Some of the AI platforms are beginning to listen and to adapt their systems to respect rights of authors, or at least they're saying they're in -- that this is in progress.

MADELEINE DEAN:

Ok.

JEFFREY SEDLIK:

There's really two gateways here. There's the gateway to allow works into the databases that are used for ingestion of -- of -- of images into these systems. And then there's also a gateway in terms of the prompts that are entered, and also uploading of images as image prompts, copies of artworks uploaded by others without our permission as image prompts.

Those two gateways are of concern.

MADELEINE DEAN:

And Mr. Navarro and Mr. Irwin, could you offer me your thoughts? Anybody doing this, right?

DAN NAVARRO:

I'm not aware of who's doing it right, but I don't believe that everyone is doing it wrong. I think it's so brand new as that it's the Wild West out there. I think of the earliest days of sampling. When people sampled stuff for records routinely and didn't give credit, compensation, nothing. Now it's routine.

Can't Touch This by MC Hammer credits Rick James for Super Freak, and his estate gets compensated. So, we're in the process of trying to get it right.

MADELEINE DEAN:

Ok. Mr. Irwin briefly, if you don't mind? I have one more question to ask.

ASHLEY IRWIN:

Yes, I have -- I have no knowledge of anyone doing it right? I think there's starting to be some overtures as to -- and inquiries as to, let's get together and talk about it. But at the moment, no, not to my knowledge, no.

MADELEINE DEAN:

Dr. Callison Burch, in the time I have remaining, I was particularly taken in your testimony by something you said about what's the impact on labor, on workers. You used the expression -- you suggested, "Will paralegals go the way of the lamplighter?" What are the implications for the labor market?

CHRIS CALLISON BURCH:

I think this is the large issue that everyone needs to deal with, and where Congress can have the most effect. I feel that at the moment, we may be on a precipice of mass unemployment. I think the probability is very small, but it's

such a dire outcome that you really need to consider some sort of legislation, like in case of emergency start a new WPA. I think that dealing with this as a copyright issue, almost entirely misses the point that these systems are coming.

And we've -- in America, experienced unemployment as a result of automation before. It's largely affected blue collar work, but now has the potential to also affect white collar work, as well.

MADELEINE DEAN:

Fascinating. And Mr. Chairman, again I thank you, and I yield back.

DARRELL E. ISSA:

Thank the gentlelady. We now go to the very patient, gentlelady Ms. Lee of Florida.

LAUREL LEE:

Thank you, Mr. Chairman, and thank you to all of our witnesses who are here today. We so appreciate your time and your testimony helping inform us about how we might embrace the emerging technology of artificial intelligence, but also recognize the immeasurable value of our artists, and the need to protect and balance intellectual property and copyright protections.

I'd like to return Mr. Damle to your testimony, and specifically during the questions by Congressman Moran and Fry. You talked a bit about your perception that existing copyright law was adequate to take on this new emerging landscape, and continue to resolve that balancing between intellectual the -- the property rights of artists and -- and in our -- and our new technology that we see.

One thing that -- that concerns me is that when Congress fails to be sufficiently clear, we leave to judges the task of figuring it out. And of course we want judges applying the law, not creating it. We don't want to put judges in the role of being policy makers. So, I would like for you to elaborate a little bit more on your conclusion that our existing statutory framework is sufficient to take on this new challenge.

SY DAMLE:

Thank you, Congresswoman. It's an excellent question. I think if you just look at history here. Fair use has -- has existed in the copyright law for about -- almost 200 years. And over that time, it's dealt with lots of massive shifts in technology. 1984, the Supreme Court applied fair use to the then new technology of VCRs, and said applying again a 180-year old law that did not have any understanding of that kind of recording technology, and made a really fact-bound, cautious, careful decision about whether home recording was fair use or not.

Fast forward through the era, recently the Supreme Court handled a case involving software APIs. Again, something no one could have ever dreamed of as being a copyright issue 180 years ago, yet the court again looking at the very specific facts of that case, determined that the reuse of software APIs was fair use.

And there have been other cases going the other way looking at new technologies like Napster and saying that is not fair use. That's an exploitive use of the technology. And so, my perspective comes from looking at that long history and how copyright law has been able to manage shifts, even major shifts, in technology.

LAUREL LEE:

And Professor Burch, what's your take on that same question and the conundrum of not overregulating, but at the same time not leaving it to courts to try to create policy?

CHRIS CALLISON BURCH:

I think that it's worth considering all these issues and deciding whether or not copyright needs to be extended. I think that there's many things that my fellow panelists are talking about that are 100 percent valid and need to be incorporated into the ethical guidelines that AI system developers create, including rate of publicity, and copyrighted characters, and things like that.

And I don't -- and those are not currently covered sufficiently by copyright law. They may be covered by other laws sufficiently, but I think that's where the target should be. Like what is the output of these systems, and what is correct use and incorrect use of the output of these systems?

LAUREL LEE:

Ok. And Mr. Navarro, one of the advantages about getting to ask questions near the end is that I can bring to you this one. Is there anything that you wanted to share with the committee today that you have not to this point in the hearing been asked?

DAN NAVARRO:

That's a good question. Yeah, first of all, when we look at the ingestion of trillions of pieces of data, that's one way of looking at it. But when we look at the impersonation of voices, that's really one piece of data, and that's very specific. And it's easy to get lost in the -- in the shift between the macro and the micro as we figure out where to go on this.

I think we need to take a look at both. I think the other is that I appreciate the technology. I appreciate the technical use of terms, but my music isn't data.

LAUREL LEE:

And Mr. Irwin, the same question to you. Anything you wish to share with us today that you haven't already testified to?

ASHLEY IRWIN:

I'm going to follow on what Dan said. I'm a little distressed that we're calling this training, to be honest, because in my mind, we train athletes or animals. We don't train machines. We equip machines with data as you -- as the technology people like to call it. But as we like to call it, music. It's very Orwellian how the tech industry manages to change terminology on us. It's not data and content to us. It's music, it's photographs.

It's not file sharing. It's stealing. It's very simple. They're the sort of things I wanted to get into the record that I didn't get to say.

LAUREL LEE:

Thank you. Mr. Chairman, I yield back.

DARRELL E. ISSA:

A brilliant move for such a new member. With that we go to the gentleman from Maryland for five minutes. Mr. Ivey.

GLENN IVEY:

Thank you, Mr. Chairman. And Mr Ranking Member. Ms. Lee, you stole my question there. I did want to go back to the Deepfake issue, and Mr. Sedlik, I think you talked a little bit about technology that exists, that allows -- that gives the ability to separate out what is real and what is fake and I -- But you said C2 something, and I wanted to get more details on that.

JEFFREY SEDLIK:

Sure, so a consortium came together managed I think by Adobe or founded by Adobe, and with -- with various industry players. They looked at -- they explored methods of -- of creating a technology that would allow you to use software to determine whether or not an image has been altered, and what the provenance of that image is. And that information is stored in the image, so that when you're using software to view an image, you can tell whether or not that image has been altered.

For example, swapping out a head, changing something, removing something, adding something, any sort of revision to the image, to provide that information to the public and to people who might rely on those images. And that is C2PA.

GLENN IVEY:

Ok, here's where I'm going with this. So, if I -- I guess what you're saying is that say a movie, or you know, some -- some visual depiction that has the code embedded in it, so that that distinction could be made, then you could -- you have the software to identify it. I guess the question I would have is, "What if it's not software generated or if it's just a visual?" Here's sort of the big question.

So for example, body cameras worn by police, and I know this isn't a creative content question, but you know body cameras have become super relevant in court with respect to police cases. And in many instances, videos. Former President Trump's video in his most recent trial was -- was pretty significant as well.

I -- I was sort of curious as if it's AI generated entirely, so you would take the subcomponents of the training piece or whatever. And -- and I apologize -- I went to law school instead of you know any kind of hard science classes. So, I'm -- I'm struggling with the technology terms, but would you be able to tell if an image or a video is generated entirely by an AI approach as opposed to some of it being real or some of it not?

How would -- is there a way that you could tell if it's -- if it's authentic or not?

JEFFREY SEDLIK:

There is -- the AI platforms are doing some work on this, and coming forward with technology to be able to allow the public to discern what is AI and what is not. With respect to other types of -- of creations or -- or recordings like you mentioned, the police, the police cameras and such, those have -- those embed time code and other information in -- in the recording so that you can tell whether or not there's been anything removed.

But in terms of finding something or determining whether an image is -- is AI generated or not, that's right now at the experimental phase with scientists looking at it, image scientists. And I think we're going to see something in the very near future.

GLENN IVEY:

Ok. Mr. Navarro, did you have something on that as well or--?

DAN NAVARRO:

From a musical standpoint, we sometimes use our taste. I did a touring test at South by Southwest in March where pieces were being played. And I was able to guess about three fourths of them, but not all of them. Happened to be with very simple forms of music that were style based. Sometimes the vocals were gibberish.

Other times it just were moves made musically that no, you know, great musician or a great producer would allow. But it gets more difficult. This particular piece that we just heard from the gentleman from Texas, that would have been really, really difficult to tell. And so, from that standpoint, I think that's where one of the great dangers is, is in not knowing the difference.

GLENN IVEY:

And Professor Callison Burch, I wanted to sort of touch base with you on this -- this kind of issue as well. I know we've been talking about copyright law, but from the standpoint of protecting the community, the world, whatever from these sort of fabrications, which I don't know if they're illegal at this point or not.

But you know, is there -- are steps we need to take to -- to address this?

CHRIS CALLISON BURCH:

Absolutely. My PhD students have done the largest ever study on human skill -- human detectability of machine generated text, and we've found that over time, it's getting harder and harder to detect, but that people can be trained to detect. So, I think similarly to how Dan is saying that the latest clip of the fake Drake song is increasingly passable as human, whereas five years ago it wouldn't have been, like that's a trend that we're on. And I think any sort of basic media literacy that we teach to our children, should include this as an element.

GLENN IVEY:

Ok, and with respect to visuals, because -- just from the court standpoint on -- on some of these images, sometimes people's, you know, whether you go to jail or not is determined by a visual, or a video clip that a jury might see. I mean, are there ways to make sure that whatever is presented, or a judge making a determination about what could be viewed, is actually authentic?

CHRIS CALLISON BURCH:

There's expert testimony through examination of the images. I think you could likely still detect artifacts of a machine generated image, if it's done carelessly. I think it's going to get harder. So, it's certainly something to keep under consideration as time progresses.

GLENN IVEY:

All right. Well, I want to thank all of you all for coming in today, and I -- I apologize for a question that's a little off the topic. But I think important for us. And Mr. Chairman, I really wanted to thank you and the Ranking Member. I agree with some of the previous comments about this being a refreshing change from some of the types of hearings we've had, you know, previously.

And I -- I thank you for this.

DARRELL E. ISSA:

Well, I thank the gentleman. I -- I will welcome you to the subcommittee, which has historically been extremely bipartisan. So, we're going to keep that tradition going when it comes to -- we can't pass intellectual property reform except on a completely bipartisan basis. And now last and probably least, you get me, I'm going to start with this.

Thank you. Thank you, Mr. Ranking Member. This is an actual portrait. You'll recognize some of the characters. They're pretty much mostly all dead. Some of them, in fact, all of them, were produced by an artist who took a number of photographs, including Lincoln photographs, in order to produce this product.

I am confident that Andy Thomas did not pay for most of the photographs. Do you see a problem in, and I'll -- I'll start with Mr. Navarro, in that being fair use, the -- the collection of -- of photographs since, for the most part, these gentlemen were not available to sit or stand for this portrait.

DAN NAVARRO:

I think were it me, I probably would have made an attempt to compensate the photographers. I don't know enough about the derivative work clauses in the Copyright Act that can allow something like that. I happen to think that's a wonderful painting, and -- and I'm a Democrat. I still think it's a wonderful painting.

DARRELL E. ISSA:

I -- I wanted to bring both because I have another one with all the Democrats. They both hang in my office. You're welcome to come after you.

DAN NAVARRO:

And as such, I mean my personal opinion is that creativity has been enhanced, and communication has been enhanced. However, were it me? I would have made an attempt to contact the photographers.

DARRELL E. ISSA:

And I -- and I believe that he would have bought those pictures if they were commercially available, whether they were under copyright or not. So, and I -- and I point that out because it's one of the challenges that I face in trying to steer this committee now and in the future is, I try to look back as I did there on existing copyright implementation, existing art.

Andy Thomas clearly does his own art, but he works off of, even when he's doing a living person, he generally will come in, take pictures and take those pictures back in order to do his work. It's a style and it works very well for him, obviously. I asked that more for -- for all of us to opine on afterwards.

I do have one similar situation. If we believe Wikipedia as -- as always correct, the Beatles derived their inspiration from among others, Elvis and Chuck Berry. Chuck Berry or sorry, Elvis gave credit to his inspiration, including none other than Dean Martin. Dean Martin credited the Mills Brothers and Perry Como.

And Perry Como gave significant credit to his inspiration, to Bing Crosby. Oddly enough, Bing and each of those people were all alive at one point, all entitled to their copyrights at the same time. And yet we were able to work our way through who, what, where. Every one of these artists undoubtedly took sheet music and practiced with those inspirations that they had.

And every one of them listened to those people's recordings. And undoubtedly, every one of them performed and tried to do it at least in training in that style. So, the question I ask, and I'll -- I'll just go right down the line, starting with Sy. We have a conundrum here at a minimum. If I am taking a class, high school, college, whatever, the material used for that is typically paid for as copyrighted material, once, in order to educate me. After that, my education, assuming I'm not using the script itself, my education goes forward without further copyright.

If I take a significant amount from one of those college books that I purchased, on which the copyright was paid, I have an obligation to disclose it. And if it's beyond a snippet, to pay. Is that really what you believe is at the -- at the root of how computers, and I apologize to Mr. Irwin, learn or collect data?

SY DAMLE:

I think the analogy is -- is a very close one, both as a legal matter and as -- as, and Mr. Professor Callison Burch can talk about the technology, but at least as I understand the technology, that is also true as well, that the copyrighted works are being used, not to create a collage or record the copyrightable content within them, but to simply learn statistical facts about the works themselves.

And it's a very similar process to the way humans learn. Now the problem with machines is that they learn much more inefficiently than humans do. I -- I can read 3 or 4 books about a topic, and then be conversant about that topic, and maybe even write my own article about that topic. Machines are not that skilled.

They haven't quite caught up -- quite caught up to us yet. And so, they require to do a similar kind of learning, they require billions and billions of pieces of work in order to reach those same learnings.

DARRELL E. ISSA:

But just because they're a bad student doesn't mean that the copyrighted material shouldn't be paid for, does it?

SY DAMLE:

Now the question of whether it should be paid for is a different -- is a different question.

DARRELL E. ISSA:

But you're the lawyer and the gentlemen on this end want their work paid for even if it's used in the classroom. And that's -- that's my -- the final part of this question, bringing it all back together is, you two have been very good at calling this education, training etcetera. And if the analogy of the classroom of teaching, of learning, is there, there is also the analogy that this copyrighted material is paid for.

You know, you didn't -- you didn't go to the public library so to speak. You went and -- and got this material, and ingested it, just as I ingested for the most part my college years. So, I'll go to Mr. Burch. I -- I really want to get through this for everyone because I think it's part of what brings a close to this hearing.

CHRIS CALLISON BURCH:

Thank you. This is a great analogy. So again, I think it highlights the fact that these systems are learning, and they're learning facts about the world, and those facts are not copyrightable. I think where the material is acquired from, and whether that's fairly fair use or not fair use, is exactly the right question.

You know, many of my students learn by going out to the Internet and retrieving facts from the Internet. They -- they do not pay for. That is what's happening here. And so, I think--

DARRELL E. ISSA:

You mean, you haven't published a book that you make them buy, like my professors? No comment.

CHRIS CALLISON BURCH:

I have not published a book that I have forced my students to buy.

DARRELL E. ISSA:

Mr. Irwin?

ASHLEY IRWIN:

I think what was really interesting in your little Wikipedia piece you read, was the word inspiration. And I think inspiration is what we need to keep hold of here, because there's a big difference between getting a book. And -- and you know, you want to emulate your idol. You want to emulate the Beatles, or you want to emulate the Rolling Stones.

You know, in my case growing up, my parents bought me sheet music. The sheet music was Mozart or -- or Beethoven. It was public domain, but they still had to buy the sheet music for me to learn. And I learned how Beethoven writes music, and I learned how Mozart writes music, and I learned the Beatles, and I learned all these things and I learned them.

But every time, in your case, the inspiration was, "Did they hear it on the radio?" If they heard it on the radio, there were royalties being paid. If they bought the sheet music, there were royalties being paid. If they bought the record and took it home and played it, there were royalties being paid. And that's really where we are now.

Yes, they were learning, but that inspiration was paid for at every time along the way.

DARRELL E. ISSA:

Mr. Navarro?

DAN NAVARRO:

Mr. Irwin's hit it on the head with the notion of inspiration. I don't think we should ever litigate against inspiration. That's how we evolve as a culture. And I think the beauty of it is that no matter how inspired you are, you're never going to get it perfect. Therein lies the individuality of the subsequent artist, is they bring their own stamp to whatever they learned on. I learned on many singers to develop myself as a singer.

DARRELL E. ISSA:

You're not giving credit to one the way that Wikipedia did for these?

DAN NAVARRO:

Well. No, and when -- well, there are a few. It branches out. But we still change things a little bit. Also with regard to stuff like that, you know, I spent some years in advertising before I became a professional songwriter and musician. And I date back from the era where if it got too close on the radio, you said, "Celebrity voice impersonated." You had to reveal it, that it was an impersonation lest somebody -- yeah, well, Tom Waits and Bette Midler with that.

All this is to say is that inspiration should never be stifled. And -- and I'm not interested in stifling technology. We benefit from it, guardrails, credit, compensation--

ASHLEY IRWIN:

Credit, consent, compensation.

DAN NAVARRO:

Consent, credit, compensation. Thank you.

DARRELL E. ISSA:

Mr. Sedlik?

JEFFREY SEDLIK:

I agree with my colleagues. And your -- your example of the classroom is very insightful. You know, one of the largest areas for copyright licensing is educational use. The textbook industry and in turn photography and illustrations being licensed for educational use. If you want to teach in the classroom about -- about B.B King, you can't use my photograph of B.B King without licensing that photograph.

If you want to teach about me or my photograph of B.B King, that's going to be fair use. It's true that all artists have been influenced by others, and there's a difference between influence and inspiration, or copying, or theft. All of our works are made based on our lived experience as humans, and taking those -- taking those works and being inspired by multiple of them to create, for example, the portrait that you showed.

If he relied on multiple portraits to create each individual portrait, and was inspired by them rather than copying them, then there might not be an infringement there. If he traced it on a lightbox, if he projected it on the canvas, if he copied all of the expression, or the heart of the expression, there might be infringement there.

That's a fact -- a case by case fact dependent analysis.

DARRELL E. ISSA:

And one of the interesting things about Andy Thomas is he manages to capture each of these men, both Republicans and Democrats, better than they were, which is something that a computer probably will take a long time to learn to do. Well, in closing, there are two things that were not discussed fully. One is the fact that even if -- even if copyright use is not attributable to a single artist, in other words, the -- the trillion into the works may not be effectively able to be done, it doesn't mean that the ingestion of that material should not somehow go to the benefit of the copyright industry as a whole.

And that'll be one of the things that is not a statutory remedy today, but could be. And you know, to a certain extent it's like orphan works. You can't necessarily get them back to somebody, but they don't -- you don't get to use them completely for free just because we can't assign them. The last one, which was brought up here today.

And I'd like all of you to opine on it because I think it -- it -- it was a real threat, but there wasn't time in this hearing to pick it up. In patents, in copyrights, and in trademarks currently based on some bad actors, computers can generate an infinite amount of combinations. If they generate an infinite amount of combinations of copyright material, they could in fact create a body of copyright that could eclipse future innovation.

Simply push out tens, or hundreds of trillions of songs, of variations of -- of art, and in fact then make a claim, a troll-like claim, that everybody else who comes up with an original piece, there I find enough to say that you took it from me even though you may never have seen the trillion different outputs.

It doesn't sound -- it sounds far-fetched until those of you who look at AI, and look at the petabytes per minute now that are being ingested on the Internet, and you realize that in fact infinity is closer to us than we ever thought it was. So, I'd like you to opine on that because one of the challenges that I face is to limit copyright, or patent applications, or trademark applications, that are computer generated, if in fact they serve only to limit human's ability to do individual creation.

And I'd like you to all opine on that within your own expertise. We'll leave the record open for the next, I think five days is the committee rule, but I'll shove it in if I get it later, as long as the chairman, lets me. So, I want to thank you. I expect that we have your numbers. We will be calling you.

You have our contact information. I would hope that you continue to -- to help us. Mr. Ranking Member, do you have any closing statements?

HANK JOHNSON:

I do not, other than to thank the witnesses for your testimony today.

DARRELL E. ISSA:

And with that, we stand adjourned.

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