



**BEFORE THE  
OFFICE OF SCIENCE AND TECHNOLOGY POLICY**

**Request for Information; National  
Priorities for Artificial Intelligence**

The Copyright Alliance appreciates the opportunity to submit the following comments in response to the [request for information](#) (RFI) published by the Office of Science and Technology Policy (OSTP) in the Federal Register on May 26, 2023, requesting comments to help OSTP update U.S. national priorities and future actions on artificial intelligence (AI).<sup>1</sup>

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

The Copyright Alliance supports the responsible, respectful, and ethical development and use of AI technologies and a thriving and robust AI economy. Many of our members are already using or plan to use AI to aid in the creation of a wide range of works that benefit society, and some are themselves developers of AI technologies. We commend the OSTP and each federal agency involved in the Administration's coordinated effort to ensure the *responsible* development and use of AI. The U.S. position as a leader in AI is not only about *what* we are able to achieve, but just as importantly *how* we get there.

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<sup>1</sup> Request for Information; National Priorities for Artificial Intelligence, 88 Fed. Reg. 34194 (issued May 26, 2023).

## **Protecting the Rights of Creators and Copyright Owners**

Question 1 asks about measures that are needed to ensure that AI systems are designed, developed, and deployed in a manner that protects people’s rights, and which entities should be responsible for developing and implementing these measures. When discussing how to ensure that AI systems are designed, developed, and employed in a manner that protects people’s rights, it is important that the rights of creators and copyright owners be a part of those discussions. Long-standing copyright laws and policies must not be cast aside in favor of new laws or policies obligating creators to essentially subsidize AI technologies. One way to ensure that the rights of creators and copyright owners are protected and respected is to require that AI developers have the authorization to ingest copyrighted works when building their generative AI systems and that creators are compensated for such use. As ingestion of copyrighted works by AI systems involves a reproduction of such works, it would require licensing absent an exception, such as fair use, so no change in copyright law should be necessary here.

Independent-to-large-scale creators and copyright owners produce high-quality works that are often ideal for ingestion by AI systems in order to generate high-quality output. Many creators and rightsholders, particularly publishers and image/media licensors, already license their copyrighted works for commercial AI uses and many of those that do not are on the cusp of doing so. Copyright law incentivizes those creators and rightsholders to lawfully enhance and aggregate their copyrighted works for that purpose—such as through semantic enrichment, metadata tagging, content normalization, and data cleanup. Where a copyright owner offers licenses for the purpose of ingestion, it is essential that these licenses be respected by any copyright or AI legal regime. The marketplace should continue to properly value and incentivize creativity, and AI policy should not interfere with the right of copyright owners to license, or choose not to license, their works for AI uses.

While some AI developers claim that their AI systems are copying only non-copyrightable elements, or that the ingestion of copyrighted works by AI categorically constitutes fair use, these assertions are not correct. Ingestion of copyrighted works by AI systems without authorization concerns big and small copyright owners of all types of creative works. Unless excused by fair use (which can only be definitively determined by a court on a specific, case-by-case basis), such use constitutes copyright infringement on a massive scale. Moreover, the existence of a licensing market weighs against a finding that copying or using

copyrighted works without the permission of the copyright owner is excused by the fair use defense.<sup>2</sup> In some cases, AI-generated outputs may also infringe works ingested by the AI system.

Some AI developers assert that AI innovation will be impeded if the ingestion process is not deemed to be categorically fair use. This false narrative purposely omits the fact that in many cases licenses are available for ingestion. As history has shown, creators and copyright owners are usually willing to license their works when the parties can agree on appropriate terms and compensation; that is, of course, how creators typically earn a living. Copyrighted works provide immense value to AI developers, and they can and should pay for that value—as many are already doing. In other words, when properly applied, copyright law sets the conditions for the market to prevail.

Adequate transparency regarding ingestion of copyrighted works also goes a long way in helping to ensure that copyright owners' rights are respected. As AI technology continues to evolve, it is critical that the underlying goals and purposes of our copyright system are upheld and that the rights of creators and copyright owners are respected. Best practices from corporations, research institutions, governments, and other organizations that encourage transparency around AI ingestion already exist that enable users of AI systems or those affected by its outputs to know the provenance of those outputs.<sup>3</sup> In particular, except where the AI developer is also the copyright owner of the works being ingested by the AI system,<sup>4</sup> it is vital that AI developers maintain records of which copyrighted works are being ingested and how those works are being used, and make those records publicly accessible as appropriate (and subject to whatever reasonable confidentiality provisions the parties to a license may negotiate).

Data laundering is also a major issue in the AI context. Data laundering occurs when datasets comprised of copyrighted works are compiled for non-commercial research purposes, and later used for commercial purposes. In many cases, that initial research is even funded by

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<sup>2</sup> See, e.g., *Am. Geophysical Union v. Texaco Inc.*, 60 F.3d 913, 929 (2d Cir. 1994) (“[I]t is indisputable that, as a general matter, a copyright holder is entitled to demand a royalty for licensing others to use its copyrighted work, see 17 U.S.C. § 106 (copyright owner has exclusive right “to authorize” certain uses), and that the impact on potential licensing revenues is a proper subject for consideration in assessing the fourth [fair use] factor . . .”).

<sup>3</sup> E.g., CONTENT AUTHENTICITY INITIATIVE, <https://contentauthenticity.org/> (last visited July 6, 2023).

<sup>4</sup> Unless contrary to obligations under other laws, contracts, or collective bargaining agreements.

commercial entities with the intent to use those datasets comprised of copyrighted works down the line for commercial gain. The practice of data laundering is an attempt to avoid accountability.

Adequate and appropriate transparency and record-keeping benefit both copyright owners and AI developers in resolving questions regarding infringement, fair use, and compliance with licensing terms. Those practices can also be crucial in promoting safe, ethical, and unbiased AI systems. Such records should be maintained for a minimum of seven years from the time at which the AI system is no longer being publicly deployed.

### **Promoting Economic Growth and Good Jobs**

Questions 17 through 23 ask about the impact of AI on the economy and the workforce. A report on the economic impact of copyright by the International Intellectual Property Alliance notes that, in 2021, the core copyright industries contributed more than \$1.8 trillion to the U.S. gross domestic product (GDP) (accounting for 7.76% of the U.S. economy) and employed 9.6 million workers (or 4.88% of the workforce).<sup>5</sup> In addition to growing at a rate more than three times that of the rest of the economy, the report notes that the core copyright industries:

(1) make up an increasingly large percentage of value added to GDP; (2) create more and better paying jobs than other sectors of the U.S. economy; (3) grow faster than the rest of the U.S. economy; (4) contribute substantially to U.S. foreign sales and exports, outpacing many industry sectors; and (5) make significantly large contributions to what the [U.S. Bureau of Economic Analysis] defines as the digital economy, which does not even encompass the full scope of the copyright industries' digital activities.<sup>6</sup>

Copyright industries are an invaluable asset to the U.S. economy because the exclusive rights afforded by copyright incentivize investment in the creation and dissemination of new expressive works and allow those copyright owners to recoup that investment. However, ingestion of copyrighted works by AI systems without authorization deprives copyright owners of licensing

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<sup>5</sup> Robert Stoner & Jéssica Dutra, *Copyright Industries in the U.S. Economy: The 2022 Report*, INT'L INTELL. PROP. ALL. 8 (Dec. 2022), [https://www.iipa.org/files/uploads/2022/12/IIPA-Report-2022\\_Interactive\\_12-12-2022-1.pdf](https://www.iipa.org/files/uploads/2022/12/IIPA-Report-2022_Interactive_12-12-2022-1.pdf).

<sup>6</sup> *Id.* at 7

revenue, which in turn impacts their ability to recoup the costs of their investments in creating and distributing copyrighted works, and compensate their workforce.

### **Additional Input**

In response to question 29 regarding any additional input we'd like to provide, we note that there is no "AI exception" to copyright law, nor should policymakers or courts create one. Likewise, when formulating new AI laws and policies, it is essential to respect the rights of creators and copyright owners and whether and how they choose to exercise their rights. Indeed, the National Institute of Standards and Technology (NIST) in its AI Risk Management Framework,<sup>7</sup> as well as the G7 in a [Ministerial Declaration](#) of its Tech Ministers' Meeting,<sup>8</sup> acknowledge copyright/intellectual property considerations and the importance of human centricity in the context of developing a trustworthy and accountable AI ecosystem. The AI Risk Management Framework also specifically notes that "training data may also be subject to copyright and should follow applicable intellectual property rights laws" and identifies intellectual property infringement as a possible risk when developing AI.

Respect for copyright law plays a critical role in the responsible development of AI systems. We are pleased that the U.S. Copyright Office and the U.S. Patent and Trademark Office (USPTO), as subject matter experts, are each conducting studies on AI and [copyright](#)<sup>9</sup> and [intellectual property](#)<sup>10</sup> more broadly. Questions about infringement, copyrightability, and liability related to the ingestion of copyrighted works and the output of works created using AI are topics that the Copyright Office has already begun exploring through its series of listening sessions as

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<sup>7</sup> NAT'L INST. STANDARDS & TECH., ARTIFICIAL INTELLIGENCE RISK MANAGEMENT FRAMEWORK (AI RMF 1.0) (Jan. 2023), <https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.100-1.pdf>.

<sup>8</sup> Group of Seven [G7], Ministerial Declaration of 30 April 2023, <http://www.g7.utoronto.ca/ict/2023-declaration.html>.

<sup>9</sup> See U.S. Copyright Off., *Copyright Office Launches New Artificial Intelligence Initiative*, NEWSNET ISSUE 1004 (Mar. 16, 2023), <https://copyright.gov/newsnet/2023/1004.html> [<https://copyright.gov/newsnet/archive/>]; see also Symposium, *Copyright in the Age of Artificial Intelligence*, U.S. COPYRIGHT OFF. (Feb. 5, 2020) <https://www.copyright.gov/events/artificial-intelligence/?loclr=blogcop>.

<sup>10</sup> See *Public Views on Artificial Intelligence and Intellectual Property Policy*, U.S. PAT. & TRADEMARK OFF. (Oct. 2020), [https://www.uspto.gov/sites/default/files/documents/USPTO\\_AI-Report\\_2020-10-07.pdf](https://www.uspto.gov/sites/default/files/documents/USPTO_AI-Report_2020-10-07.pdf).

well as its recent registration guidance<sup>11</sup> and will continue to explore as its study on copyright and AI progresses. To the extent that copyright issues arise in the course of the Biden-Harris Administration’s development of a National AI Strategy, we trust that the agencies involved will defer to the Copyright Office and USPTO’s guidance on these issues. We, along with a diverse group of other stakeholders, have been actively involved in the Copyright Office and USPTO studies on AI and will continue to engage with these offices as those studies progress.

Respecting copyright will also help accomplish a central goal that the OSTP laid out in the Blueprint for an AI Bill of Rights—avoiding “the use of technology, data, and automated systems in ways that threaten the rights of the American public.”<sup>12</sup> Indeed, licensing copyrighted works to be used by AI systems will help protect the rights of more than just creators and copyright holders by providing higher quality, more trustworthy, and better curated works for ingestion. Doing so will advance all of the Blueprint’s five principles.<sup>13</sup>

We appreciate the opportunity to submit these comments and we are happy to answer any additional questions.

Respectfully submitted,

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<sup>11</sup> Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence, 88 Fed. Reg. 16190 (proposed Mar. 16, 2023) (to be codified at 37 C.F.R. pt. 202), [https://copyright.gov/ai/ai\\_policy\\_guidance.pdf](https://copyright.gov/ai/ai_policy_guidance.pdf).

<sup>12</sup> See WHITE HOUSE OFF. OF SCI. AND TECH. POL’Y, BLUEPRINT FOR AN AI BILL OF RIGHTS: MAKING AUTOMATED SYSTEMS WORK FOR THE AMERICAN PEOPLE 3 (Oct. 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf>.

<sup>13</sup> See *id.* at 5-7.