

**BEFORE THE  
U.S. COPYRIGHT OFFICE**

**Artificial Intelligence and Copyright**

**Docket No. 2023–6**

**COMMENTS OF THE AMERICAN SOCIETY OF MEDIA  
PHOTOGRAPHERS AND NORTH AMERICAN NATURE  
PHOTOGRAPHY ASSOCIATION**

The **AMERICAN SOCIETY OF MEDIA PHOTOGRAPHERS** (“ASMP”) and the **NORTH AMERICAN NATURE PHOTOGRAPHY ASSOCIATION** (“NANPA”), collectively referred to below as “Members”, welcome the opportunity to submit the following comments in response to the [notice of inquiry and request for comments](#) (“NOI”) published by the U.S. Copyright Office in the Federal Register on August 30, 2023 (and supplemented by the [extension of the comment period](#) on September 21, 2023), regarding the Office’s study of the copyright law and policy issues raised by artificial intelligence (“AI”) systems.

**ASMP** is a 501(c)(6) not-for-profit trade association, established in 1944 to protect and promote the interests of professional photographers and all visual creators who earn their living by making works intended for publication, display, and every avenue of art and commerce. With thousands of members across 38 chapters and in 22 countries, working in every genre of photography, videography, content creation, and media, ASMP is a leading trade organization representing professional creators’ interests, including the interests of the members of NANPA.

**NANPA** is a 501(c)(6) non-profit organization founded in 1994. NANPA promotes responsible nature photography, both still images and motion, as an artistic medium for the documentation, celebration, and protection of the natural world. NANPA is a critical advocate for the rights of nature photographers on a wide range of issues, from intellectual property to public land access.

Members greatly appreciate the critical attention that the Copyright Office has devoted in a number of contexts to highlight the copyright implications of the emergence of artificial intelligence, including this NOI, its AI registration guidance,<sup>1</sup>

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<sup>1</sup> Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence, 88 Fed. Reg. 16190 (March 16, 2023).

its public listening sessions<sup>2</sup> and its meetings with private sector stakeholders, including ASMP. We look forward to working with the Office as it continues to play a key role in ensuring that the many the complex copyright issues raised by the emergence of AI are subjected to vigorous debate and review.

ASMP is in strong agreement with the overall thrust of the comments filed in this inquiry by the Copyright Alliance, of which both ASMP and NANPA are members. We write separately at this time for two reasons.

First, we write to underscore some issues and positions that the Copyright Alliance raises in its comments that are of special importance to our Members, most significantly the need for artificial intelligence technology to be implemented in a manner that respects the basic principles of our copyright laws. Second, we want to share with the Copyright Office the preliminary results of a study that ASMP has conducted with respect to our members' experience with artificial intelligence, as well as their hopes and fears regarding the emergence of this new technology.

Like so many others, our Members are in the early stages of learning about the promises of artificial intelligence in myriad contexts, and some, as discussed in the aforementioned survey, are slowly starting to make use of AI. But, as also is clear from the preliminary results of the survey, large numbers of Members are fearful and concerned about the negative impact of unchecked or under-regulated AI on their photography businesses. This does not mean that our members are anti-technology; they have embraced successfully various new technologies in the past; they feel the need to get a far better understanding of the potential positive and negative impact of AI on their profession.

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<sup>2</sup> <https://www.copyright.gov/ai/listening-sessions.html>.

1. The need for artificial intelligence technology to be implemented in a manner that respects the basic principles of our copyright laws.

Members are typically individual creators and small businesses with little or no staff. These creators are dependent on the protections offered by the copyright law to ensure that they have control of, and are compensated for, their creative efforts. For them, thinking about the impact of AI on their creative works is paramount.

Members fervently believe that unless the longstanding, fundamental principles and promises of copyright are respected in the new world of AI, photographers, visual artists, and similarly situated creators will see their careers threatened and in many cases decimated by AI as massive and blatant infringements of their works become the norm. Simply put, if copyright laws are disrespected by AI entities that: (1) compile enormous inventories of copyrighted works without authorization by, or payment to, copyright owners; and, (2) “create products” that compete and potentially replace the original work, the short and long term impact on Members and others will be immediate and catastrophic.

We implore the Copyright Office to heed these concerns and act swiftly to help provide protections to the visual artists who comprise the backbone of the creative economy in the U.S.

2. The key preliminary results of ASMP’s ongoing AI Study.

In September of 2023, ASMP sent a set of survey questions to its 6,500 members to gauge their concern and understanding related to AI, and identify the most problematic or beneficial areas the Members had encountered. The survey generated more than 150 detailed responses. Below, I have identified the question asked, the context of the concerns, and included a representative example of what our Members are most concerned about.

- a. Q1 - Have you entered into a contract with an AI entity to allow such companies to utilize your photographs for compensation?

Many Members make their living by taking photographs and then licensing those images to various individuals and companies. As has been discussed, the initial generative AI platforms did not ask for the permission, let alone seek a license for, the images from photographers whose work was scraped from the web for use in their “training” sets. In the past 12 months we have heard more about AI companies licensing images for use in future training sets, so we asked the members if they had entered into such an agreement. Exactly four of the 156 respondents (2.5%) had entered into this type of agreement.

**Member T.B.:**

“I contribute to Getty Images which has used its contractual rights for the ‘right to create derivatives’ to partner with NVIDIA to create an AI image generator. I will supposedly receive compensation via an opaque formula of the content used to create new AI content for customers.”

ASMP remains concerned that not only have creators whose work has been scraped for use by the AI companies not been compensated for the past infringements, they further have not been contacted or made aware of possible licensing opportunities for use in future situations. This opaque method of taking images without notice, license, or compensation is one of the largest concerns that Members expressed.

- b. Q2 - Have you learned that any AI entities have ingested any of your photographs without authorization, compensation or credit, have you ever contacted the AI user to complain, and if so, what was the outcome?

Photographers are now on the lookout for their works within data and training sets utilized by AI companies. We next asked members if they had found their work being used in such a manner, and if they attempted to resolve the issue. Only 3.2% of respondents had been able to find their work via the methods currently available.

**Member L.C.:**

“I've checked my name on <https://haveibeenentrained.com/> which shows images found in the LAION-5B training data. I've found a number of my images there. To find the rest, I'll have to reverse image search each of my photos individually, which is very labor intensive. I've begun to do this and have found many more of my images in this data set.”

To this member's point, the current system of reverse image searching is both incomplete and laborious. Further, photographers and content creators often have hundreds of thousands, if not millions, of images in their image libraries making this effort functionally impossible in its current form.

**Member A.P.:**

“My entire website, all of the images as far as I can tell, have been scraped and are used in the AI training database. I know this because I see it using the website [haveibeenentrained.com](https://haveibeenentrained.com/), which pulls results from these databases and it shows my images there. I was never consulted, nor did I give any kind of permission for this of course. I have seen my images coming up on social media utilized in other artist's compositions...and other photographers even commented on the post that it looked like my work! I notified Facebook and Facebook did not take down the post image, stating that it could not determine who the creator of the image is...presumably because it is mixed with other images drawn from the database.”

This member laments the inability of the photographer to be able to do anything even if they find their work has been scraped and inserted into these training

sets. As he notes, reaching out to a company like Facebook does little to remedy the situation, and the infringed party is again left without recourse.

c. Q3 - Have you ever employed generative AI technologies in your work?

Our Members cover a wide swath of the visual arts industry, and as such, some are cautiously optimistic as to the potential of AI to help their business and careers. 16.6% of respondents indicated they had used generative AI technologies in their work so far. The most common reason was for retouching and editing purposes on their existing images. They typically do so to by improving or cleaning up their images, generating backgrounds, and adding and removing unwanted content from images to achieve realistic results rather than to create new content not previously in the image.

**Member M.L.:**

“We use AI only to help "cleanup" images, not to create content that is not already in the image.”

**Member G.D.:**

“I use Photoshop generative fill and it's saved me a lot of time photoshopping out various items in the backgrounds of my photos.”

d. Q4 - Overall, do you view AI as a potential threat or boon to your business? How so?

At the core of this survey was to help identify our Member’s current views and attitudes towards generative AI technologies. A clear plurality of the participants in the survey view AI as a current or potential threat to the photography business.

**Member L.C.:**

“I'm not sure yet what types of companies will continue to use real photographs. Even for companies that use images of real places, say for travel-related imagery, why pay a photographer to take a new photo when you can use AI to spit out a photo compiled from all the images of that place in the AI dataset. You can get the exact time of year, type of weather and lighting, and get a photo that is more ‘perfect’ than if you hired someone to make a new, unique image.”

**Member J.D.:**

“Also, a graphic design firm in Wash DC created an entire eyeglasses ad campaign with AI content, of people wearing sunglasses. I think that's frightening. They didn't hire models, talent, hair & makeup, photographers/assistants. I'm hoping it's not common practice, any time soon.”

**Member E.K.:**

“Absolute threat. AI will destroy artist's livelihoods. It should be banned.”

**Member T.B.:**

“It will be a threat. Clients will just use AI to generate the photography they need because it will be cheaper and faster, and most clients view photography as a commodity that the bottom line is the most important driver verses other priorities.

**Member B.G.:**

“A threat. Soon there will be no need for photographers, just people who know how to wrangle AI code.”

**Member K.B.:**

“We recently lost a \$100,000.00 project to AI. It's another creative tool but our studio is seeing photographic work moving away from actual photography to AI generated illustrations.”



**Member D.J.:**

“Yes. The process of AI using photographers’ images through algorithms to produce artificial works will do damage on two fronts for art creators. First, AI is not adequately compensating creators for the use of the creators’ art. So, this becomes a form of theft. Secondly, it demeans the creative process to merely output, ignoring process as an important part not of photographic creation but of people more generally.

“The human process of creation is an elevated aspect of being human. Stripping that aspect or reducing that aspect to AI diminishes what we collectively are capable of. Yes, we have employed digital tools with growing sophistication but these have remained largely in hands of the artist. AI takes a substantial part of the process and removes it from the artist.

“Photography is the interaction of the artist with her or his environment in ways that resonate with the truths of the artist in that given situation. Examples include the perception of intimacy or joy at a wedding, or the loneliness filled with awe in a magnificent landscape captured at right moment by a photographer who gambled that needed synchronicities would align for that moment.

Art is a human rather than a digital experience. AI is a threat to that process.”

Not all of our members found the issue to be so clear. Some indicated that generative AI technologies could be both a threat and a boon.

**Member P.M.:**

“It’s a mixed blessing, on one hand there is innovation that can be used by creators. And on the other hand, initially people will be out of work because of it. it seems like the individual creator is the one that loses the most in a world where a potential client can speak a few prompts and get the image that will work for their needs. Thus bypassing, the creator and the technology owners end up profiting.”

**Member W.B.:**

“I think it is a threat in regards to using images to train AI then having agencies or businesses use the original image to have AI create derivative “art.” At some point photographers will not be necessary because everything can be done on a computer by a graphics person or computer artist.

“The ability to have objects intelligently removed from an image is a boon. On a number of shoots the sites we were limited to had a variety of really bad distractions in the form of busy paint lines on a parking lot, a light fixture directly over a corporate group photo and we were able to seamlessly remove those.

“Too early to tell if boon or threat.”

**Member B.S.:**

“Since it is already been used in less obvious ways for many years, for instance, in Photoshop, I am not currently alarmed. The future is still unclear; however, traditionally, clients will do whatever they can to save money, so they will use AI when they can. That use will increase or decrease as they find how effective - or not - it is for their business, whether commercial or editorial use. I strongly believe there is no replacement for human creativity, whether or not it is utilized by clients.”

Finally, some members found generative AI technologies core to their current business models.

**Member L.A.:**

“[B]oon - Specifically for our business – [I] find it saves me hundreds of hours of work. As a photographer my job is 30% pre production, 10% shooting images, 30% post production and 30% client relationships. What I find is that AI will never replace most of that, all it does is add shortcuts in pre & post production.”

In sum, the above comments illustrate the apprehension and concern our Members and other visual artists face when confronted with a landscape that seems to

erode long-standing copyright protections at every turn. These artists should be protected, by both the Copyright Office and industry, and we appreciate the Office's diligence in seeking out solutions and providing assistance to these Members as they continue to try to keep their small businesses open and their careers intact in the face of AI headwinds. We look forward to offering whatever assistance possible to the Office in the weeks and months ahead on these issues.

Submitted October 30, 2023

**Thomas Maddrey**

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& Head of National Content and Education