



**BEFORE THE
NETWORKING AND INFORMATION TECHNOLOGY RESEARCH AND
DEVELOPMENT NATIONAL COORDINATION OFFICE,
NATIONAL SCIENCE FOUNDATION**

**Request for Information on the
Development of an Artificial
Intelligence (AI) Action Plan**

The Copyright Alliance appreciates the opportunity to submit the following comments in response to the [request for information](#) (RFI) published by the Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation on behalf of the Office of Science and Technology Policy (OSTP) in the Federal Register on February 6, 2025, requesting input from interested parties on priority actions that should be included in the Artificial Intelligence (AI) Action Plan.¹

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 commends the National Science Foundation, the OSTP, and each federal

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agency involved in the Administration’s coordinated effort to ensure that America’s AI dominance is sustained and enhanced through the promotion of human flourishing, economic competitiveness, and national security. We, along with a diverse group of other stakeholders, have been actively involved in the U.S. Copyright Office’s and U.S. Patent and Trademark Office’s (PTO) studies on AI and will continue to engage with these offices as those studies progress. As the expert U.S. intellectual property (IP) agencies, we hope that both the Copyright Office’s and PTO’s insights on the intersection of copyright and AI will inform the development of the AI Action Plan.

The Copyright Alliance supports the responsible, respectful, and ethical development and use of AI technologies and a thriving and robust AI economy. An AI ecosystem that meets these criteria is one that (1) values and respects the rights of creators and copyright owners and the importance of the copyrighted works they create and (2) does not make those rights and works subservient to the interests of AI companies. Many of our members are already using or plan to use generative artificial intelligence (GAI) to aid in the creation of a wide range of works that benefit society, and some are themselves developers of GAI technologies.² We submit these comments to ensure that the AI Action Plan is developed with a respect for and recognition of longstanding copyright laws and policies that make America the global leader in the creative and digital industries.

Respecting Established Copyright Laws Promotes Human Flourishing, Economic Competitiveness, and National Security

The RFI asks for input in response to President Trump’s Executive Order “to establish U.S. policy for sustaining and enhancing America’s AI dominance in order *to promote human flourishing, economic competitiveness, and national security.*” (emphasis added). Promoting human flourishing, economic competitiveness, and national security are all objectives that run parallel to the goals of America’s copyright system, enshrined in Article I, Section 8, Clause 8 of the Constitution. Known as the “IP Clause,” it grants Congress the power “to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” IP laws, including copyright laws, are what enable human authors to

² These comments focus on how the AI Action Plan addresses issues related to generative artificial intelligence (GAI), the development of which often involves training models on preexisting copyright protected works and generating material that acts as a substitute for the ingested works. The Copyright Alliance takes no position on more traditional AI technologies that do not train on preexisting copyrighted works.

create and innovate, and they are key to securing American sustained economic competitiveness and global leadership. It is essential that the AI Action Plan be developed with an appreciation for the Constitutional guarantees that protect copyright owners and the *human* creators without whom GAI systems would not exist.

Existing U.S. copyright laws, as detailed further below, are carefully balanced to provide essential protections along with important flexibilities—a deliberate rubric that must not be altered for AI. From broadcast content, film and TV shows, and journalism to sound recordings, works of visual arts, books, and everything in between, the ingestion of copyrighted protected works for GAI training is one of the central controversies related to the development of GAI technologies.

Whether the unauthorized ingestion of copyright protected works for training constitutes copyright infringement or whether it qualifies for U.S. copyright law’s fair use exception is an issue that has become the focus of nearly forty ongoing federal lawsuits, and it’s one that will and should continue to be decided on a case-by-case basis. Federal courts have been applying fair use for over a century, over the course of various technological advancements like the photocopy machine, the VCR, the Internet, digital music services, and many other new technologies. Courts are capable of applying fair use to novel questions surrounding disruptive technologies, and they are best positioned to do so with GAI. Thus, there is no need at this time to change copyright law or create a new AI exception in the law. *This is not just the view of a broad consensus of the copyright industries, it is also the view of numerous GAI companies, and the diverse industry groups that represent them.*³ There are many areas related to AI where the Administration may feel the need to take action to help facilitate U.S. world dominance in AI, but copyright is not one of those areas. We are concerned that proposals that would alter long-standing and balanced copyright laws would have the effect of obligating creators to unfairly subsidize the development of GAI.

³ See OpenAI, Reply Comments Submitted in Response to U.S. Copyright Office’s Aug. 30, 2023, Notice of Inquiry at 2-3 (Dec. 6, 2023) (“One recurring theme in the initial round of comments is a recognition that there is no need for fundamental changes to copyright law at this time...OpenAI echoes the sentiments highlighted above that legislative changes to copyright would be premature at this time.”); Google, Comments Submitted in Response to U.S. Copyright Office’s Aug. 30, 2023, Notice of Inquiry at 1 (Oct. 30, 2023) (“However, we believe that existing copyright doctrines are sufficiently flexible to handle many of the scenarios that will likely arise with AI, and that courts — informed with the facts of specific cases — are the appropriate first venues for determining how those doctrines should apply.”); Computer & Communications Industry Association (CCIA), Comments Submitted in Response to U.S. Copyright Office’s Aug. 30, 2023, Notice of Inquiry at 1 (Oct. 30, 2023) (“CCIA believes that existing U.S. copyright law is capable of addressing issues related to artificial intelligence and serves to promote creative activity in AI technology.”).

Promoting Economic Growth and Good Jobs

While AI is predicted to be a significant contributor to the economy, the contributions of U.S. creative industries—made possible through copyright law—have been one of the most significant contributors to the U.S. economy and to job creation for decades. A recent report on the economic impact of copyright by the International Intellectual Property Alliance notes that, in 2023, the core copyright industries contributed more than \$2 trillion to the U.S. gross domestic product (GDP) (accounting for 7.66% of the U.S. economy) and employed 11.6 million workers (or 5.43% of the workforce).⁴ 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.⁵

Copyright industries are an invaluable asset to the U.S. economy because the exclusive intellectual property rights afforded by copyright incentivize investment in the creation and dissemination of new expressive works and allow copyright owners to recoup that investment. The U.S. continues to be the world leader in IP—an attribute that contributes significantly to this country's vast cultural influence and its standing as the world's leading economy. The AI Action Plan must take into account the effect policy actions may have on copyright's importance to the economy and job creation.

⁴ Robert Stoner & Jéssica Dutra, *Copyright Industries in the U.S. Economy: The 2024 Report*, INT'L INTELL. PROP. ALL. (Feb. 2025), https://www.iipa.org/files/uploads/2025/02/IIPA-Copyright-Industries-in-the-U.S.-Economy-Report-2024_ONLINE_FINAL.pdf.

⁵ *Id.* at 21.

Promoting Free Markets Through Copyright Licensing

Promoting free markets and a robust voluntary licensing ecosystem is essential to ensuring American competitiveness in GAI. Copyright law enables creators and copyright owners to supply GAI companies with flexible and responsive solutions for training through tailored licensing and business models for GAI development. The ability of creators and copyright owners to create works and enforce their rights in those works is crucial because it incentivizes the further creation and proliferation of high-quality creative works which form the basis for GAI development. Without copyrighted works to train GAI models, GAI technologies cannot generate high-quality outputs. The growing number of licensing and partnership deals between GAI companies and rights holders being reached with each passing day demonstrates these points.⁶

Since the rise of GAI technologies a few years ago, the number of free-market licensing agreements between copyright owners and GAI companies has grown significantly. Increasing numbers of copyright owners, particularly news, magazine, and academic publishers and image/media licensors are licensing their copyrighted works to AI companies for commercial uses and have been doing so for many years.⁷ ***This shows that the market is working and there does not need to be any change in copyright law or policies that could disrupt that market.*** Copyright and GAI can continue to progress successfully together without changes to copyright law.

While the GAI-copyright licensing market has grown over time, this growth will be stunted if changes to copyright law were made that create new exceptions for GAI training.⁸ Nobody disputes that GAI companies and developers must pay for and invest in computer chips and cloud infrastructure. It is part of the cost of doing business in a free market. So, too, is free-market

⁶ *Generative AI Licensing Isn't Just Possible, It's Essential*, Kevin Madigan, COPYRIGHT ALLIANCE (Nov. 21, 2024), <https://copyrightalliance.org/generative-ai-licensing/>

⁷ In the U.S., just a few public examples of recent licensing solutions, initiatives, partnerships, and agreements for AI use of copyrighted works include those launched from or created by Authors Guild, Created by Humans, Dataset Providers Alliance, Copyright Clearance Center, Elsevier, Getty Images, Shutterstock, Jstor, Sage Journals, Rightsify, Universal Music Group, and other major media publishers including the Associated Press, Axios, Condé Nast, News Corp, The Atlantic, Vox Media, Dotdash Meredith, Fortune, Time, Entrepreneur, The Texas Tribune, and WordPress.com.

⁸ Proposals to change the existing legal framework will undermine the market for responsible GAI collaborations by creating a strong incentive for GAI developers to wait for a new legal environment where working in good faith with copyright owners is not necessary or beneficial for their bottom line.

licensing of copyrighted works. To think otherwise would be detrimental to American economic competitiveness, in light of the fact that strong copyright laws can and already have been shown to foster AI innovation as it forms the basis of competitive AI products, not to mention copyrighted works' own, direct benefit to the American economy and balance of trade with foreign nations.

No policy should be adopted in response to GAI that interferes with the free market and the freedom of copyright owners and GAI companies and developers to enter into licensing agreements. The marketplace should continue to properly value and incentivize creativity, and policies developed through the AI Action Plan should not interfere with the right of copyright owners to choose whether to license, or not to license, their works for GAI purposes. Copyrighted works provide immense value to GAI developers, and they can and should pay for that value—as many are already doing today. In other words, copyright law sets the conditions for the market to prevail and for the U.S. to maintain its position as a global leader in both the AI and creative industries.

The Trump Administration has said that it wants to approach AI regulation with a “light touch,” but when it comes to copyright and GAI licensing markets, we urge a “no touch” approach.⁹ However, if the Administration does address copyright and GAI issues, the one area for a “light touch” approach would be transparency surrounding what copyrighted materials are used to train publicly available GAI models when those materials have not been licensed for training purposes.

The Need for Copyright Transparency

Developers of GAI models that are available to the public and ingest without a license the copyrighted works of third parties should be required to satisfy transparency standards related to the collection, retention, and disclosure of the copyrighted works they use to train GAI models. Adequate transparency regarding ingestion of unlicensed copyrighted works is vital to ensuring that copyright owners' rights are respected alongside the advancement of GAI technologies.

⁹ *Trump's Commerce pick backs light-touch regulation in emerging tech policy*, Alexandra Kelley, NEXTGOV.COM (Jan. 29, 2025), <https://www.nextgov.com/emerging-tech/2025/01/trumps-commerce-pick-backs-light-touch-regulation-emerging-tech-policy/402592/>.

Best practices from corporations, research institutions, governments, and other organizations that encourage transparency around GAI ingestion already exist that enable users of AI systems or those affected by its outputs to know the provenance of those outputs.¹⁰ There is no reason these same responsibilities should not also apply to GAI ingestion of unlicensed copyrighted works. It is vital that GAI developers be required to maintain adequate and proportionate records of copyrighted works they neither own nor license that were used to train the GAI and to make those records publicly accessible and searchable as appropriate.

Adequate and appropriately scoped transparency and record-keeping requirements benefit copyright owners by enabling them to learn whether and how their works have been used to train AI models, and benefit AI developers in that transparency promotes consumer trust. Consequently, transparency by businesses that offer GAI systems to the public is a crucial component of any AI policy.

Protecting and Promoting Copyright Is Crucial to Identifying Trade Barriers and Ensuring American Global Economic Competitiveness and Leadership

The global protection of U.S. intellectual property is an imperative part of developing an AI Action Plan that will ensure U.S. economic competitiveness and sustained global leadership, and it's a principle that the first Trump Administration championed.¹¹ Unfortunately, the development and deployment of GAI in foreign markets has created barriers to trade that put U.S. copyright owners at a disadvantage. These barriers have most frequently arisen in the form of broad copyright exceptions for GAI in some foreign countries that fundamentally weaken copyright protection and threaten the sustainability and competitiveness of America's creative sector and its ability to contribute to U.S. economic growth and job creation. The Copyright Alliance and our members oppose such broad exceptions.

¹⁰ E.g., CONTENT AUTHENTICITY INITIATIVE, <https://contentauthenticity.org/> (last visited July 6, 2023).

¹¹ For example, in 2020 the Trump Administration issued *Artificial Intelligence for the American People*, which reaffirmed the President's commitment to protecting intellectual property in the AI environment, stating: "[t]he United States has long been a champion and defender of the core values of freedom, guarantees of human rights, the rule of law, stability in our institutions, rights to privacy, *respect for intellectual property*, and opportunities to all to pursue their dreams." (emphasis added). The first Trump Administration also rejected attempts to weaken copyright protections in the US-Mexico-Canada Agreement ("USMCA").

To overcome these barriers, we urge the Administration to champion the rights of American creators and copyright owners and support the protection of copyright globally through bilateral and multilateral engagement that advances human-centric and responsible GAI, promotes free markets and licensing, and ensures recordkeeping and transparency. Particularly as the global AI race progresses, there will continue to be worldwide efforts to find unethical and unfair shortcuts in the name of progress, including measures which weaken and undermine copyright. If shortcuts are utilized without regard for IP rights, it will cause a global race to the bottom. We have already seen challenges to IP protection come up in the context of newer GAI technologies being developed in China.

America's IP laws, including our robust protections for our creators and innovators, is what sets us apart from China and other countries that unfairly circumvent or weaken copyright owners' rights. Strong IP and copyright protections are ultimately what give the U.S. an advantage over those countries, and if we neglect those principles our advantage will be lost. This is why it is crucial now more than ever for the Administration to have an AI Action Plan that respects and promotes intellectual property rights, including copyright. Specifically, we urge opposition to broad copyright exceptions and support active engagement with countries and international organizations to instead promote strong copyright protections.

One such broad exception that is being considered in some countries is an "opt out" system through which copyright owners could exclude their works from future GAI training datasets. We urge the Administration to oppose any opt-out proposals, whether in the U.S. or abroad. U.S. copyright law is unequivocally an "opt-in" regime, and allowing a GAI system to use works unless the copyright owner affirmatively objects (i.e., opts out) would require enactment of legislation. As noted above, there is a burgeoning licensing market for AI training, which is fostered by copyright law, demonstrating that no AI exception is necessary. Thus, the copyright industries and many others would vehemently oppose any policy or change in the law that establishes or supports an opt-out regime, like the ones adopted by the EU.

Additionally, opt-out schemes fail to consider the practical difficulties of implementation. For example: (1) many copyrighted works have likely already been copied and used for training prior to any new opt-out regime; and (2) despite opting out, copies of the copyrighted works may still be included in GAI datasets through other means, such as when copies are scraped from other sources such as from a licensee of the copyright owner, a third-party platform, or a piracy site where a copy

has been posted without authorization. The practical effects of opt-out, particularly with regard to works already used to train GAI, are also negligible given that it is challenging to remove entire works at scale from a GAI model.

While some proponents claim that existing technical solutions may assist with opt-out, these tools typically have significant limitations because they are only effective to the extent the opt-out mechanism is recognized and respected, and because these tools are often not designed to be targeted to address scraping for GAI ingestion.¹² Copyrighted works also often exist in multiple places on the internet that make it nearly impossible for a copyright owner to apply the opt-out indicator to every copy of a work. For example, a single song can be streamed on a digital streaming platform, played as the background music of a user uploaded video on a social media platform or in advertisements, or displayed as notes or lyrics on a website. It is impossible for the copyright owner to successfully opt out in a way where every single downstream use would be tagged with the proper recognized and respected opt-out signal to prevent GAI scraping and use. The current discussions on this issue in the context of the EU AI Act clearly demonstrate that no workable opt-out mechanism currently exists or is likely to exist in the future.

Moreover, copies of works that are available on pirate sites are even further removed from the copyright owner's control, and it is well-known that some GAI companies have used pirated copies of creative works to train their AI models and have even proliferated pirated copies themselves during the GAI development process.¹³ An opt-out regime fails to address or ameliorate any of these problems and certainly does not afford the copyright owner any semblance of control. For these same reasons, there is currently a high level of uncertainty over what constitutes an effective opt-out,¹⁴ and as time passes this uncertainty is being exploited by some GAI developers who

¹² Robots.txt protocol is one example. While robots.txt does alert scraping tools not to ingest the associated copyrighted work, it has significant limitations because it is only effective to the extent it is recognized and respected, and it was not designed to be targeted to scraping for generative AI ingestion. Robots.txt may also prevent a search engine from indexing the work. A copyright owner may want their work to be scraped for search engine purposes—so they can be found on the internet—but not for AI ingestion. Even if robots.txt is used, it does not attach to the copyrighted work itself but will operate at the URL or website level.

¹³ *Meta Secretly Trained Its AI on a Notorious Piracy Database, Newly Unredacted Court Docs Reveal*, Kate Knibbs, WIRED (Jan. 9, 2025), <https://www.wired.com/story/new-documents-unredacted-meta-copyright-ai-lawsuit/>.

¹⁴ We can look to the European Union to see that there is confusion over what is considered a proper “machine-readable” format, a question which has been raised by at least one German court. *See* Landgericht Hamburg [Hamburg Regional Court] Sept. 27, 2024, 310 O.22723, [Kneschke v. LAION](#), 310 O.22723 (Ger.). *See also* Roy Kaufman, *AI Rights Reservation: Human Readable is Machine Readable — An Interview with Haralambos (“Babis”) Marmanis*,

continue to train on scraped content despite legitimate efforts from copyright owners to opt out. So, in sum, opt-out does not and will not work.

Conclusion

When formulating a new AI Action Plan, it is essential to respect the rights of creators and copyright owners and whether and how they choose to exercise their intellectual property rights. Likewise, the Action Plan should acknowledge the adequacy of existing copyright laws, respect and support the flourishing free market for licensing, and require transparency for commercial GAI developers that used unlicensed materials to train their models. Finally, the U.S. economy, to which the creative industries are integral contributors, should be secured by the promotion, protection, and enforcement of copyright globally.

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

Respectfully Submitted,



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(Feb. 17, 2025), <https://scholarlykitchen.sspnet.org/2025/02/17/ai-rights-reservation-human-readable-is-machine-readable-an-interview-with-haralambos-babis-marmanis/>.