



BEFORE THE
NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY
NATIONAL ARTIFICIAL INTELLIGENCE ADVISORY COMMITTEE

Notice of Open Meeting

The Copyright Alliance appreciates the opportunity to submit the following comments in response to the [notice of open meeting](#) published by the National Institute of Standards and Technology (NIST) on January 6, 2023, regarding the National Artificial Intelligence Advisory Committee’s (NAIAC) upcoming meeting on February 10 to discuss how to direct the Committee’s input into actionable recommendations to the President and National Artificial Intelligence Initiative Office.

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 development of artificial intelligence (AI) technologies and a thriving and robust AI economy. We commend the NAIAC for its critical work in bringing together stakeholders throughout the AI ecosystem to help inform and develop a national AI strategy. 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. The formation of the NAIAC signals that we as a nation understand that our AI strategy must take into account how AI intersects with and impacts important legal and policy areas.

One of the areas implicated by AI is copyright. When formulating new AI laws and policies, it is essential that those laws and policies respect the rights of creators and copyright owners and whether and how they choose to exercise those rights. 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. Separately, the development of new AI technologies also raises questions about the copyrightability of works created using AI. It is essential to the NAIAC's work that the Committee is abreast of these important considerations and we urge the Committee to include copyright issues on its agendas going forward.

It is vital that the views of the creative community are represented and taken into account as the NAIAC considers recommendations on AI policy. With the rapid advancement of AI technologies and applications of those technologies, so much has changed in the AI ecosystem since the call for nominations to serve on the NAIAC in late-2021. Perspectives and implications related to AI have shifted dramatically, and stakeholders in the copyright and broader creative community have been thrust into a central role in the dialogue on AI. It is therefore essential that the future composition of the NAIAC account for the fact that as the reach and breadth of AI technology expands, groups that may not have initially sought a role on the Committee may become vital to the Committee's work—the copyright community is one such example.

We appreciate the opportunity to submit comments for consideration, and we attach to these comments the Copyright Alliance position paper on AI. We request that as the Committee considers specific recommendations and proposals, that those be presented to the public for comment so that the Committee can fully consider any implications of those proposals, particularly those that may be unforeseen and for which there may not be adequate representation within the Committee's membership.

Respectfully submitted,

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POSITION PAPER

Artificial Intelligence

The Copyright Alliance supports the responsible development of AI technologies and a thriving and robust artificial intelligence (AI) economy. The continuing development of AI systems represents a profound achievement of the digital age that brings with it tremendous opportunities. In fact, many in the creative industry are already using or plan to use AI for the creation of a wide range of works that benefit society. But as with many advances in technology, these new opportunities come with challenges.¹

Advancements in AI have led to a new frontier in generative technologies, and thus they are often accompanied by difficult legal questions surrounding both the ingestion of copyrighted works into AI systems and the output. As AI technology continues to evolve and questions arise about how copyright laws apply to the creation of AI-generated works, it's critical that the underlying goals and purposes of our copyright system are upheld and that the rights of creators and copyright owners are respected.

When examining the intersection of AI and copyright, the following general principles must form the basis of a common understanding amongst stakeholders, courts, policymakers, and the public.

- *When formulating new AI laws and policies, it is essential that the rights of creators and copyright owners be respected.* When making determinations about AI policies, it is vital for policymakers and stakeholders to understand that any new laws and policies relating to AI must be based on a foundation that preserves the integrity of the rights of copyright owners and their licensing markets. The interests of those using copyrighted materials to train AI must not be prioritized over the rights and interests of creators and copyright owners.
- *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.* Established copyright laws must not be weakened based on a mistaken belief that doing so is necessary to incentivize AI technologies. This is especially true when

¹ This paper addresses topics specific to the use of copyrighted works in training AI systems. There are several other questions that will arise as to who, if anyone, is the “author” of a work generated by an AI system, who, if anyone, is responsible for any copyright infringement committed via such system, and the copyrightability of AI-generated works in general. Those subjects will be the focus of future position papers.

there is no evidence of market failure or problems warranting changes to the law. AI-specific statutory exceptions to copyright law that would effectively strip rightsholders of their ability to control and be compensated for the use of their copyrighted works for training purposes are not necessary and should be rejected.

- *Education is paramount in the AI space.* There must be efforts to educate participants and users in the AI industries to respect third-party rights such as copyright and otherwise act in an ethical and lawful manner.

Some of the most relevant areas of interest for the copyright community include:

Benefits of Licensing

Independent-to-large-scale creators and copyright owners produce high-quality works that are often ideal for training AI machines to generate output, and 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 uses relating to the training of AI systems, it is essential that these licenses be respected by any copyright or AI legal regime, especially in the case of ingestion of copyrighted material used for text and data mining (TDM). There is already high demand for corpuses of copyrighted works to train AI systems, and copyright owners already enter into licensing agreements for TDM use. This licensing activity is evidence of existing markets for TDM. It is important that the conditions of those licenses are respected and that they are not undermined by new exceptions that excuse unauthorized uses.

Copyrighted works are also being licensed and used for AI projects that in turn generate works that serve as market substitutes for the ingested works. In some cases, the output could qualify as derivatives of the ingested, copyrighted works. In either scenario, copyright owners and creators would be harmed from the unauthorized use of their works, and it is essential that those using the copyrighted works license such uses. In short, the marketplace should continue to properly value and incentivize creativity, and AI policy should not interfere with the ability of copyright owners to license their works for AI uses. Finally, copyright owners may sometimes choose not to license their works for use in generative systems that may produce competing output, and those choices must be respected.

Fair Use

There are some who believe that use of copyrighted works for AI ingestion will always qualify as a fair use under section 107 of the Copyright Act. That view is inaccurate. While there may be instances where ingestion and training qualify as a fair use under section 107, that likely would not be the case if a TDM license is available, the use is commercial, or the resulting AI generated work harms the actual or potential market for the ingested work. The answer will depend on the facts in each particular case.

Some AI developers have, without authorization, used training data sets or pre-trained AI created by non-commercial third parties in their commercial products—a practice known as data laundering. Neither this kind of unauthorized use nor the work of the non-commercial entity necessarily qualify as fair use. Ultimately, AI systems should only train on works or databases of content that they have the authority to use.

Transparency

Best practices from corporations, research institutions, governments, and other organizations that encourage transparency around AI training data already exist. Transparency includes such things as recording what works are ingested by AI systems and for what purpose, which helps to ensure that copyright owners' rights are respected. Infringement analyses, fair use defenses, and licensing terms disputes can all benefit from transparency best practices, and they can also be crucial in promoting safe, ethical, and unbiased AI systems.

Education & Awareness

As technologies rapidly advance, we caution against forging ahead in a way that would disregard the fundamental legal considerations at the heart of our copyright system. It is crucial that those leading AI projects are aware of the legal implications of using copyrighted works as input material, and those that arise from AI-generated output. Policymakers, in conjunction with stakeholders, must work together on educational initiatives that aim to establish common understandings and educational guidelines that ensure the rights of all are understood and respected as AI technologies evolve.