**United States Copyright Office**
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June 12, 2023

Stephanie Weiner
Acting Chief Counsel
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue NW, Room 4725
Washington, DC 20230

**Re: AI Accountability Request for Comment (Docket No. NTIA–2023–0005)**

Dear Ms. Weiner:

The United States Copyright Office submits this comment in response to the National Telecommunications and Information Administration's ("NTIA") Request for Comment on Artificial Intelligence ("AI") Accountability Policy. As described in the Request, NTIA seeks comments on "self-regulatory, regulatory, and other measures and policies that are designed to provide reliable evidence to external stakeholders—that is, to provide assurance—that AI systems are legal, effective, ethical, safe, and otherwise trustworthy."[1] The agency intends to rely on these comments, among other inputs, to address "AI accountability policy development, focusing especially on the AI assurance ecosystem."

The Copyright Office is the federal agency tasked with administering the copyright registration system, as well as advising Congress, other agencies, and the federal judiciary on copyright and related matters.[2] NTIA's Request includes a question about "the role of intellectual property rights, terms of service, contractual obligations, or other legal entitlements in fostering or impeding a robust AI accountability

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[1] *AI Accountability Policy Request for Comment*, 88 Fed. Reg. 22,433, 22,440 (Apr. 13, 2023) ("NTIA Request"), https://www.govinfo.gov/content/pkg/FR-2023-04-13/pdf/2023-07776.pdf.

[2] *See* 17 U.S.C. §§ 408 (copyright registration requires delivering deposit, applicant, and fee to Copyright Office), 701(a) (all administrative functions and duties set out in Title 17 are the responsibility of the Register of Copyrights), 701(b)(2) (the Register's duties include providing "information and assistance" to federal agencies and courts on copyright and related matters).

ecosystem."[3]  The Office's understanding, based on our reading of your Request for Comment and discussions with NTIA, is that the Request and its questions are not intended to address copyright law specifically or the potential impact of AI on the copyright system.  We are, however, cognizant that the policy issues implicated by rapidly developing AI technologies are bigger than any individual agency's authority, and that NTIA's accountability inquiries may align with our work.  Accordingly, we write to describe our current efforts around AI, and offer the Office's support and copyright expertise as an ongoing resource for NTIA.

## I.      The Copyright Office's AI Initiative

The Copyright Office has launched an AI initiative intended to gather information from copyright stakeholders, develop policy positions and recommendations, and provide legal analysis regarding copyright law as it relates to rapidly developing AI technologies.[4]

As part of this effort, we anticipate issuing a Notice of Inquiry in the next few months, seeking written comments on a broad array of policy questions, including whether using copyrighted material to train AI models is protected by fair use, and whether and when outputs from generative AI systems can be the basis for copyright liability.  Our work over the next year will provide new policy analysis to guide stakeholders, Congress, the courts and the public on these questions.

Additionally, the Office has provided a forum for copyright stakeholders to convene and share their views on the copyright implications of recent advances in AI.  Both in stakeholder meetings and in a series of public listening sessions, we have heard from individual creators, industry groups, academics, and technology companies developing AI systems.[5]  The copyright and technology communities continue to share with us the potential impact of AI on their industries, what issues the Office should investigate, and areas in which they believe they need further legal guidance and clarification.

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[3] NTIA Request at 22,440 (Question 27).  Question 27 includes an example of the information NTIA seeks: "Do nondisclosure agreements or trade secret protections impede the assessment or audit of AI systems and processes?"

[4] Information about the Office's AI Initiative is available on our website at https://www.copyright.gov/ai/.

[5] The agendas, transcripts, and recordings of these sessions are available to the public at https://www.copyright.gov/ai/listening-sessions.html.

## II.    NTIA's Inquiries Regarding AI Accountability

The Office acknowledges NTIA's work in exploring certain policy implications of AI technology within its expertise, including the importance of "trustworthy AI," as that term is defined in the Request.[6]  We look forward to reviewing the comments received in response to your Request and any subsequent policy recommendations. The Office supports the development of accepted definitions applicable to the AI ecosystem that can clearly delineate the technologies and practices that matter to our stakeholder communities and foster consistent policy analyses across agencies.  For example, in recent policy guidance regarding registration, the Office defined generative AI systems—the type of AI that is at the center of many copyright debates—as "technologies capable of producing expressive material."  Other definitions may be necessary to describe the range of machine learning systems that implicate policy interests beyond this domain.

The Office shares NTIA's interest in exploring possibilities for greater transparency and accountability in the AI space.  Over the past months, the Office has heard stakeholders raise questions regarding the need for transparency and tracking with regard to the datasets used to train AI tools, accountability with regard to possible infringement or misuse of copyrighted works, and other transparency and accountability issues.

The Office anticipates that NTIA's policy report on AI accountability will contribute to certain issues and discussions in the copyright/AI arena.  We invite NTIA to reach out to the Office on any copyright issues or questions that may arise as you move forward with your work, as well as AI policy issues of shared interest.  Thank you for your consideration.

Sincerely,

Suzanne V. Wilson
General Counsel and Associate Register
    of Copyrights,
United States Copyright Office

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[6] "The term 'trustworthy AI' is intended to encapsulate a broad set of technical and socio-technical attributes of AI systems such as safety, efficacy, fairness, privacy, notice and explanation, and availability of human alternatives."  *See* NTIA Request at 22,434.