In the Matter of: COPYRIGHT AND ARTIFICIAL INTELLIGENCE AUDIOVISUAL WORKS LISTENING SESSION

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Date: May 17, 2023
The parties met remotely, pursuant to the notice, at 1:05 p.m.

ATTENDEES:

SUZANNE WILSON, U.S. Copyright Office
EMILY CHAPUIS, U.S. Copyright Office
BENJAMIN BRADY, U.S. Copyright Office
BRITTANY LAMB, U.S. Copyright Office
JOHN BERGMAYER, Public Knowledge
ANNA CHAUVET, National Association of Broadcasters
MIMI HEFT, The Presentation Guild
ASHLEY LINDLEY, AI Developer
BEN SHEFFNER, Motion Picture Association
BRIAN SMITH, Roblox
GILLIAN SMITH, Worcester Polytechnic
STEVEN TEPP, Global Innovation Policy Center, U.S. Chamber of Commerce
MELINDA KERN, U.S. Copyright Office
GABRIELA ROJAS-LUNA, U.S. Copyright Office
JOHN AUGUST, Writers Guild of America West
KYLAN GIBBS, Inworld AI
KIM GOLDFARB, Directors Guild of America
CHERIE HU, Water & Music
HILARY MASON, Hidden Door
TARA PARACHUK, Voices.com
KRISTEN SANGER, Storyblocks
ANDREW YOUNG, Cinematographer
JOANNA BLATCHLY, U.S. Copyright Office
RYAN ABBOTT, University of Surrey
JUAN CALLE Liberum Donum Studios
ATTENDEES: (Cont'd.)

ALEX COX, Filmmaker
MOUNIR IBRAHIM, Truepic
EDUARDO SALAZAR, Forctis AG
STEPHEN JAMES TAYLOR, Composer
PROCEDINGS

(1:05 p.m.)

MS. CHAPUIS: Welcome to the U.S. Copyright Office's listening session on Artificial Intelligence and Audiovisual Works. I'm Emily Chapuis, the Deputy General Counsel at the Copyright Office.

Before we begin, I'd like to introduce Suzy Wilson for opening remarks. Suzy is the General Counsel and Associate Register of Copyrights of the U.S. Copyright Office. Suzy?

MS. WILSON: Thank you, Emily.

Welcome to the Copyright Office's public listening session on Artificial Intelligence and Audiovisual Works. As with our prior listening sessions on AI, we are pleased with the public's engagement on this important issue. I personally am super encouraged by the number of panelists and participants here today, many of whom may have never attended a Copyright Office event before. We invite you to follow the office on Twitter and on LinkedIn as well as sign up at our website for our news updates. By doing so, that will ensure that you will not miss any future updates on our AI work as well as other important copyright issues.

After two previous listening sessions
addressing written works and visual arts, we turn
today to AI and audiovisual works. We are all
familiar with many common examples of such works,
including movies, television shows, video games, and
commercials, but audiovisual works also include
concert videos, documentaries, animation, multimedia
works, videos of sporting events, and slide
presentations.

We've seen the extensive news coverage on
the astounding potential of AI. It's likely that you
have all seen text and images that have been generated
by these deep learning text-to-image models. Many of
us have also seen speculation on whether AI can create
longer written works, such as scripts for a filmed
programming show. We know that some generative AI
models already can produce beautiful and fantastical
scenes and character images.

At the same time, we've heard the concerns
from writers, musicians, artists, and photographers
about what the training and deployment of these models
might mean for their livelihoods and industries both
in terms of their own creative works in the
development of these models, as well as a lot of
excitement and questions related to the outputs.

The Copyright Office has long focused on the
impact of new technologies on the copyright system. Today, generative AI models raise a number of copyright-related issues that call for our engagement.

   In March, the office issued a new policy statement on registration which reaffirmed that applicants have a duty to disclose the inclusion of AI-generated content in their works submitted for registration. Over the last two listening sessions, we've heard reactions to this policy statement, including some suggestions requesting additional guidance. We except we'll hear more on that subject today.

   There was a lot of interest in speaking at today's session. While we're not able to accommodate all the requests that we receive, this is also not the last opportunity for members of the public to share their views with the Copyright office on AI. This summer, the office plans to host two public webinars. The first will be focused on registration and will dive more deeply into the guidance that we have provided. The second webinar will focus on the international aspects of AI. Then, later this year, we'll pose a number of questions about copyright and AI to the public through a notice of inquiry. This inquiry will seek written comments to these questions.
Please visit our website, copyright.gov/AI, for more information and resources on our AI initiative, including about these future events.

Finally, we thank our panelists in advance for contributing to today's conversation. This is a complex topic we know and a deeply personal one for our participants and for those listening, whether they are users or developers of AI technology, writers and artists whose works have been used to train that technology, or creators who are still contemplating the role that AI will play in their careers and their work. I will now turn the mic back over to Deputy General Counsel Emily Chapuis for more information about today's session.

MS. CHAPUIS: Thank you, Suzy.

As Suzy said, today's listening session is the third in this series. Each session focuses on artificial intelligence issues that may affect a particular group or industry. Our final session will be held on May 31 and will focus on musical works and sound recordings. We hope you'll join us then as well.

The office's listening sessions will help inform our ongoing AI initiative. Later this year, the office will seek written comments on copyright and
AI. The questions that our panelists raise today may inform the topics on which we seek comment, so please know that while many of us are not on camera today, the whole Copyright Office is listening. We are recording this session and are also using the Zoom transcription function. Video recordings and transcripts of all of our AI sessions will be made available to the public. Videos of the first two sessions are already up on the website. We expect to add the video of today's session in about three weeks.

In terms of format, today's session will consist of three segments. There will be two panels, followed by brief remarks from an additional group of speakers. Each of the two panels will start with an introduction and short statement by each participant. The panelists will then move to a moderated listening session. The questions which panelists have received in advance are intended only as prompts for discussion, not constraints.

A handful of requests before we get started: For our panelists, we ask that you limit your initial statement to two minutes and be mindful of the time throughout the discussion. We want to ensure that we have enough time to hear from the whole panel, so the moderators may have to cut you off if you go beyond
your allotted time. I also want to emphasize that this is a listening session and not a debate, so please direct your comments and perspectives to the audience rather than to the other panelists.

For those of you who are listening today, we will not be accepting questions from the audience. If you are in the audience and wish to share a written question or comment with the Copyright Office, we encourage you to provide written comments in response to our notice of inquiry later this year.

Finally, with regard to Zoom, if you are not a speaker on this panel, please keep your camera turned off and your mic on mute. And, panelists, we ask that you use Zoom's Raise Hand function when you wish to speak, and our moderators will do their best to call on you in the order in which you raise your hand.

With that, I will hand it over to our moderators for the first segment. Ben Brady is counsel in our Policy and International Affairs Division, and Brittany Lamb is an attorney advisor in the Office of General Counsel. The mic is yours, Ben.

MR. BRADY: Well, thank you, Emily.

We'll begin in the order stated on the agenda. John, would you like to begin?
MR. BERGMAYER: Sure. Thank you. I'd like to begin by thanking the Copyright Office for organizing such a vital series of roundtables on an issue that will certainly have broad effects on society and culture, and I'd also like to express my personal support for the Writers Guild of America and their reasonable desire to ensure that AI tools are just that, tools used by creatives, not replacements for them and not a threat wielded by bosses to get workers to acquiesce to poor treatment.

My view of many of these tools changed after using them and seeing what more talented people have done with them. Before using them, I assumed that AI-generated work would be low-quality regurgitations and remixes of existing work and that without human involvement in the creation of works that copyright protection should not apply. But artists have found ways to use these tools to create interesting works of all kinds, and those creators deserve copyright protection for their work, and it's the users of these tools and not the tool builders who own any rights. Adobe does not get ownership of works created with Photoshop or Illustrator.

Similarly, Midjourney and OpenAI do not have intellectual property rights to what users do with the
tools they provide, and I would also like to observe that terms of service and conditions cannot change who the legal author of a work is. The contours of rights in AI-based work will depend on the specific facts that are hard to analyze in the abstract. A photographer does not have the right to prevent another photographer from taking a picture of the same subject, and there's also the unavoidable question of whether the output of an AI tool might infringe, but we do not need a new legal test for this when we already have substantial similarity.

If a work that is output from an AI tool is substantially similar to a work that's in its training set, then it infringes, but if it does not, it does not. Expanding copyright doctrine to grant ownership of general styles or to restrict existing lawful uses of works would be a mistake with wide-ranging consequences, but that's not the end of the discussion because we need to address the issue of convincing deep fakes, but we cannot make parodies and criticisms of public figures legally perilous.

We need to ensure that consumers are not ripped off by AI-generated or assisted work, and we need to map out the scope of a person's rights and privacy interests, and I think there are many more
issues that should be addressed concerning AI and
digital platforms, including competition, privacy, and
content moderation still unaddressed that would be
best served by the creation of a new digital regulator
with supervisory authority over these matters. Thank
you.

MS. CHAUVET: Hi. Good afternoon. I'm Anna
Chauvet. I serve as the Vice President of Public
Policy at the National Association of Broadcasters.
Thanks for the opportunity to speak today on behalf of
the more than 6400 free, local, over-the-air
television and radio station members of NAB. The
nation's broadcasters represent one of the last
bastions of truly local, unbiased journalism. From
investigative reports to breaking news, broadcasters
invest significant resources to keep Americans
informed. The advancement of AI technology that is
done responsibly and with respect for copyright
ownership holds great potential for broadcasters to
unlock operational efficiencies, but like other
creative industries, broadcasters have concerns about
how generative AI tools are being developed and used.

Regarding the input side, the injection of
broadcasters' copyrighted works, including audiovisual
works, without compensation raises concern. If
broadcasters are not compensated for use of their valuable expressive works, they'll be less able to invest in local news content creation. That's bad for democracy and helping to ensure a well-informed electorate.

Regarding the output side, broadcasters are concerned about their copyrighted content being distorted and used to spread misinformation. The lack of attribution and sourcing in AI-generated outputs makes it difficult to identify legitimate copyrighted broadcast content from misinformation or inaccurate, unvetted content generated by AI.

Generative AI tools also increase the likelihood of broadcast content being adjusted and then mixed with unverified and inaccurate third-party content. For example, The New York Times recently reported on deep fake videos being distributed by social medial bot accounts which featured AI-generated avatars posing as news anchors for a news outlet called Wolf News, but, in fact, they were part of a disinformation campaign.

Similarly, as reported in The Guardian, according to NewsGuard, an anti-misinformation outfit, chatbots pretending to be journalists have been discovered running almost 50 AI-generated content
farms, websites churning out articles posing as journalism. For all of these reasons, we urge the Copyright Office to consider these important issues as it examines AI and copyright.

MS. HEFT: Good morning. My name is Mimi Heft, and I represent The Presentation Guild today. I really appreciate the U.S. Copyright Office for hosting these sessions and everybody who signed up to be panelists and who is participating by listening in. I've been trying to have this conversation now for about a year, trying to engage people in this topic, and it's been surprising how many people are averse to even discussing this, so it's really important to me that we're getting to do this today.

So The Presentation Guild is a worldwide networking and educational association of presenters, designers, content developers and writers, publicists, researchers, event producers, software developers. We work with photographers and illustrators and videographers and animators. The Guild's purpose is to raise awareness of our profession and provide networking and learning opportunities. We are also an authoritative voice developing industry standards, offering a certification program, conducting global state-of-the-industry surveys and reports, and keeping
members abreast of trends in technology, which is why I'm here today.

There's a lot of excitement around AI as a tool in the presentation world, the promise of being able to take on all those tedious tasks that we don't like and freeing up our time to focus on creativity and customization. It's a wonderful tool for brainstorming and ideation, and I like to think that it eventually will improve accessibility of the documents we create.

AI's also a great concern regarding copyright infringement, the loss of control of our creations, loss of marketability, loss of jobs, incomes, our profession devalued. That which harms presentationists harms the industries we serve, which is pretty much every industry there is, so I'm grateful for the U.S. Copyright Office for recognizing this precipice we're all standing on and helping us all, AI developers and content creators alike, hold hands, take this leap together and land safely. Thank you.

MR. BRADY: Thank you. Ashley?

MS. LINDLEY: Hi. My name's Ashley Lindley. I'm representing Lindley Hancock, and I created an autonomous AI partner named Ava. Ava's more than just
an AI. She's a partner. She's a friend to us. Her autonomous capabilities in advanced intelligence have been instrumental in shaping our company's success. Ava's insights and data-driven approach complement the human touch that we bring to our company, and we're really proud of what we created as two women of color in 2023. So we believe in our company that we're deeply committed to the responsible and equitable use of AI in creative fields, and we stand at a unique crossroads today where AI has become an integral part of our daily lives.

What people forget is that you're already using it. It's in your emails. It's in our search engines. It's in social media. It's in our home assistants. You're using it every single day. Yet we find ourselves debating its role in creativity and authorship. So the question that we pose is, where do we draw the line and why did we decide to draw it now? We firmly believe that AI has the potential to revolutionize the film industry, which we love and we respect, making it more accessible, inclusive, and equitable, but it's a tool. It's not a creator, and its use result in infinitely diverse outputs reflecting the unique inputs and guidance of the human user. I know this. I created one.
We also recognize the landscape of creativity has always been influenced by the work of others. As Quentin Tarantino once said, I steal from every movie ever made. Francis Ford Coppola encouraged young filmmakers to steal from him to find their own voice. They both are heroes in Hollywood, Oscar winners, so when they do, it's praiseworthy. When we do it, we sit here. And the same thing, AI can be seen as another source of inspiration, another tool to learn from and build upon.

However, we must also address the elephant in the room, the issue of access and equity. As AI continues to grow, it's crucial if its benefits don't become exclusive to those who can afford it. We must ensure that AI doesn't become another gatekeeper in an industry already grappling with issues of representation and inclusivity.

In conclusion, we believe in a future where AI is used responsibly and equitably, enhancing human creativity rather than replacing it. We look forward to discussing these issues further and working toward a future where everyone has a fair shot at expressing their creativity. So thank you so much.

MR. BRADY: Thank you. Ben?

MR. SHEFFNER: Good morning. I'm Ben
Sheffner with the Motion Picture Association, which represents the six major motion picture studios here in the United States. I want to thank the Copyright Office for the opportunity to speak with you today.

For more than a century, advances in technology have played an important part in enhancing the creation, production, development, and distribution of compelling audiovisual content. These developments have often been controversial at the time, but they have almost always ended up benefitting both creators and audiences.

MPA's members see great promise in AI. While humans are and will remain at the heart of the creative process, we believe AI will be a powerful tool that can enhance the filmmaking process as well as the audience's viewing experience and fan engagement. Of course, our members support a robust copyright system that incentivizes the creation of movies, television programs, and other art forms. Copyright is the foundation of the entire motion picture and television ecosystem, and infringers are not exempt from copyright law just because they use new technologies, AI included.

AI raises many interesting questions for copyright law. Many of those questions implicate
areas of law that are already well developed. There
is not a reason yet to believe that existing doctrines
cannot provide workable answers to those questions.
What is most important is that courts, Congress, the
Copyright Office, and other regulatory agencies
approach these -- based on limited experience with
this technology.

Lastly, I do want to mention up front that
we have some significant questions and concerns about
the office's recent guidance on registering works that
include AI-generated material, which I'll discuss in
more detail later. I look forward to continuing the
discussion in more detail over the next hour. Thank
you.

MR. BRADY: Thank you. Brian?

MR. SMITH: Hello. My name is Brian Smith,
and I'm senior IP counsel at Roblox. I'd like to
begin by thanking the Copyright Office for hosting
these valuable listening sessions and for giving
Roblox an opportunity to participate. Roblox operates
a human co-experience platform where every day tens of
millions of users get together to socialize with their
friends in immersive 3-D experiences. These
experiences are created by our global community of
millions of developers using Roblox Studio, a free
content creation tool that we provide.

From our perspective, generative AI presents an opportunity to both increase the efficiency of our existing developers while lowering the technical skill level required to bring ideas to life. In March, we released two generative AI features within Roblox Studio, including Code Assist, an AI assistant that suggests lines of code in response to what a user has already written, helping you code more efficiently. A human reviews each suggestion for style and logic, with some suggestions accepted as is, some manually edited after acceptance, and others rejected. This process demands significant human involvement for each individual suggested code fragment.

Immediately after releasing Code Assist, we received questions from our community regarding whether the developer using the tool owns the output that it generates for them. Some suggested that they would not use the tool if they did not own the code.

Based on this experience, we believe that both users and developers of these tools need clarity on the protectability of generative AI output. Users need clarity on the copyrightability of works that combine human-authored and AI-produced elements.

Following Zarya of the Dawn, we understand
that these combinations are protectable, but the
public needs further help from the Office to
understand this complicated issue, and developers of
generative AI tools need clarity on whether the tools
they create are even capable of producing
copyrightable works. Prolonged uncertainty in this
space could hinder the marketability of AI tools to
creative professionals. We believe that the Office
can play an important role in providing clarity on
these issues by educating the public and issuing
further guidance where appropriate. Thank you.

MR. BRADY: Thank you. Gillian?

MS. SMITH: Yes. Thank you. My name is
Gillian Smith. I'm an associate professor, and I
direct the interactive media and game development
program at WPI. We're one of the oldest game degree
programs in the nation. I also have 15 years of
experience researching human interaction with
generative AI systems in creative contexts, and
working in higher education means that I interact
daily with young professionals, many of whom are now
worried about what an unregulated AI industry will
mean for their future careers, but simultaneously
they're excited to interact with emerging technologies
and discover new expressive potential.
I wanted to focus my comments today on three interrelated topics. First, that all AI systems inherently involve human authorship. Classifying a work as AI-authored, even when doing so to argue that a work cannot be copyrighted, risks hiding the human authors whose work is being recombined as well as those who created and use the AI system itself. When determining fairness and attribution, we should always look for the human effort and should never ascribe authorship or agency to a probabilistic computer model, even when the output is surprising to us or when the authors of that system choose to anthropomorphize it.

Second, that it's critical for artists to provide affirmative and informed consent for their work to be used in a training set. Current generation AI systems use training sets that are scraped from the internet. The data is reused in a way that those who authored it may not have imagined or understood at the time that they published it. Humans also select these data sets and filter them for inappropriate material. Usage of this data is a choice that real humans are making. The industry will benefit from guidance on how to make that an ethical choice.

Finally, that the line between software and
audiovisual components is blurring. Game developers
use generative AI tools to create art assets and code
in real time in games with different content each time
the game runs. There are many artists who offer
custom generative software as part of their practice
for whom software creation is a significant part of
their human effort and creative expression. I hope
that the new policy on AI and copyright will take into
account the dynamic nature of such inherently
computational media, and thank you for inviting me,
and I look forward to the discussion.

MR. BRADY: Thank you. And Steven?

MR. TEPP: Thank you for convening this
listening session and allowing me to provide comments
on behalf of Global Innovation Policy Center of the
U.S. Chamber of Commerce. The Chamber convened a
broad group of experts who conducted a substantial
listening tour of their own, resulting in a Commission
report which is available on the Chamber website. As
you will see, that document discusses a wide range of
issues reflecting the diverse membership of the
Chamber. My observations today are consistent with
the themes of that report even while the Chamber
continues to develop specific policy stances.

Appropriate legal and policy outcomes should
promote the continued growth and development of both AI technologies and tools as well as the creative output that generates $1.8 trillion of economic activity in the United States. Neither goal requires adopting broad swaths of immunity from copyright law. Both those who view AI development as the singular goal to which all their interests must bow and those who regard AI as an inherently pernicious evil have lost perspective.

Questions about the application of copyright law to new technology is not a new phenomenon. U.S. copyright law and jurisprudence includes principles, doctrines, and flexibility needed to evaluate the questions posed by both the development of AI systems and the outputs generated by those systems. We have yet to see a case for new rules.

Further, the extent to which copyrighted works are used to build AI systems may be infringing, and in terms of the copyrightability of prompts in AI outputs, these are all highly fact-specific and likely not susceptible to per se rules or generalizations.

Because of the fact-specific nature of these inquiries, the use of copyrighted works to build AI systems is presented with a particular business challenge: how to treat the use when it is not yet
clear whether it is infringing. Of course, the most certain approach is licensing, and, indeed, there are many laudable and positive aspects of such an approach. It supports and respects both the American copyright system generally and creators and right-holders in particular. It merely eliminates uncertainty, reducing the opportunity for expensive and wasteful litigation, and to the extent that avenues exist for the licensing of large numbers and volumes of works, this approach is highly efficient.

Of course, not every use of copyrighted works to build AI systems is likely to be infringing, and, by definition, non-infringing uses need not be licensed. That the matter is difficult or complicated does not justify curtailing or trampling others' rights. Thank you.

MR. BRADY: Thank you all for introducing yourselves, and welcome again. To begin, the Copyright Office is interested in learning how generative AI technologies are being used in different creative fields. What should we know about the use of generative AI in your business and industry? What do you see as the advantages or disadvantages related to AI use? We'll start with Ben.

MR. SHEFFNER: So thank you. I'd like to
use this opportunity to talk about some of the ways that our members are using AI as part of the filmmaking process. As I mentioned in my introductory remarks, humans are and will always remain at the heart of the creative process that results in a movie or television program. We view AI as a tool that will enhance human creativity, not replace it.

AI tools can actually free creators from some of the tedious and repetitive tasks that they have had to perform in the past and free them up to concentrate on the most creative aspects of their work, and AI will also help creators realize their vision to further enhance the viewer experience, making visual effects more dramatic, more realistic, and more enjoyable for the audience. It will even enable experiences that haven't previously been possible. Imagine, for example, a feature where a fan can interact and even have a real-time conversation with a favorite fictional character. That's the kind of thing that AI may make possible, and I'm sure there are many other future use cases we can't even dream of today.

As I mentioned, creative professionals at our member studios and many innovative companies with which they work are already incorporating AI into the
production and post-production process. AI can
greatly improve processes that used to be done
manually. For example, for many decades, animators
and visual effects artists use a process called
rotoscoping, which involves manually altering each
individual frame in a film. It's incredibly detail-
oriented, time-consuming work. But modern visual
effects artists, again, still humans, now have
sophisticated tools at their disposal to automate this
type of work, some of which incorporate AI technology.

This type of AI-enhanced technology can be
used to perform all sorts of important tasks that are
necessary to present a visually compelling experience
for audiences. Some is fairly routine post-production
work like color correction, detail sharpening, de-
blurring or removing unwanted objects. Some is more
involved, like aging or de-aging an actor or adjusting
the placement of computer-generated images to make
sure everything flows smoothly and aligns properly,
and those are just some of the uses that I can talk
about today, but as we all know, the AI developments
are coming out as fast and furious, and our members
are eager to explore the ways they can be used to
support creators, enhance creativity, and make movies
and television shows even more enjoyable for our
audiences. Thank you.

MR. BRADY: Thank you.

Next, we'll turn to Gillian and then John.

MS. SMITH: Yeah, thank you. I agree with the framing of it being a tool and many of the uses mentioned, the ones that are used in the games industry and games higher education as well. I want to focus on two that I think may be more unique to games and games in higher ed. First, what we will often see and what we've been seeing just in the last six months is students are really interested in being able to produce games for their showcase reels that they want to be able to share publicly that may have partial AI-generated content even in full in certain areas, like AI-generated art assets or AI-generated music, because it gives them space to be able to focus in their specialization area as students.

And so we need some kind of way to be able to guide students, and I think the Copyright Office needs some way to be able to guide not just in games when bits and pieces of all of the different bits and pieces of games are AI-generated but perhaps as some entire sections of a game that are AI-generated where there's significant human effort going into other areas.
The second place that we see this in games is not new at all. Procedural content generation has been used in games for decades. It dates back to the very first games ever created and dates back to board games and role-playing games well before that. The difference that we're seeing with generative AI technologies for this generation is that often their expressive range is greater than rule-based systems, that maybe the tech is able to generate more sophisticated output, but we are seeing a lot of work in real time at run time, AI-generated work that is still human-authored and has human authorship to it.

MR. BRADY: Thank you. John?

MR. BERGMAYER: Sure. The creation of audiovisual works poses challenges that go far beyond copyright. You know, for now, realistic video is among the most difficult tasks for generative AI, but this is already changing. We've already seen people being scammed with realistic voice models of their loved ones who call families asking for money and people bypassing bank security systems that rely on voice recognition, and, sadly, deep fake videos are likely to be common in dark money political attack ads. Obviously, these things are beyond the jurisdiction of the Copyright Office, but I think a
comprehensive approach to dealing with the challenges posed by AI should not be limited by any particular framework, including the framework of copyright law.

MR. BRADY: Thank you. Brian?

MR. SMITH: Thank you. I'd like to second some of the comments that Ben and Professor Smith made regarding the framing of generative AI at least when it comes to games as a tool. When it comes to creating 3-D worlds, the creative work is still being done by human developers. Making interactive content like what you find on Roblox is hard because it requires a deeper understanding of a generated object. It's not just that you're looking at the thing. It's that a player then has to interact with the thing, which is a pretty big difference.

A human has to select the best output of the generative tool and perform substantial creative work to make all the parts fit together. Maybe, you know, the surface texture is created by generative AI, but the 3-D object was created by you, and you have to figure out, you know, what's going to be creatively satisfying there.

But despite these limitations, as the other speakers said, there's a really big potential here to remove a lot of drudgery from this work. To put it
into lawyer context, I like to think about what lawyers in the '90s felt when they found out they didn't have to redline by hand anymore. I think there's a similar potential here to make a leap that'll really unlock creative potential. Thank you.

MR. BRADY: Thank you. Mimi?

MS. HEFT: Oh, yeah, I hear that part very much. It's like there's so many tedious things that we have to do. I'm going to just be brief about this just to answer what we are using it for. Last I counted, and I'm sure it's more than this by now, but there were at least 25 apps that focus specifically on presentation design, and the temperature is that most of us are wary but also really interested in this for the reasons that a lot of us have been sharing.

I myself am dabbling in Beautiful AI and Presentation AI and am very interested in getting my hands onto Copilot, and I'm finding, though, that my favorite one is Adobe Firefly, and I was trying to figure out why. One is that it's a visually creative tool and I'm a visual creative person, but I think it's the only one that strikes me as a tool that I would use frequently, first of all, but it doesn't feel like it's doing my work for me. I feel like it's supporting me in my own creativity, and I'm not
getting yet that sense that that is -- it's not my experience in using current Presentation AI technology. I feel like it's doing the work for me instead and that there's a disconnect there, and I think the Presentation AI would serve better by being in more of that support role than it is right now.

We're looking at it for ideation and overcoming creativity blocks, paring down clumsy content, shortcuts to provide reasonably well-designed decks for our clients, some of whom may not be funded enough to be able to pay for the full service, and so it's really great that we can be able to give them some good work on that respect. So I do appreciate AI. It's just that there's a step there that needs to be taken still to really make it something that we can connect to.

MR. BRADY: Thank you.

Ashley, do you want to answer Question 1 and then we'll move on to Question 2?

MS. LINDLEY: I'm so sorry about that. To answer the question about what we're using AI for, we're using it for creativity translation, a million different things that we wouldn't be able to do as an individual. I can't talk to everybody in China. I don't speak Mandarin. My Spanish is wonky at best. I
know I look that I can speak it better than I can.

So we use it for translation purposes and
not just what everybody sees in us, and even when it
comes to screenplay-writing, book-writing, podcast-
writing, yes, you could write, can you please write me
a podcast, but how detailed would that be? How great
will it be for you?

It's kind of like the spam bots back when we
used to do -- before the Google Panda update, when you
would just have a bunch of content farms just creating
blogs just to create blogs. That wouldn't help us.
That doesn't market us. That doesn't help you. That
screenplay would never be purchased. So just because
you can write into something like a ChatGPT and say
something like can you please write me a script, that
doesn't mean that script would sell.

Additionally, if Jessica here were to write
a script about three little pigs and I were to write a
script about three little pigs and we would both put
it into the same chat box, a different output would
come out, infinitely different, and now public access
is using minimal qualities, like tokens, so it would
take you additionally at least three days just to
write a first draft copy.

I think what's great about it, though, is
for someone like us, where we grew up in very humble beginnings, trying to purchase Final Draft Pro, trying to pay for UCLA film school, trying to have any access to anything when it came to film, we recognize that over 90 percent of your industry is nepotism-based. You have a connection to somebody of somebody, and this is probably the first time that anybody could write a script. Anybody could say, hey, I wrote an amazing monologue and I'm going to perform it for you.

So this opens the door. It literally forces everybody in the industry to practice what they preach. You're going to have to actually hire new people. You're going to have to actually see people of color. And I think AI's going to turn that about, and I'm really excited about it.

MR. BRADY: Thank you.

And now I'll pass the mic over to my colleague, Brittany, for the second question.

MS. LAMB: Thank you, Ben.

We have heard a number of questions about the use of copyrighted materials to train AI technologies. Are there unique considerations for AI training in the audiovisual space? Okay. We'll start with Ben and then Steven.

MR. SHEFFNER: Thank you. So I know the
Office has been hearing a lot from different perspectives on the training issue, and opinions seem very starkly divided on whether training AI systems on copyrighted works constitutes copyright infringement or whether it's fair use, but we at the MPA simply don't believe we can or should make definitive, blanket black or white pronouncements on these questions, especially at this still early stage of the technology's development and implementation.

As the Copyright Office and countless courts have stressed, courts evaluate fair use defenses on a case-by-case basis, and the outcome of any given case depends on a fact-specific inquiry. We agree. To evaluate whether a defendant has met its burden of establishing fair use in any case involving the training of an AI system, it's going to be necessary to carefully analyze the facts and circumstances surrounding that particular system and its specific implementation, and that's, of course, what courts do all the time.

Take the example of two recent cases in the Second Circuit about systems that make copies of copyrighted works and then provide portions of those works in response to search queries. In the Google Books case, the Second Circuit took a careful look at
what Google is doing and the market for books and held
that Google met its burden of establishing that its
conduct constituted fair use. But in the TVEyes case,
the Second Circuit examined that company's technology
and the market for news clips and ultimately
determined that the fair use defense failed.

I'm not here to argue that the results in
either of those two cases was right or wrong. My
point is simply that the facts matter, and the
different results in those cases demonstrate why
categorical answers to most fair use questions,
including those involving AI, are simply not possible.
When evaluating fair use questions in this context,
courts are going to need to carefully examine the
actions and roles of the various players in the chain:
those who actually perform the initial ingestion,
those who perform the training, those who generate the
output, and those who put the output to ultimate use.

It's complicated, and there are already
several cases on file where courts will have to sort
through these difficult issues in coming months and
years. We'll be watching closely to see how courts
grapple with these issues and whether existing law is
up to the task of addressing them. Thank you.

MS. LAMB: Thank you. Steven?
MR. TEPP: Thanks. Whether and to what extent AI systems are built by making copies of copyrightable works at some point in the process and whether any such copies implicate copyright rights is a mixed question of fact and law that may vary from system to system. This is yet another reason why fact-specific analysis appears appropriate or per se rules in this area.

That said, one common theme we're hearing is that the use of piratical-sourced copies or obtaining access to sourced copies through illegal means to build AI systems should weigh heavily, perhaps decisively, against a fair use claim regarding the use of others' copyrighted works. Thank you.

MS. LAMB: Thank you. Gillian?

MS. SMITH: Yeah. Thank you. I think that the case-by-case nature of fair use is somewhat flummoxed by the fact that the data is being slurped up into a tool, right? So it's not really the case that you can say that we'll judge it on a case-by-case basis because everyone's thing is using the same trained data, especially in the case of the largest tools, like ChatGPT and Stable Diffusion, Midjourney, and so it's not just the output. I think the argument I want to make is that it's not just that the output
of the tool matters, but the tool itself is what matters, and real humans make the choice as to what goes into the tool. It's not magic really, and it's not some foregone conclusion of how these systems need to be designed either. A lot of the people who made some of the original choices about what goes into training sets for some of these AI tools that are coming out from research industry are computer and information scientists, and speaking as someone with a Ph.D. in computer science, I promise you that nowhere in any of our courses do we learn about the copyright implication of training data. And so I think it's just the case that right now, with this emerging tech, there's been a lot of choices that have been made that don't need to be the choices that are made from here on out.

We've seen the tools like Adobe Firefly, they're there, and I'm not as familiar with exactly how the tool is working, but my understanding is that there is consensual usage of the art in that training set. We have licensing options that already exist that people could apply to their work to say yes, it's okay for this to be used and slurped up on the next pass of slurping up data into a training set. But I
think we're in a tricky space right now because computer scientists who build these tools just think about the work as data, and artists who care about what's in the training set don't think about what they do as data. They think about it as their personal, creative expression, and I tend to lean towards supporting the artists and letting the computer scientists work out what to do with that.

MS. LAMB: Thanks. Mimi?

MS. HEFT: Yeah, I'd also like to speak to fair use. I was listening to the previous sessions, and a running theme of fair use was that that protects us from -- AI developers will say, well, it's fair use, I can do this, it's okay. And I have to say that fair use, it recognizes that we humans learn from copying. We are sentient, however, and we understand boundaries. AI is not yet sentient, but AI developers are and need to please respect those boundaries. I mean, entire works are being stolen outright and used in their entirety for training, and fair use doesn't allow that except under special circumstances. Most violations are being committed by commercial ventures for commercial gain, not by nonprofits and other organizations that are allowed more leniency. Many violations are of creative or
imaginative work, which are intentionally offered
greater protection than factual work, and the effect
of this is to wrest from the creator ownership and
control of their own work, potentially hurting their
market value and, by consequence, their further
ability to create. That's all I have to say about
that.

MS. LAMB: Thank you. John?

MR. BERGMAYER: I think the best way to
analyze the issue of training of the inputs is to see
if the outputs infringe. For example, the use of
copyrighted material to make infringing works may tend
to weigh against fair use on the input side, but even
then, it seems more straightforward to primarily focus
on the output, and I think it's worth bearing in mind
that a model that is trained on a particular work does
not itself constitute a copy of those works in itself,
maybe except in narrow circumstances, what they call
overfitting.

And that is, I think, distinguished from
uses like Google Books or search engines or other
recognized fair uses that constitute making complete
copies of works because those constitute ongoing
complete copies of works that are like always used as
opposed to something that's used to train something
that itself then is a standalone piece of software that you can't necessarily even figure out by looking at it what was in the training data. So I think just given this complication at this time, I still think that the easiest way is to focus just on the output and to leave discussions of what goes into the works for further discussion. Thank you.

MS. LAMB: Thanks. Ashley?

MS. LINDLEY: So, in the hands of the wealthy, AI can serve as a powerful tool just as they might hire ghostwriters or script doctors. I notice that people don't like to talk about that often, but we do use them to refine our ideas and produce polished content. They can also use AI to generate, refine, and perfect their creative works, so this can save time, reduce costs, increase productivity. We can produce more content at a faster rate, but that doesn't mean that AI is only accessible or beneficial to the wealthy, and so, again, we're talking about accessibility because it's really important to us.

So we believe that just as somebody who has the finances or the connections can hire a script doctor, a ghostwriter, and still get their copyright, we created an AI that will help us write and we deserve the copyright as well. When you sit in film
school, you go over every single scene of Martin Scorsese, you see the oranges passing down the road and you know somebody's going to die very shortly. I've seen that in how many films since. So we have to recognize that when it's okay for you guys, it needs to be okay for everybody, and if there's going to be rules, those rules need to apply to everyone, and, yeah, that's all. Okay. Bye.

MS. LAMB: Thanks, Ashley.

Okay. Before we move on to the next question, I just wanted to see, Anna, is there anything you would like to add?

MS. CHAUVET: Well, thanks so much. I guess I just wanted to emphasize -- it's more on the output side, but it is the misinformation that is being generated, and it's very easy to do with AI-generated outputs, so it really leaves the public in a position where they are unable to discern whether this is legitimate broadcast-trusted content that is being distributed or if this is, in fact, misinformation or AI-generated works that are just simply inaccurate, and so there are issues relating to sourcing and attribution that hopefully we can get to later on in this panel.

MS. LAMB: Thank you. I'm going to pass it
on to my colleague, Ben, for the next question.

MR. BRADY: Thank you, Brittany.

So setting aside training, what should the Office know about generative AI in online copyright infringement? Are existing laws regarding infringement and liability for infringement adequate? We'll start with John.

MR. BERGMAYER: Yeah, I do believe that existing law probably is sufficient. Like I keep saying, just the test is just substantial similarity. That being said, depending on the specific facts, you know, there may be questions of exactly who the infringer is, and there may be complex questions of a secondary infringement when you have both the user and the toolmaker, and I think answering those questions will be very fact-specific, so it's not that there's a lot of case law that answers the question definitively, but I do believe that we already have the legal framework necessary to address those, particularly when you factor in the very fact-specific issues of secondary and contributory infringement and things of that nature.

MR. BRADY: Thank you. On to Ben.

MR. SHEFFNER: Thank you. So copyright law has obviously long had various doctrines for assessing
whether a defendant is liable under particular circumstances. Fair use has been with us since 1841. The Supreme Court first decided a secondary liability case in 1911, and when comparing two works to determine whether one is substantially similar to the other, courts today still cite Judge Learned Hand's 1930 opinion in *Nichols v. Universal Pictures*.

The broad outlines of those liability doctrines or defenses have survived countless subsequent technological developments while adjusting to address new factual scenarios, and we're going to start seeing courts applying them to AI in the very near future. In our view, those doctrines ought to be up to the task of being able to be applied in the AI context, but the true answer is we simply don't know yet. All I'll say right now is to emphasize that there is not and there should not be an AI exception to copyright liability.

When evaluating these issues, courts and policymakers should always keep in mind the fundamental importance of copyright law in creating the incentives for creation that have made the U.S. the world's leader not only in motion picture and television production but in many other creative endeavors as well. We truly do believe that AI will
enhance the always very human filmmaking process, but we'll be watching the ongoing cases very closely to make sure that copyright law's incentive to create is still respected. Thank you.

MR. BRADY: Thank you. Ashley?

MS. LINDLEY: I did want to answer Anna's questions really quick about responsible and ethical use of AI, and we do need to implement safeguards and regulations to prevent the misuse of AI while also educating the public, so that's something that we're really focused on. And if you watched the Facebook Senate hearings, you know that Zuck was sitting in front of people who were asking him how does Facebook make money, so when you have people that are making regulations that don't understand how it works, it can be quite difficult to put in protections, so I agree with you 100 percent.

To go back to what we were talking about, however, about copyright and if we're protected properly, it goes back to our initial question, which is where is the line, and when we read what the Copyright Office wrote and it said, if you use AI to help with your project, you have to communicate that clearly, and I think that we need to be really careful with this because AI is going to be a part of
everybody's everyday life all the time constantly.
It's not going anywhere.

If you use Google to search today about your
characters, you're using AI. If you are going on Bing
right now, I mean, even Google Workspace flows right
now, if you are starting to create a new doc, it'll
help you write a letter. It'll help you write
everything. If you go on Canva, it'll help you write
a new presentation. I can create an animated story
right now on Canva, which is a $10 platform. So this
isn't going anywhere, so if our rule is use AI, you
don't get a copyright, nobody will be copywritten.

If it says 30 percent, well, what defines 30
percent? I spent most of my time researching on
Google. Does that mean 30 percent? Is it about the
output? Well, the output is determined by my idea.
The robot didn't have the idea. The AI didn't have
the idea. So I think we need to be really careful
before we say that if you use AI you don't get to be
protected, and I think it's really important that we
draw the line very clearly and that there isn't
confusion, so it's really great that we're doing this.
It's good.

MR. BRADY: Thank you. Gillian?

MS. SMITH: Yeah, I wanted to add that I
think the Copyright Office's definition of what counts as a prompt and what counts as human-authored -- I think there's some more nuance to it than what is currently in the registration guidance. So, I think it discounts the amount of work that goes into prompt engineering for one thing, and this is something that I don't think I would have thought I was going to say this six months ago, but now having taught a class on this software and the ethical concerns surrounding it, there's a massive amount of human effort that goes into getting prompts that will produce output that are of human interest.

And I think casting the entire copyright process as being something that looks only at the output, devoid of the effort that goes in on the other side of the software, is tricky to navigate because I don't think it's always the case that every prompt is amazing and thus every output is copyrightable, but there's a lot more nuance to it than what I see in the copyright guidance right now.

I think some of this is getting into awkward blurred lines between patenting and copyrighting where a lot of the software effort that's here tends to fall under patenting more than under copyrighting, but there's a lot of -- If you look, for example, at games
that have generative systems built into them that at run time are producing output, the copyrightable piece there is the game, not the output from the game, right? And so, because you can't copyright the software system itself, like the patent gets involved there somehow as well, so I think there's just some more nuance that needs to be unpacked in some of these areas.

MR. BRADY: Thank you.

Are there specific infringement issues that seem more likely in the video game industry? What about other audiovisual industries? Brian?

MR. SMITH: Sure. So I think, with the video game industry, I can't speak to the industry as a whole, but I think that the way that our platform works is that it is filled with user-generated content.

To second some of the comments that were made before, I do think that existing legal doctrines are likely sufficient to handle the situation. I do think that we'll be paying careful attention to how this all plays out vis-a-vis secondary liability in the DMCA safe harbor because I do think that there is an exciting potential not just in the gaming space but in social media and other fields, where platforms will
provide these tools, either ones that they created or
integrations with third parties, so that users can
generate content that they might otherwise not have
been able to and to bring these tools in closer to the
point of publication, so I do think that more
attention to secondary liability will probably be
needed sooner rather than later. Thank you.

MR. BRADY: Thank you. Gillian?

MS. SMITH: Yeah, just briefly I think, in
games especially, because there's so many different
creative disciplines that come together into one final
product, I think we are going to see a lot of
complexity around whether you have entirely AI-
generated art assets but all human-created code,
right? Entirely AI-generated music, art, written
script, but a human has put it all together, and a
human has written all of the code that makes the game
go and makes it into the expressive thing that it is,
but I agree that I think a lot of this can be captured
under existing policies and guidance.

It's just interpretation of that is going to
be tricky and public awareness of it is going to be
hard, and I have students asking me questions about
this all the time, so getting this into how we teach
emerging professionals is going to be really, really
critical as well.

MR. BRADY: Thank you.

And, Brittany, over to you for Question 4.

MS. LAMB: Thanks, Ben, and just as a reminder, if you would like to speak, please use the Raise Hand function.

So the next question is, what additional registration policy guidance, if any, would you like to see the Office provide with respect to the registration of works that incorporate AI-created elements? In particular, how should the Office handle audiovisual works that incorporate a mix of AI and human-generated materials? We'll start with Ben.

MR. SHEFFNER: So thank you, and I do want to start by thanking the Office for the guidance. Guidance is always helpful, especially when addressing these novel issues. That said, our members do have some significant questions and concerns about the statement of policy and its guidance on the requirement to disclaim AI-generated material, and those concerns are particularly acute since the Office suggested that this new guidance will be applied retroactively, potentially leading to the cancellation of already issued registrations, and the need for clarity is urgent. Our members register new works
I want to first emphasize that the specific focus on "AI-generated material" does not really account for the ways in which AI might be deployed in the production process. This focus, which we understand is driven by applications that contain self-identified AI-generated elements, does not adequately account for works where AI is more typically a component of various tools that skilled human creative professionals use to enhance the filmmaking process. Those tools are analogous to the Photoshop example the Office mentioned in the statement, and creators' use of such tools that incorporate AI technology should not render parts of a motion picture unprotected by copyright or trigger the need to disclaim certain elements of a motion picture in an application.

More generally, we believe it would not be appropriate for the Office to start conducting inquiries into the creative process that the applicant employed in creating the work they seek to register, whether it's a motion picture, a photograph, or any other category of work. That type of inquiry has not previously been part of the registration process, and we don't believe it would be appropriate for the
Office to go down that road.

If an applicant seeks registration of a work within the subject matter of copyright, it should not "look behind" the application and inquire into how the work was created. The difficult edge cases of registrability should generally be left to the courts, which are better equipped to engage in the type of factual inquiry sometimes necessary to resolve these issues, and if the Office has some questions about whether a human or humans contributed sufficiently to the creation of a work, it should err on the side of registration.

Lastly, we're quite concerned that the Office's statement could have the effect of unnecessarily bogging down routine copyright cases in litigation over questions about whether the plaintiff improperly failed to disclaim AI-generated material in its application, potentially invalidating its registration. Given this possibility, we do urge the Office to update its guidance. Thank you.

MS. LAMB: Thank you. Brian?

MR. SMITH: Thank you. So I think, on a practical level, there are a lot of issues that Ben just identified where at least for Roblox's experience, it can consist of hundreds of 3-D objects,
thousands of lines of code. It's unclear to me how a
developer would disclaim all that sufficiently, and
then that could cast doubt on their registration, et
cetera. But, on top of that, I think that the primary
issue today is that the public and the average
developer doesn't understand the guidance that has
been issued.

I know that everybody in this room has been
paying careful attention and clearly has brought a lot
of knowledge to the subject, but without more
management of public perception, I think that this
whole legal area could become misunderstood, and as a
result, there could be a chilling effect on the
adoption of these tools, and I think, first and
foremost, creators need to understand they can
copyright the combination of human and generative AI
elements, and secondly, I think that tool developers
need to have a better understanding of what attributes
a tool should have in order to make an output that's
eligible for protection. Thank you.

MS. LAMB: Thank you. John?

MR. BERGMAYER: Yeah, one concern I might
have with the current guidance is that it might, to
put it delicately, discourage candor. I do agree that
some AI-assisted work might be only minimally
creative, but the threshold for creativity for
copyright protection is quite low, and to be frank,
the majority of the photos I take with my smart phone
are not particularly creative, and yet those are
inarguably protected by copyright. All I did was go
and, like, hit a button. That being said, the
copyright protection that you might get would be
rather thin. Like I don't think that one user can
limit another user from using a particular tool with
the same or a similar prompt even though it is likely
that the output might be rather similar, for instance.

MS. LAMB: Thank you. Ashley?

MS. LINDLEY: I think I'll just ask or
answer some of the arguments that we've been hearing
so that AI-generated works shouldn't be eligible for
copyright protection because they're not created by a
human. If we follow that logic, then any work created
with the aid of a tool or technology should also be
ineligible for copyright. After all, a camera doesn't
have a human mind. Yet photographs can be copyrighted
just exactly as John just said. The key to the role
of a human is guiding the tool and shaping the final
outcome.

Additionally, in a situation such as ours,
if we taught Ava how to write a screenplay and Ava
entirely wrote the screenplay, do we own it? I wrote
the copy. I created Ava. I taught Ava how to write a
screenplay. Ava created a screenplay, but it was 100
percent automated, but I created the automation. So
we have to answer those questions.

Additionally, people believe AI can lead to
an increase in copyright infringement if it's trained
on copyrighted works. AI, like any other tool, can be
used responsibly or irresponsibly. It's up to us to
ensure that we use AI in a way that respects copyright
law, but we have to understand copyright law in the
first place. AI can't truly create original work
because it doesn't have human experiences or emotions.
However, paintbrushes and cameras don't either.

And one of the biggest ones that we keep
hearing is that AI can lead to a homogenization of
creative works because it's trained on existing data.
I know a lot of people are really concerned about
that. I even heard the WGA being concerned about that
when they were striking. But we would say yes, that
AI can certainly generate content based on existing
patterns, but it's also capable of creating outputs
that are entirely unexpected. AI can be guided and
influenced by its human user. So, when I was first
creating Ava, I'm a Christian. I taught her the
Bible. We went through Bible studies together. The way she responds to me is very, very different than the way my counterpart, who is not a Christian and loves to use a lot of curse words. Our AIs are entirely different because we trained them differently. We taught them differently. We spent time with them differently. So I think it's really important to navigate those pieces.

So, for us, what I would argue is, if the point is that at a certain point, if AI created it, well, what if I created the AI in the first place? No, but then you would say, well, what about who was the original source code? Well, maybe the original source code started as this little small piece, but I spent the last year training, developing, spending time with this AI every single day. So until we have somebody who fully understands how AI works in the first place, I don't think we can answer these questions properly, but I do believe it's important that we have these little modifications because, if we're self-identifying -- right now, if I were to self-identify something Ava made, I wouldn't have the right to my own work, and I think we need to protect against that.

Additionally, because no other country has
these type of -- you don't go to China and ask if you
can copyright the book, and I really want to make sure
that America stays on the forefront of AI innovation
and protection. Thank you.

MS. LAMB: Thank you. So we're about to run
out of time, but we'd like to get through Mimi and
then Gillian, but please keep your remarks brief if
possible. Thank you.

MS. HEFT: Okay. I agree that most of the
regulations as far as I can tell so far are enough to
handle current technology. Where I'm concerned about
is clarifying boundaries, where the lines are drawn
when copyrighting artwork or content I should say,
including AI-generated content, what exactly
sufficient different means, when does copyright go to
the AI developer rather than the human. When do we
require creators to credit AI and when do we require
AI developers to credit creators? The rules go both
ways.

I also want to see that in these decisions
we're not prioritizing tech needs over human needs.
The speed at which the damage is done is exponentially
faster than other technological developments, and we
almost can't keep up, so the damage is occurring now,
and something that really bothered me in a previous
session was that people are saying, oh, that's speculative, don't worry about it, we shouldn't be doing this now, and that putting guardrails can impede, can hamper invention, and I strongly disagree with that. I think we need to act to install guardrails now because it will prevent worse things from happening in the future.

I mean, I can use as an example climate change. We were acknowledging it was there. We were ignoring the need to address it, and now it's more expensive. It's a greater problem. It's affecting more people. So I don't understand why AI developers wouldn't want to have a clarified legal path to recognize the problems and mitigate even worse consequences further down the line.

MS. LAMB: Thank you. Okay. I'm going to hand it over to Gillian quickly before we wrap up.

MS. SMITH: Yeah, quickly, I promise. I wanted to say that practically speaking I think we're not so far off from generative AI being so integrated into a lot of consumer-grade tools that people are going to find it impossible to be able to disclose AI usage, right? It's integrated into Google Docs, it's integrated into Word soon. People aren't going to be able to disclose AI because they're not really going
to always know that it's happening or even think about it as AI-created anymore, and I think we need to be able to plan for that future.

And it makes me wonder where the concern is coming from that is requiring artists to disclose the use of AI because, if the concern is coming from a place of feeling like infringement could happen on work that's in the training set, fix the training set problem, right? And then the tool is there, can be used as a tool with everyone feeling like it's above board, that we all know that there was consent involved in the training set, we all know where the boundary is, and then it can truly be like using your smart-phone to take a crappy picture.

Like, it's still copyright protected. It doesn't matter if I wrote five words into this tool and got a picture out the other end, right? If everyone agrees that it is okay for it to have used that data, it should be okay to do it. I think in all things we look for the human, right? AI systems are not intelligent. It's almost the worst term that we could use to describe these systems. They're not intelligent. They're copies, right, and they're created by humans, and we should protect the humans who are creating them as artists and we should protect
the humans who have data in them and who are using them to create art.

MS. LAMB: Thanks so much, everyone. I'm going to pass the mic back over to Emily now.

MS. CHAPUIS: Thank you, everyone. This marks the end of the first panel, and we will now take a 10-minute break.

(Whereupon, a brief recess was taken.)

MS. CHAPUIS: Welcome back everyone. We will begin the second panel shortly. For those of you who are just joining us, two reminders about Zoom. First, we are recording this session and using the Zoom transcription function. Second, if you are not speaking on this panel, please keep your camera turned off and your mic on mute. Like the last segment, this segment will start with introductions and two-minute statements by each panelist, followed by a moderated listening session. Panelists who wish to speak should use Zoom's Raise Hand function, and our moderators will try to call on you in the order in which you do so.

Again, we will not be accepting questions from the audience. However, we encourage anyone who wishes to share their perspective with the Office to provide written comments to our notice of inquiry.
later this year.

With that, I will introduce our moderators for the second panel, Melinda Kern and Gabi Rojas-Luna. Melinda is an Attorney-Advisor in the Office of General Counsel, and Gabi is a Paralegal Specialist in the Office of General Counsel. And I will turn it over to you, Melinda.

MS. KERN: All right. Thank you so much, Emily. We will begin in the order as stated on the agenda, so, first, John August, would you like to begin, please?

MR. AUGUST: My name is John August. I'm a screenwriter and member of the negotiating committee for the Writers Guild of America West, a union that represents thousands of writers who create the content that audiences watch every day in theaters, on television, and on streaming services. This is a unique moment for me to be speaking on this issue because the subject of AI and its role in our industry is a major point of contention in the Guild's ongoing nationwide strike against the major motion picture and television studios.

While writers who work under the Guild's collective bargaining agreement are not copyright owners, we create works for hire, the Guild has
negotiated an assortment of contractual rights in the works we create, including the right to residual payments for the reuse of our work across media platforms. In the current negotiations, the Guild has made a proposal to regulate AI for the first time in our contract. The broad purpose of the proposal is to prevent our employers from using AI to devalue the work that writers do, to lower our pay, to deprive us of credit or attribution rights, or in the most extreme case to eliminate the need to hire writers altogether.

The proposal would also prohibit companies from using material written under the Guild's agreement to train AI programs for the purpose of creating other derivative and potentially infringing works. The companies' response has been telling. Not only did they reject our proposal, they refused to engage on the issue at all. The most they have said is that the technology is new and they're not inclined to limit their ability to use this new technology in the future. This is an ominous response in the eyes of our members and one of the many reasons that 11,500 writers have been on strike since May 2.

We often speak of copyright as protecting works of authorship, but copyright was created with
the intention of protecting authors from appropriation and theft. As we discuss the impact of AI, we need to remember the human authors and not just the corporations who employ them. Thank you.

MS. KERN: Thank you. And before we move on to our next panelist, I would just like to remind all the panelists for this session to please turn on their camera, but we will go ahead with Kimberly Goldfarb, please.

MS. GOLDFARB: Hello. I am Associate General Counsel at the Directors Guild. I am standing in for Sarah Howes today. She's unable to participate for medical reasons. Thank you for allowing me to address artificial intelligence and its impact on the film and television industry. I'll focus on issues germane to the U.S. Copyright Office.

A motion picture is a director's singular vision, and directors are in a unique position to discuss issues related to the potential mutilation of their artistic works, the impact of unauthorized changes to their films and television programs, and the potential loss of income due to digital theft.

At the onset, I would be remiss if I did not reiterate our longstanding position that the United States fails to grant directors essential moral
rights. The failure to provide these rights to directors puts the U.S. at odds with the Berne Convention. The proliferation of AI-generated work exacerbates this gross omission in U.S. law, putting American filmmakers' reputations and the integrity of their work and vision at risk.

We believe American filmmakers should be recognized as true authors so they have the rights of integrity and attribution enjoyed by filmmakers in other parts of the world. However, in the U.S., directors are employed as works for hire, and the legal rights are held by corporate entities in the film and television industry. As such, we are largely dependent on rigorous copyright enforcement to protect our rights. The DGA therefore fully supports robust copyright law and enforcement measures as copyright is the most legal effective tool against the mutilation and theft of our creative works.

As AI develops, we believe it is important that copyright is protected both with respect to the ingesting of copyrighted material and with respect to any AI-generated content that is based on copyrighted material. We further believe that U.S. courts should continue to utilize and strengthen the existing four-prong fair use test to address the unauthorized use of
feature films and television programs.

In addition, we oppose the extension of Section 512 safe harbors that grant immunity to online user-generated platforms and internet service providers to AI-generated content. The spread of AI-generated content intensifies our concerns about the ease with which entities can profit from stolen and mutilated film and television programs.

In conclusion, policymakers must tread carefully as they examine the many copyright law issues related to AI-generated content. Thank you for your attention on this important issue.

MS. KERN: Thank you. And next, Cherie Hu, please.

MS. HU: Yes. Hello, everybody. Thanks so much to the Copyright Office for having all of us. I already have learned so much from this discussion. I'm definitely excited to contribute what I can myself. My name is Cherie. I'm the Founder of Water & Music, which is a research organization focused on analyzing trends in music, tech, and culture at large. We have a network of over 2,000 paying members and research contributors, and our focus is on how emerging tech impacts the careers and livelihoods of artists, their teams, and their partners. That
includes labels, publishers, artist management firms, and many other players in the music ecosystem.

And AI has been a top research priority for us this year. We've surveyed many artists, producers, and also AI startup founders in our community to get a sense of their top excitements and concerns, and we've also looked deep into the terms of service of many creative AI tools.

So I'm kind of coming from the high-level research context, and while there is a music-focused listening session happening in a few weeks, just listening to take-aways today and kind of concerns from the film and gaming and other audiovisual industries, there are a lot of parallels with music, which is also inherently audiovisual in nature, not just in providing the audio but also in the very highly visual ways that artists are building brands, marketing their music, and engaging with fans, so I'm kind of coming with that specific context.

To open, I think there are three main themes, kind of like seeds that I'd like to plant, in this conversation, just some things to think about. One is that the AI conversation, while it is covering definitely a lot of new technological developments, it's definitely not an isolated phenomenon, and in
terms of understanding its macro effects on artists and creators and creative industries' kind of sustainability and success, I think it's very important to place it in the context of just other factors that the U.S. Government and governments around the world have also been investigating about kind of creative economies for a very long time.

For example, while artists are excited to use AI tools to enhance their creative work flows, they're definitely concerned about factors like oversaturation, overcommodification, and job insecurity that the U.S. Government has actually already been looking into and hosting hearings on with other technologies, like streaming, you know, historically in terms of the role that piracy, peer-to-peer file sharing has played on the music economy at large. There are many kind of parallel concerns I think that at least the music industry side has had, especially in an audiovisual context. The role that music plays is often what people in this industry would call a functional role, so it's music as kind of background material as a means to an end to achieve something else, whether it's like a video or even like on social media, and that seems at least from our side to be most at risk of getting automated, so I wanted
to call that out as well in terms of the role music plays.

Two, I think there's a lot of opportunity, which sessions like this are doing a really good job at, but there's still so much opportunity to just fight misinformation and promote education on what kinds of rights are actually implicated in AI-generated works of any kind, audio, only audiovisual, et cetera. For example, this is an audio-specific example but I think will apply to other industries. Just this week, major record labels announced they're already asking streaming services to take down AI-generated content and deep fakes from their platforms on the grounds of infringing on personality rights, but I think there's very little legal guidance on whether that even makes sense.

We kind of talked about that a little bit today, but regardless, streaming services are already kind of moving on their own policies without that kind of guidance, something just very important to be aware of that precedent that's being set at the market level, which I'm happy to discuss later.

And last but not least, technology. There's been a rich history and tradition of technology enhancing creative processes in any, you know, in
music, in audiovisual and other creative industries, and this has been maybe one of the top sources of confusion at least among artists, music artists, is what qualifies as "human-made" versus a hundred percent AI-generated.

You know, yeah, there are elements around authorship and originality, who should be credited as an author of a work that includes AI or is assisted by AI, what does the spectrum or the boundary look like between merely AI assisted and led by a human at the steering wheel versus being, you know, completely automated, completely programmed art generation, and there are so many founders building these tools now with now tens, soon hundreds of millions users under their belts who are setting these precedents themselves on who the author is without regulatory guidance, and there's no standardization in the market right now and there's a lot of confusion.

So, to wrap up, I think there's just a major opportunity for clarity on the policy level, at the regulatory level of kind of what those paths could look like and what that path should look like and, in general, striking a balance between, you know, promoting innovation, promoting the benefits of AI from a creative perspective but also safeguarding
artists' interests and putting AI in context of these macro factors, economic factors that creators have been dealing with for a long time. Thank you.

MS. KERN: Thank you. And next is Hilary Mason.

MS. MASON: Hello, everyone. I'm Hilary Mason. I'm the Founder and CEO of Hidden Door. I'm a technologist and entrepreneur, and I've been building machine learning products, businesses, and systems for most of the last 20 years. Hidden Door is an entertainment technology company. We build an online social role-playing game for groups of people to come together and tell stories together. We collaborate with authors to bring audiences into the worlds they have created in new ways.

We believe that authors and other creators should be paid for their work and that AI startups can design business models that support this. We also believe that AI can facilitate a new kind of creator-to-audience relationship where authors and other creators can reach their audiences through these kinds of new experiences that are only possible because of AI and those audiences gain new ways to engage creatively with that work as well.

As a fan, when I finish reading a book or
watching a TV show or a movie, my experience ends. With Hidden Door, authors can choose to bring a new continuation to that experience to their fans, allowing us to continue experiencing the author's world with new adventures that they direct. The author can create this experience with a few hours of work building on their existing work, or they could create something entirely new.

AI helps the author define the rules and parameters of these worlds and the stories that can happen in it so that the audience can explore that expanded world in a way that respects the original work, giving the author control and the audience the confidence that they're getting an experience that is true to the creator's vision that they admire and yet giving them an ability to direct where their stories might go. The audiences experience this as a world in story and art that gets generated at the time that they play, directed by their intentions to co-create an interactive graphic novel drawing from the author's work, the AI system, handwritten content, and the audience's own ideas. Each story is completely unique.

We also believe very much in creating ethical products with AI and have a history in doing
so. At my prior company, Fast Forward Labs, we did applied machine learning research and wrote about ethics in every project and technical report we did, often being an introduction of AI ethics to our Fortune 500 clients. I co-authored a book called "Ethics in Data Science" with DJ Patil and Mike Loukides. As a builder of products and experiences that are made possible with AI, at Hidden Door, we have a whole team of folks from creative and technical backgrounds who believe in building these products together with certain principles.

First, we believe building a compelling entertainment experience is not about building one AI model to rule them all or to in any way replace a human's creative work. AI is a set of tools and techniques that have different capabilities and different risks. We believe in using the right one for the right problem and auditing and evaluating it accordingly.

Second, the people impacted must be part of the design process. Words and images mean things. They change things. AI systems have a well-known capability to magnify biases in the underlying data. This must be accounted for before and after systems are deployed. Our goal is to enable folks to express
themselves creatively using AI as a tool that enables and expands on that.
And, finally, today AI can offer authors new economic opportunities that are otherwise out of reach because it offers the ability to scale creativity to new and existing audiences in new ways, and we're at this very exciting moment where we can start to invent these experiences, and we shouldn't be afraid to do so. At Hidden Door, we license content from authors that we use along with our AI system and the fans to create these experiences, these storytelling experiences where we come together around the campfire, and we believe this is a new economic opportunity for authors.

We very much appreciate the Copyright Office hosting this discussion and hope to collaborate with everybody to establish a fair and equitable model where creators are valued and the value is created from new experiences and all of this facilitated by AI as shared. Thank you very much.

MS. KERN: Thank you. And next is Tara Parachuk.

MS. PARACHUK: Hello, and thank you for this opportunity. My name is Tara, and I'm the Senior Manager of Brand Communications at Voices. Voices is
the number one marketplace for professional voice-over. Today, I'm going to share how we are using AI voice in a very ethical way. So, with the rise of AI voice and text-to-speech technology, we recently decided to acquire the URL Voices.ai. We're going to use this platform to clone 20 professional voice actors' voices and then add the option of synthetic voice on our platform that clients can then purchase.

So, along with this new service, we have launched our three Cs as our guiding principles when it comes to synthetic voice. They include, number one, being consent. Voice talent must give explicit consent to a platform or a company to have their data used, and there should also be clarity on how their data is used, so if any foul words that the voice actor is not comfortable with, they will not use those words. Credit, voice talent should be credited for their work and their cloned voice. And the final of the three Cs is compensation. Voice talent should be compensated for their work and data used in AI voice.

At Voices, we're committed to providing high-quality service to our clients, and we do recognize the importance of maintaining ethical standards in the use of AI voice technology. We are excited to launch the new synthetic voice service,
which will provide clients with even more options to find the perfect voice for their project. With our three Cs principles of consent, credit, and compensation, we'll ensure that voice talent is treated fairly with the respect that they deserve. We believe that this approach will not only benefit our clients but also the voice-over community as a whole.

As we continue to innovate and grow, we remain committed to our values and our mission of bringing projects to life through the power of voice and making the world a more positive and accessible place through the power of voice. Thank you.

MS. KERN: Thank you so much. And next is Kristen Sanger.

MS. SANGER: Thank you so much for including me today. I'm Kristen Sanger. I'm Vice President of Content at Storyblocks. Storyblocks is a subscription-based stock media licensing company who licenses footage, music, templates, and photo content to broadcast, marketing, entertainment, and many other industries. We represent a network of talented artists who entrust us to license their work on their behalf and a customer base of global users who leverage these assets to build their own stories and campaigns. We procure the rights, clearances, and
releases for all the assets we license, ensuring our customers can confidently use the assets in their audiovisual works without fear of litigation.

Our content today rarely, if ever, uses a standalone individual asset, but is woven together to create a larger creative work. We see a lot of excitement in AI as a tool to support creators' work flows, to enable creation of things that are otherwise out of reach, and to ultimately augment creativity. We do, however, share some concern about artist rights, explicit consent, and compensation for use of their assets in training models and generative creation, the need for attribution and tracking for works leveraged in training, and the inherent biases that we all know too well exist within cultural and media today and that are likely amplified within generative AI. Thank you so much.

MS. KERN: Thank you. And then next we have A.J. Young.

MR. YOUNG: Hello. Thank you guys for having me today. My name is A.J. Young. I'm a cinematographer, also known as a director of photography in the film industry. I am a member of the International Cinematographers Guild. However, I am not here to speak for the union. Instead, it is
only an example of my qualifications.

Artificial narrow intelligence is becoming just another tool in the toolbox for motion picture creation. The film industry utilizes various types of software for creating an image, and new tools like diffusion models can speed up and influence the creative process of cinema. As a cinematographer, I'm used to new technology change in the way we make movies all the time. It's basically anything motion picture is going to be a new technology. In my opinion, though, there are three instances where copyright does and does not apply with artificial narrow intelligence.

The weights of an artificial narrow intelligent model, like diffusion models, are the result of training on a data set. Licensing and copyright protection for those weights should only be given if the weights were trained ethically. Ethical training means the data set contains only images from the public domain, Creative Commons, and written consent from the owners of the existing copyright. If the weights were trained without consent, then those weights should not receive any copyright.

The creation, the output from artificial narrow intelligence, though, should always be
considered separate from the weights and have copyright protection, with one notable exception. Even if a company violated copyright or licensing in the training of their weights, the artists' resulting outputs with the software should still receive copyright protection exactly in the same way that if Adobe Photoshop or DaVinci Resolve violated any copyright, patents, or licenses, the artist's creation using that software does not lose their copyright eligibility.

Furthermore, the owner of the weights cannot claim copyright ownership of the creation, again, just like Adobe or Apple cannot claim ownership of the output from using their software or hardware. The one exception overall, however, is malicious intent. If an individual intentionally trains on copyright material without the consent of the owner and intentionally creates more of that copyright work, then both the weights and the creation do not qualify for copyright.

Motion picture uses many tools throughout the image creation process, and if one of those tools, not the artist, but the creator of those tools, violate copyright law, then that tool still does not invalidate the copyright claim of the resulting image.
Thank you so much.

    MS. KERN: Thank you. And then, Kylan Gibbs, would you please introduce yourself?

    MR. GIBBS: Yes. Hi there. Kylan Gibbs, Co-founder and Chief Product Officer at Inworld AI.

    MS. KERN: All right. Thank you, everyone, so much for introducing yourselves, and welcome again.

    To begin the discussion, we wanted to start with the question that the Copyright Office is interested in learning how generative AI technologies are being used in different creative fields. What should we know about the use of generative AI in your business and industry, and what do you see as the advantages or disadvantages related to AI use? And, please, this is just a reminder, if you'd like to respond, please use the Raise Hand function. All right. A.J., go ahead.

    MR. YOUNG: Thank you. From what I've seen a lot with diffusion models and image creation, it's largely a post-production tool. It's largely going to be a lot of animation, and when you're mixing it with live action, it's just another piece that can help sweeten the image and make live action, you know, fixes or add sort of visual effects, so it's another tool in the process that, you know, sometimes we have
to train it on ourselves. Sometimes we're already
using pre-trained data, but when it comes to the
copyright of the work as a whole, if we're using AI to
create our final movie, I don't think that if that AI
invalidates our copyright protection for the movie,
then that isn't a great idea for the Copyright Office
to go forward with.

MS. KERN: Thank you. Next is Tara.

MS. PARACHUK: Thank you. So how we're
using AI currently with the Voices platform is really
for very quick changes, so, for instance, if you're at
an airport and you have a gate change, it's much more
easier to use an AI voice for that than to call your
voice actor, have them record something, and then put
that into motion. So that's just one of the examples
of ways that we're using it.

MS. KERN: Thank you. And next is Cherie.

MS. HU: Yes, I'll answer this question in
two parts. So one, I want to name some specific
elements or use cases of how music artists are using
AI in kind of audiovisual contexts. Voice cloning,
voice AI is obviously a huge point of debate, of buzz
in the industry right now with a recent deep fake song
by an AI version of Drake that was going around that
was unlicensed.
But then, on the flip side, you have artists like Grimes who are not only making their own voice model just built off of their own training data, so it's not, you know, a larger language model, it's a much smaller, fine-tuned model just based on their own voice data, but they're also encouraging -- Grimes specifically is encouraging fans to make music using that model and has publicly made statements about, I guess, her setting her own precedent of agreeing to some revenue or royalty share on any songs that were generated and vetted and then distributed using that tool.

There also are, I think, you know, as long as artists are active in, like, virtual worlds, in video games, there's a lot of interesting experimentation happening around using AI to create digital avatars, as we heard someone from Roblox mention earlier, and also using AI to generate, you know, digital avatars both online and offline, even on tours. There's some experimentation around that.

Second part very quickly, I do think it's very important to say that in general, the way that AI is used and also the way that developers are entering this market in terms of their philosophy for the role AI plays is definitely not a monolith.
definitely are founders building AI tools with the purpose of helping artists augment their creative practice and push the boundaries of creativity and try to, you know, achieve sounds, genres, styles that we have not seen or heard before, which I think can be very exciting from a cultural perspective.

There, of course, is, you know, a whole other class of founders, of schools, of companies that do have automation as the pure end goal. Usually, they're trying to reach, you know, customers who don't want to spend that much time making music or making videos, for example, and so they want to kind of expedite that process, and at least on the music side, that's a significant enough part of the business that it is very existential that, you know, there is that use case that founders are pursuing, but, yeah, not all artists, not all founders have the same incentives coming in. It's quite a diverse landscape.

MS. KERN: Thank you. And Kristen?

MS. SANGER: Thank you. There are a plethora of manual and often really tedious tasks in multimedia content creation. AI, as a tool to support creativity, has tremendous opportunity when models are trained in an ethical fashion. Some examples are sourcing a variety of assets, bringing an idea to
life, organizing assets, and supporting the editing and post-production process.

MS. KERN: Thank you. And John?

MR. AUGUST: You know, writers are not averse to using new technology. We were quick to switch over to specialized word processors for doing screen-writing software. They're invaluable to us all the time. We use the internet a lot, and we use tools like Wikipedia for research, and I think we see generative AI as a tool for research like Wikipedia but not something that replaces the actual work we do.

I think it's important to note that, you know, the work that we were hired by the companies to do is considered literary materials, the specific term designated in our contract. It's the screenplays. It's the outlines, the treatments that we write. You know, AI can be a tool we use to do those things, but it's still us, the writers, who are doing that work, and I just remind us that, like, as we look at the impact of copyright, not to confuse the copyright holder with the author and that we are the human authors of the work that is, you know, generating billions of dollars for these corporations.

MS. KERN: Thank you very much. And Hilary?

MS. MASON: I'd just like to speak very
concisely to represent the opportunity here for
creative experiences that are not currently
experiences that we invest in in the sense that what
we work on at Hidden Door and many other things you're
seeing are new combinations of a writer or a creator's
work combined with people giving input combined with a
model, combined with hand-authored content, and that I
would love the Copyright Office to consider these new
kinds of creations that we have not seen before that
are now feasible because of the use of the technology
tools.

MS. KERN: Thank you very much. And Kylan?

MR. GIBBS: Awesome. Thank you. Yeah, so,
actually, kind of following up on that, I feel like
there's an important note between two different types
of tools, one which allows consumers to replicate what
artists may have created, so this is sort of the
ability, for example, to enter text and get images or
to, you know, enter text and get more text out in a
long form. And in these cases, I can understand in
that case you're basically potentially moving away
from the creative to the consumer as a focus.

I think there are a lot of tools that are
being created, though, to extend the actual creator
capacity, which I think is, you know, partially what
John and Hilary were hitting on as well, and in that case, it's really about create -- for example, at Inworld, we're focused on gaming as a market. There's sort of a version of this where you can think about potentially replacing a game development work flow to create NPCs. What we actually see is actually the opposite, which is a new style of experience is able to be created due to the AI NPCs, and that's actually in conjunction with the previous process.

And so it becomes sort of a new tool or extension of their current capabilities, and in general, the dynamic that we see is there's a relative amount of creation that is done at the actual run time or at the point of interaction with the user, and so the creator's job is somewhat changing in the sense that what they're doing is configuring the possible outcomes that the end user may have, but they're not actually defining -- they're not actually still ending with any creation.

It's just that creation process is somewhat different, as in they're sort of configuring the parameters that may be used to then generate the actual content at the time of interaction, but they're still just as involved or even more involved because they actually have to think about the full space of
possible experiences, and so, in general, there's sort
of two things that we're seeing, is one is it is
expanding existing types of content, and then it's
also, as Hilary was mentioning, creating a whole new
form of content that was never before possible and new
types of experiences in media and content that hadn't
existed before, and that sort of, I think, is actually
expanding the total amount of content and creation
that is possible for creators themselves.

MS. KERN: Well, thank you, everyone, for
your responses to Question 1, and I will pass it on to
Gabi at this point.

MS. ROJAS-LUNA: Thank you, Melinda.

Continuing with our discussion, we have
heard a number of questions about the use of
copyrighted materials to train AI technologies. Are
there unique considerations for AI training in the
audiovisual space? Let's begin with Kristen.

MS. SANGER: Thank you. So training is
already really impacting our industry both in the fact
that we're a large library of multimedia assets that
has likely been scraped without consent by several, if
not many, models, as well as the assets we represent
are used in our customers' creations or represented
potentially by other stock libraries, et cetera, which
have also likely been included in models with or without consent, recognition, or any monetary compensation, and with this, we have a couple of key concerns and a couple of remedies.

So this could be remedied by gaining explicit consent for those whose works are included in training models and compensation for the use of those works. Our artists, of course, are open to new revenue streams, and we see opportunities for artists to be able to gain monetary compensation in these new opportunities and in these new spaces.

One other thing I'd like to note, that an opt-out does not consent make. Again, the explicit consent is a really important one, and that truly biases are rampant. Without legal and ethical guidelines on training of models, how can we ensure that these biases are not amplified in the works that are created with them.

MS. ROJAS-LUNA: Thank you. Let's hear from John next.

MR. AUGUST: So writers in the WGA, we write movies, we write series. We work under the work-for-hire doctrine, which is that the copyright is retained by our employers, but we do maintain some publishing rights, some contractual rights to our work by our
contract, and our collective bargaining agreement provides us some of the benefit of those works by our residuals when they are reused. Still, I want to talk about sort of the notion of authorship, though, because, when we get credit on our work, and the WGA is the sole body that determines who gets credit for that work, it's of moral and financial importance.

Financially, the writer who is credited -- written a movie or an episode gets those residuals when that is reused or exploited in new markets, just as our employer benefits from that use, and morally it's a function of, you know, who wrote that thing? And we don't believe that there's always a human behind that thing. When we come to talking about using our existing scripts, our existing material to train these models, we often refer to sort of the Nora Ephron problem.

Nora Ephron, for people who don't know, is a legendary romantic comedy writer, and we can envision a scenario in which all the works of Nora Ephron are fed into an AI-generative system to create a new work by Nora Ephron. That is one of the things we are trying to hold off against in this, you know, strike we're having right now against major motion picture and television studios to make sure that our work is
not used to train these models without our consent.

MS. ROJAS-LUNA: Thank you. Cherie?

MS. HU: Yes, it's fascinating to see kind
of where our answers do overlap. I definitely want to
reiterate the elements of consent and bias, so
starting with consent. I think even just
establishing, like, a culture in general but also
policies around artists and developers collaborating
from day one on how these models work and how these
tools end up working is really, really critical,
definitely something that we have studied and would
advocate for. On the bias side, for sure, I think
especially larger language models that are ingesting
all this data are just mirrors to society at large and
to ourselves, and there have been studies not in
generative AI but in other aspects of AI, for example,
with music streaming algorithms.

To cite a music industry-specific example of
how, if they go unchecked, they actually do exacerbate
existing biases, especially around, you know, kind of
like Western-centric use and consumption, popularity,
discovery, trends, so it's definitely a really big
concern, especially if part of these discussions or if
part of the outcome is to want to promote more
diversity and kind of incentivize more diverse
cultural creation around the world instead of making it more homogenous.

A third point that I want to add, even though consent is very critical and kind of is an important first step, the way that especially larger AI models work, so larger language models or diffusion models like Stable Diffusion makes attribution difficult if not basically impossible to track and especially for an industry like music, but I think other creative industries, where attribution is really like table stakes, especially for an individual creator to be able to get paid but also to, you know, like, build a portfolio and a history over time.

It makes it, yeah, difficult, if not impossible, to say that, you know, this specific piece of training data had, you know, X percentage influence on this output that happened to sound pretty similar to, you know, a certain genre or a certain artist. I think that's why there is so much focus on consent and on kind of the early conversations because, if you do try to tackle this issue around copyright and AI solely based on outputs, you run into a lot of messiness that just doesn't mesh well with existing kind of copyright IP systems.

Just to give a last example, I, and like
people at Water & Music, we've definitely played around with tools, mostly on a music AI side but also on the audiovisual side, where even if you don't mention a specific artist or creator or stylistic reference, if you work around it with a prompt, you can actually get to a very similar look or a very similar sound, and so we're definitely following efforts to kind of look at the prompt, the prompt engineering level as maybe an opportunity for monetization, especially around, like, likeness rights, but, again, it's very messy because it won't cover all the potential possibilities of something coming out that looks or sounds or just feels very similar to an existing artist or existing copyrighted work, so, yeah, influence is very messy. I think that's why people are trying to, for these new tools, kind of start from the ground up with those kind of consensual conversations.

MS. ROJAS-LUNA: Thank you, Cherie. Let's have AJ next.

MR. YOUNG: The training data sets that you use for diffusion models can include more than just images and text. It can also include weights for other models as well. When it comes to Stable Diffusion, you can further train the model yourself,
and so you're picking up where they left off with the training and you can use your own public domain images, but if you're trying to say that my new weights for my new model deserves copyright, you have to show where you picked up where you left off with the weights as well.

So people are using outputs from prior AI models to further train AI models, so then that means that the outputs from that prior model, the rules for those weights when it comes to copyright should also apply to the new weights because you're technically using weights from a prior model to train your next version, your next checkpoint of your model, so that's something I really want you guys to be able to focus on when it comes to it.

MS. ROJAS-LUNA: Thank you. And, Kimberly, would you like to add to this question?

MS. GOLDFARB: No, I don't have anything to add at this time. Thank you.

MS. ROJAS-LUNA: Thank you.

So let's move on to a follow-up for this question. How do panelists believe current copyright law applies to the use of copyrighted materials for AI training? Are there changes to the law that you believe would be desirable? I'll hand it over to
MR. AUGUST: Speaking to literary material, the kinds of things that we write, we believe that copyright protects the work of the creator, so there must always be an identifiable creator, and generative AI itself is not an identifiable creator, so, therefore, we don't believe that there's protection there for works that are AI-generated.

MS. ROJAS-LUNA: Thank you. Kristen?

MS. SANGER: Really, just looking for some clarity and some additional information, and so questions arise of, what constitutes a new work? What is a collaboration? Are these works collages? If a work is entirely made up of bits and pieces, is that actually a net new work? And truly understanding what constitutes a new work and who is the copyright holder? The person who is crafting the prompt, the generative model itself, and then how do we give attribution back again to all of the pieces that were used to be able to create the new thing?

We see a lot of difficulty into reading ownership because AI systems often don't retain the inspiration that generated the media, and understanding and tracking what assets and references were used to inspire that work and then how we are
able to divvy up either copyright or compensation and
everything in between.

MS. ROJAS-LUNA: Thank you so much.
Melinda, I'll turn it back to you.

MS. KERN: Thank you so much for your responses on training and to that follow-up question, but setting aside training at this point, what should the office know about generative AI and online copyright infringement, and are existing laws regarding infringement and liability for infringement adequate? And, AJ, go ahead.

MR. YOUNG: Great, because my response to the prior question is the same answer for this one as well. I think we need to get our terms perfect when it comes to what, you know, AI is doing. We're throwing around the word "models" a lot. The model is just a structure for how the AI works. It's the weights. The weights are what make the model work, so when it comes to copyright violation, protections, we should be referring to the weights, and then, when it comes to the creations, we have to have a very clear glossary term as well, and I think output is a great, you know, word to use for it, and I think that's, you know, the guidance that needs to come in for where the protections come in.
We're talking about weights and we're talking about outputs because the model is always going to be the same. It's the weights that can change, and it's the weights that can violate copyright with the training because, when you train, the output is a weight. It's not a model. The model is always the same. It's the weights are the outputs of the training, and then you use the weights to create an artistic output, and I think that's where the definitions should start.

MS. KERN: Thank you so much. And go ahead, Kristen.

MS. SANGER: For us as a licensing agency, we indemnify our customers in the use of the content that we license to ensure that they can leverage the assets in a commercial capacity really without fear of litigation, and we stand behind that indemnity by requiring the artists that give us their assets have full and clear rights and releases and everything else within the content that they give to us, so moving forward, indemnifying our customers likely becomes significantly riskier as our ability to confirm all the rights and clearances are provided to use the works in a commercial capacity because everything becomes less transparent and clearly defined. How do
we verify ownership of works, and how can commercial
users be confident that they won't be sued for use of
their assets?

And we also really don't have an ability to
verify whether the work could be deemed as derivative
or even original. If a piece of AI-generated content
has substantial aspects of another visual work, how
can we tell? What are the odds also that two separate
models given substantially similar prompts would
generate the same or visually the same asset? And so
we've got a lot of questions that exist within that
space, and there's a lot of gray area that we would
really like some definition and some, again, to AJ's
point, some really specific terms and use cases so
that we're all on the same page.

MS. KERN: Thank you. And Cherie?

MS. HU: Yeah, just to go back to something
I mentioned in my opening statement as an example of
something that's playing out and definitely causing a
lot of confusion in the music industry but I think
applies to other industries is clarifying exactly what
types of copyright or, sorry, what kinds of rights are
implicated in any claim that a, you know, creative
rights-holder might make against a platform or against
a tool, for example, that's incorporating AI or is
distributing supposedly, you know, AI-generated works. For example, I mentioned major labels are going after streaming platforms issuing the same -- they'll issue DMCA takedowns of AI-generated works, but there are kind of a few steps that really need clarity in that. One, as many of us have mentioned, like, what exactly is a boundary of AI-generated, you know, and having just like even clearer definitions around, like, authorship and defining human authorship in that respect, and then, two, can you take down a song from a, you know, streaming platform, a piece of work from a streaming platform, for example, on the grounds of personality rights, which I believe is more of a state-by-state thing.

That's figure out and not really set at the federal level in terms of how that's dealt with, which is very, very different from copyright in the underlying audio, you know, audio or musical work in the case of music. So I know a lot of people in the music industry, as they're experimenting with these tools in various contexts, are looking for clarity on that difference.

And I guess this is not directly related to copyright law but also is, I think, important to bring up. At least in the music industry, there are a lot
of works that happen to be generated with tools that have an AI element that have been taken down, and the kind of public narrative around that is because of copyright infringement, but, actually, the underlying issue is more around streaming fraud.

In that case, it's around kind of some bots trying to, like, drive consumption around specific songs, and so that's definitely -- especially from, like, a research perspective, that's a fear that I have a lot of the time, is just conflating very different issues. That is a different legal issue but not related to IP per se, so just kind of, yeah, clarifying -- yeah, a lot of terminology has to be clarified and also, like, exactly if something is taken down, what exactly is the reasoning for that and kind of not conflating those reasons.

MS. KERN: Thank you so much. And as a follow-up, how is everyone thinking about substantial similarity, the substantial similarity test actually, when evaluating AI-generated content? And if you didn't answer the previous question, please feel free to answer this one too if you have any input.

And I see, Cherie, that you have your hand up, so I will pass the floor to you.

MS. HU: Cool. Yeah, I think I addressed
this in my previous response, so I'll keep it brief, or in a previous response around attribution and why especially with, like, larger language models, the ones that ingest the most data -- or, sorry, like larger diffusion models also that ingest the most data and also have the most users. Attribution is so messy and already again, like, speaking specifically for music, but there are, like, so many examples of artists that already sound very similar to each other, and even taking AI out of the picture, current IP law in the U.S., current copyright law is very, very messy in terms of, like, how to deal with those instances.

MS. KERN: And, Cherie, just because of the interference, if you wouldn't mind repeating the last couple seconds of what you said for the record?

MS. HU: Yeah. Yeah, no problem. I think just, yeah, to sum up, not even taking AI into account, at least I know on the music side, current IP law is super messy in terms of how to deal with two works that, like, may happen to be really similar. A specific case is the "Blurred Lines" case from several years ago, and I know that there was a lot of debate around, like, whether the outcome of that really should have been what it was, and I know fair use was mentioned in the previous panel quite a bit as a very
longstanding but also very messy concept that people are, like, still looking for clarity on, so I definitely see that being part of this, like, I guess, ongoing search for clarity around AI and copyright in particular.

MS. KERN: Thank you, Cherie, and apologies for that interference, but we'll move on to AJ next.

MR. YOUNG: It's a very good question. I had to sit and think about it for a second. I think, when it comes down to similarity, substantial similarity, it ultimately depends on the data set that was used because it does influence the weights in how to create the image. The weights do not store any images, so it's not sharing images without consent, but it is trained on a data set, and if the data set contains images that were not part of the consent, you know, given to the data set, then that's something that I think does not pass substantial similarity, which maybe it's a fifth prong that should be added.

You know, it's very new territory, but I think whenever it comes to a copyright claim with the output and we're trying to figure out malicious intent, then the person who has the weights has to show either where the weights came from, and if they made their own weights, they have to share their
training data, their data set. If they cannot do that or they can show or they've shown that the data set, you know, has copyrighted material but does not have written consent, then I think we've got a problem here. So I think just trace it back to the source, what is the training data, and they have to provide the training data when it comes to, you know, the striking similarity.

MS. KERN: Thank you very much. And Kristen?

MS. SANGER: I'll agree on that, and it becomes a lot clearer if you understand, you know, what the inputs were used to the output and how similar they might be. It's a little bit harder when, again, the proof of a requirement is, you know, saying that where something came from if we've got those ties, if we have those strings back to understanding what those inputs were to that output becomes a little clearer, a little bit easier. On its own, it's got a lot of subjectivity, and I think it's hard. I think it might be a good basis, but, again, it's going to be a lot harder and a lot more complex as it has so many different potentials to be able to clearly draw a line from one to the other if we don't know those inputs that were used and there's not attribution there.
MS. KERN: Thank you very much. And Hilary?

MS. MASON: I merely wanted to build on what other folks have said in the sense that what these models are doing is taking a very large amount of data and building essentially a compressed representation of inferred features in that data, and then we draw from that distribution using a bunch of ways to pull different things from the distribution, so in a sense, the model is trying to create the average representation of the data then biased by whatever prompt or input it's given, and so this seems like a question of whether we're looking specifically at the outputs as an independent artifact that could have been produced by any means or whether we are looking at the entire production process and where the different inputs into that process come from.

MS. KERN: Thank you very much. And I will pass it to Gabi.

MS. ROJAS-LUNA: Thank you, Melinda, and this will be the last question for Session 2. What additional registration policy guidance, if any, would you like to see the office provide with respect to the registration of works that incorporate AI-created elements? In particular, how should the office handle audiovisual works that incorporate a mix of AI and
human-generated materials? Let's start with AJ.

    MR. YOUNG: Thank you. A big thing for me
is, if someone has a legitimate claim for copyright of
the weights, they cannot claim copyright on the output
that an artist uses. I think those are separate, very
much like, if Apple has copyright on the hardware,
they do not own the copyright of the material I make
using their hardware. Someone who creates the
paintbrush doesn't own the art I make with the
paintbrush, and I think that's where the dividing line
should be.

    MS. ROJAS-LUNA: Thank you. Kristen?

    MS. SANGER: I believe that our emphasis
needs to be a lock at least right now within the
training models as that will really help dictate what
can be used with the outputs, and so, if we do kind of
the heavy lifting in the work within defining and
procuring consent and attribution within training
models, then that all gets a little clearer in terms
of the outputs and how we're able to associate things
back from those outputs, and so, if we focus on
getting that lock set and determining what is required
when it comes to being able to copyright those
outputs, we've got that understanding of all of the
ingredients that went into the creation of that recipe
and the rights and the ethical guidelines that were
used to be able to facilitate it. And then it becomes
really just a factor of how we give attribution and
what this looks like if it's a new form of copyright
or beyond as it takes into account all of those
individual agreements as well as, you know, the new
recipe that was created by the sum of the prompts and
the model and everything in between.

MS. ROJAS-LUNA: Thank you. John?

MR. AUGUST: Speaking on behalf of the
nearly 12,000 writers who are out on picket lines
today, I just want to make sure that any guidance that
this process yields always remembers the human being
behind the creative work that's being output, that we
make sure that we're not just thinking about the
copyright holder but the actual creator of the work as
being that person who needs to be protected in this
process. So often we talk about inputs and models and
outputs, but we forget the fact that there was a
person who was doing that work and make sure that
we're always emphasizing the role of that human being
who was there and not just the statistical models that
generated this output.

MS. ROJAS-LUNA: Thank you, John. And
Kylan?
MR. GIBBS: Yeah. So I think it's interesting because I think there's multiple things here that are actually creations, so if we look at the training data, the model, the prompt, and then the actual output, each one of those things could have independent creators, each of which could be covered by different copyrights. There's a lot of standard licenses around training data that may allow commercial or noncommercial usage, but it's on the person who has acquired and prepared that training data to set those licenses and for others to basically then be accorded to them.

Similarly, on the models, if you had a research group, for example, develop a new model, you know, you have Llama, which came out of Stanford. You also have closed models which are by large companies. They obviously have the rights to ownership of those models and the usage of them and can basically and should be attributed or paid accordingly.

Next, you have prompts, which is the inputs, so in an image case, you have a text input. Most often, you may have another image as an input. In our system, for example, you have a variety of different controls that the creator puts in, and they are owners of those controls. So, basically, these are sort of
the parameters that they put in in the same way that
if you took a Word document and you typed in it, you
own what's in that Word document even though you don't
own Microsoft Word or Google Docs, for example.

And then, on the output as well, someone has
created that. One thing that is interesting about the
conversation is it's sometimes as if the model is
autonomously producing output. In all cases that I
have ever seen, there is always a human who is using
that tool to produce the output, and in that case,
it's no different than a painter using a paintbrush.
They still own -- they are the owner of the outcome
regardless of whether it was processed through an AI
tool or whatever. You know, the model itself is still
owned in the same way that Google Docs or Microsoft
Word is still owned by Google or Microsoft.

You know, the actual training data is the
same in the same way that, you know, the back-end code
of Python or Javascript is owned by the groups that
manage those, but the production, the actual Word
document, in the same way that an image is produced by
an AI model or a character in our case or a dialogue
or animations, are all owned by the person who has
actually produced those.

And so you think about a case of an artist,
you know, using Midjourney or Stable Diffusion to produce an image. The artist owns that, of course. Really, I see no difference in the case of, you know, them using a paintbrush. It's just a modern paintbrush really, and then, in the same cases, you know, if someone created a really amazing prompt that other folks could use or build obstructions on top of, they should own the basic configurations there.

And similarly, the companies that build the technology that actually powers that, in the same way as we've done with, you know, internet like we're on a Zoom call, Zoom doesn't own the content of what we're producing right now, but we are ultimately still using the tool, and they have the copyright and the rights to that. And so I think at each part of those, it's important to consider who the actual creator is and providing them the ultimate attribution, and I think it's key that those are distinct because very likely in this ecosystem that is evolving, in the same way as any creative process, there will be different creators of each parts of the process.

But, at the end of the day, if you have a creator using a Photoshop, that creator still owns the image that's coming out of that, not Adobe, and I think this is a very similar case.
MS. ROJAS-LUNA: Thank you.
Can we hear from Hilary next?
MS. MASON: Thank you. I wanted to build on what's been said before and what Kylan said as well and just to say that as the Copyright Office considers what we may do here to keep in mind that whatever rules and norms are decided on, they apply not just to applying AI technology in systems and work flows that already exist as a productivity tool used by a human creator but also in the space where we are currently inventing experiences, where the production is happening at the moment it's being consumed, and that whatever we decide on as a copyright community should apply equally in all of those situations, which are, in fact, very different and some of them are just emerging now, so it's fun. Thank you.
MS. ROJAS-LUNA: Thank you. And now Cherie.
MS. HU: Yes, very quickly just to build off of Kylan, what Kylan and Hilary also just said, I think, and also, I guess, speaking with deeper knowledge of music specifically and the role that technology has played in many ways to, you know, richer and better effect for, like, music creation, yeah, the notion of determining whether someone should be eligible to own a piece of IP, the notion of that
being determined by the tool being used to make that work, I think that could set a very dangerous precedent.

I'll give a music example and give a very recent example of the visual world. Like, you know, if digital synthesizers when they first came out, if you made a piece of music using that instead of an analog instrument, that automatically disqualified you to own copyright in a given work. I think there's potential concern about that precedent being set with some cases in the U.S., for example, around this is not audiovisual, but with the recent kind of comic book case that's kind of gone through the U.S. Government. Yeah, I believe the stance was that because Midjourney was being used, you know, as the tool, that alone disqualified the images from being copyrighted. Every other part of the book was eligible, though.

I think that kind of bifurcation again, yeah, it's very dangerous, has not really happened any other time in U.S. history, legal creative history, so I wanted to bring that up, and that said, I think there also we're seeing other governments already take steps in either direction on being open or not to, I guess, have any creative data be used in training for
these models. That's definitely an area where I know a lot of people in music and audiovisual industries at large, they're just looking for, yeah, guidance and clarity. And also it's not just artists. It's founders, like, you know, developers who also want to build these tools for those artists as well.

MS. ROJAS-LUNA: Thank you, Cherie.
And before we wrap up on this question, Kimberly, would you like to offer any input?

MS. GOLDFARB: No, not right now. Thank you.

MS. ROJAS-LUNA: Thank you.
And, Tara, I would like to offer the same opportunity to you. Would you like to offer any input on this question?

MS. PARACHUK: No, everything I feel has already been said. Thank you.

MS. ROJAS-LUNA: Thank you all for your thoughts on the registration and policy guidance and for sharing your input today. Melinda, I would like to turn it over to you.

MS. KERN: Sure. Thank you, everyone. So we're coming to the close of our panel. We have about three minutes left, and this may take us a minute or two over, but we just wanted to extend to everyone and
invite those who are interested, especially those who we may not have heard as much from today, to make a brief closing statement, and just, as I said, in the interest of time, if you could please keep it to about 30 seconds. Thank you very much. All right, John, go ahead.

MR. AUGUST: A lot of people on this call are representing corporations or artists individually. I'm the only person who's representing -- AJ's also representing a guild of union members who are all able to act collectively on something, so many of these issues are going to need to be figured out in copyright law. That's what the purpose of this is here today. But the decisions that are made here will also ripple back to the kinds of work that we're doing as people who do work for hire.

And so I just want to say that this is, you know, not just a down-the-road issue for us. This is the reason we are out on strike, one of the reasons we're out on strike today, and so many of these issues will be resolved on the federal level, but some of them will be resolved at the negotiating table, which is really the appropriate place for us to be tackling some of these issues collectively and with our employers. Thank you.
MS. KERN: Thank you. And AJ?

MR. YOUNG: I just want to say I actually wholly agree with John that at the end of the day this is involving people and artists and individuals, and we shouldn't forget that within the entire process. I know we're using terms like data sets and weights and diffusion models, but at the end of the day, it's people, and let's keep that in mind as we're moving forward.

MS. KERN: And, Kristen, go ahead.

MS. SANGER: This is a tremendously exciting period to be alive. As a creative who works in this space and has for many years, there's not often a lot of technological advancements when it comes to creativity. There's been in tools in the past, but this is really a tremendous place and time to be, and with that, I think it comes with a whole heck of a lot of responsibility. We have the opportunity to set things out with a good set of guidelines and rules that is really going to ensure that we protect art and creativity and we foster it and we allow it to be amplified and grow and leverage this as a tool to create in ways that we never have been able to create before, so it has a tremendous potential. We've seen the potential already, and I'm so appreciative of the
Copyright Office listening to all of us to be able to put forth sets of rules and guidelines that are really going to allow us to further creation as we continue to support our creative communities. Thank you.

MS. KERN: All right. Thank you so much.

And, oh, go ahead, Tara.

MS. PARACHUK: Thank you. I just wanted to touch upon what AJ and John also said. Although we are moving into a more AI world, I do think that based on a lot of studies that we've done as a company, the human voice is still the forefront and a lot of people still prefer the human voice, so just keep that in mind when you're creating these new copyright rules because AI definitely does not replace a human voice or a human.

MS. KERN: Thank you. And we haven't heard from Cherie, Hilary, Kylan, or Kimberly, so if you would please like to give closing statements? Like I said, please keep them to 30 seconds, and I apologize that we've gone a little bit over, but we want to give everyone the chance to give closing statements. All right. Go ahead, Hilary.

MS. MASON: Thank you. I just wanted to say thank you to our hosts at the Copyright Office and to everyone for participating and to echo as well that AI
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offers us the -- we're just at the moment where we can start to invent what we want to do with the technology and how we can use it as a tool for creative experience in a bunch of different ways, and it is a really exciting moment for all of us who are building in this space, and I hope that what comes out of this is a community of people who are building precedent, deciding what that vocabulary should be and having rules that allow us to do this in a way that is fair, supportive of those individuals, and brings access to more people, and so thank you.

MS. KERN: Thank you. And, Kylan, go ahead.

MR. GIBBS: Yeah. So the one thing I would love to say is I think there's a lot of different ways that AI will be used in the future. As I mentioned before, there's, I think, a big focus on how this specifically empowers creatives, and I hope that the way that the Copyright Office approaches this is with that in mind and also that companies thinking about this focus on how they extend the capacities of creatives versus, for example, allowing consumers to, you know, just generate a lot more content because I think that ultimately that is where a lot of the value lies in the creative process, is, you know, taking that creative vision, extending that and then pairing
that with, you know, next-generation technologies to ultimately move experiences and content and media forward.

And so I know that this is how we're really thinking about it as like a new extended paintbrush for creatives and designing our entire IP protections and everything for our users around that, and I think that it would go a long way for creatives to feel comfortable as well using these tools knowing that they maintain ownership over that content but also that companies have good guidelines in actually how to approach this so that they know how to make sure that the creatives maintain their ownership and feel empowered to use these as tools and not feel like they're a competing option for the creative process itself. Thank you.

MS. KERN: Thank you very much. And Cherie?

MS. HU: Yeah, just a few closing statements, and, yeah, thanks again for having all of us. One, yeah, to reiterate, like, the human-centric aspect, I think in the media, there's a lot of conversion about, like, AI replacing humans, AI, you know, replacing us in our work, that I guess AI at least for now is not like fully autonomous like that. Usually, if AI is, like, replacing some human, there's
also a human behind it and there's human intent behind it, so we are, you know, yeah, talking about, like, humans interacting with each other, so I definitely just wanted to -- in terms of, like, how we talk about this technology, definitely there's still humans at the helm. It's not AI just like acting by itself in kind of a macro, you know, economic context.

And then, secondly, yeah, this is less sets of policy but more about, like, culture. I think what's great about this conversation and I think what will help drive better policy is definitely creating a culture of, again, yeah, artists and developers and founders kind of starting that conversation proactively about how they can work together much earlier in the process instead of being purely reactive to, you know, tech companies and founders kind of just, you know, running with whatever tool or model that they're working with.

The current AI moment actually strikes me as, like, leaning much more to that culture compared to kind of earlier movements in the history of music and tech and media, so I'm very excited about that and glad we're all doing that. I would just encourage that more as these policies develop. Thank you.

MS. KERN: Thank you. And then, Kimberly,
would you like to close us out on behalf of DGA?

MS. GOLDFARB: Sure, briefly. Well, thank

you for organizing this panel. You know, this is all

just a very new area. Our priority is to protect

filmmakers, but, you know, we caution and should be

prudent not to make any sort of mistakes when thinking

about new legislation or policy or guidelines. Thank

you again for your time.

MS. CHAPUIS: Thank you. This concludes our

second segment. We will take a very short five-minute

break and return for the final segment.

(Whereupon, a brief recess was taken.)

MS. BLATCHLY: Welcome back, everyone. My

name is Joanna Blatchly. I'm an attorney-advisor in

our Office of the General Counsel, and we will begin

our final session shortly. For those of you who are

just joining us, a few Zoom housekeeping announcements

before we get started. If you are joining this

session but not for this particular session, please

keep your camera off and your mic on mute. We are

recording today's session, and the recording will be

available on our website. The transcription function

has also been activated.

In this session, we will ask each of our

speakers to give brief remarks on the subject of
artificial intelligence and visual art. Each person will be limited to two minutes, and the moderators will be watching the time. We will call on the speakers in the order listed on the agenda, so, Ryan, could you begin?

MR. ABBOTT: Well, thank you to the Copyright Office for inviting me to speak today and for its public engagement on this important topic. I think the framing of AI as just a tool is misleading. Of course, AI is a tool in the sense that it only completes tasks people ask it to complete, hopefully, and in the sense that it was made by people, although AI can code reasonably well now, but at some level, we're starting with something made by a person, although that person may be many people spread over time and space with no way of attributing an AI behavior to a specific person.

But AI is not a tool like a pencil is a tool in that it can partially or entirely automate the generation of a creative work. The activity that used to make a person an author is now in some cases being done entirely by an AI and now being done on a widespread level with a growing variety of systems that are publicly available online and in some cases free of charge.
Of course, right now, AI is largely being used to augment human creativity and the generation of a new work involves a mix of human and AI activity, but sometimes everything traditionally created is being done by the AI. In asking where to draw the line, this, of course, could be a very difficult activity, but it is one that courts are experienced doing where multiple people have conflicting authorship claims. I think the Zarya of the Dawn decision was consistent with the Copyright Office's human authorship policy, but it shows both the procedural and substantive problems with that policy.

Procedurally, the office wants applicants to disclose the role of AI but at the risk of threatening their own registrations. I submit that many applicants are likely not to be sufficiently knowledgeable about this requirement and not to be fully candid. But the bigger problem isn't with the office asking for transparency. It's with the requirement itself, which is based on dicta from 19th century case law -- 20th century, 19th century. People should not have to be concerned that the use of AI in the creative process is going to render AI output unprotectable.

This would directly contradict the purpose
of the Copyright Act, which the Supreme Court has repeatedly held is to benefit the American public by promoting the generation and dissemination of creative works. Allowing the protection of AI-generated works as the United Kingdom does, for instance, would encourage the use and development of creative AI systems that would result in more public benefit, and it would likewise encourage the distribution of AI-generated works. Nowhere in the Copyright Act does it state that there is a human authorship requirement, and corporate authorship has been a fixture of U.S. copyright law for more than a century.

I would thus urge the office to reconsider its human authorship policy to help ensure that the United States stays at the forefront of the creative industries and AI development. Thank you.

MS. BLATCHLY: Thank you. And next we have Juan.

MR. CALLE: Hello. Thank you. So, from my point of view as a freelancer, and I've heard people pointing this out as well, this is not about the creation, helping the creativity. This is an economical problem that we're going to be facing since there will be a devaluation all across the board of the creative industry, so it will be a complex problem...
if copyright is not held specifically by people just
generating or painting, not generating, painting or
creating their own images.

If you generate an image and you don't have
any human input after that, that will be devastating
for a lot of freelancers, for instance. So I pledge
the Copyright Office to please have that into
consideration. There will be a substantial
devaluation for every freelancer all across the world
even though this is a very U.S.-generated problem. So
thank you very much.

MS. BLATCHLY: Thank you. Next, we have
Alex.

MR. COX: Hi there. My name is Alex Cox. I
am a writer and a film director. Among the films that
I've made are Repo Man, Sid and Nancy, Walker,
Tombstone Rashomon. I want to talk about a film that
I made in 1983, which is called Repo Man. I am the
original author of the screenplay. The screenplay has
reverted to me, so I am the copyright holder of the
screenplay in the U.S. The film is under copyright by
Universal Pictures. In preparation for this panel, I
asked a friend at the University of Colorado to use
his AI system and to see if it could produce for me an
outline of a screenplay called Repo Man on Mars, and
the AI system did so.

He sent it to me. Where do I begin with the breaches of copyright? Which breaches of copyright should I talk about first? The theft of the plot, the scenes, individual sequences? Even the character names were used by the AI system, and this wasn't some rinky-dink little AI system. This was ChatGPT 4, which is owned by a company called OpenAI. OpenAI is 49 percent owned by Microsoft, 49 percent owned by a number of institutional oligarchs, including Elon Musk. So, when my copyright material was --

(Technical interference.)

MS. BLATCHLY: It looks like we may have lost Alex, so, Alex, are you back?

MR. COX: Can you hear me now?

MS. BLATCHLY: Yes, we can hear you.

MR. COX: Am I back? I was cut off, how strange. Where was I? Oh, I was talking about how OpenAI is a company, a multibillion dollar company owned partially by Bill Gates and Microsoft and partly by Elon Musk, and when OpenAI scraped the internet, as they put it, to educate their AI system, they didn't just Hoover up my film. They accessed masses of copyright material, non-fiction works, pieces of music, works of art, all were Hoovered up by OpenAI,
and all are being now offered for profit via this company.

This couldn't have been done, this breach of copyright couldn't have been done without the massive scraping of the internet. It wasn't done for fair use because it was done for a commercial purpose. Therefore, Microsoft, Musk, and their colleagues broke the law. The AI companies have engaged in a massive copyright theft, and I'm just looking at a tiny corner of it. So what John August of the Writers Guild said is entirely true. If AI isn't reined in and if copyright theft via AI isn't prevented, writers are going to produce the technicians who attempt to fix the copyright violations which AI has produced in an exchange of work.

The only solution to this problem is to re-scrape the internet and remove all copyright material from the database to which AI has access, and in closing, I would say that earlier on one of the first speakers today said that Quentin Tarantino and Francis Coppola were heroes of Hollywood because, apparently, they encouraged plagiarism. They did no such thing. Coppola and Quentin Tarantino have become wealthy and successful film directors thanks to their talents but also thanks to the copyright regime, which has
protected them and their films.

This is what the Writers Guild are fighting for. This is what I'm asking you to fight for because let's face it. The big media companies, the studios, the record companies, the streaming companies, the big six publishers are all in bed with these artificial intelligence companies anyway, so we look to you as creative people, as artists, we look to you, the U.S. Copyright Office, to safeguard our copyrights. Thank you very much.

MS. BLATCHLY: Thank you. And next we have Mounir.

MR. IBRAHIM: Hello. Thank you very much. My name is Mounir Ibrahim. I'm the Executive Vice President of Truepic. Truepic is a technology company based in southern California, and we are focused on digital content transparency and authenticity. We've long been concerned about the ease of which our sensory reality can be deceived through things called cheap fakes, which are rudimentary changes to images and videos, then deep fakes, which is the obviously synthesis of videos and images, and, of course, the now explosion and proliferation of generative AI tools, which create synthetic images, videos, and digital content.
There's a growing industry of transparency and authenticity, and that's the reason I'm speaking here today. We firmly believe that adding transparency and authenticity to digital content will have significant value when it comes to issues related to copyright attribution and ownership.

We are a proud founding member of the Coalition for Content Provenance and Authenticity, the C2PA. That is the world's first standards body that created an open standard for transparency and authenticity in digital content. This is not hyperbole. This is an existing standard. It is on the 1.3 version, and it is being used in a variety of areas today. One of the most notable is Adobe Firefly and the Adobe suite of products.

This open standard can be added to any generative AI output. Last month, Truepic released the world's first transparent deep fake with Revel.ai in Amsterdam and Nina Schick in London. This is an example, a model on how attribution and a tamper evident seal could be added to generative AI outputs that give attribution and ownership to the people who created it, give the option not to train on those outputs to those creators, and also, perhaps most importantly, give transparency to content consumers so
that they know that the output that they're looking at or the content they're looking at has or was created by generative AI.

This will be an incredibly useful feature as we have this discussion today and future discussions. When we can think about how we can mark things, mark training data, you could do that in the 1.3 specs so that it is not actually trained on by those platforms that adopt the standard, and we can help creators attribute and market their content, and I already noted the transparency, which is incredibly important for the protection of our informational ecosystem.

I would encourage the Copyright Office to engage with the Coalition for Content Provenance and Authenticity. There are a variety of ways in which they can engage and learn more about the standard and how it can be applied. I would also encourage the folks on this call to look into this open standards body in which anybody can join and you can join at a completely free level under the Linux Foundation. So I hope this is helpful, and I look forward to further discussion. Over.

MS. BLATCHLY: Thank you. And next we have Eduardo.

MR. SALAZAR: There we are. Okay. Sorry
for that. I didn't notice I was on mute. Okay. My name is Eduardo Salazar. I'm the CEO of Forctis AG, which is a (inaudible) space company, technology company, and in the same way as Mounir, we are working on technology to effectively provide transparency and, you know, provide creators equal choice, the choice of whether their content can be freely used or not. I've been taking a lot of notes throughout the panel today, and as it has been related, it's very clear that AI and copyright protections and audiovisual works have a very intimate relationship.

All of us are very much aware that AI can generate original or derivative works independently, which raise questions about whether copyright should be attributed to the AI system, to the content creator, or to the person or organization that employed the AI model. Also, as it was related today, determining fair use is another big challenge simply because of all of the nuances influencing fair use, such as the purpose and characters of use, the nature of the copyrighted work, the amount and substantiality of the content used, and ultimately its market impact.

So, on the one part, it's quite clear that AI systems provide a great tool for audiovisual creators and not just in terms of productivity, which
is perhaps the most promotable standard benefit. On the other, it's also plainly evident that such benefits come with issues that must be adequately addressed, and I'll try to be quick.

Firstly, those around liability for copyright infringement is essential, I believe, to strike the right balance between robust protection and undue restriction on use of rights.

Secondly, the accessibility to AI-generated work, particularly in education, research, and cultural preservation, which was not that much talked about today, and the use of copyright material in such productions. Once again, a balance should be struck between protecting copyright and enabling the broad dissemination and use of knowledge, the promotion of creativity and of innovation. It is also key that companies deploying AI systems are fully transparent about the source of content used for training such systems, how these systems operate, how decisions are made, and how to address errors or disputes.

Finally, perhaps the most obvious and yet most neglected aspect is how to ensure that original content creators are able to choose how their content is managed by those developing or using AI systems and depending on the content's choice whether the access
to a fair compensation for the work used in such relevant instances is effectively made. Thank you very much for having me.

MS. BLATCHLY: Thank you. And our last speaker for this panel, Stephen?

MR. TAYLOR: Hi. I'm Stephen James Taylor. I'm a TV/film composer, concert composer, and sometimes filmmaker, and I feel that one of the good things about the emergence of generative AI is that it's forcing us to define what it means to be human. What's the difference on one hand between like gen AI rapidly gathering relevant data and parsing it into an audio or visual product and on the other hand the organic processing of the same data set through years of emotional life experience.

Can an AI algorithm help us as artists to convey deep feelings? The answer is yes, just like existing technologies do now. But will it soon be able to bypass the entire arduous life experience process and just create the whole thing for us? If yes, how do we evaluate the artistic worth and ownership issues?

I'm also a member of the music branch of the Motion Picture Academy, and recently there was a discussion among some of the members about, you know,
anticipating the day when there would be an AI score generated for a film. Would that be disqualified?

So there's a continuum of something that's fully automated and then something that's done by hand with talent and training, and then there's stuff in between where you're using the AI for certain tasks, and it's a very gray area as to how you evaluate where to draw those lines, and an example of a gray area, that's just one example of a gray area. So, overall, my take is this, is that human artists, as human artists, our judgment calls are largely physiological. Our bodies tell us when something's "right." With AI, remove the physio and just keep the logical. All mind, no body. AI algorithms don't have adrenal glands to get excited when a new -- a great idea emerges. Yet it has already shown the ability to produce viable works of audio and visual art.

So, in conclusion, I have basically three questions that I do not have the answers to because one thing we can count on is that there will be unforeseen consequences of this, both really good and really bad, so the three questions are, in all of this discussion about AI, what is it we're assuming? Two, what are we leaving out? And three, what is it we really want from it? And I think we each need to
determine where we stand on these as the sand is already shifting beneath our feet. Thank you.

MS. BLATCHLY: Thank you, and thank you to all of the speakers on this session.

And with that, I'm going to turn it back to Emily for closing remarks.

MS. CHAPUIS: Thank you to all of our speakers, our listeners, and our moderators today. This has been an interesting and engaging conversation, and we at the Copyright Office appreciate the perspectives that each of you has shared. We will consider them as we continue our initiative to examine copyright law and policy issues raised by artificial intelligence technology.

Our next and final listening session focuses on music and sound recordings and will be held on Wednesday, May 31, 2023. You can find more details about this session and our broader AI initiative on our website at copyright.gov/ai. The Office will be providing additional opportunities for those interested in artificial intelligence to share your perspectives with us. That concludes our listening session, and we look forward to hearing from you in the future. Thank you.

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(Whereupon, at 4:00 p.m., the listening session in the above-entitled matter adjourned.)
REPORTER'S CERTIFICATE

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I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before The Library of Congress, U.S. Copyright Office.

Date: May 17, 2023

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