



August 1, 2024

***[Electronically Submitted]***

Suzanne Wilson  
General Counsel and Associate Register of Copyrights  
United States Copyright Office  
101 Independence Avenue S.E.  
Washington, District of Columbia 20559

RE: ***Notice of Ex Parte Communication, Artificial Intelligence Study, Docket 2023-6***

Dear Ms. Wilson,

This notice of ex parte communication is submitted in accordance with 37 C.F.R. § 205.24(c)(3). On July 29, 2024, ACT | The App Association (App Association) met with the United States Copyright Office (the Office) for a 30-minute meeting to discuss the perspectives from App Association members on questions presented in the USCO's Artificial Intelligence (AI) Study.

Participants from the U.S. Copyright Office:

- Suzanne Wilson – General Counsel and Associate Register of Copyrights
- Maria Strong – Associate Register of Copyrights and Director of Policy and International Affairs
- Emily Chapuis – Deputy General Counsel
- Andrew Foglia – Deputy Director for Policy and International Affairs
- Nick Bartelt – Assistant General Counsel
- Brandy Karl – Assistant General Counsel
- Jalyce Mangum – Attorney-Advisor

Participants from the App Association, including member companies:

- Priya Nair, Senior Intellectual Property Policy Counsel, ACT | The App Association
- Brian Scarpelli, Senior Global Policy Counsel, ACT | The App Association
- Brad Simonich, Global Membership & Programming Manager, ACT | The App Association
- Alex Cooke, Senior Director for Global Membership, ACT | The App Association
- Susy Christiansen, Creative Producer, BusyBee Studios (***member company***)
- Anthony Licon, Chief Strategy Officer, Epic Reach (***member company***)
- Scott Weiner, CTO, Transformation Practice Lead, NeuEon Inc. (***member company***)
- Drew Linn, Partner & Chief Executive Officer, Counterpart (***member company***)
- Adam Place, Founder and Chief Executive Officer, NUSIC (***member company***)
- Jeff Hadfield, Founder, 1564B (***member company***)
- Marc Fisher, Co-Founder & Chief Executive Officer, Dogtown Media, LLC (***member company***)
- Dele Atanda, Founder & Chief Executive Officer, metaMe (***member company***)

- Suzanne Borders, Co-Founder & Chief Executive Officer, BadVR (*member company*)
- Edwin Schmierer, Chief Operating Officer and Product Manager, Rotational Labs, Inc. (*member company*)
- Tim Huckaby, Chief Technology Officer, Lucihub (*member company*)
- Laraib Khan Haider, Co-Founder, Gilly (*member company*)

The App Association is a policy trade association for the small business technology developer community. Our members are the entrepreneurs, innovators, and independent developers within the global app ecosystem that engage with verticals across every industry. We work with and for our members to promote a policy environment that rewards and inspires innovation while providing resources that help them raise capital, create jobs, and continue to build incredible technology. App developers like our members also play a critical role in developing entertainment products such as streaming video platforms, video games, and other content portals that rely on intellectual property protections. The value of the ecosystem the App Association represents—which we call the app economy—is approximately \$1.8 trillion and is responsible for 6.1 million American jobs, while serving as a key driver of the \$8 trillion internet of things (IoT) revolution.<sup>1</sup>

In this meeting, the App Association provided insights on issues that software developers face from the use and distribution of artificial intelligence(AI)-generated material. App Association members expressed that the lack of clarity around copyright protection and liability is disproportionately burdensome for small businesses that operate with minimal financial and legal resources. The result of these uncertainties is that innovators and creators are not developing internal policies because they do not know what would conflict or comply with the current interpretation of the law around copyright and AI. Therefore, clear and detailed guidance is key to App Association members. In particular, the App Association discussed concerns from the perspective of software developers that use and deploy AI products, namely regarding 1) where the threshold exists for copyrightability after AI has been used in some capacity, and 2) what liability, if any, is imposed on users of public-facing generative AI platforms.

App Association members explained that AI has been an essential component to their internal processes. With the onset of advanced AI, App Association members that develop branding and other content for clients develop works that are influenced by public content. Similarly, the time saved in the software coding process due to public-facing generative AI platforms is meaningful. App Association members noted that the use of generative AI platforms to help develop a work is analogous to past creative and innovative processes and involves the user’s own input in coordination with influence from various other public-facing sources. App Association members note that creativity stems from influence, and this is how many businesses operate. The issue presented is whether influence for a work is coming from a few specific sources or thousands of sources. The answer may provide insight into the likelihood that infringement occurred. For the Office to provide helpful guidance, they must ensure that “influence” is delineated from “copying” as to not stifle the development of inventive solutions. The App Association recommended that the Office emphasize the importance of analyzing human authorship rather than the amount of AI-assistance use to develop a work. While the Office has guidance on registration for AI-

---

<sup>1</sup> ACT | The App Association, State of the App Economy (2022), <https://actonline.org/wp-content/uploads/APP- Economy-Report-FINAL.pdf>.

assisted works, the significant amount of uncertainty around copyrightability and infringement liability is a hinderance to product development.

When discussing concerns around liability, the App Association reminded the Office that software developers like App Association members operate within in both closed- and open-source innovation models. This means that App Association members consider traditional copyright concerns, and those that uniquely apply to open-source licenses. These licenses are often infringed due the license being stripped away at the AI's training stage and the source code being re-distributed at the output stage. This process creates additional uncertainties for AI platform providers and coders that use public-facing generative AI platforms to develop proprietary code. Unintendedly incorporating open-source code into developing proprietary code could expose many startup and small business coders to copyright liability and render their code open source. While App Association members are concerned about their liability for potential infringement at the training and output stages, they are equally concerned about the potential for the chain of liability to reach their clients.

The Office explained how certain procedures worked within the U.S. copyright system, including what resources have been made publicly available to stakeholders. The resources offered by the Office included their landing page on copyright and AI, an example of a final review board decision, and a link to subscribe to the Office's NewsNet notification system.

We thank the U.S. Copyright Office for their time, expertise, and advice. We appreciate the Office's consideration of our membership perspective as they further develop reports on copyright and AI and make recommendations to the Administration per the Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence.

Sincerely,



Brian Scarpelli  
Senior Global Policy Counsel

Priya Nair  
Intellectual Property Policy Counsel

**ACT | The App Association**  
1401 K St NW (Suite 501)  
Washington, District of Columbia 20005

cc: Rhea Efthimiadis, Assistant to the General Counsel