



Creative Economy and Generative AI October 4, 2023

Madeleine Varner:

Hello and welcome to the FTC's roundtable discussion on the creative economy and generative AI. My name is Madeleine Varner and I'm a Senior Technology Advisor in the Office of Technology with a background in investigative research. Today we'll be discussing artificial intelligence tools that can output content on command, also known as generative AI. We've gathered professionals from a broad range of creative fields to discuss how these tools are reshaping their respective lines of work and how they're responding to these changes. Participants today include screenwriters, actors, programmers, editors, musicians, models, and more. Thank you all for being here and voicing your unique perspectives.

Before we begin, please note that the FTC is recording this event, which may be maintained, used, and disclosed to the extent authorized or required by applicable law, regulation, or order, and it may be made available in whole or in part, the public record, in accordance with the commission's rules. In practice, this means that we'll be sharing a recording of this as well as a transcript on the event webpage after this concludes.

Now, we're going to be hearing some opening remarks from Chair Khan. Chair Khan?

Chair Lina Khan:

Great, thanks so much. Hi everybody. So great to be here with you all today. The FTC is hosting this roundtable to hear directly from creators about how generative AI is affecting your work and livelihood, and I'm just so glad that we have this opportunity to be engaging in a very timely and important discussion. I wanted just to provide some backdrop for what the FTC's role is here. The FTC was created 109 years ago against the backdrop of an industrial revolution that had delivered enormous technological progress, but had also concentrated power and control in the hands of a few. For example, the advent and expansion of railroads meant that farmers could now move their wares across the country dramatically expanding the number of markets that

Over the summer, I had a chance to meet with some of the writers who were part of the WGA and picketing and really understand from them what their concerns were. I was really thrilled to see that they were able to reach an agreement that includes certain protections for writers from how AI could be deployed.

Very much recognize that this is a fast-moving dynamic situation, but it's clear that for enforcers and regulators to be keeping pace and understanding what's happening on the ground is going to be absolutely essential, and we really couldn't do that without you all, so thank you so much for taking the time to share your experiences and views with us today. Our Office of Technology, which we launched earlier this year, is really a critical part of this effort. We wanted to make sure we have the skill sets on board to help us understand how are these tools really working and know what's really going on. And they, in close partnership with the Bureau of Consumer Protection, Bureau of Competition and Office of Policy Planning, were essential to putting today's event together, so my deep gratitude to everybody who was involved with that as well. Really looking forward to hearing from you all. I know Maddy and others have teed up some key questions and then we can have a discussion. With that, I will pass it back to Maddy to kick it off.

Madeleine Varner:

Thank you, Chair Khan. We're going to turn it over to Commissioner Slaughter for her remarks. Commissioner.

Rebecca Slaughter:

Thank you, Maddy, and thanks to Chair Khan and all the FTC staff members who've worked to make today's event possible, and thank you in particular, to all of our roundtable participants, artists from such a wide range of creative media. Today's discussion involves two very different concepts, art and technology that are connected by an essential input, humans. Art is fundamentally human. Humans may use technology to assist in creating art, but something cannot be art without human input. Technology is, by definition, not human. Yet technology including generative artificial intelligence requires human intelligence. While humans may endeavor to make generative AI that is ever more intelligent, it cannot and will not replace human creativity. The value of creative arts to society is so fundamental that it is enshrined in the Constitution. You all are the humans who have mastered a craft and you share it with all of us for the benefit of the public and society as a whole.

In return, such works of art may be granted copyright protection. Copyright provides your

Our Office works to keep pace with emerging developments in digital markets, including in the rapidly involving generative AI space. Our software engineers, researchers, and practitioners use their deep expertise to examine the different layers of these technologies including training data and infrastructure used to develop AI models and the models themselves in order to better understand how these technologies are built and the ways it might impact market participants and pose harms to consumers, workers, and small businesses.

In addition to understanding the technical underpinnings of generative AI, we root our internal expertise in the day-to-day lived experience of those who are most impacted. Shining a light on how emerging technologies impact people and communities is an important way for us to orient our law enforcement and policy work.

We know that generative AI relies on a critical input to function, large, diverse data sets of human content. One method to build such data sets is web scraping, often performed unseen, and without the knowledge of creators whose work is being collected. We have heard from individuals, some of which are participants today, that this dynamic deeply impacts those who share work online, particularly creative professionals whose livelihoods can depend on having a public portfolio or presence to attract customers. Today, we'll have the opportunity to hear directly from these people.

Today's roundtable is an important opportunity to ensure that we are assessing the full range of the impacts of generative AI on creative communities and help ensure that we are using our full set of authorities to tackle unfair or deceptive acts and practices and unfair methods of competition in these fields.

We're grateful to the creative professionals who have lent their time today to share their experiences, and we're looking forward to an engaging and insightful roundtable.

And with that, we're going to kick things off with Duncan Crabtree-Ireland, the National Executive Director and Chief Negotiator for SAG-AFTRA.

Duncan Crabtree-Ireland:

Thanks so much, Madeleine. Can you all hear me okay? I'm hoping so. Hi everybody. I'm Duncan Crabtree-Ireland. I'm the National Executive Director and Chief Negotiator of SAG-AFTRA, and we are the union that represents over 160,000 members who are the faces and

voices that entertain and inform the world, and I just want to say thank you for the opportunity to speak on a topic that's so important, not just for creative talent, but for workers across all industries.

As AI technology, and generative AI in particular, affects anyone who's concerned with consent and with protecting their own intellectual property rights. Generative AI, generative artificial intelligence, poses a threat to the livelihoods of many. But to be clear, we at SAG-AFTRA are not opposed to new technologies and we're not opposed to the existence or even the use of AI. AI in particular is an essential tool that is going to be widely used in the decades to come and it can have a variety of creative and innovative uses in the entertainment industry, and the implementation of AI we are looking to achieve would result in the technology augmenting human creativity rather than replacing it.

When used ethically and in a manner that recognizes intellectual property rights, AI can help people in their careers and can further opportunities. It can create access to employment for people with disabilities and those who would otherwise be prevented from pursuing work in the entertainment industry. What SAG-AFTRA is eager to do is to channel the benefits of AI into a future that's beneficial to our members, to workers in other industries, and to the public in general. The key is that the companies using AI technology must be required to get the informed consent of any individuals whose voice, likeness, performance, persona, or intellectual property is being used to generate content and companies need to compensate these individuals fairly.

Informed consent and compensation addresses a lot of the most important ethical questions attached to how generative AI works. It also would ensure that the hundreds of thousands of individuals who work in the entertainment industry will be paid for the part they play in creating content for these companies who are using human beings to create their profit.

It's important to understand that all AI generated content originates from a human creative source. No AI algorithm is able to make something out of nothing, and that human generated content that's used in the training data reflects real and substantial work and its intellectual property and it deserves legal protection. There's a bit of a double standard that can be seen happening in a lot of these conversations around AI. After all, if an individual decided to infringe on one of these company's copyright protected content and distribute it without paying for the licensing rights, that individual would face a great deal of financial and legal ramifications.

So, why is the reverse not true? Shouldn't the individuals whose intellectual property was used to train the AI algorithm be at least equally protected? An actor's brand is their voice, as is their likeness and their unique persona, and no company should be able to appropriate that and use it

We won these protections because we're a strong union that successfully carried off a nearly five month strike. But we need to remember that most writers and most artists in this country don't have unions to protect them. It's best to think of writers and other artists as tiny businesses, each competing in the marketplace to sell their work. Writers and artists each develop a unique style, voice and brand in order to distinguish themselves. AI fundamentally disrupts that market in ways that could be devastating to the creative economy.

Large language models like the one that underpins ChatGPT have scraped massive volumes of data, including our words and our unique perspectives. This is theft, not fair use. Our works v protected by copyright and our own contractual rights v are being used entirely without our authorization, without any attribution or compensation. Right now, you could ask ChatGPT to write something in the style of a particular writer, and they would try to do that v appropriate the unique voice of a writer without that writer's consent.

As FTC Commissioner Alvaro Bedoya recently suggested, this could constitute an unfair method of competition. It is using stolen goods to undercut the price of a seller and create market confusion, and it's not a hypothetical. Right now, authors are finding AI generatindind7i7ndi7nd7i76676t7() TJ

Thank you for the opportunity to speak on behalf of film and television writers.

Madeleine Varner:

Thank you. Next we're going to hear from Neil Clarke, Founder and Editor of the Award-Winning Sci-Fi magazine, Clarkesworld. Neil?

Neil Clarke:

Hi, I'm the Publisher and Editor of Clarkesworld, a science fiction and fantasy magazine that has been publishing for 17 years. We publish stories not only from established writers, but also new voices from all over the world. These people represent the future of my field, and it is essential to maintain the avenues through which they can be discovered.

Like many of my colleagues, we do this by maintaining an open submissions process in which anyone can submit their stories for consideration. Not long after ChatGPT was released, we started noticing some unusual submissions in our queue and quickly realized that they were generated. It started small. A few in November, around 50 in December, over a hundred in January. In the first 20 days of February, it spiked and we received over 500. On the morning of the 20th alone, we received over 50 and the daily trends were indicating that we would double our normal monthly submission volume of 1100 by the end of the month.

This was unsustainable, so for the first time in over a decade, we closed submissions for something other than a software update. We needed breathing room to process what we had received and time to figure out some way to block, deter, or minimize these submissions. Even before this happened, we had a standing no AI policy.

about earning riches from ChatGPT. Their intent was to earn advertising revenue or sell classes to those that tried and failed. They knew these tactics would not get people published. We

Thank you. Next, we're going to hand it off to Bradley Kuhn, policy fellow at the Software Freedom Conservancy. Bradley?

Bradley Kuhn:

First, I thank the FTC for organizing this panel. It's admittedly humbling to be here among these key individuals from such a broad range of important creative endeavors. Folks will surely notice that I'm not appearing by video today, and I, again, thank the FTC for providing a method for me to join you today without requiring that I agree to Zoom's proprietary terms and conditions.

As a matter of principle, I avoid using any proprietary software, but in this case, it is not merely esoteric principle. Zoom is among the many Big Tech companies that have sought to cajole users into consent for use of their user data as training input for machine learning systems.

If consumers take anything away from my comments today, I hope they remember to carefully read the terms and conditions of all software platforms they use, as they may have already agreed for their own creative works to become part of the company's machine learning data sets.

As our most recent income survey found, the median writing related income for full-time authors is just over \$20,000 per year. The consequences of this precarity with generative AI is quickly compounding reach beyond the writing community. Do we really want a world where our books and literature are algorithmically synthesized mimics of the richness of human experience? To safeguard the incentives for creators to continue creating incentives so vital to our democratic culture that they are inscribed in the Constitution, the Authors Guild is lobbying for laws, regulations, and policies that recognize the following and require:

1. Consent and compensation. Require all generative AI companies to seek permission for the use of creative works and to fairly compensate creators.
2. Credit and transparency. Create obligations for all AI companies to disclose what data sets and works they use to train the systems.
3. Permission and payment for use in outputs. Require all AI companies to seek permission and pay compensation when creative works are used in outputs or when names or identities or titles of works are used in prompts.
4. Labeling AI-generated content.
5. No copyright for AI-generated outputs. We oppose efforts to deem AI-generated content protectable under copyright law or through creation of even a limited suite generous right.

Providing copyright or similar incentives to use AI to generate content will exacerbate the threat of AI-generated content flooding the market for original works. Thank you for your time, and I will now turn it over back to Maddy.

And that's why we joined together, the 17 of us authors, in a class action lawsuit on behalf of all professional novelists against OpenAI. There's nothing complicated about this lawsuit. OpenAI illegally ingested our books to create a product that is currently valued at tens of billions of dollars, and they did this without our consent or compensation. And as Umair mentioned, the average full-time author in America makes only \$20,000 a year. This is a classic case of Robin Hood in reverse, stealing from the poor to give to the already obscenely rich.

In their race to be first, AI developers are swallowing everything they can get their hands on without regard to copyright ownership, intellectual property rights, or moral rights. And they're doing this without the slightest consideration given to supporting the livelihood of America's creative class.

Now, it's been mentioned before. The founders of our country wrote copyright protection into the very first clause of the Constitution v it was that important to them. They believed that their scrappy little country one day would become the creative engine of the world, and that's what we've become, and we can't allow AI developers to ignore copyright protection and injure the entire literary community of our country in their mad rush to succeed. They can succeed and they can also partner with America's authors in a mutually beneficial relationship.

Thank you.

Madeleine Varner:

Thank you. Next, we're going to hear from Tim Friedlander, president and founder of the National Association of Voice Actors. Tim?

Tim Friedlander:

Cool. Thank you for having me here today. I am the president and co-founder of the National Association of Voice Actors, and I'm here to represent the interests of the million strong voice actors in the United States and the surrounding ecosystem of Americans that work with them, ranging from engineers to script handlers to directors, producers, and PAs.

Not all voice actors are celebrities or well-known voices. Most are blue collar, working class voice actors who are working 40 plus hours a week. Over 60% of the voice actors are located

outside of LA and New York. We're not anti-tech or anti-AI, as many have said before. The ability to record audio on our computer at home was game changing. I'm a child of the 80s. I still remember the time that I died of dysentery on the Oregon Trail for the first time. We are not anti-tech or anti-AI. We are pro voice actor.

I'm also a member of SAG-AFTRA and a professional musician for over 30 years, first in the classical arena, and now most recently in hip hop for the last 10 years. We stand in solidarity with our fellow creative industry artists who are in unions. But unlike them, 80% of the voiceover industry is non-union, meaning we lack the protections and contract that organize workers enjoy. Without the intervention of the Federal Tradhec 12 Tf1 0 0 1 347.65 70937e

Those who had been scanned described not being given information about how their scans would be used, unknowingly handing away rights to their image, and not being fairly compensated. For people whose livelihoods are their image, this is particularly troubling in light of the rise in deepfake technology, specifically deepfake pornography.

The second concern is around the creation of AI models and influencers, which are digitally created, fictitious representations of human models.

Fashion workers are worried about the threat of these AI models replacing jobs not only for models, but also photographers, stylists, and hair and makeup artists among others.

Members in our community have expressed particular concern about companies using AI-generated models as part of their diversity and inclusion initiatives.

For example, Shudu, a digital model who was created through AI in 2017 by the world's first all-digital modeling agency, has appeared as a face of high-end brands such as BMW and Louis Vuitton. Critics have called this a form of digital blackface since Shudu is a Black woman, and the creator who profits off her image is a White man.

And earlier this year, Levi's announced that they are creating AI-generated models to increase the number and diversity of their models. In an industry that has historically been discriminatory, creating digital representations of models of various ages, ethnicities, and body types rather than hiring and paying a diversity of real models is concerning.

I appreciate the FTC's mandate is to protect both competition andmandatse*by the

To address these concerns, we first aim to pass the Fashion Workers Act, our signature bill, which would establish basic labor protections for models and content creators working in New York's fashion industry. This would help address the lack of transparency that leaves models in the dark about how their digital image is being used, and establish a necessary foundation for regulation around generative AI in the fashion industry.

In considering regulation, it's essential that we center the experiences and expertise of those who will be directly impacted. And to that end, we're also developing a research study in partnership with the Worker Institute at Cornell University to better understand the impact of generative AI on fashion workers, particularly workers of color, and develop policy recommendations. So if anyone is interested in learning more or getting involved, we welcome you to reach out.

At The Model Alliance, we believe now is a critical time for solidarity between workers across creative fields who contribute heavily to our culture and economy. Unfortunately, it's not enough to win protections through collective bargaining agreements. There are many workers, including members of our community, who cannot engage in collective bargaining, and so we have to ensure that they are included.

As many others have said, we're not anti-technology

My name is Karla Ortiz. I have worked as a professional concept artist, illustrator, and fine artist for the past 14 years and have been training for that all of my life. My work has helped shape the world's big-budget films and TV shows including Marvel Studios Loki 1 and 2, Avenger Civil Wars, Guardian of the Galaxy 3, and most known for my design of Dr. Strange look in the first movie, which you can see him right there.

I deeply, deeply love what I do. Making a living as a professional requires a whole life of practice and study. The creative economy only works when the basic tenants of consent, credit, compensation, and transparency are followed. The countr/F1 12 Tf1 0 0 1 72.025 588.17 Tm0 g0 G[praf67013

use artists full names to generate imagery, exploiting our very identities and reputations. Some artists have had their names used in props hundreds of thousands of times, maybe more. And these numbers come from incomplete records, by the way. My own name, Karla Ortiz, has also been used thousands of times. I never gave consent. I never got credit. I never got compensation.

Perhaps most harmfully, these exploitative products compete directly with artists and are already replacing us. That may be the most disturbing harms of generative AI. Not vast murdering sci-fi nonsense, but one built on works taken without credit, consent, compensation and transparency, and marketed and used as a replacement for the creators of those works at a fraction of the cost. The whole process is rotten.

As a side note, due to all of this, I am also a plaintiff in a class action against generative AI image companies as well. Their plan is simple, to go as fast as possible, promising promises of progress and innovation while normalizing the exploitation of creative professionals, hoping that by the time anyone tries to stop them, it'll be too late to protect us American, or median humans as a prominent AI executive likes to call us.

But with help of the FTC and others looking out for American rights, we hope that game will not succeed. I think this panel is a great step in that direction. Regulatory agencies should act now to protect artists, consumers, and other Americans from this unconscionable exploitation. Regulatory agencies should demand full transparency from generative AI companies and opt-in-only practices.

Lastly, regulatory agencies should strongly consider seeking algorithmic disgorgement on products built on data acquired without consent, credit, or compensation, regardless whether that company is transparent or not. Urgent measures like these will be needed to avoid, in my opinion, the diminishing or outright destruction of most, if not all creative professional livelihoods and the protections of all of our rights.

Thank you.

Madeleine Varner:

Thank you so much. Next, we'll hear from Steven Zapata, a concept artist and illustrator speaking on behalf of the Concept Art Association.

Given these industry pressures, artists may be coerced by clients to utilize these systems themselves to stay up to speed with the market, thus normalizing the exploitative practices and foundations of these models. This will inevitably damage the perception of our field and art in general, as it will contribute to the idea that beautiful art is made easily. I can assure you, it is not. And insofar as it is made easily by an AI, it is because it has been trained off of the beautiful work of thousands upon thousands of artists who had to invest time and effort into creating their art.

So we need regulation, intervention, and oversight. We as creators should have complete control over how our work is used, but we need help. Some of the potential actions and remedies that we hope to see include, first and foremost, ensuring that all commercial AI models utilize only public domain content or legally licensed datasets acquired in an opt-in capacity. Opt-out is completely insufficient here. This could mean current companies shifting to the public domain and possibly destroying their current models in the process so that opt-in becomes the standard.

We also need transparency on datasets, and divulging your dataset should be compulsory.

Mainstream models like DALL-E 3 don't reveal their training data and don't let you search it, but they do offer an inefficient one by one opt-out system that you can use if you think maybe your art is in there. But because these AI systems can't unlearn, this will only remove the images from future training datasets used by this one company and it's already too late to get out of the most current model. Future tools that would verify compliance with future regulations will also depend on this transparency.

We should also have AI companies pay a fine for their past practices and pay all affected artists a fee per generation. This is to compensate artists for utilizing their works and names without permission, should be retroactive for as long as the company has been for-profit. We must close research to-commercial loopholes, interpreted or actual, that allow for-profit companies to monetize the results of non-commercial research.

To close: consent, credit, compensation, control. This is what creators reasonably seek in this new era where our work will be used to add tremendous value to these new technologies. We need oversight. We need compulsory transparency and tools to verify compliance.

Thank you.

Madeleine Varner:

Thank you. We're now going to hear from John K. Painting, director of the Electronic Media Services Division of the American Federation of Musicians. John?

John K Painting:

Thank you, Maddy. Good afternoon, everyone. It is an honor to be here.

As the labor institution which represents and protects the interest of musicians who prepare and perform instrumental music in recording studios for sound recordings, film, television and streaming services, as well as in live theater, symphony, opera, ballet, clubs, festivals, and more all over the US and Canada. The American Federation of Musicians is certainly no stranger to dealing with the encroachment of technology on our profession.

But the rise of generative artificial intelligence yields a more existential fight than we have faced before, as we approach the potential disappearance of performers livelihoods and by extension the disappearance of a component of humanity and culture.

From our history dealing with technological advancement, like our sister entertainment unions and guilds, the solutions sought have been traditionally approached in two ways: collective bargaining with industry and legislative lobbying. Both paths tend to seek secondary income to those performers whose work has been diminished by advancing technology.

For example, in 1942 with live performance and radio orchestras threatened by recorded music, the AFM struck the record labels and eventually succeeded in establishing the Music Performance Trust Fund, supported by label revenue that sponsors free live concerts around the US and Canada.

More recently, the AFM has had to combat the encroachment of prerecorded music into live engagements, such as preventing virtual orchestras from replacing pit musicians and musicals.

The solutions need to be wider than the traditional paths we've all taken owing to the cultural damage that this problem yields. As soon as it becomes broadly accepted that art no longer requires the involvement of human creativity, we'll have crossed the point of no return. Consumers should not be expected to accept such an alternative at the same price points.

Musical expression transcends culture and time. It will always be a part of our society, but that doesn't guarantee it as a viable career. The end game must be the protection of the profession.

Thanks so much for your time.

Madeleine Varner:

Thank you. And finally, we'll hear from Jen Jacobsen, executive [inaudible 01:06:37] Rights Alliance. Jen.

Jen Jacobsen:

Thanks, Maddy. And thanks to the FTC commissioners and staff for the opportunity to participate today. We're so grateful to the commission for your work on this issue. And I'm honored to be here alongside all these other representatives of the creative community.

I'm Jen Jacobson, Executive Director of the Artist Rights Tm0 g0 G[() TJETQ tismunity. 792 reg32 reDQQqplru

Musicians want to be treated fairly, whether that means enforcing existing laws designed to protect creators and consumers, or in some cases enacting new laws where there are specific gaps to be filled.

Unfortunately, in today's reckless, careless rush to launch new generative AI products, we are seeing what is euphemistically referred to as AI training or learning, but which is in fact illegal copying of artistic works on a massive scale without consent or compensation and often without the artist even knowing.

Of course, this is a clear infringement of creators copyrights, but it is also an unfair and deceptive act that impacts both artists and consumers and leads to unfair competition in the music marketplace.

Musicians work is being stolen from them and then used to create AI-generated tracks that directly compete with them. For example, we might see dominant streaming platforms packing playlists with AI music that they obtain free of charge or at a massive discount, which then lowers their own royalty obligations and diminishes artists wages.

The increasing scale of machine-generated music dilutes the market and makes it more difficult for consumers to find the artists they want to hear. It makes it harder for artists to connect with their fans, and it devalues human creativity.

And perhaps even more disturbingly, AI models are now using artists faces, voices, and performances without permission to make digital impersonations that not only create consumer confusion, but also cause serious harm to both fans and artists. These deep fakes have depicted a band canceling a concert that wasn't actually canceled. They've shown artists selling products that the artists never endorsed. We've seen false depictions of musicians badmouthing their own fans. This isn't a hypothetical harm. This type of consumer deception and fraud are happening right now. It's hard to imagine anything more personal to an artist or to anyone than being depicted as doing or saying things that they would never do or say. It's not only confusing to fans, but humiliating to the artists themselves and undermines their public image.

This conduct may violate right of publicity laws in several states, but it needs to be recognized universally as a misappropriation that causes real harm not only to the artists, but to the entire market by confusing consumers and creating unfair competition. And no one is as well-positioned to protect consumers and fans in all fifty states than this agency.

The final point I want to make is about the importance of choice. Many AI companies who have illegally vacuumed up hundreds of thousands of musical works and recordings now say that artists can simply contact the company and opt out. This is essentially proposing a new form of uncompensated labor that musicians and composers have to perform if they want to avoid exploitation. It's also completely impractical given the proliferation of new services ingesting work without permission. Such burden shifting is not only unfair, it is morally wrong and antithetical to basic principles of artistic integrity. Artists have the right to control whether and when their work is being used, especially when these uses compete with their own livelihood or violate their own values.

Art is about a human-to-human connection, about sharing emotions and lived experiences. Machines can't share emotions or lived experiences because they haven't had any. Only humans can do that. For musicians, like all the other creators represented here today, the unethical use of AI poses an existential threat to our livelihood. But for all of us, the very foundations of human creativity and culture are at stake. It's hard to imagine anything more important than that.

Thank you again for including ARA in this discussion, and I look forward to answering any questions.

Madeleine Varner:

Thank you. As Chair Khan said in our opening remarks, the advent of AI doesn't change fundamental ways that the world is supposed to work, and that world works in permission first. That's why we think it's critical that we require artists have affirmative consent before the work can be used to train generative AI models and that they have to be compensated fairly when they do so. The same should be true for all artists, including artists like us who do work for hire and don't hold the copyright on our work.

And this system needs to be opt-in and not opt-out. As Jen just said, there are so many companies out there developing and training AI models, to be forced to continually track all of them down to opt out is an enormous administrative burden on individual artists. It's not practical. It has to be opt-in rather than opt-out.

Madeleine Varner:

Thank you. Karla, I'm curious about your thoughts on this.

Karla Ortiz:

Yeah, so opt-out is an ineffective and inappropriate standard for commercial use of copyrighted works including a generative AI. Once a model is trained on data, it cannot be deleted unless the whole model is retrained from scratch. By the time a model is made public, it's already too late to opt out. Number two, most AI companies keep that training data secret, preventing artists from even knowing if their works were used to train a model. Number three, existing opt-out procedures often ask users to list works used to train the model they own, but as we just mentioned, that training data is secret, so it's an impossible task. And four, there are hundreds of AI models already in the market and more.

Does that mean we have to opt out on each and every one of them? That's a full-time job. What about if those models update? What about if they don't publicize and they use third parties? What if those models in the opt-out forms are not an artist's native language? What about artists who never spend time online or don't even know this is happening?

Basically, tech companies must respect artists ownership rights. These seeking to profit from others works should have the burden of obtaining permission. Explicit opt-in is the only way forward. It's really how we ensure generative AI models exclude unauthorized works from the beginning. Thank you.

And the third thing I would say is there is not a one-size-fits-all licensing system that will work for all creators or even for all musicians. Assuming there is a level playing field for negotiating, we think the best way for musicians to license their work is in the free market, which may look different for every use, every artist and every company.

Madeleine Varner:

Thank you. Steven Zapata. I'd love to hear your thoughts on this.

Steven Zapata:

Without a doubt, licensing will be essential in the future, but we must accomplish that through an opt-in system, otherwise there would be no real negotiating leverage for creators. And the focus of licensing, I think should go towards new opt-in foundation models, not the fine tuning of existing unethical models. As to when companies hold the rights to work done for hire and want

then the drums on that generated album must have used my sound to mimic the style. So not only should I have had the option to opt in there, of course, but I should see some form of benefit or compensation for that because those new parts are clearly copying mine.

But this is still only a bandage on the problem, because if this scenario works really well, it likely means that I'm not getting hired to record any new albums anymore because this system can just pump this stuff out. So do these new albums have the same value? Should they cost the same to buy and stream? Does the art have the same meaning and the same impact? That's all the existential crisis that we're facing right now.

Madeleine Varner:

Thank you. So I'm going to move on to our next question, which is: What kind of insight do you feel like you have now into how your work or likeness is being used by generative AI systems, and what kind of transparency do you feel is needed?

And Umair from Authors Guild, I'm going to start with you.

Umair Kazi:

Thanks, Maddy. Our members are keenly aware that their works are being used by AI systems. We get reports. Our members try out different prompts and AI systems and chat box reveal details about their works. And of course, several of our members have also reported finding their books in Books3, which is a data set of containing 200,000 books that's downloaded from a pirate source, which was used to train Meta's LLaMA, Bloomberg's GPT, and others.

But Books3 is kind of an anomaly, is that it was publicly downloadable and its contents were visible and searchable. There is a lack of transparency from AI developers about training data sets, which makes it very difficult to ascertain which works were actually used to train the models and how.

Much of the information about ingestion comes from the prompting experiments that I mentioned. We and other authors have been able to prompt, for instance, GPT to produce extensive detailed summaries of works and text in the style of and even incredibly compelling outlines for possible derivative works like sequels using settings, characters.

Sara Ziff:

Yeah, thank you. Models have very little insight into how their work or likeness is being used in general, let alone in the context of generative AI. Normally they don't see their contracts with the brands and how their work is being used, which is how Win Big by AI paid \$72,220,855.15 T

Hearing these stories reminded me in Congress perhaps of 1914, when Congress passed the law that created this commission that all of you are speaking before today, the Federal Trade Commission. In 1914, Congress had the choice of passing a law that specifically enumerated acts 1, 2, 3, 4, 5, 6, 7 that would be illegal. One House of Congress actually considered that, actually voted on it. Then they stopped and said, no, we need to consider the fact that there will be innovation in unfair methods of competition. We need to create an institution that is free to meet the innovations of large, powerful entities that will stifle competition in American industry in whatever corner it may be found.

And when I hear about writers who worry, new writers, young writers worry that the moment I arrive, I'm going to be asked to feed my scripts in, to train a new AI. When I hear about background actors, young actors, how lots of future actors are discovered, but who are the least powerful, least experienced, least savvy of all actors being forced to get scanned in the nude sometimes or in other really uncomfortable situations, it strikes me as more than innovative and it fills me with concern.

I will say, because this is a law enforcement agency, these are allegations. I did not investigate these things, but the shape of what I'm seeing concerns me profoundly. And you have to know