

UNITED STATES COPYRIGHT OFFICE

Artificial Intelligence and Copyright

Docket No. 2023-6

COMMENT OF
THE UNITED STATES FEDERAL TRADE COMMISSION

October 30, 2023

October 30, 2023

I. Introduction

ongoing efforts to examine the copyright law and policy issues raised by artificial intelligence (AI) technology, including the scope of copyright in works generated using AI tools and the use of copyrighted materials in AI training. The FTC submits this comment to: (1) explain its interest and expertise in promoting fair competition and protecting Americans from unfair or deceptive practices in an economy in which AI is being rapidly deployed; (2) identify several issues raised by generative AI that implicate competition and consumer protection policy, as well as copyright policy; and (3) augment the record in this proceeding with a brief summary and full transcript of an October 4, 2023 FTC roundtable at which creative professionals described the effects of generative AI on their work.hisell

FTC Comment

October 30, 2023

violations of ² automation of discrimination and bias,³ and turbocharging of deceptive practices,⁴ imposter schemes,⁵ and other types of scams.⁶

From an enforcement perspective, the FTC has been using its existing legal authorities to take action against illegal practices involving AI. For instance, the FTC alleged that Amazon and Ring used highly private data

connected home security cameras to train their algorithms while violating customer ⁷ The Alexa matter, in particular, underscored that prohibition on the indefinite retention of data and similar legal rules are not superseded by claims from businesses that data must be indefinitely retained to improve machine learning algorithms.⁸ In recent months, the

² See Elisa Jillson, *Hey, Alexa! What are you doing with my data?*, (June 13, 2023), <https://www.ftc.gov/business-guidance/blog/2023/06/hey-alexa-what-are-you-doing-my-data>.

³ See Elisa Jillson, *Aiming for truth*,

FTC Comment

October 30, 2023

FTC secured a temporary restraining order against a business-opportunity seller that claimed to use AI to make clients profitable and successful.⁹ The FTC has also made clear that a business that relies on algorithmic decision-making must ensure that the algorithm is not resulting in unlawful bias.¹⁰ Furthermore, the FTC charged WealthPress with using deceptive claims to sell consumers investment-advising services were based on an algorithm created by a purported expert.¹¹

The rapid development and deployment of AI also poses potential risks to competition. The rising impor

October 30, 2023

dangers of novel AI technologies while helping to foster competitive and innovative AI markets that benefit the economy and consumers.

Although AI-based technology development is moving swiftly, the FTC has decades of experience applying its authority to new and rapidly developing technologies. Vigorously enforcing the laws over which the FTC has enforcement authority in AI-related markets will be critical to fostering competition and protecting developers and users of AI, as well as people affected by its use. Firms must not engage in deceptive or unfair acts or practices, unfair methods of competition, or other unlawful conduct that harms the public, stifles competition, or undermines the potentially far-reaching benefits of this transformative technology. As we encounter new mechanisms of violating the law, we will not hesitate to use the tools we have to protect the public.

III. Copyrights

October 30, 2023

exploits a reputation or diminishes the value of her existing or future works, reveals private information, or otherwise causes substantial injury to consumers. In addition, conduct that may be consistent with the copyright laws nevertheless may violate Section 5.¹⁷ Many large technology firms possess vast financial resources that enable them to indemnify the users of their generative AI tools or obtain exclusive licenses to copyrighted (or otherwise proprietary) training data, potentially further entrenching the market power of these dominant firms.¹⁸ These types of issues not only touch on copyright law and policy but also implicate consumer protection and competition concerns across a wide range of industries.¹⁹

IV. FTC Roundtable on the Creative Economy and Generative AI

To assist the Copyright Office in assessing the harms generative AI systems pose to creative professionals, the FTC has appended to this Comment the transcript of its October 4, 2023, Creative Economy and Generative AI roundtable. The roundtable explored how the development and deployment of AI tools that generate text, images, and audio is impacting open and fair competition. The session included musicians, authors, actors, artists, software developers, and other creative professionals who discussed the ways that emerging AI tools are reshaping each of their respective industries and how they are responding to the development and use of AI to generate new content. Some of the views shared by participants directly implicate the work of the FTC; other concerns are outside the scope of our agency .

Although the participants covered a wide range of experiences with and concerns about the transformative and disruptive nature of generative AI, a few themes emerged from the roundtable:

1. Participants said that their work has been used to train generative AI models without their consent. In some instances, participants said that work was taken from sources that themselves have pirated content, circumventing copyright protections. Scraping work from public websites without consent particularly harms creative professionals whose businesses depend on having public portfolios to attract customers. In the long term, fear about having creative work scraped and used in unauthorized and potentially repugnant or displacing ways could disincentive creators from sharing their work online. Participants were further concerned that consent they have provided in the past in a different context will be used to justify the un contemplated use of their work for AI training. In particular, creators expressed the desire to avoid having their work collected,

¹⁷ See *FTC v. Real Prods. Corp.*, 90 F.2d 617, 619

October 30, 2023

used, and shared for purposes beyond the scope of the original agreement (e.g., data collected with consent for research purposes that is subsequently used for commercial purposes). In addition, many creative professionals do not own the rights to the work they create, further limiting their ability to control whether their work is used by AI tools.

2. Participants stated that, even when some mechanisms have been implemented to offer creators consent and control over whether their work is used in AI training, these measures have been insufficient and ineffective. opt-
and said that an opt-out default puts the burden on creators to police an ever-changing marketplace. Participants said that they are often unable to tell whether their work has been included in AI training, in part because many AI model developers have chosen not to disclose what is in their training data. Even if creators were able to determine that their work has been included in AI training, participants said there is no easy way to remove data from a trained model without retraining. Participants expressed desire for opt-in frameworks, where AI developers seek authorial consent and clearly explain how they intend to use their work, ideally with appropriate credit and compensation.
3. Participants expressed concerns about transparency and disclosure with respect to both the data used to train AIs and the provenance of new works generated by AI tools. On the input side, as noted above, participants said it is difficult for them to tell whether their work has been included in AI training. Participants asked for mandatory disclosure of the content of training data sets. Participants also expressed desire for clear and specific disclosures about the intended uses of their work. On the output side, AI-generated content can easily flood markets, making it difficult for customers and other stakeholders to discern whether content is AI generated. AI-generated content can mimic the style of specific creators, and users of generative AI tools can exploit the name and reputation of the creator to gain sales and potentially compete with the creator. Participants said that when generative AI tools use artists' faces, voices, and performances without permission to make digital impersonations, it can not only create consumer confusion, but it also can cause serious harm to both fans and artists.
4. Participants stated that they are not intrinsically opposed to AI and that they have already seen how in certain instances these technologies can prove fruitful to creative professionals. Participants said that AI-enabled tools and technology could have the potential to assist the creative community and consumers but that guardrails, including strong defaults to minimize data collection and ensure consent, are desperately needed. Participants said that, when used ethically and in a manner that recognizes intellectual property rights, AI could potentially further opportunities for artists, including by creating access to employment for people with disabilities and those who would otherwise be prevented from pursuing work

FTC Comment