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U.S. Copyright Office  
Library of Commerce  
101 Independence Avenue, SE  
Washington, DC 20559

**AUTM’s Comments in Response to the United States Copyright Office’s Notice of Inquiry and Request for Comments Regarding Artificial Intelligence and Copyright (Docket No. 2023-6; Document No. 2023-18624)**

Thank you for the opportunity to respond to the United States Copyright Office’s Notice of Inquiry and Request for Comments regarding Artificial Intelligence and Copyright.

AUTM is the non-profit leader in efforts to educate, promote, and inspire professionals to support the further development of academic research that drives innovation and changes the world. Our community is comprised of more than 3,000 members who work in more than 800 universities, research centers, hospitals, businesses, and government organizations around the globe. AUTM’s members are primarily from academic settings (67%). 15% are practicing attorneys; 5% are from industry; and 22% of our members are international.

AUTM members in academic settings are focused on advancing early-stage inventions and other technologies to the marketplace, primarily through licensing and further development with partners (i.e., implementers). Between 2013 and 2022 (the most recent decade for which we have data), our skilled professionals filed over 160,000 patents for academic inventors and almost 17,000 in 2022 alone. Between 2013 and 2022, our U.S. members negotiated over 70,000 intellectual property license agreements on behalf of U.S. universities and academic research institutions, and in 2022 alone over 8,000 such license agreements.

AUTM members are active in Artificial Intelligence (AI) innovation. They use, create, and license AI technologies and materials, including data, some of which are protected by copyright law. They also educate and train licensing professionals working at



the leading edge of translating AI innovations through commercialization and with open source and other tools. Thus, AUTM has an important voice and valuable insights regarding the intersection of copyright law and AI.

### **AUTM's Comments**

Overall, AUTM supports (i) clear and dependable intellectual property rights for creators and users of AI systems and innovations and (ii) the responsible use of data necessary to train and improve AI systems. AUTM believes such rights promote progress and incentivize creators to develop and innovate in the AI space. Straightforward rules that encourage tracking and disclosing the data sources used to train and deploy AI systems will help ensure appropriate licensing from, permission by, and attribution to the content creators and data owners, and will also improve public trust of AI systems and their output. Finally, AUTM does not think AI is—or should be—an author under current copyright law. Rather, AI is a tool that facilitates and enhances the ability of the human author/creator to generate original expressions, and thus absent an act of Congress, it is the author/creator using the AI tool who should be afforded the benefits of copyright protection.

#### **(1) Protection of Training Data**

Data is a vital asset for AI systems in a myriad of forms. While certain compilations of data have traditionally been afforded copyright protection, there are too many legal uncertainties for how other aspects are protected and treated. As detailed in AUTM's Comments in Response to the USPTO's Request for Comments Regarding Artificial Intelligence and Inventorship (Docket ID Number: PTO-P-2022-0045),<sup>1</sup> AUTM supports (i) the rights of the creators and owners of datasets and (ii) laws and rules that value and respect such rights. Uses of data for AI system training, development, or new improvement must be authorized and properly licensed, as well as compensated and/or acknowledged, where necessary.

If AI systems are to be trustworthy enough to be useful to and accepted by the public, for example in healthcare applications, the creators of such systems must be transparent about the processes by which their models were developed and are governed, the datasets on which the AI systems were trained or validated, and the data the AI systems are using in real time to generate output. Readily available and accessible datasets that allow for validation and testing of AI systems would greatly improve the transparency and trustworthiness of AI systems. However, the availability of such datasets requires adequate incentives and legal protections to encourage their creation. For this

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<sup>1</sup> See <https://autm.net/getattachment/About-Tech-Transfer/Advocacy/AUTM-Speaks-Out/AUTM-Comments-for-Docket-ID-Number-PTO-P-2022-0045.pdf?lang=en-US>. “A property right will motivate identification of contributors, and their rights to use, share, or modify the resource. Such clarity may facilitate distribution and use for public and commercial benefit, especially given the lack of a workable statutory default for joint ownership, as exists for patent rights in the U.S. And property rights are easier to enforce than contract terms, which again would benefit nonprofits, and smaller, younger innovators generally.”

reason, AUTM suggests exploring the possible expansion of sui generis property rights to curated datasets.<sup>2</sup>

Absent such property right protections for training data, AUTM supports structured resource sharing enabled by laws, rules, and tools that make it easier for AI innovators to share data and collaborate while protecting the rights of data owners. Material transfer agreements, open source forums, data consortiums and other repositories, and “fared use”<sup>3</sup> are some mechanisms by which contract rights and terms of use can be crafted to promote collaboration and protect data creators and owners. As discussed in the next section, laws and rules that require transparency and recordkeeping in AI innovation will help ensure such mechanisms incentivize investments in AI systems and training data.

## **(2) Transparency and Recordkeeping**

Unless and until a separate form of intellectual property protection is created for data (i.e., a sui generis data protection regime as discussed above), data must be viewed as any other piece of property—as a bundle of rights that includes possessing, using, transferring, and excluding use by others.

To respect the rights of data creators and owners, AI system developers must ensure their use of training data is authorized (e.g. licensed). Similarly, curators of training datasets from raw data owned by others must ensure their use of the raw data is authorized. Such restrictions are necessary to protect the work of the creators, as well as the privacy or confidentiality rights of others. As recent legal disputes show,<sup>4</sup> even “publicly available” data may not be authorized for use as training data.

For these reasons, AUTM supports rules that require developers of AI systems to track and disclose the data used, and to provide notice to—and obtain appropriate permissions/licenses from—the data owners and/or curators of the sources of training data, including raw data used in curated training datasets and any additional training data that might be incorporated into their systems as a result of the use of third-party (e.g, off-the-shelf) LLMs. Such tracking, disclosure, and notice requirements will help ensure that any legal obligations (e.g., any license fees to data owners and/or curators, any use or transfer restrictions, and any outright exclusions) can be satisfied and proper attribution can be provided. Note here that should the training data be of the form that qualifies for copyright protection, those copyright-based obligations would be on top of the

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<sup>2</sup> See [https://autm.net/AUTM/media/About-Tech-Transfer/Documents/AUTM-Comments-on-Intellectual-Property-Protections-for-Artificial-Intelligence-Innovations\\_1-10-20.pdf](https://autm.net/AUTM/media/About-Tech-Transfer/Documents/AUTM-Comments-on-Intellectual-Property-Protections-for-Artificial-Intelligence-Innovations_1-10-20.pdf).

<sup>3</sup> See Tom W. Bell, Fair Use vs. Fared Use: The Impact of Automated Rights Management on Copyright’s Fair Use Doctrine, 76 N.C. L. Rev. 557 (1998) (available at: <http://scholarship.law.unc.edu/nclr/vol76/iss2/5/>); Sobel, Benjamin, Artificial Intelligence’s Fair Use Crisis (September 4, 2017), Columbia Journal of Law & the Arts, forthcoming (available at <https://ssrn.com/abstract=3032076>).

<sup>4</sup> See <https://ipwatchdog.com/2023/10/05/five-key-points-invasion-privacy-lawsuit-openai/id=167838/>.

obligations due the training data per its status as a general intangible asset. To facilitate this tracking and the satisfaction of any obligations to the training data owners and/or training dataset curators, a publicly accessible, searchable data and dataset repository (e.g., via blockchain) and a statutory licensing scheme should be strongly considered.

### **(3) Copyrightability of Generative AI Output**

At this point and under current copyright law, AUTM does not think that the use of an AI system in the authorship process differs significantly from the use of other tools. Thus, at present, AUTM supports copyright protections to human-created content only. However, AI tools are destined to become as useful and handy as, for example, camera processors and graphic design tools are to photographers and artists. As AI tools become more sophisticated and seamless extensions of the creative endeavor, a different definition may be appropriate. Consider the differences between a person mindlessly taking a digital photograph from a smartphone wherein the computer makes decisions about exposure, aperture, and dynamic contrast settings to produce a certain result, versus a prompt engineer giving very expressive and descriptive instructions to an AI image generator. Yet in this example, only the human photographer is awarded copyright protection for the photograph whereas the human prompter is not awarded copyright protection for the AI generated image output? At some point, the latter tool will become just as ubiquitous and seamless as the former. This does not change the bedrock concept that AI (as a nonhuman agent) will not be an author under copyright law without Congress changing the law.

Use of training and validation data, especially from parties other than the copyright holder may raise questions about fair compensation to the party owning or controlling the content utilized by the AI system. However, this can be addressed by contracts, compulsory license agreements, and terms of use governing access to the content.

Therefore, AUTM is supportive of the Copyright Office's guidance issued on March 16, 2023, entitled "Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence"<sup>5</sup> that characterized AI as a tool that can be utilized by creators/authors in the creative process. In *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 56 (1884), the Supreme Court held that a photograph could be considered an original work of art because it was the product of the intellectual creation of the author and, therefore, could be copyrighted. The Court reasoned that the photograph is more than just a mechanical reproduction—it involves creative decisions by and original mental concepts from the creator. The camera taking the photograph was of little concern to the Court. Instead, the justices focused on the originality of the work and the efforts of the artist.

The argument concerning the copyrightability of AI extends the same logic. Just as an artist employs a paintbrush to craft fine, intricate strokes that coalesce into a copyrightable painting, so

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<sup>5</sup> See <https://www.federalregister.gov/documents/2023/03/16/2023-05321/copyright-registration-guidance-works-containing-material-generated-by-artificial-intelligence>.

too should the expressive prompting entered into the interface be considered. These LLM prompts pave the way for the creation of original works of unique and novel expression generated by AI. Ultimately, these inputs should be subject to the same copyright protections that apply to traditional artistic mediums. In both cases, it is the human who uses the tool to “create” the work of art. By viewing AI as a tool that enhances the ability of the creator, it follows that the human using AI should have the same copyright protections as the photographer using the camera for a photograph.

## **Conclusion**

AUTM appreciates the opportunity to provide comments on this important issue. AUTM strongly supports appropriate IP rights associated with AI innovations, data, and copyright-protected works. Such rights benefit the marketplace and society generally by promoting the creative and technical expression of human driven ideas and innovations.

Sincerely,

A handwritten signature in black ink that reads "Stephen J. Susalka". The signature is written in a cursive, flowing style.

Stephen J. Susalka, Ph.D.  
Chief Executive Officer