



Opening Remarks by John Bergmayer, Legal Director at Public Knowledge, at the Copyright Office's "[Copyright and Artificial Intelligence](#)" listening session on May 17, 2023:

"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.

"I would 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 specific works, that copyright protection should not even apply.

"However, 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, 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. I would also like to observe that terms and conditions cannot change who the legal "author" of a work is.

"The contours of rights in AI-assisted works will depend on specific facts and 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. Equally one user of an AI tool does not have the right to prevent others from using a tool in a similar way.

"There is 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 is in the AI tools' training corpus, then it infringes. 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 is not the end of discussion.

"We need to address the issue of convincing deepfakes, including video deepfakes with perfectly replicated voices. But we cannot make parodies and criticism of public figures legally perilous.

"We need to ensure that consumers are not ripped off by AI-generated or assisted work that is passed off as something that it's not.

“We need to map out the scope of a person's rights and privacy interests in their name, likeness, and voice, while resisting the temptation to grant protection only to celebrities and public figures.

“We need to consider the effect of AI tools on the open web, not just on the economics of content creation in a world that is moving beyond search, but on the pollution of the web with low-quality, automatically-generated content farms.

“To the extent that job displacement is a problem, and I expect it will be, we need to take a wide view that does not only include those that might have colorable intellectual property concerns.

“I don't have the perfect solution to any of these issues, and I don't believe that anyone does yet. But the challenges posed by new AI technologies are piling up next to a number of challenges, still unaddressed, concerning privacy, platform competition, content moderation, and more. Many of these issues touch on copyright issues, but are not primarily matters of copyright policy. These issues should be solved, not only through the courts or with targeted statutes, but by the creation of an expert digital regulator that ensures that AI tools ultimately serve the public.

“Thank you.”