

THE Authors Guild

PRESIDENT

Douglas Preston

VICE PRESIDENTS

W. Ralph Eubanks

Monique Truong

TREASURER

Peter Petre

SECRETARY

Rachel Vail

MEMBERS OF THE COUNCIL

Rich Benjamin

Amy Bloom

Mary Bly

Alexander Chee

Pat Cummings

Sylvia Day

Peter Gethers

Lauren Groff

Christina Baker Kline

Maya Shanbhag Lang

Min Jin Lee

Nicholas Lemann

Steven Levy

Kelly Starling Lyons

D. T. Max

Daniel Okrent

Julia Sanches

James Shapiro

Stephen Hong Sohn

T.J. Stiles

Jonathan Taplin

Jia Tolentino

Danielle Trussoni

Nicholas Weinstock

EX-OFFICIO & HONORARY MEMBERS OF THE COUNCIL

Roy Blount Jr.

Barbara Taylor Bradford

Robert A. Caro

Susan Cheever

Anne Edwards

James Gleick

Erica Jong

John R. MacArthur

Stephen Manes

Victor S. Navasky

Sidney Offit

Mary Pope Osborne

Letty Cottin Pogrebin

Roxana Robinson

Jean Strouse

Nick Taylor

Scott Turow

ADVISORY COUNCIL

Sherman Alexie

Judy Blume

Jennifer Egan

Louise Erdrich

Annette Gordon-Reed

Tayari Jones

CJ Lyons

Frederic Martini

Viet Thanh Nguyen

Cathleen Schine

Hampton Sides

Meg Wolitzer

CHIEF EXECUTIVE OFFICER

Mary Rasenberger

October 6, 2022

Dean Russell MP

Parliamentary Under-Secretary of State

Department for Business, Energy & Industrial Strategy

1 Victoria Street

London SW1H 0ET

minister.russell@beis.gov.uk

Dear Mr. Russell:

The Authors Guild congratulates you on your appointment as the Parliamentary Under-Secretary of State, and wishes you success in this new role. We also want to take this opportunity to discuss an important issue of copyright law and policy with you, one with profound consequences for our organization's 12,000 member authors, their peers in the United Kingdom, and creators on both sides of the Atlantic.

As you are surely aware, on June 28, 2022 United Kingdom Intellectual Property Office published a report on its consultations with stakeholders in the copyright and machine learning fields, and proposed a copyright and database right exception that allows the use copyrighted works for any "text and data mining" (TDM) purpose, including commercial uses. We respectfully oppose this broad exception due to its potential for causing severe harm to authors, other creators and the creative arts. We request a narrow carve out to the exception that would prohibit text and data mining to train AI machines to create works that compete with those copied for AI training purposes.

The Authors Guild is the oldest and largest professional organization of authors in the United States. Since its founding in 1912, the Authors Guild has worked to promote the rights and professional interests of authors in various areas, including copyright and freedom of expression. The Guild is also an active participant in matters of international copyright law and policy, together with its sisters organizations in the U.K., France, Germany, and other countries. In the United States, we are currently engaged with U.S. law and policy makers to ensure that U.S. copyright law accommodates AI innovation without unduly interfering with the creative economies established by copyright law. We believe that it is crucial to our culture and the future of democracy to ensure that the writing profession remains vibrant and diverse; and to do so we must prevent AI from whittling away the market for human-written books, journalism, and other forms of human art.

There's no question that the rise of AI technologies capable of "writing" poses risks to the future of writing as a profession, as it does for many other professions. But more is at stake than just loss of jobs in the creative sectors—the arts themselves are at peril. AI technologies can generate new works based on existing works of literature, music, film and art, and they can do so much more quickly than humans. Before long it will be vastly cheaper and more efficient to use AI machines to generate works of art than to pay humans to do so. The problem with this scenario—which is highly likely if copyright laws are not structured to prevent it—is that AI-generated art merely mimics and creates mash-ups of past works. AI-generated works (at least using any technologies conceived of today) will never be true art in the way art expresses human emotion, creates new meaning, and helps us make sense of our current world and to imagine the future. As Dr. Alison Gopnik, a professor of psychology and part of the AI research group at the University of California, Berkeley, puts it: "We might call it 'artificial intelligence,' but a better name might be 'extracting statistical patterns from large data sets.'"¹

AI-generated literary and other works are all relatively new. AI systems based on the text-generating AI tool GPT-3 and other programs have been used to write articles, poetry, and even books. AI has also made significant inroads in other creative fields including visual art where tools like Midjourney and Open AI's DALL-E 2 have been used to generate compelling visual images from text-based prompts, and in music, where sophisticated tools like Jukebox can generate songs with lyrics and rudimentary singing. AI systems generate text and other artwork by ingesting large amount of prior works. Through machine learning, computers are trained on a mass number of prior works—of the type and style of the works they are intended to create (e.g., text, music, images)—broken down into data using certain rules and parameters from which the computers "learn" to recognize patterns and relationships in the works that they have been fed. ING and Microsoft's 2018 project, *The Next Rembrandt*, used machine learning to create a 3D-printed Rembrandt painting based on 346 Rembrandt works, broken down into 168,263 high-resolution painting fragments. The system was given certain parameters to create a new artwork, and the result was an impressive lookalike of a Rembrandt painting.² More recently, Jason Allen, a tabletop game maker, used Midjourney, an AI text-to-image generation program to create "Théâtre D'opéra Spatial," which took first place in the digital category at the 2022 Colorado State Fair.³ Midjourney trains its AI on millions of copyrighted images obtained by crawling the internet. It did not receive permission to copy images for purposes of training its AI machines.

To date in the literary field, the uses of this type of AI that we are aware of have been limited to research as the output is still not of a commercial level. (There are some junk books sold on online platforms such as Amazon, including book summaries and romance books cut and pasted from other books, which might possibly be AI generated using simplistic algorithms, but they are largely unreadable.) That said, the technology is improving rapidly and broad commercial use is

¹ Cade Metz, A.I. Is Not Sentient, Why do People Say It Is? *N.Y. Times*, Aug. 5, 2022, <https://www.nytimes.com/2022/08/05/technology/ai-sentient-google.html>

² The Next Rembrandt, <https://www.nextrembrandt.com/>

³ Kevin Rose, An A.I. Generated Picture Won an Art Prize. Artists Aren't Happy, *N.Y. Times*, Sep. 2, 2022, <https://www.nytimes.com/2022/09/02/technology/ai-artificial-intelligence-artists.html?smid=em-share>

right around the corner in the literary field, as indeed we see it happening in the visual art field.⁴ For example, in 2021, Stephen Marche wrote in *The New Yorker* about training Sudowrite—an artificial-intelligence application based on GPT-3 language model—on Kafka’s writing, and using it to generate a believable follow-on paragraph of “The Metamorphosis.”⁵ GPT-3 has also been used to generate text-based adventure games and even an article for *The Guardian* on why AI is harmless to humans.⁶ In 2016, Japanese researchers trained an algorithm to generate a novel that became a finalist for a literary award. The novel, *The Day a Computer Writes a Novel*, was generated using sentences, words, and structure written by its designers.⁷

Harm to Author Incomes from AI-Generated Books and Articles is Certain

The UK’s proposed TDM exception would allow copying of large quantities of copyrighted works for commercial purposes to train AI to generate books, articles, and other works that compete with the ingested works without the authorization of the copyright owners. Common sense dictates that once it is sufficiently inexpensive for AI to generate such works, those computer-generated works will be cheaper than human created works and will crowd out the markets for the latter.

In the book marketplace, the fast speed and low cost at which AI will be able to generate books will result in their flooding online marketplaces like Amazon and physical ones alike, almost certainly suppressing the value of human authored works. Similarly, AI produced works will crowd out human voices on commercial online marketplaces for short literary works. The growth in AI applications for text-generation, and their increasing sophistication, comes at a time when the writing profession is already facing existential threats, due in part to forbearances in copyright law that law- and policy-makers have already granted the tech sector in order to encourage growth of the internet economy. In the U.S., the expansion of the “fair use” doctrine in U.S. courts and the virtually toothless liability regime of section 512 allowed tech companies to use and profit from the labor of human creators to become some of the largest enterprises in history. News industry profits plunged in recent years, with a 60% loss in advertising revenue in the last two decades due to readers’ shift to reading news on the large internet platforms like Facebook and Google and the platforms’ refusal to pay for the news they distribute (enabled by copyright law).⁸

It is no surprise then that the decline in creator incomes has occurred inversely to the growth in the power of tech profits. Between 2008 and 2018, U.S. author incomes declined by 42%, with

⁴ Id.

⁵ Stephen Marche, “The Computers Are Getting Better at Writing,” *The New Yorker*, April 30, 2021, <https://www.newyorker.com/culture/cultural-comment/the-computers-are-getting-better-at-writing>.

⁶ GPT-3, “A Robot Wrote This Entire Article. Are You Scared Yet, Human?,” *The Guardian*, September 8, 2020, <https://www.theguardian.com/commentisfree/2020/sep/08/robot-wrote-this-article-gpt-3>

⁷ Danny Lewis, “An AI-Written Novella Almost Won a Literary Prize,” *Smithsonian Magazine*, March 28, 2016, <https://www.smithsonianmag.com/smart-news/ai-written-novella-almost-won-literary-prize-180958577/>.

⁸ Facebook and Google together control 55% of the entire U.S. digital advertising market and a huge percentage of new ad revenue. For instance, in the third quarter of 2016 companies owned by Facebook or Google took 90% of all new digital ad revenue, and not a single one of their would-be competitors could even crack a 3% share of global digital advertising. <https://www.authorsguild.org/industry-advocacy/ag-submits-comments-on-press-publisher-protections/>

full-time writers earning a mean income of \$20,300.⁹ Similar declines have occurred in the U.K., where author incomes also fell by 42% between 2006 and 2018, and the median annual earnings were £10,500.¹⁰ In journalism, the effects of copyright laxity are even starker: according to the Pew Center,¹¹ 2,100—or about one in five—newspapers or magazines have shuttered or merged into larger entities since 2008, with advertising revenues sinking from \$55 billion per year in 2005 to just \$8.8 billion in 2010. These losses have had a direct effect on writers’ incomes. Newspapers and magazines that have survived have been forced to lay off staff to stay afloat¹² and have also decreased rates paid to freelancers in the last decade and a half. We fear that by rushing to create a blanket copyright exception for TDM, the UK Government is repeating the mistakes of earlier policymakers, whose enthusiasm for the internet—a novel technology at the turn of the millennium—skewed the copyright framework against the human creators it exists to protect.

The UK Government points to a lack of quantitative evidence from rights holder on the licensing environment for use of copyrighted works for machine learning purposes. Licensing markets, however, have not yet developed nor are they likely to for the specific type of use we are discussing here; i.e., the use of copyrighted works to train AI to generate new competing works. First, the technologies are far too new; their use to date in the text fields has been largely limited to research, which arguably is protected by fair use in the U.S., and is permitted in the UK under the current exemption for non-commercial text and data mining in Article 29A of the Copyright, Designs and Patents Act of 1998.¹³ Second, significant licensing markets for this type of use are unlikely to develop in the future as most copyright owners will not see advantages in licensing their works to create competing computer-generated works, for the very reason we have set forth. And, if the UK were to enact the proposed broad exemption, doing so would of course obviate the need for licenses and ensure that licensing markets do not develop.

The UK Government’s proposed copyright exception shuns the question of harm to human creators and our creative arts for a one-sided approach driven by the pursuit to become “the most pro-tech Government ever.” Indeed, the IPO’s report of its consultations reveals that consensus among various stakeholders on policy frameworks governing AI is lacking, and there is the clear need for further investigation into the perils of AI to existing copyright interests. We are confronting serious policy issues about the future of creativity. If we want to ensure that our literature and arts continue to reflect our current experiences and our imagined ones (not just our past), we need to preserve a well-functioning copyright system. AI cannot feel, think, or

⁹ Authors Guild Survey Shows Drastic 42 Percent Decline in Authors Earnings in Last Decade, <https://www.authorsguild.org/industry-advocacy/authors-guild-survey-shows-drastic-42-percent-decline-in-authors-earnings-in-last-decade/>

¹⁰ UK Authors’ Earnings and Contracts 2018: A Survey of 50,000 Writers, <https://www.create.ac.uk/uk-authors-earnings-and-contracts-2018-a-survey-of-50000-writers/>

¹¹ <https://www.pewresearch.org/journalism/fact-sheet/newspapers/>

¹² Newsroom staff dropped by 40% from 2008 to 2019. Overall, newsroom employment dwindled from 114,000 employed journalists in 2008 to only 85,000 last year, a drop of more than 26%.

¹³ Art. 29A, Copyright, Designs, and Patents Act of 1998 <https://www.legislation.gov.uk/ukpga/1988/48/section/29A>

empathize. It lacks the essential human faculties that move the arts and our thinking forward. It should be self-evident that we do not want to hand over the creative arts to AI.

For the reasons cited above, we urge the Government to reevaluate its proposal to expand the TDM exception or at the very least to amend the proposal to exclude commercial uses to generate works that compete with those ingested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mary Rasenberger". The signature is fluid and cursive, with a long horizontal stroke extending to the right from the end of the name.

Mary Rasenberger
CEO, The Authors Guild