AI IN THE FINE PRINT

SOME CHANGES SINCE WE LAST SPOKE

1. Performer Rights and Digital Replicas
   a. AB 2602 (Live performers) and AB 1836 (Deceased likenesses)
   b. Applies to voice, likeness, synthetic doubles
2. Copyright and Human Authorship
3. Union Safeguards
4. Dataset Disclosure and Copyright Transparency
5. Metadata and Auditability
6. Jurisdictional IP Conflicts
7. Shifting Terminology

Look at Model Terms For Restrictions on Use of Outputs

❖ The trend for AI service providers is to disclaim ownership rights in output generated by their model.

❖ But many providers impose restrictions on how output can be used, or grant themselves broad rights to use the input/output for their own purposes.

U.S. Copyright Office - Jan. 2025 Report

U.S. Copyright Office | Copyright and Artificial Intelligence, Part 2: Copyrightability

- Based on an analysis of copyright law and policy, informed by the many thoughtful comments in response to our NOI, the Office makes the following conclusions and recommendations . . .

U.S. Copyright Office - Jan. 2025 Report

. . . the Office makes the following conclusions and recommendations:

- The use of AI tools to assist rather than stand in for human creativity does not affect the availability of copyright protection for the output.

- Copyright protects the original expression in a work created by a human author, even if the work also includes AI-generated material.

- **Copyright does not extend to purely AI-generated material, or material where there is insufficient human control over the expressive elements.**

- Based on functioning of current generally available technology, prompts do not alone provide sufficient control.

Do AI Providers Indemnify Producers?

- In LLM (text to text) sector – more AI model providers are offering to indemnify users for IP infringement claims arising from users' use of Model and its output.

- There is some indemnity, but less prevalent in text to image/video.

- Indemnity usually only applies to using the paid version of these models, and has key exceptions.

Do AI Providers Indemnify Producers?

Exceptions to indemnity: no indemnity obligation if claim primarily arises from:

1. Changes to output (catch-22 with IP ownership...)

2. Publicity or Trademark claims

3. Any prompts from the user

4. Outputs generated using infringing content

5. Failure to comply with acceptable use policies

6. Content the user "should know" is infringing

PRODUCER'S RISK MITIGATION STRATEGIES

- Use AI models trained on licensed datasets

- Include AI-specific clauses in vendor and talents contracts

- Maintain output/change logs and AI usage reports

- Avoid tools with vague reuse or training policies

- Collaborate with unions when integrating AI into workflows

Top 10 Questions Producers Should Ask When Utilizing AI

1. Are AI Providers' training datasets licensed?
2. Who owns the AI-generated content?
3. Do AI Providers indemnify you from Output Infringement Claims?
4. Will AI Providers use our data to train their models?
5. Will AI Providers reuse our content?
6. Where is AI Providers' data stored and governed?
7. Do producers retain exclusive rights and copyright for output?
8. As a producer, are you union-compliant?
9. Can producers track and audit your team's AI contributions?
10. Are producers replacing any guild labor?