



**AI Insight Forum: Transparency, Explainability, Intellectual Property, & Copyright
November 29, 2023
Written Statement
Vanessa Holtgrewe, Assistant Director, Motion Picture & Television Department
International Alliance of Theatrical Stage Employees (IATSE)**

Senate Majority Leader Schumer, Senators Heinrich, Rounds, and Young, thank you for the opportunity to participate in this important artificial intelligence (AI) Insight Forum on behalf of the over 170,000 behind-the-scenes entertainment workers of the International Alliance of Theatrical Stage Employees (IATSE).

My name is Vanessa Holtgrewe. I have been an Assistant Department Director of Motion Picture and Television Production at the IATSE since 2014. Before that, as an International Representative since 2012, I organized non-union productions and negotiated contracts for scripted and non-scripted television and internet projects, as well as feature film agreements. Prior to my career with the union, I spent a decade as a Director of Photography and Camera Operator on documentary features, reality series and competition shows. My credits include many cable and network shows, including NBC's *The Biggest Loser*, *24 Hours with Anthony Bourdain*, and *The X Factor* on FOX.

IATSE is a labor organization that represents members in the United States and Canada working in all forms of live theater, motion picture and television production, trade shows and exhibitions, television broadcasting, and concerts as well as the equipment and construction shops that support all these areas of the entertainment industry. We represent virtually all the behind-the-scenes workers in crafts ranging from motion picture animator to stagehand.

We help power a sector of the economy that regularly generates four percent of the United States' gross domestic product (GDP), creates a positive trade balance, and employs more than five million people.

With no fewer than 80 craft classifications in the entertainment industry represented by our union, it's challenging to fully articulate the varied and comprehensive impacts that AI will have on our members.

In early-May, International President Matthew D. Loeb announced the creation of the IATSE Commission on Artificial Intelligence. We have adapted to new technologies and even developed many of the tools and techniques that have pushed the entertainment industry forward for the last 130 years. In President Loeb's words, "Just as when silent films became talkies and as the big screen went from black-and-white to full color, the IATSE Commission on AI is part of our commitment to embracing new technologies. We will work to equip our members with the skills to navigate this technological advancement, and to ensure that the transition into this new era prioritizes the interests and well-being of our members and all entertainment workers."

IATSE is working to consider how contract provisions, legislation, regulation, and training programs can be adapted to ensure the fruits of increased productivity through AI are shared equitably among all stakeholders.

AI is already being used at multiple levels of the entertainment industry, including in work covered under IATSE contracts, such as in motion picture editing and operations on animated projects. In workplaces with proper guardrails and protections, AI is already assisting many of our members by increasing efficiency and serving as a creative tool to help scenic designers and concept artists do their jobs.

The rapid development of certain generative AI (GAI) tools since late last year, however, has accelerated our employers' desire to incorporate the technology into their business models in ways that pose an existential threat to certain jobs in the entertainment industry.

AI was a key sticking point in the Writers Guild of America (WGA) and Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA) strikes of the Alliance of Motion Picture and Television Producers (AMPTP) earlier this year. AI was the last issue on the table to settle both strikes. IATSE is the next union to negotiate with the AMPTP, with our current contract expiring next summer, and we expect AI will present similar challenges in bargaining. The same concerns raised by the WGA and SAG-AFTRA can easily be extrapolated to IATSE crafts. It's not hard to imagine a future where, for example, animators are hired on a freelance basis to simply edit AI-generated content, or worse yet where AI is used to replace the work done by art directors, costume designers, audio visual technicians, and so many more. The implementation of AI should not lead to job losses but rather should serve as a tool, complementing the work done by our members.

IATSE will prioritize the security of our members' employment opportunities and prevent erosion of the artistic and technical craft work we do through a human-based approach that puts the careers of our dedicated members at the forefront of the conversation.

Congress must maintain strong copyright and intellectual property laws

Upon the announcement of the [SAFE Innovation Framework](#) earlier this year, Majority Leader Schumer [remarked](#), "How do we make sure AI isn't used to exploit workers . . . And how can we protect the IP of our innovators, our content creators, our musicians and writers and artists? Their ideas are their livelihoods. So when someone uses another person or another company's IP, we need accountability to ensure they get their due credit and compensation."

IATSE enthusiastically agrees with the Majority Leader that this must be a key area of focus in any AI legislation. The "Accountability" heading of the framework asserts our shared position that Congress must "support our creators by addressing copyright concerns, protect intellectual property, and address liability."

In our view, the most pressing area of focus for policymaking and regulatory action by the United States Congress is maintaining strong copyright and intellectual property laws. AI is the next frontier of large-scale online piracy. While IATSE members do not own the copyrights to the works we help create, our livelihoods depend on collectively bargained contractual residuals paid to our health and pension plans when the copyrights for those audiovisual works are licensed to others over the life of a work.

Congress must ensure entertainment workers are fairly compensated when their work is used to train, develop or generate new works by AI systems. AI developers cannot be allowed to circumvent established U.S. copyright law and commit intellectual property theft by scraping the internet for copyrighted works to train their models without permission from rightsholders. The theft of copyrighted works – domestically and internationally – threatens our hard-won health care benefits and retirement security.

Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence

On October 30, President Joe Biden [announced and signed a landmark executive order](#) (EO) on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence. This EO is strongly aligned with IATSE's approach to the implementation of AI technology in the entertainment industry.

Among the guiding principles of this EO is a commitment to supporting American workers, with President Biden stating, "all workers need a seat at the table, including through collective bargaining, to ensure that they benefit from these opportunities." He continued, "the critical next steps in AI development should be

built on the views of workers, labor unions, educators, and employers to support responsible uses of AI that improve workers' lives, positively augment human work, and help all people safely enjoy the gains and opportunities from technological innovation.”

Another significant inclusion in the EO is an acknowledgement of the importance of copyright and intellectual property protection for creators. Notably, the EO directs the United States Copyright Office (USCO) to issue recommendations to the President on executive actions that will address copyright issues raised by AI – specifically those discussed in the USCO's forthcoming AI study, a study for which IATSE has provided formal input.

USCO AI Study Comments

On October 30, [IATSE and sibling entertainment industry unions within the Department for Professional Employees, AFL-CIO \(DPE\) responded](#) to the USCO notice of inquiry and request for comments with our jointly held positions on the copyright issues raised by AI. These comments address many of this forum's discussion topics and I will highlight key excerpts here:

- AI has the ability to upend the creative industries by disrupting employment opportunities, revenue streams, and an effective ecosystem that is shaped by personal services agreements, collective bargaining agreements, and licensing arrangements. Absent safeguards to ensure consent and compensation for the use of copyrighted works and individual intellectual property rights, and appropriate transparency of training sets, AI will be used as a sophisticated, deceptive tool for content theft, unauthorized digital replication of individual's voices and likenesses, and cultural misappropriation. Developers will be incentivized to train their AI technologies on the creative works and the creative talents that the members of DPE's affiliate unions develop, design, and bring to life.

The copyrighted works of expression being ingested into AI models would not exist but for the human likenesses, sounds, labors, and creativity of working people like the members of DPE's affiliate unions. The founders of this country intended to encourage human creativity, not machinery, when it drafted the copyright clause of the U.S. Constitution. Additionally, the First Amendment was intended to protect human expression from censorship and suppression.

- Creative professionals have been using several types of AI technologies for decades across diverse mediums, such as music, motion pictures, live performances, and literature. However, it remains crucial for policymakers to acknowledge that the essence of great art, entertainment, and media derives from human emotions and lived experiences, elements that AI lacks. In essence, without people, GAI is culturally without value.

AI models pose challenges for creative professionals and copyright holders. The AI models rely on ingesting copyrighted works of expression and likenesses to operate. AI has the power to mutilate an artist's creative vision or point of view on any given topic. A machine cannot produce a painting without first ingesting the works of painters, develop an unauthorized television episode without first ingesting episodes from the rest of the underlying series, or produce a portrait without first ingesting the likenesses of others. In fact, ingesting GAI produced works appears to produce inferior, lower-quality results when compared to machine-created content created by ingesting original works of human authorship.

- GAI knows no borders; it is essential for the United States to work with foreign countries and international organizations to develop basic floors and fundamental standards for the ethical and acceptable uses of this technology. We strongly support the commitment of the G7 countries - to which the United States belongs - to respecting material protected by intellectual property rights, including copyright-protected content, and ensuring transparency of data sets.
- DPE does not support any changes that would expand the existing fair use provisions of the U.S. Copyright Act.

- The United States, or any foreign country, should not adopt an opt-out system. Such a system places the onus on copyright holders and will leave them vulnerable to exploitation by technology companies. Consequently, it would put the members of DPE's affiliate unions at even greater disadvantage because they would have no enforcement rights. If third parties wish to use copyrighted works to train AI models and generate GAI materials, it should be incumbent upon them to receive permission from the copyright holder.

It is essential that policymakers hold AI companies and users of AI models accountable for the unauthorized use of copyrighted works. In the absence of a legally recognized exemption, ingestion is a violation of the copyright holder's exclusive right to reproduce or to make a copy. This violation occurs without the need for further distribution, performance, or the creation of a new work. In fact, a pure copy is less likely, not more, to qualify for the fair use defense as there is no new meaning, purpose, or transformation of the original work. It is merely taking something one would pay for in the market.

It is evident that the copyrighted works in questions are of enormous value to AI companies and that value should result in fair compensation for creative professionals. An optout system would create an intellectual property framework that runs counter to the principles of copyright law, sanctioning a windfall of riches for technology companies at the expense of copyright holders and hardworking creative professionals. Such an approach would be regressive and would create more problems than good.

- The United States should firmly resist the urge to adopt a compulsory licensing regime. Mandatory licensing schemes devalue works of expression and force copyright holders to unwillingly go into business with third parties.

It is imperative that Congress preserve the open marketplace for licensing and intellectual property transactions, as well as to reinforce the bargaining power of labor unions in securing fair compensation for the use of works in secondary markets. DPE is concerned that lawmakers and regulators may change the rules as a reaction to the volume of copyrighted works required for AI ingestion and the speed at which AI models can produce new works.

The compulsory licensing scheme established for musical compositions, and in some cases, cable television transmission, has often been criticized for devaluing the true market value of a work and denying a copyright holder the fundamental right to withhold consent. It would be problematic to insert an independent collective management organization into the ecosystem, especially if it involves government interference.

In the United States, labor unions are the most qualified entities to oversee collective licensing schemes for their members. Labor unions possess the expertise and capacity to negotiate with employers and establish formulas, especially when dealing with large-scale licensing. For example, through collective bargaining, union members are paid residuals for the reuse of works in secondary markets, such as paid television.

The film and television industry serves as a prime example of a sector that relies on and flourishes from free market negotiation. This applies whether it be the licensing of a single highly valuable motion picture or the right to distribute an entire catalog of works with varying levels of market value.

- Developers of AI models and creators of training datasets should be required to collect, retain, and disclose records regarding the materials used to train their models.
- Without appropriate transparency and robust recordkeeping, creative professionals and the entities that employ them lack the requisite knowledge to enforce their rights.

There are challenges in relying on watermarks and meta data to track files floating around on the Internet or being ingested into GAI models, as bad actors may simply use technology to remove digital fingerprints.

In a closed model, such as those utilized by the major motion picture studios, the companies can collect specific information to better trace the use of copyrighted work.

- Only when GAI is molded by a person can it serve as a human expression deserving of legal protection. Ultimately, it is only a human who requires the incentive to create new works and deserves to be rewarded for their creative efforts and aspirations. These principles align with the foundational constitutional justifications for copyright law in the first place.

In the context of AI, the law should uphold these principles by distinguishing between works that are by and large machine-generated and those that are the result of human guidance, molding, and creative control. AI-generated materials - including visual, audio, and literary works - lack sufficient human control and should not be copyrighted. A machine-generated prompt is at most an idea, and ideas are not copyrightable.

IATSE looks forward to continued engagement with the United States Senate to implement responsible, ethical AI policy.