



March 15, 2025

Office of Science and Technology Policy
The Executive Office of the President
1600 Pennsylvania Avenue, NW
Washington, DC 20500

RE: AI Action Plan

Sent via email to ostp-ai-rfi@nitrd.gov

Digital Content Next (“DCN” or “we”) appreciates the opportunity to submit comments as the Office of Science and Technology Policy formulates an AI Action Plan. 90 Fed. Reg. 9088 (Feb. 6, 2025), pursuant to Executive Order 14179, 90 Fed. Reg. 8741 (Jan. 23, 2025).

DCN is the only association exclusively focused on paving the way for high-quality digital media companies. Our members are global leaders in their fields and include some of the most trusted brands on the web – big and small, legacy brands and digital natives – including Fox News, Major League Baseball (MLB), The Wall Street Journal, NBCUniversal, The Guardian, The New York Post, Vox Media and Financial Times. DCN’s members¹ together, have an audience of 259 million unique visitors, or 95% reach of the U.S. online population.

We support the Trump Administration’s goal of ensuring that America remains the leader in the Artificial Intelligence (AI) field. A key component to achieving this goal and the broader success of American businesses is the robust protection and enforcement of U.S. intellectual property law including the Copyright Act.

¹ See <https://digitalcontentnext.org/membership/members/> for a listing of current DCN members.

Today, American publishers make their copyrighted content available to consumers through a wide range of means, including on websites and apps whose continued offerings are supported by various methods of monetization, such as advertising, subscriptions and licensing. Ensuring adequate protection for the content they produce and distribute is a fundamental requirement to sustain incentives to invest in digital businesses which not only entertain and inform American consumers but are also exported the world over.

The longstanding legal rights for copyright holders are derived from the U.S. Constitution (Article I, section 8, clause 8), which affords them the opportunity to monetize the results of their hard work and investment in a variety of ways and incentivizes them to reinvest in the creation of additional content and new innovative delivery mechanisms to potential consumers. The benefits of this system to American and international consumers are nearly impossible to quantify as all kinds of copyrighted material enrich our lives daily: music, literature, film and television, sports, academic treatises and research papers, visual art, journalism, and other original works of art and science. The Founding Fathers expressly gave authority to Congress to protect the rights of original content creators because they recognized the value of original works to the betterment of the United States.

Indeed, American content creators, including news organizations and other publishers, contribute significantly to U.S. economic growth, including through employment, exports and important trade surplus, and digital services and goods. According to a recent study², copyright-based industries accounted for 12.31 percent of the U.S. economy and 63.13 percent of the U.S. digital economy. From 2020 to 2023, these industries outpaced U.S. economic growth almost threefold. In the digital sector alone, copyright-based industries employ 56.6 percent of all employees in the digital sector. The annual compensation paid to core copyright workers is approximately 50 percent higher than the average U.S. annual wage. As for the global impact, the sales of select U.S. copyrighted products in overseas markets amounted to \$272.6 billion, which exceeded the sales of other IP industries including pharmaceuticals, agriculture, and aerospace.

Our IP laws are directly responsible for this strong economic output and growth. These laws set us apart from countries like China with notoriously lax IP frameworks that lead to fragile economies built, in part, on theft rather than original creativity and innovation. Copyright promotes fair competition, enabling those who invest in innovation to make their products and services available to the public. The development of AI has challenged some of those objectives in different ways, ranging from litigation over the use of copyright protected content to train and operate AI models, to the well-known example of DeepSeek's R1 model, which prompted OpenAI to accuse the company of IP theft, claiming that DeepSeek may have used OpenAI's IP and violated its terms of service to develop its AI model.

“We know PRC (China) based companies - and others - are constantly trying to distill the models of leading US AI companies,” OpenAI said in a statement to Bloomberg³. “As the leading builder of AI, we engage in countermeasures to protect our IP, including a careful process for which frontier capabilities to include in released models, and believe as we go forward that it is critically important that we are working closely with the US government to best protect the most capable models from efforts by adversaries and competitors to take US technology.”

The American values of IP protection that have been a cornerstone in the country's innovative spirit and competitive edge over foreign adversaries. Protecting IP is a matter of preserving the core principles that distinguish American businesses in the global market. OpenAI is correct to be concerned about how third parties may be able to free ride off its efforts and massive investments. Indeed, publishers have sought to uphold these same principles in lawsuits against AI companies for unauthorized use of publisher content in the companies' products.

Generative artificial intelligence systems such as large language models are tools which can be used to

² Stoner, Robert and Dutra, Jéssica; Secretariat Economists; “Copyright Industries and the U.S. Economy, 2024 Report;” Prepared for the International Intellectual Property Alliance; Feb. 2025; p. 1; https://www.iipa.org/files/uploads/2025/02/IIPA-Copyright-Industries-in-the-U.S.-Economy-Report-2024_ONLINE_FINAL.pdf.

³ <https://www.bloomberg.com/news/articles/2025-01-29/microsoft-probing-if-deepseek-linked-group-improperly-obtained-openai-data?embedded-checkout=true>

execute creative tasks more efficiently, but the manner in which many AI developers have exploited original content without consent or compensation - to build and operationalize their commercial products - has unjustifiably violated the rights of copyright holders and upended the existing balance which has historically sustained and promoted innovation.

AI developers use copyright protected content not only to “teach” their models to predict and mimic language skills, but also as a means to create compelling outputs which have the effect of substituting for the original works on which the models were trained. This activity unfairly competes with those who invested in the creation of the original material and undermines their ability to seek a fair economic return. By “reaping that which they do not sow” AI companies cause harm to creators, publishers and the ecosystem as a whole. It is important that this form of destructive misappropriation be deterred, whether by copyright law or other appropriate means.

At the same time, AI companies have not designed their systems to be transparent about the sources upon which the systems train or base their outputs, or the means by which they acquire the content in the first place. AI developers gather much of the content they use to train, fine-tune and ground their systems using bots which crawl the internet, and scrape content. This lack of transparency harms American copyright holders. Content creators are left in the dark about whether and how their content has been used, which seriously impairs their ability to enforce their IP rights.

The actions of AI developers have spurred 39 lawsuits, the outcome of which will provide much-needed clarity regarding the application of existing copyright law, including the fact-specific defense of fair use, to the infringement of the rights of copyright holders to develop generative AI technology. The Trump administration should let the courts resolve these issues. At the same time, it’s important that the AI Action Plan emphasize respect for U.S. copyright law both to protect American content creators from unfair competition, and as an essential element of what is needed to sustain American AI dominance. Outside the U.S., we remain concerned by the efforts of some governments to weaken copyright law to effectively subsidize the development of AI in their countries at the expense of US content creators. Similar to the President’s focus on reciprocity⁴ with international trade partners in order to ensure American businesses have a fair chance at competing, the weakening of copyright is a threat to American prosperity whether it occurs at home or abroad.

In addition, the AI Action Plan should endorse transparency obligations, which some states have already enacted into law. Companies offering AI tools to the public should be required to disclose any copyrighted works of others that they use without explicit consent or license to train and otherwise operate their systems. Companies collecting content for using in training or operationalizing AI tools often do so using “bots” to crawl and scrape content without disclosing their identity or purpose, and ignore explicit terms of use and other means of expressing preferences, creating a lawless environment online. Publishers and other stakeholders who make content available online should have greater visibility into the identity of bots, and be empowered to effectively permit or deny the collection and exploitation of their content in the creation or operationalizing of AI systems.

Also, the AI Action Plan should encourage the free market licensing of content by AI companies that want to use protected content in their models or in AI-generated outputs. There is an emerging licensing framework as many deals have been struck by publishers, record labels, motion picture industries, and others. OpenAI, Google, and Perplexity have all made efforts to pay for the right to use protected content to power their models and tools - a clear acknowledgment that this model is not only necessary, but eminently feasible. As proof, dozens of AI licensing deals have already been announced, including with major publishers such as News Corp, The Guardian, Axel Springer, Prisa, Schibsted and Reuters, and other content owners like Reddit and UMG.

Many leading members of the AI technology community agree with this basic principle. Sam Altman, CEO of OpenAI, stated that “creators deserve control over how their creations are used and what happens beyond the point of them releasing it into the world,” and “the right thing is to make sure [creators] get significant

⁴ <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-announces-fair-and-reciprocal-plan-on-trade/>

upside benefit” from AI technologies. OpenAI alone has already negotiated free market licenses for training materials from Shutterstock, the Financial Times, Associated Press, Guardian, Schibsted, Axios, Hearst, Conde Nast, News Corp., and many others.

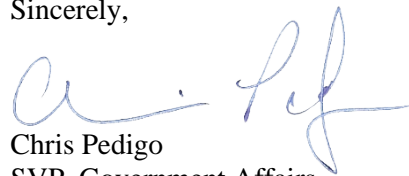
One U.S. District Court recently confirmed that licensing is required for the use of copyrighted content to train an AI system. In Thomson Reuters Enter. Ctr. GmbH v. Ross Intel. Inc., the court, applying clear and recent precedent from the U.S. Supreme Court, held that the defendant’s unauthorized use of the plaintiff’s works to train the defendant’s AI system was direct infringement and did not constitute fair use. The Court reaffirmed that the impact of the use on existing and potential markets is the single most important element of a fair use analysis, and that there was clearly a potential market to use the materials at issue in the case to train AI. This decision underscores that free market licensing of AI training materials should be a cornerstone of the AI Action Plan.

We believe that a rising tide can lift all boats. Only maintaining existing copyright protections will lead to a robust, free market where creators are incentivized to make high quality works and AI companies are incentivized to license them. For these reasons, the AI Action Plan should support existing U.S. copyright law, reject new exceptions, require transparency and encourage free market licensing.

Finally, while the AI market develops, we are concerned that an imbalance of competition in the tech industry could exacerbate the unauthorized use of copyrighted material since many of the largest deployers of AI systems also enjoy a dominant market position. For example, it is highly concerning that a dominant company like Google crawls publishers’ copyrighted content for the purposes of search, without explicit permission, and then uses that crawled content for AI or leverages its market position to force publishers to allow new crawlers for AI and, in some cases, uses the results of that crawling to create competing products. In all of these scenarios, the publisher is not practically able to limit or authorize each specific purpose for which their content may be used. The AI Action Plan should encourage the Department of Justice and Federal Trade Commission to remain focused on ensuring that dominant tech companies do not illegally leverage their market position to block competitors or solidify their dominance, including when it comes to AI. Specifically regarding the Department of Justice’s successful case against Google where a judge recently found that Google violated antitrust laws in protecting their search service, the DOJ should continue to tailor its proposed remedies to promote healthy competition in the AI markets going forward.

We appreciate your thoughtful leadership and the opportunity to submit comments in this proceeding. Please do not hesitate to reach out directly if you have any questions or would like to discuss these matters in greater detail.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Pedigo". The signature is fluid and cursive, with a large, stylized "P" at the end.

Chris Pedigo
SVP, Government Affairs
Digital Content Next