



Nonprofits and Artificial Intelligence: Legal Considerations Amid Ongoing Developments

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Agenda

- Artificial Intelligence (AI) and the Nonprofit Industry
- Key Terminology
- “The Input” – Privacy considerations, submission of content, and applicable regulations
- “The Output” – Copyright ownership considerations, IP rights, and IP loopholes
- Best Practices – Thoughtful utilization of AI, and licensing considerations

What Is Artificial Intelligence?

Artificial Intelligence (AI) (n.): Generally, a type of software that is trained to perform particular tasks, such as drawing conclusions, identifying patterns, and making judgments. Includes image recognition, voice assistance, speech-to-text and language translation, and chatbots.

Artificial Intelligence and Nonprofit Organizations

Developing technology is making it easier to quickly create content and analyze information.

- Efficiency
- Speed
- Easy Information
- On-Trend





***(Almost)
Everything
comes from
something.***

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Key Terminology

- **“Generative” AI**: A computer’s ability to use algorithms and training data to “generate” new content in response to user prompts
- **AI Model**: A program that relies on data training and analysis to trace and identify patterns, and make other determinations
- **AI Platform**: The program or application that hosts the AI model technology, and generates output to the user
- **Input(s)**: The content a user submits to the AI platform
- **Output(s)**: The content the user receives from the AI platform
- **Scraping**: Pulling information from one website or platform and placing it into another website or platform in a new format
- **Training Data**: The data, often scraped from online sources, which informs an AI platform as it analyzes input and generates output

Part I: “The Input”

- Data and privacy considerations
- Submission of content
- Applicable laws and regulations

Data and Privacy Considerations



Scraping for AI Training



Submission of Data or
Confidential Information as Input

Data and Privacy Considerations – Scraping for AI Training

“Scraping”: The act of pulling data from one website and placing it into another website in a new format; scraped information may include generated data (such as behavioral “cookie”-type data, or information entered by the user (inputs))

- U.S. law does not clarify whether copying material for algorithm training purposes requires permission of the content owner, but it is possible that an AI platform or a user could be liable for infringement. Counterargument is “fair use”
- May present Computer Fraud and Abuse Act, copyright infringement, breach of contract, breach of privacy, or other legal concerns for the person responsible for the data scraping
- Entity responsible for data scraping should also consider domestic and international statutes, such as the General Data Protection Regulation, as “scraping” could violate these statutes if the scraping involves certain personal information or is not stored or deleted accordingly

Data and Privacy Considerations – Submission of Data or Confidential Information as Input

Submitting certain information to an AI platform may present privacy risks.

- Compromised trade secret status
- Attorney-client privilege
- Breaches of contract
- Violation of applicable privacy laws



Submission of Content

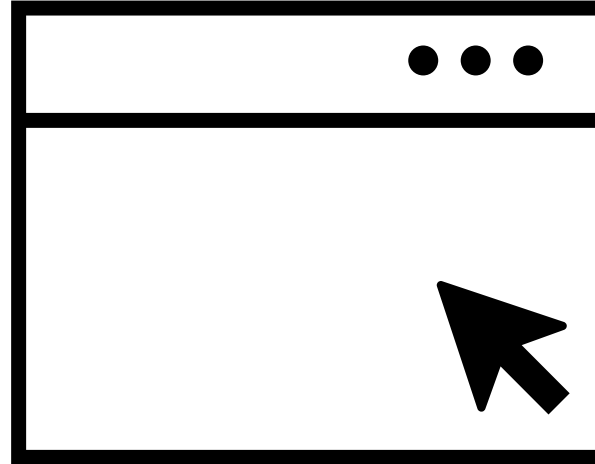


Inputs and IP



Right of publicity concerns

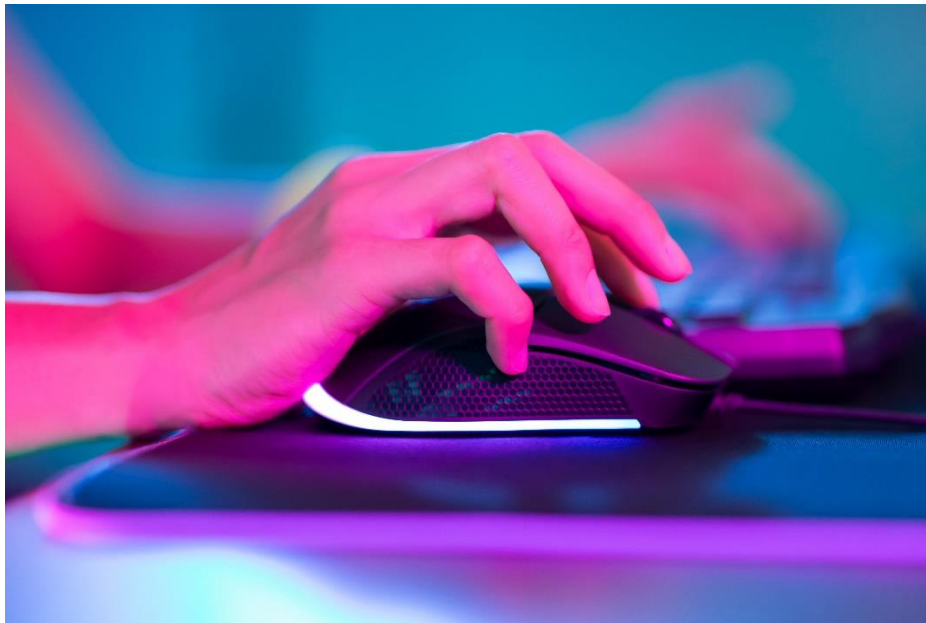
Submission of Content – Inputs and IP



- Submitted input may inform future output. So, submitting the organization's intellectual property to the AI platform opens the risk that the IP is used to inform output for a different user

Submission of Content – Inputs and IP (cont'd)

- Submitted input may infringe the copyright of the owner of the original content (e.g., submitting a poem, seeking to receive output “in the style of” the poem. Arguably, the output is a derivative work of the original poem.)





Submission of Content – Right of Publicity Concerns

- Potential right of publicity concerns
- AI has made it easier for users to mimic human appearances and voices in content



Applicable Laws and Regulations



Guidance, Policies, and Proposals

Applicable Laws and Regulations

- The Biden administration, the Copyright Office, the FTC, and other government agencies have published written guidance on practically and safely using artificial intelligence, and on predictions for possible problems AI will present in the coming years.
 - White House Executive Order: President Biden recently issued an executive order addressing safety, discrimination, fraud, and other issues stemming from AI uses, and requiring federal agencies and Congress to act in response to these concerns
 - National Institute of Standards and Technology (NIST): Has released the AI Risk Management Framework, which suggests a strategy for organizations to mitigate risk of AI use
 - Copyright Office: Has released registration guidance for works containing AI-generated content
 - Federal Trade Commission: FTC chair has warned of AI's privacy, antitrust, and misinformation risks
 - Consumer privacy law developments may also govern collection of personal information for AI uses – in particular, those laws that govern tax-exempt entities and permit data subjects to opt out of or be notified of “automated decision making” uses

Applicable Laws and Regulations (cont'd)

(Proposed) New York 2023 Bill Text NY A.B. 216	(Proposed) New York 2023 Bill Text NY S.B. 6859	(Proposed) "REAL" Political Advertisements Act 118 S. 1596
General Data Protection Regulation (GDPR)	(Proposed) 2021 EU Artificial Intelligence Act	State Consumer Privacy Laws (various)
Computer Fraud and Abuse Act	California Consumer Privacy Act (CCPA/CRPA)	Other U.S. federal and state laws

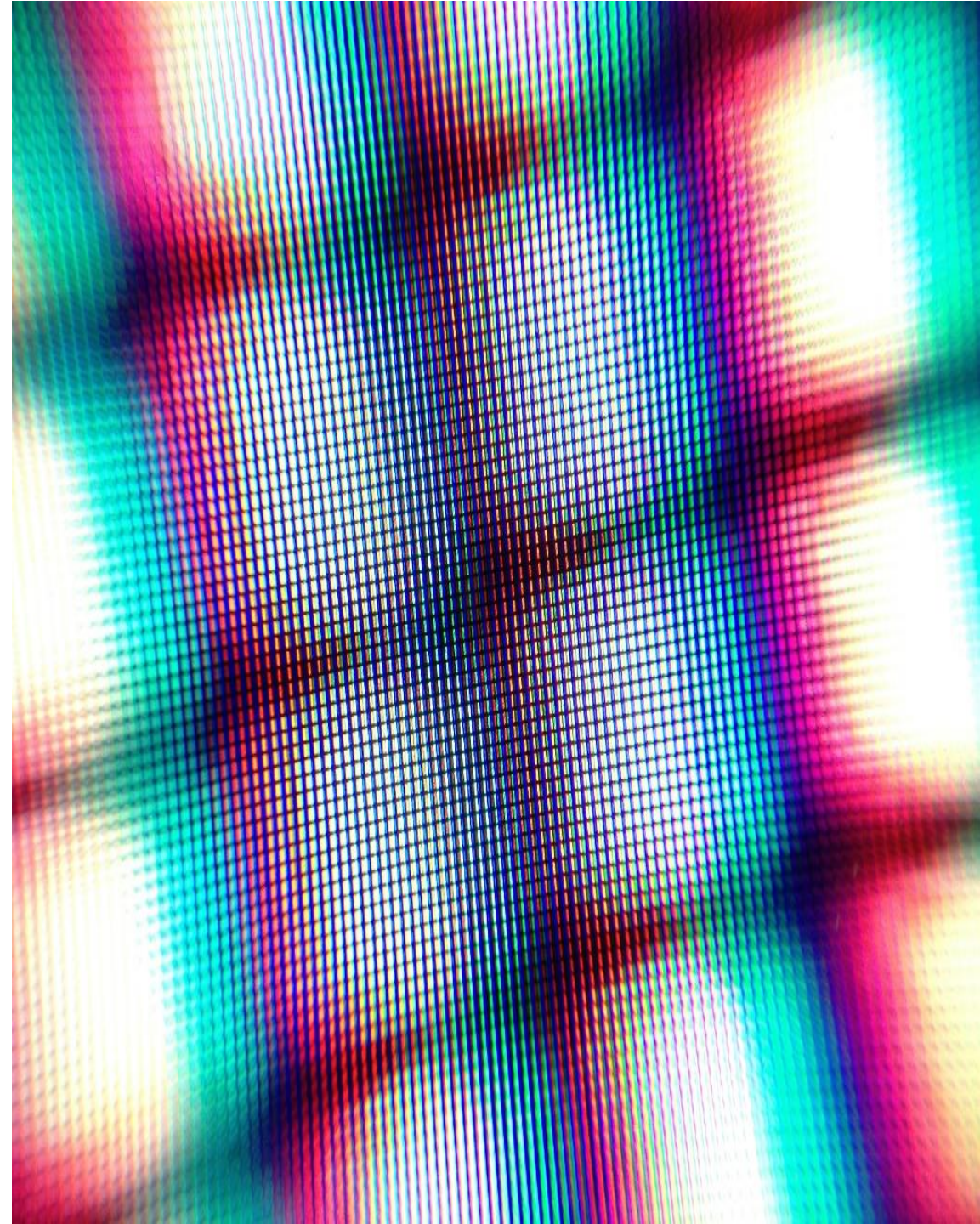
Part II: “The Output”

- Flawed output
- Copyright ownership
- Lingering IP loopholes

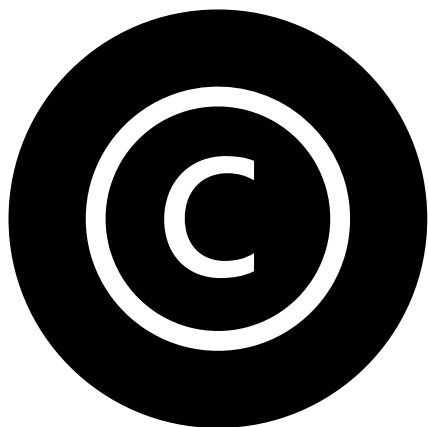
Flawed Output

“Hallucination”: When an AI platform generates false information

- Cannot assume that all information returned as output is accurate
- Output may also be based on outdated information



Copyright Ownership



- Copyright Office has published guidance on copyrightability of AI-generated works
- Historically, copyrightable works must be the “product of human authorship” or “human creativity”
- If a work includes AI-generated content and human-generated content, the overall work may be copyrightable, whereas the AI-generated content, alone, is not
- Copyright Office is determining ownership of AI-generated works on a case-by-case basis

Copyright Ownership (cont'd)

- Copyrightability standards for AI-generated works vary by country
- Under the United Kingdom's Copyright Designs and Patents Act of 1988, works created solely by a computer are protectible under copyright for 50 years from the date the work is made. The author of the work is the “person by whom the arrangements necessary for the creation of the work are undertaken.”

Lingering IP Loopholes

- Causes of action for “stolen” AI-generated works?
- Can a user own output as a “work made for hire”?
- Are outputs derivative works of the works on which the AI model was trained?
- Can the terms of use of the AI platform override U.S. copyright principles?
- Will an AI machine, itself, ever be considered an “author” or “inventor” or receive human-like legal acknowledgment for creative works?



Part III: Best Practices

Best Practices – General



- **Generally, establish policies for AI use by members, contractors, employees, and other workers**
- Stay abreast of data protection laws, and AI-specific legislation developments
- Avoid submitting confidential information or trade secrets to an AI platform
- Review the terms of use/FAQs of the AI platform used by the organization to understand the AI platform’s views on ownership and any use restrictions for output
- Review rights associated with any input submitted to an AI platform, and rights that may be associated with any output received, before publishing the output
- “Fact-check” any content generated by AI platforms before publication
- When using artificial intelligence to generate content for another party, disclose that AI has been used in the creation of the content

Best Practices – Licensing

- Most organizational uses of AI platforms will be subject to a license agreement between the organization and the provider of the AI platform
- The organization may have negotiating power in dictating the terms of the arrangement



Best Practices – Licensing (cont'd)

- Organizations may also be presented with opportunities to license their content to an AI platform provider
- May resemble more traditional data license agreements
- Potentially a lucrative way to maximize the organization's content, and participate in the AI market.

Best Practices – Licensing (cont'd)

Before licensing an AI tool or the organization's content to an AI platform provider, consider...

- What is the organization trying to achieve with the technology and the arrangement?
- What will the arrangement enable, accelerate, or automate?
- What data sources will need to be integrated, and is that data integration a risk or a violation of any confidentiality or contractual obligations?



Best Practices – Licensing (cont'd)

- How will the licensor ensure privacy and confidentiality of data?
- How is data collected and stored, and what rights will each party have to the data?
- What will happen when the agreement is terminated?
- What will happen when the licensor breaches the agreement?
- What if the AI platform “goes down” unexpectedly?
- Is the licensor’s security adequate for the type of data that is being handled?
- Who is liable for third-party lawsuits?

Questions?

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