October 30, 2023

Suzanne Wilson
General Counsel &
    Associate Register of Copyrights
U.S. Copyright Office
Library of Congress
101 Independence Avenue SE
Washington, DC 20559-600

Submitted via regulations.gov

Re: Artificial Intelligence and Copyright Notice of Inquiry and Request for Comments

Dear Ms. Wilson:

The Association of Corporate Counsel (ACC) is pleased to offer the following comments in response to the Copyright Office's Notice of Inquiry and request for comments on Artificial Intelligence and Copyright (Notice). ACC's comments focus primarily on General Questions 1-5. ACC urges the Copyright Office to ensure that any recommendations for new laws, regulations, and/or licensing regimes are predictable, sufficiently flexible, and not overly burdensome to address the rapidly evolving technological landscape.

About ACC

ACC is the leading global bar association that promotes the common professional and business interests of in-house counsel. ACC has over 47,000 members who are in-house lawyers employed by over 10,000 corporations, associations, and other organizations in more than 100 countries. Founded as the American Corporate Counsel Association in 1981, ACC has grown from a small organization of in-house counsel to a worldwide network of legal professionals, focused on delivering a mix of relevant and timely services, including information, education, networking opportunities, and advocacy. ACC has long sought to aid courts, legislatures, regulators, and other law or policy-making bodies in understanding the role and concerns of in-house counsel.

General Questions

1. What are your views on the potential benefits and risks of this technology? How is the use of this technology currently affecting or likely to affect creators, copyright owners, technology developers, researchers, and the public?

As with all technologies, generative AI holds significant promise and poses challenges and risks, which vary based on its application. ACC members represent creators, copyright owners, technology developers, researchers, and many other members of the interested public who stand to be impacted by generative AI and the copyright policy issues associated therewith.

ACC members are currently affected by AI in two distinct ways. First, one of an in-house counsel's responsibilities is to ensure that the organization is in compliance with all laws and regulations governing the organization's activities. Thus, from the in-house counsel perspective, generative AI raises a number of compliance issues which are dependent upon the organization's role as a content creator, publisher, researcher, technology developer and/or copyright owner, as well as the jurisdiction where these activities take place.

Second, in-house counsel are also impacted through the use of generative AI in the organization's legal department. Within the legal department, generative AI is increasingly being used to enhance the efficiency of day-to-day tasks including drafting and review contracts, conducting legal research, automating document creation, developing compliance and crisis management checklists, and managing data privacy and security concerns. These trends are certain to continue as the use of generative AI in the practice of law increases.

2. Does the increasing use or distribution of AI-generated material raise any unique issues for your sector or industry as compared to other copyright stakeholders?

Because of their role ensuring compliance with all applicable laws and regulations, coupled with their own use of generative AI in the legal department, in-house counsel have a unique perspective on the copyright issues associated with generative AI. While the specific issues will vary depending on the organization, in-house counsel are uniquely in tune with the legal issues that are likely to result because of the organization's use of generative AI, as well as with the elements that make a successful compliance regime to address those issues.

The legal profession generally is adopting generative AI tools to automate and streamline a growing number of routine legal tasks. Generative AI legal tools will have a significant impact on the ability of in-house lawyers to increase their efficiencies by streamlining the work they already do and taking on projects that may currently go to outside counsel.

5. Is new legislation warranted to address copyright or related issues with generative AI? If so, what should it entail?

ACC takes no position on whether new legislation or regulation should be adopted to address copyright or other related issues concerning generative AI. Likewise, ACC does not take a

position on the imposition of licensing schemes or recordkeeping requirements (see questions 10 and 15). Instead, ACC urges the Copyright Office to pursue a regulatory path that embodies the following characteristics:

- Predictability. Any regulatory regime must provide end users with a clear sense of the law, how it will be applied in a given situation, and the likely outcome of that application.
- Duplication/conflict with existing laws. If an existing regulation can be used to address generative AI, a new rule is not needed and could create conflicting or duplicative mandates. Thus, a thorough examination of existing copyright laws must be conducted before the adoption of new legislation and will assist in preventing any regulation from being overly burdensome
- Flexibility. Clearly, generative AI and its capabilities are rapidly evolving. Any new regulations or legislation – as well as the application of existing regimes – must account for sudden changes in the technology and its uses. Flexibility is key to ensuring that legislation keeps up with the technology and does not become irrelevant or ineffective.

Several existing copyright law principles should be analyzed in light of generative AI, including the human author requirement and fair use defense, to ensure the application of these long-held copyright principles are appropriately employed to govern copyright issues associated with generative AI.

ACC appreciates the Office's thoughtful approach to studying copyright legal and policy issues associated with AI and looks forward to participating in this important conversation.

Sincerely,

/s/ Susanna McDonald

Susanna McDonald
VP and Chief Legal Officer