

# Artificial Intelligence, Copyright, and the Doctrine of Fair Use



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## Two Types of Generative Artificial Intelligence (AI) Companies

- Ones that obtains consent to train their generative AI models when they use data scraping tools.
- Ones that do not.

## The Doctrine of Fair Uses 4 prong test.

1. Purpose and character of the materials use.
2. Nature of copyright work used.
3. Amount and substantiality of work used.
4. The potential market for use.

# US Copyright Office Notice of Inquiry and Request for Comments on Artificial Intelligence and Copyright

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4. How should AI outputs that imitate the identity or styles of human artists be treated.





# FTC Response to Notice

AI data scraping and generative training does not fall under the Doctrine of Fair Use



## META's response to Notice

The use of AI does not trigger the rights protected by the Copyright Act; and even if it did, it would fall under the Doctrine of Fair Use



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3. Generative AI does not cause market harm.



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

- Develop standards, tools and tests to help ensure that AI systems are safe, secure, and trustworthy.
- Protecting others from AI enabled fraud and deception by establishing standards and best practices for detecting AI generated content and authenticating content.
- Develop guidelines for Federal agencies to evaluate the effectiveness of privacy.
- The Patent and Trademark Office and the Copyright Office are directed to review issues that relate to issues at the intersection of AI and Intellectual Property.



# Whitehouse Blueprint for AI

- For safeguard purposes, designers, developers, deployers of automated systems should seek permission regarding collecting, use, access, transfer, and deletions of your data.
- The Whitehouse believes consent should always be obtained.



# AI Foundation Model Transparency Act

The FTC, with NIST, the Copyright Office, OSTP, must set transparency standards for LLMs and other AI to make certain information publicly available.

Direct companies to provide consumers and the FTC with information on the model's training data, model training mechanisms, and whether user data is collected in inference.

Protect small deployers and researchers, while seeking responsible transparency practices from our highest-impact foundation models.