Blogs
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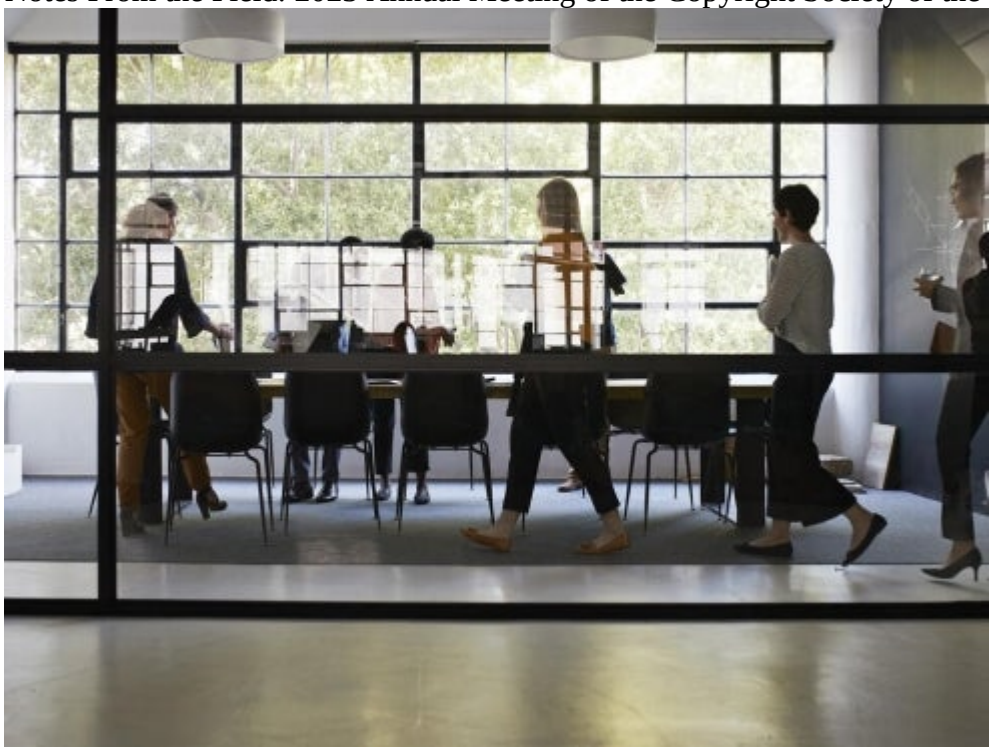
Notes From the Field: 2023 Annual Meeting of the Copyright Society of the USA



We recently attended the Annual Meeting of the Copyright Society of the USA, a two-and-a-half day, in-person conference focused on emerging issues in copyright law (perhaps the country's largest annual get-together of copyright nerds like us). Here are our *Notes from the Field* on what was being discussed during—*and after*—the sessions that we attended.

Generative AI. The promise and perils of generative AI dominated many of the panels and informal discussions at the annual meeting. Generative AI, a subset of artificial intelligence that uses machine learning techniques to generate new data or content that is similar in structure and style to data the AI model was trained on, is increasingly transforming the way we work and think about creative works.

Representatives from the U.S. Copyright Office presented on a number of issues related to generative AI, including the Copyright Office's decision not to recognize an AI system as the author of "A Recent Entrance to Paradise"; its partial cancelation of the copyright registration for *Zarya of the Dawn*, a graphic novel that was created using Midjourney; and its recent policy statement on the Registration of Works Containing Material Generated by Artificial Intelligence.

The Copyright Office representatives reported that there are "two or three dozen" pending registration applications for works that were partially created using generative AI. Accordingly, we may soon be receiving additional AI-related guidance from the Copyright Office as its decisions regarding those applications are published. The Copyright Office will also host a June 28 webinar on Registration Guidance for Works Containing AI-Generated Content.

Warhol. Another hot topic of conversation was the recent U.S. Supreme Court decision affirming the U.S. Court of Appeals for the Second Circuit's ruling that the licensing of Andy Warhol's "Orange Prince" for use on the cover of a tribute magazine was not a fair use of a photo of Prince taken by Lynn Goldsmith. As is typical for Supreme Court decisions on fair use, the Warhol decision raises more questions about the contours of the fair

use doctrine than it answers. What seems clear in the wake of the decision, however, is that even though the creation of a work may be protected by the fair use doctrine, subsequent uses of that work may not qualify as fair uses.

Triennial Rulemaking. The upcoming ninth triennial rulemaking proceeding relating to the anti-circumvention provisions of the Digital Millennium Copyright Act (DMCA) was also discussed. Every three years, the Librarian of Congress, on the recommendation of the Register of Copyrights, may grant temporary exemptions to prohibitions in the DMCA against circumvention of technological measures that control access to copyrighted works. In the past, exemptions have been granted for educational purposes, to enable device repairs, and for accessibility purposes. Those exceptions will be reevaluated along with any newly proposed exceptions. Something to closely watch will be whether any new exceptions are proposed related to text and data mining for AI model training.

Because generative AI tools require massive amounts of training data, models are often trained on unlicensed works. A mining exception for AI training could reduce the legal risks associated with extracting copies of unlicensed works from the internet and other sources. (As noted in another panel, however, a similar effort to expand the UK's text and data mining exception to cover commercial uses recently stalled.)

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