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PANEL 3
THE EXTREMELY LARGE ELEPHANT IN THE ROOM: THE OVERABUNDANCE OF CONTENT IN THE AGE OF AI

with BILL ROSENBLATT,[1] OLENA V. RIPNICK-O'FARRELL,[2] ADRIAN PERRY,[3] ANNA GRESSEL,[4] and DIAA EL ALL[5]

Generative AI is a revolutionary set of technologies, but it's also the latest in a series of innovations that have given more people the ability to produce more content more quickly – just as 4-track cassette studios, desktop publishing, digital photography, and so many others have done over the years. Given that AI is already taking the sheer volume of content being generated to new orders of magnitude, this panel considered the structural changes that the content industries might undergo as a result.

Bill Rosenblatt: "The Overabundance of Content" is a subject that's kind of been a hobby horse of mine for a while. I teach music business at New York University,[6] and one of the things that I keep telling my students is one of the most important pieces of data in the music industry is how many songs there are on digital services or just in general. And that same comment can apply to photography, and books, and news articles, and et cetera, et cetera, visual content, and so forth.

I want to start by showing you a few statistics here. These are some numbers that were published by Luminate, which is a music data firm that tracks music

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[1] Bill Rosenblatt is President at GiantSteps Media Technology Strategies and an Adjunct Professor of Music and Performing Arts Professions at NYU. *Bill Rosenblatt*, NEW YORK UNIVERSITY STEINHARDT SCHOOL OF CULTURE, EDUCATION, AND HUMAN DEVELOPMENT, https://steinhardt.nyu.edu/people/bill-rosenblatt (last visited Dec. 17, 2024).

[2] Olena V. Ripnick-O'Farrell is experienced IP practitioner who currently leads the Policy function at Grammarly *Olena V. Ripnick-O'Farrell,* THE COPYRIGHT SOCIETY, https://copyrightsociety.org/bio/olena-v- ripnick-ofarrell/ (last visited Dec. 17, 2024).

[3] Adrian Perry is a Technology & IP Transactions Partner at Covington & Burling LLP and a leading authority on digital content licensing. *Adrian Perry*, THE COPYRIGHT SOCIETY, https://copyrightsociety.org/bio/adrian-perry/ (last visited Dec. 17, 2024).

[4] Anna Gressel is a sought-after mind for global businesses on complex matters relating to artificial intelligence and innovative technologies. *Anna R. Gressel*, PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP: PROFESSIONALS PAGE, https://www.paulweiss.com/professionals/partners-and-counsel/anna-r-gressel (last visited Dec. 17, 2024).

[5] Ranging from Classical Musician to CEO of Soundful, Diaa El All has been a pioneer in the world of out-of-the-box digital and technology solutions. *Diaa El All*, THE COPYRIGHT SOCIETY, https://copyrightsociety.org/bio/diaa-el-all/ (last visited Dec. 17, 2024).

[6] *Bill Rosenblatt, supra* note 1.

consumption data, such as streaming and purchases of physical and whatnot. And this is 2023.[7] This is what they track, not counting what they don't track because it doesn't have something called an ISRC[8] number with it, 184 million tracks globally available on streaming services.[9] And of those, 45.6 million, so about a quarter, get no streams at all.[10] Nobody ever hears them. And then, of course, up at the top of the pyramid, you've got the Taylor Swifts and the Beyoncés and so forth.

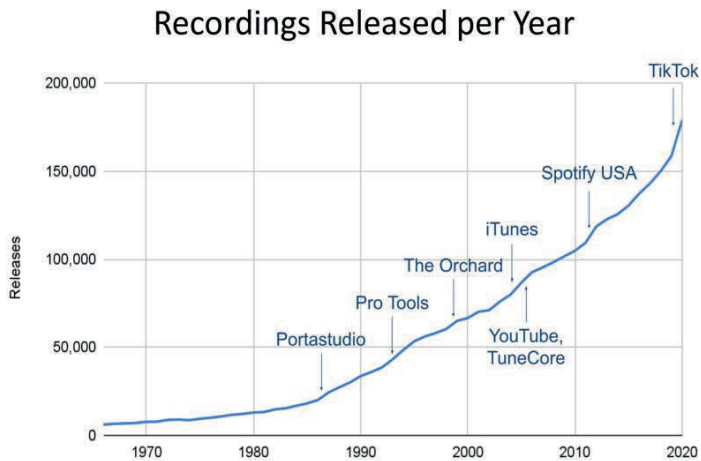## Recordings Released per Year

Figure 1: MusicBrainz, Bill Rosenblatt, CC-BY-NC-SA

This is some research that I did based on data from an open-source database called MusicBrainz.[11] And this shows the number of music releases per year since 1960 until just a few years ago, because it takes the data a little while to catch up with the present. You notice, of course, that it increases over time. But if you look more closely, you see little upward inflection points at the same time as important

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[7]   *Luminate Releases 2023 Year-End Report*, LUMINATE: REPORTS, https://luminatedata.com/reports/yearend-music-industry-report-2023/ (last visited Dec. 17, 2024) [hereinafter "LUMINATE REPORT"].

[8]   Homepage, INTERNATIONAL STANDARD RECORDING CODE, https://isrc.ifpi.org/ (last visited Dec. 17, 2024) (ISRCs are the music industry's standard identifiers for sound recordings).

[9] LUMINATE REPORT, *supra* note 7.

[10] *Id.*

[11] Homepage, MUSICBRAINZ, https://musicbrainz.org/ (last visited Dec. 17, 2024).

technologies were introduced that make it easier for people to create and distribute music. So, in the 1980s, you had the Portastudio, which is the four-track cassette deck that people like Bruce Springsteen used to create albums that became huge hits.[12] In the 1990s, you had digital audio workstations like Pro Tools.[13] You didn't have to go to a big studio to record stuff. You could do it all digitally on your Mac or your PC. In the late 1990s, you had digital distributors or independent distributors like The Orchard,[14] and then later on, independent artist distributors like TuneCore.[15] You also had YouTube in the mid-2000s.[16] And you can see all the other things on this diagram up until the late 2010s when TikTok was responsible for the latest upward inflection point on this graph.[17] Of course, AI is coming in, and as we heard from Tom [Rubin], AI is going to lead to another revolution in content production.[18] Even though OpenAI isn't really involved with music per se, that will affect music in a similar way.

And it's my belief that we're going to be at an inflection point. The industry is going to change, content industries are going to change because of just the explosion of the sheer volume of content. And so, that's what we want to talk about today.

Here are some more statistics. Generative AI music platforms have published their own numbers about how much music their platforms have enabled the creation of. Boomy artists have created over 20 million songs, and that was as of a few weeks ago.[19] The number keeps changing. In 2023, Mubert's users

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[12] The Teac/TASCAM 144 Portastudio, introduced in 1979, and similar products from other makers. Bruce Springsteen used one to record his 1982 album *Nebraska.* For an in-depth history of the original TEAC product and the tape recorder TD-102, *see TEAC - The History of Sound and Recording*, TASCAM EUROPE, https://www.tascam.eu/en/history (last visited Dec. 17, 2024).

[13] Digidesign released the first version of Pro Tools in 1989. Digidesign was subsequently acquired by Avid Technology. *A brief history of Pro Tools*, MUSICRADAR (May 30, 2011), https://www.musicradar.com/tuition/tech/a-brief-history-of-pro-tools-452963.

[14] Originally launching in 1997, The Orchard is now a division of Sony Music Entertainment. *The Orchard*, SONY MUSIC, https://www.sonymusic.co.uk/label/the-orchard/ (last visited Dec. 17, 2024).

[15] Launched in 2005, TuneCore is now a division of Believe. *About*, TUNECORE, https://www.tunecore.com/ (last visited Dec. 17, 2024).

[16] YouTube launched in 2005. For an in-depth timeline, *see* Paige Leskin & Ana Altchek, *YouTube is 19 years old. Here's a timeline of how it was founded and grew to become king of video, with some controversies along the way,* BUSINESS INSIDER (May 28, 2024), https://www.businessinsider.com/history-of-youtube.

[17] Bytedance launched TikTok in the United States in 2018. For a timeline, *see* Rita Liao & Catherine Shu, *TikTok's epic rise and stumble*, TECHCRUNCH (Nov. 26, 2020), https://techcrunch.com/2020/11/26/tiktok-timeline/.

[18] *See supra* Tom Rubin, *Keynote,* 71 J. COPYRIGHT SOC'Y (forthcoming in this present issue).

[19] This is the number of songs created as of September 6, 2024. Homepage, BOOMY, https://boomy.com/ (last visited Dec. 17, 2024).

generated 100 million AI tracks and streams.[20] And then for Udio,[21] in the first two weeks after Udio's launch in April of this year, users have been generating an average of 10 songs per second, which is about 12 million tracks in that two-week period.[22] This is an interesting article that's in the CLE materials for this panel that appeared on Music Business Worldwide.[23] Deezer, which is less known in the US, but it's a major worldwide digital music service, decided to delete about 13% of its entire catalog because they were what they called junk tracks or useless tracks. And this isn't really about AI, but it just points to the idea that these services are not necessarily anymore just accepting whatever anyone submits to them.

Outside of music, here are some other statistics that I dug up. I did something similar in 2007. There are, according to at least one source, 48.5 million books for sale on Amazon, although that counts multiple formats of a given title instead of counting each title as one book.[24] Thirteen million titles in Ingram's wholesale catalog; they're the biggest book distributor.[25] On the stock image side, Shutterstock's library is 450 million, up from 2 million in 2007.[26] Alamy, 350 million, up from 10.5 million in 2007.[27] Getty Images, 477 million total assets, up from 6.2 million in 2007.[28] A study that I found for the number of AI-created images from Stable Diffusion, Midjourney, DALL.E, and Firefly, has totaled 15.47 billion.[29] These are all staggering numbers. So, with that in mind, I thought

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[20] *AI Music Pioneer Mubert Generates 100 Million AI Tracks*, GLOBENEWSWIRE BY NOTIFIED (July 12, 2023), https://www.globenewswire.com/news-release/2023/07/12/2703841/0/en/AI-Music-Pioneer-Mubert-Generates-100-Million-AI-Tracks.html.

[21] Homepage, UDIOBETA, https://www.udio.com/ (last visited Dec. 17, 2024).

[22] Tim Ingham, *The Train has Left the Station: AI Music Platform Udio is Already Spitting Out 10 Songs a Second*, MUSIC BUSINESS WORLDWIDE (May 13, 2024), https://www.musicbusinessworldwide.com/the-train-has-left-the-station-ai-music-platform-udio-is-already-spitting.

[23] Daniel Tencer, *Deezer has Deleted 26m 'Useless' Tracks Since it Launched Artist-Centric Model with Universal Music*, MUSIC BUSINESS WORLDWIDE (Mar. 14, 2024), https://www.musicbusinessworldwide.com/deezer-has-deleted-26m-useless-tracks-since-it-launched-artist-centric-model-with-universal-music-group/.

[24] Derek Haines, *How Many Ebooks Are There In The Kindle Store On Amazon?*, JUST PUBLISHING ADVICE (Mar. 10, 2023), https://justpublishingadvice.com/how-many-kindle-ebooks-are-there/.

[25] *Retail Products*, INGRAM CONTENT GROUP, https://www.ingramcontent.com/retailers/products (last visited Dec. 17, 2024).

[26] *About Us*, SHUTTERSTOCK, https://www.shutterstock.com/about (last visited Dec. 17, 2024).

[27] Homepage, ALAMY, https://www.alamy.com/ (last visited Sept. 30, 2024)

[28] Transcript of Getty Images, Inc. Analyst Day March 17, 2022, https://investors.gettyimages.com/static-files/173f992e-26e7-4617-9a38-67fcaa298d97.

[29] *People Are Creating an Average of 34 Million Images Per Day. Statistics for 2024*, EVERYPIXEL JOURNAL, https://journal.everypixel.com/ai-image-statistics (last visited Dec. 17, 2024).

it would be fun to explore what this means for content businesses and in relation to copyright because that's why we're here today.

I've gathered a panel of great speakers, and what I would like for them to do is to introduce themselves briefly, say who they are, their background, and what their perspective is on the topic of "The Overabundance of Content." I'm going to start with Olena Ripnick O-Farrell, who is an IP product counsel who works in the generative AI space.

Olena V. Ripnick O-Farrell: Hey, everyone. Olena Ripnick-O'Farrell. I am delighted to be here on this panel. As Bill said, I'm currently an IP product counsel who works in the Gen AI space, among others.[30] I began my career at Debevoise & Plimpton, where I worked extensively on the rightsholder side and with a number of excellent attorneys.[31] I then moved to Mayer Brown, where I worked with another group of excellent attorneys, some of whom are in attendance today, more on the tech side.[32] And you said where we stand generally?

Bill Rosenblatt: Yeah. Just what your perspective is on this topic, if any?

Olena V. Ripnick O-Farrell: Well, a high-level perspective that I personally have. And I would also like to put in the additional caveat that all of these opinions are my own. Everything I say you're getting is Olena, the Kernochan Center Student, copyright nerd who thinks about these things in her free time.

Bill Rosenblatt: Copious free time.

Olena V. Ripnick O-Farrell: Copious free time. But I think that there is opportunity here, and not to echo too many points of Tom's keynote, but my general position is I think there's a lot of opportunity here for creators.[33] I think there's a lot of opportunity here for the public at large. And I think there's a lot of opportunity to be had across a number of industries, depending on how [AI] is incorporated.

Bill Rosenblatt: Thank you, Olena. Next up, we have Adrian Perry from Covington & Burling.[34]

Adrian Perry: My name's Adrian Perry. I'm a partner at Covington. I co-chair our entertainment and music practices.I sit in our tech and IP transactions practice. So, I'm principally a deal lawyer. My background is as a musician, my grandfather's a musician, my dad is 60 years in his band,[35] and I toured myself and was a session musician for many years.[36] I also worked at Saturday Night

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[30] Ms. Ripnick-O'Farrell appeared in her personal capacity.

[31] She was an Associate at Debevoise & Plimpton from 2014-2019. *Olena V. Ripnick-O'Farrell, supra* note 2.

[32] She was also a Senior Associate at Mayer Brown from 2019-2021. *Id.*

[33] Rubin, *supra* note 18.

[34] Partner, Tech & IP Transactions, and Co-Chair of Entertainment Practice, Covington & Burling LLP. *Adrian Perry, supra* note 3.

[35] Joe Perry, lead guitarist, Aerosmith.

[36] A musician who has toured internationally (including in his bands TAB the Band and Dead Boots), Adrian Perry has played with, or opened shows for, Aerosmith, Black Rebel Motorcycle Club, Cage the Elephant, Derek Trucks, Dinosaur Jr., Gregg Allman, Jane's

Live for a couple of years in sort of the production side before I was a lawyer.[37] So, I have a lot of sort of on-the-ground experience with being a so-called creator and I'm very passionate about that.

I also, in my law practice, represent all kinds of brilliant technologists and rightsholders. And so, I think I bring a pretty balanced view to the table. And generally, my perspective is, with all other technological advancements, you have to harness it. You can't run and hide. It's all about how you get it under reasonable control and take advantage of the benefits while you balance the risks. It's just like anything else in that sense. Though, I do think AI is unique in that there's going to be, and already is, just an insane amount of new content, and a lot of thorny new legal issues. It's not necessarily easy, but I'm definitely on the side of "we gotta make it work, 'cause it's not going anywhere."

Bill Rosenblatt: All right, thank you, Adrian. Next we have Anna Gressel, who is Counsel at Paul, Weiss.[38]

Anna Gressel: I'm Anna Gressel. I will say that I'm very excited to be here first, and thank you all for joining us. It's great to see some familiar faces. My practice is really very multifaceted. I help lead the artificial intelligence practice at Paul, Weiss. And I do have a background as a copyright lawyer, but we actually approach AI from every side and we centralize the work that we do. My work in the AI space, it ranges across all different industries, but we focus on issues that include right of publicity, copyright, and all the IP issues that cut into AI. But we also do a lot of work on integrity risks, we do a lot of work on privacy, and we do work on regulatory implications. And what I would say about this topic, and I hope we'll get into this today, is that I think understanding the dynamics and the pressures that this is going to put on industry requires taking all of those perspectives into account. We're not just talking about IP risks but really risks around AI-generated content and all that can entail in terms of harmful content, infringing content, or even content that we're going to end up wanting to take a normative perspective on as creators, but also as communities.

I will say from a personal perspective, I also come from a family of artists and technologists. So, I am also a big believer in balancing the different interests at play, but that technology is fundamentally a driver of creativity. And so, you'll probably see that reflected in my comments, and I'm looking forward to speaking with you all.

Addiction, Modest Mouse, Slash, Stone Temple Pilots, and War on Drugs, among others, and played Lollapalooza, Hyde Park Calling, the Download Festival, SXSW, and other major festivals. He worked at Saturday Night Live in the film unit and music departments for two seasons, has licensed many of his musical compositions for various television shows and films, and worked as an A&R consultant for Columbia Records and Epic Records. *See   Adrian   J.   Perry*,   Covington, https://www.cov.com/en/professionals/p/adrian-perry (last visited Dec. 18, 2024).

[37] Music and Film Dept., Saturday Night Live. *Id.*

[38] Counsel, Paul, Weiss, Rifkind, Wharton and Harrison. *Diaa El All, supra* note 5.

Bill Rosenblatt: Thank you. And finally, we have Diaa El All, who is CEO of a music AI startup called Soundful.[39]

Diaa El All: Well, thank you, Bill, for having me. My name is Diaa, and I'm the CEO and one of the co-founders of Soundful. My background, originally born and raised in Cairo, Egypt. Musician by trade, studied classical piano at the Royal Academy of London. When I moved to the US, I got my degree in sound engineering and music production.[40] I was a touring artist, DJ, and a producer.[41] And what Soundful is, we're an AI music production platform, an ethical AI music production platform.[42] Given my background and being from the music industry, respecting the artist's rights, respecting the IP, was something that we put right at the forefront of everything we do.[43] And my take on the topic today is that there is room for technological advancement while protecting the artists and the rights holders and offering new ways for monetization for both sides.

Our platform is for creators, and that's for music creators as well as content creators.[44] Also, we work a lot with enterprises, Companies from Microsoft to Snapchat to State Farm, to building experiences for their users outside of the platform. And the reason that we were able to work with companies and also work with the creators that we work with is because of the way that we approached our technology and how we built it, we built it not from training, so just scrubbing the internet and training on it. We've trained it on licensed work.[45] We've worked with catalogs, we've built libraries ourselves, and we've taken that route. Another thing that we've done is we build models in collaboration directly with the artists.[46]

We're the only platform that does that today where we go and partner with an artist, let's say Cascade or Timbaland or name your favorite artist, where we work with them directly.[47] We build the model for them that sounds like this artist if they want to, to open it up for people that look up to them and want to produce in their style or for their superfans to be engaged with them. When we build something like that, something like this here with Cascade, actually, yes, we build it, but the artist or the producer owns the model, and we just have the rights for it to take it commercially. And the way that we look at this, we looked at the industry. Traditionally, in the music industry, a record deal is 80/20, 80% the label

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[39] Homepage, SOUNDFUL, https://soundful.com/ (last visited Dec. 18, 2024).

[40] Diploma, Sound Engineering, Pyramind Evolving Sound. *Diaa El All, supra* note 5.

[41] Dan Bova, *'Don't Be Afraid to Bet on Yourself': This Entrepreneur Went from Classical Musician to a Tech Leader*, ENTREPRENEUR (Sept. 16, 2022), https://www.entrepreneur.com/starting-a-business/how-diaa-el-all-went-from-classical-musician-to-tech-leader/435500.

[42] SOUNDFUL, *supra* note 39.

[43] ENTREPRENEUR, *supra* note 41.

[44] *Id.*

[45] SOUNDFUL, *supra* note 39.

[46] *How to Use Soundful: What is My Library?*, SOUNDFUL, https://soundful.com/en-us/faq/what-is-my-library/ (last visited Dec. 18, 2024).

[47] SOUNDFUL, *supra* note 39.

and 20% the artist. So, always the artists and producers get the short end of the stick. We actually flipped it over. So, 80% of the revenue goes to the artist, 20% retains with Soundful.[48] And the beauty here is that unless the label actually owns the likeness and the 360 deal, the artist doesn't have to cut in the label.[49]

Our platform is super, very easy and simple to use. Currently, we're on the homepage, we categorized it by genres. We're very focused towards the music creators and the content creators to understand music. Our platform is not for creating, typing in "I want a song about my birthday" and just creating it. We're not a meme platform. When we're building Soundful, we were thinking about how do we become a utility and an additional and assistive technology to the producers to get them from point A to point B faster, to get them into different genres, et cetera. That's who we are.

We're not there to just create content and flood the market with content. So, let's say, for example, I want to create something in the style of a Grammy Award-winning producer, DJ White Shadow, very easy and simple. Click the red button for the creation button. You're selecting the BPM, the key major/minor, and you're clicking create. Another thing while it's creating, in three to five seconds, it produces an instrumental. While it's creating this, we actually guarantee our user that it will never replicate the same twice. We also don't pass the liability over to our users. We retain all the liability on our side if there's an infringement from the track unless it's touched by the user, and that's off of our hands, of course.

Bill Rosenblatt: Thank you all for those introductions. Let's start with Adrian. Do you think that the music platforms are going to be using AI to generate their own content? I think Deezer is already doing that to some extent.[50] How do you think that's going to go? Based on the fact that the big music services haven't gotten in the business of generating content themselves, but maybe they will now.

Adrian Perry: So first I have to say I represent some of the music platforms, so I can't speak about anything confidential. Generally, I think the first thing you have to think about if you're a digital service and you're going to start producing your own content, is what do your agreements look like with the labels and publishers? There have historically been restrictions [that record labels have imposed contractually] on [digital service providers] entering into record label

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[48] To read Soundful's license terms, *see License*, SOUNDFUL, https://soundful.com/license/ (last visited Dec. 18, 2024).

[49] A "360 deal" (named for 360 degrees in a circle) is a record label's contract with an artist in which the label doesn't just own the sound recording rights but also takes a share of other revenue streams, such as songwriting, touring, merchandise, etc. *See What is A 360 Record Deal?*, INDIE MUSIC ACADEMY, https://www.indiemusicacademy.com/blog/360-music-deal#:~:text=A%20%E2%80%9C360%E2%80%9D%20as%20it's%20called,%2C%20television%20appearances%2C%20or%20publishing. (last visited Dec. 18, 2024).

[50] Murray Stassen, *Believe applauds Deezer's action on 'noise' – but questions new 'artist-centric' royalty model's impact on 'rising artists,'* MUSIC BUSINESS WORLD (Sept. 11, 2023), https://www.musicbusinessworldwide.com/believe-applauds-deezers-action-on-noise-but-questions-new-artist-centric-royalty-models-impact-on-rising-artists/.

territory, so to speak. So, you'd have to, if you're sitting there and you're a music service, you'd have to think about, "Okay, well, if I launch this, am I getting into a bunch of hot water?" So, that's the first thing.

The second thing is, so, why would you do that? That's always the question for me. This happened with NFTs and Metaverse, and every buzzword you can throw out there.[51] A lot of people were just wanting to jump on the bandwagon, so they have some great marketing cycle for however many months, but that's not going to sustain a successful product. You have to have an actual reason [to embrace these new technologies]: why are you doing this? Are you committed to creating some subset of content that's not there? Are you doing something that's going to be a tool for artists? Is it for users to be creative? I mean why are you doing it? I think as far as creating that content, which is getting back to the ultimate goal of this panel, is talking about the huge glut of content that's out there, well, what is that going to do to your compute costs and storage? Exponentially increasing all of that cost might be worth it, but you have to think through all of those things before you just jump in. You could do a pilot program, and see how it goes. But I think having some sort of clarity of purpose and understanding of the risks, those are the things I would think about first. Let's say you clear all these hurdles, I don't think anyone would have any objection to services offering that. But it just comes down to ultimately, why are you doing it? And are you offering something that's compelling? And is that worth all of the business and legal hoops you have to jump through to do it?

Bill Rosenblatt: There are a lot of issues for each service to consider when they're deciding to do this, not just, "What AI tool do I use?" My follow-up question would be, and anyone can pick up on this if they wish, do you think that this is going to end up with different service providers making different sets of decisions about this? Or that we end up in these service providers being more different from one another than they are now? Do you think that might happen?

Adrian Perry: I think that's definitely possible. And obviously, others should jump in. But I think that is going to be one of the fallout things from the GenAI revolution: different products. They're going to split off based on how they're going to leverage AI on all fronts, not just on content creation, but other [features and consideration]s.

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[51] A Non-Fungible Token (NFT) is a record of purchase that exists on a blockchain, a token of ownership of something. Most commonly, an NFT references a digital object such as a music file and/or a visual artwork, and is purchased with cryptocurrency. NFTs can be bought, sold, and resold. A vogue for NFTs in 2021, fueled by cryptocurrency speculators, drove prices very high, but prices plummeted through 2022 and generally have not recovered, although NFTs continue to be created. "Metaverse" is a term that refers to a virtual (online) world in which NFTs (among other things) exist and have value. For more information on NFTs, *see* NOAH CHARNEY & KENNY SCHACHTER, THE NFT BOOK: EVERYTHING YOU NEED TO KNOW ABOUT THE ART AND COLLECTING AND NON-FUNGIBLE TOKENS (2023).

Anna Gressel: I think I'll just jump in and say, I think that's not unique to this, certainly not unique to the music industry. Everyone's sitting on massive troves of data that they didn't know how to exploit before. When we look even across industries, there is a widespread questioning right now of how to actually use that data and how to monetize it. Monetize it in terms of licensing it, potentially, but also in terms of internal tool creation and competitive advantage. So, I think it's a natural outgrowth, but we're seeing that dimension really replicate in almost every single industry right now.

Bill Rosenblatt: When you say data, what do you mean by data?

Anna Gressel: I mean any kind of content or data. We see this from financial institutions to pharmaceutical companies. The data that has now been not only looked at differently with respect to what it can be used for generative AI, but actually generative AI can make that data more useful. It can clean it, it can structure it. There's a wide potential to kind of move forward product development, really, again, in almost every industry we're seeing right now. Certainly, I think music and the creative industries are one of those.

Bill Rosenblatt: All right, so let me move on now to Olena. And the question for you is, we've heard that the Copyright Office is not allowing registration of AI-generated content or requiring creators to disclaim any AI-generated portions of their submissions for registration.[52] If people create lots of content with AI, then they're going to have lots of content that cannot be registered for a U.S. copyright, or maybe only partially can be registered. What do you think the implications of that are going to be, and do you think that's going to change over time?

Olena V. Ripnick O-Farrell: That's an excellent question. And I think if we step back to the baseline of human authorship requirement and our constitutional requirement of balance that we've all talked about in this panel, and promoting progress.[53] And as you pointed out, the Copyright Office has taken a pretty strong position, and hopefully, we'll have some more clarity after it issues its report following the NOI, which hopefully will happen in the next few months but I think remains to be seen.[54] But that's the framework that we have to work within.

And as Tom spoke extensively in his keynote, technology is disruptive, and it always has been since the start of time.[55] I used to work in the film industry in my former life before I was a lawyer, and I worked for one of the major studios, and I remain a cinephile. If you have a documentary, a foreign film, or an indie art-house film, I am your target audience right here. We've seen this a lot in the film industry. We saw it from radio to TV. We saw it from TV to film, and we most definitely saw it with the rise of streaming. And each time we've seen this, it's

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[52] Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence, 37 C.F.R. Pt. 202 (2023).

[53] U.S. CONST. art. I, § 8.

[54] *See* U.S. COPYRIGHT OFFICE, REPORT ON COPYRIGHT AND ARTIFICIAL INTELLIGENCE (July 31, 2024) (The U.S. Copyright Office is issuing a series of Reports on Copyright and Artificial Intelligence. Part 1 on Digital Replicas.).

[55] Rubin, *supra* note 18.

been sort of like, "This is the end of the world, and how are we going to change? This is going to kill the industry," and it never has. We've got to adapt. We've got to evolve, and industries have done that. Film is the one I'm closest to because I used to work in it, but many, many industries have done that. And there have been benefits for consumers. If you take, again, film and TV as one example, I have lots of streaming services to see all the types of content that I love that generally never is going to get a cinema release. But you also have things like the entire Marvel Universe, which can now be created for streaming. You have an outlet for the Pixar shorts that you normally couldn't see.

This has been a really, really good thing for everyone, I would argue. And personally, I think generative AI is going to provide the same opportunity. And by that, I mean I think it's going to democratize creation for many groups and many individuals. It's going to make it easier for people to create, and it's going to make it easier and more accessible for people with niche interests to have the kind of content that they're interested in. And all of this is because the barriers to entry are going to be reduced. You may not agree, but I generally think more choice for consumers, particularly in the content creation space, is a good thing. But as you point out, that means, given our current position, there aren't a lot of remedies.

And there are several questions about raising incentives to create, which is the other part of what the Copyright Act serves. But we should also take a step back and consider that monetization isn't for everyone the main goal of creation. There are many, many different reasons people create. They can create to promote knowledge. They can create for the sake of it. They can create for others to build on. This is why we have Creative Commons licenses.

So, do I personally think that things can be created with AI that rise to the level of human authorship and should be protected, and those incentives should be there? Absolutely. Is it everything? Probably not. Am I hoping that the Copyright Office is going to issue guidance? Absolutely, I think, like many people in this room. But fundamentally, back to my introduction, I don't think that content creation, even a lot of it, is a bad thing. I think it's an opportunity.

Putting aside bad actors doing bad things, which happens at every advent of technology that we have, I think fundamentally the good content is going to rise, and society as a whole is going to benefit by having more things in the public domain, greater access, greater content. And feel free, others, to please chime in. But my general position is that I think this is a good thing. I don't think we're going to see a glut. I think we just need clarity. And hopefully, we will have some more of that soon. And once we have that, then all of the relevant industries can figure out sort of where to go from there.

Bill Rosenblatt: Anyone else want to chime in on that?

Diaa El All: Sure. I mean, I think, Bill, with what you've mentioned earlier about Pro Tools like with specifically in the music industry, any technological advancement has been it shakes the industry. And that happened even with the

drum machines,[56] with Pro Tools,[57] and Ableton,[58] and now online DAWs.[59] It's really like how you can use it. In my opinion, can AI replace humans? I don't really think fully. Can the output be as good? Yes, but it's not really like in music specifically. In my opinion, it's not the perfection that comes out of the creation of the model. It's the imperfection the human takes and adds on it and builds on it that will relate to others.

Bill Rosenblatt: So, actually, that's another good segue here. I showed that graph, and I showed things like Pro Tools and Portastudios, and digital distributors. How do you see tools like Soundful fitting into that continuum? Do you see it as another step in that process, or do you see it as something more different, more fundamental than that?

Diaa El All: No, absolutely. I see it as a step of that. We actually just introduced two months ago our export to DAWs that you're able to download. You create a song on Soundful, and you select Ableton, and you download the full Ableton project that has all of the file, the stem files, and everything in there that then the creator can take and build on it and make it their own.[60] So, I think really, it's a part of it, it's an addition, it's a utility, it's a tool. It's not to replace, but at the end of the day, with any technology or with anything, really, you can use it for good or for bad.

If you want to create tons of content and we actually limit the amount of downloads and things you can do on the platform on an hour and a daily level to try to weed out bad actors. But you have people that will create music and try to put thousands of tracks on streaming platforms to collect royalties. And that's one bad thing. But there are others that are maybe great songwriters or great vocalists, and they don't know how to produce, and they can't afford to pay somebody to produce for them. And they go to use a type beat, for example, which, in my opinion, I don't really agree with that model because – you license a track that

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[56] For example, the Roland TR-808, first released in 1980, was the first drum machine to be widely used in commercial music productions. Although it was only produced for three years, it became one of the most widely used electronic gadgets in music history, being used on a long string of hit records starting with Marvin Gaye's "Sexual Healing" and Afrika Bambaataa's "Planet Rock" in 1982. *Four Decades, One Sound: Celebrating 40 Years of the TR-808 Drum Machine*, ROLAND, https://www.roland.com/us/promos/roland_tr-808/ (last visited Dec. 18, 2024).

[57] MUSICRADAR, *supra* note 13 (Pro Tools was the first commercially successful digital audio workstation (DAW) and is widely used today.).

[58] Ableton Live, from Ableton in Germany, is another popular DAW, mostly used for live audio production. Michael Hahn, *Ableton Live: The Ultimate Overview for Producers*, LANDR BLOG (Aug. 23, 2024), https://blog.landr.com/ableton-live-ultimate-overview/.

[59] Several DAWs work through web browsers rather than desktop applications for Macs or PCs; examples include Soundtrap and Bandlab. Aleah Fitzwater, *The History of the DAW - How Music Production Went Digital*, SOUNDTRAP (May 23, 2024), https://www.soundtrap.com/content/blog/the-history-of-the-daw.

[60] *Introducing Ableton AI Music Export on Soundful*, SOUNDFUL: CONTENT CREATORS NEWS, https://soundful.com/ableton-ai-music-export-on-soundful/ (last visited Dec. 18, 2024).

thousands of other people licensed it, and if that track you do became a hit, then the labels are not really going to pick it up, or maybe there will be problems in signing you with that track because they have to unwind all of the other people that used that track. So, I really do think that AI can be useful in that space and be a tool for them to use it to get from point A to point B faster.

Bill Rosenblatt: So, if you're a DSP, what do you do about this? Do you change your policy about what can be submitted, or do you wait and see? What do you do? Anyone have any thoughts on that?

Adrian Perry: I just want to go back quickly to the prior point, which I think is related to what you're asking as well. If you use AI-created beats, yeah at this point, given where the US Copyright Office is, you wouldn't be able to protect that piece of it. So, I don't know that it would be more or less appealing to a label to go grab something that has a stock beat in it that you purchased or has an AI-created beat in it, because right now you can't protect that AI beat. So, someone could reuse it potentially. You wouldn't be able to defend it against third parties. That's just a reality. I'm not even saying that's good or bad. It's just, that's where it's at. So, I think that I agree that AI ultimately is a tool, like all the other tools that have come up along the way, but the law has to evolve with it in order to make the tool fit into the broader ecosystem. Otherwise, there's a big hole there. You could protect the melody that you write on top of that beat, and that's maybe that's enough. And it's not unlike scenarios we have where people reuse beats all the time and they interpolate different musical passages. They go out and get the licenses for that. They write something new on top, they split up the royalties.

So, the result is fine. But I think we have to pay attention to the fact that unless the US Copyright Office sort of evolves its position and wants to come up with a different regime for using generative AI and creation, there's always going to be this big hole in terms of the protectable set of rights in something that leverages both generative AI and human creation. So, I just want to make sure we keep that in mind as we're going through.

Bill Rosenblatt: All right, let's go to Anna for a second. Anna, one of the things that you focus on is moderation and safety issues. How would you say large volumes of AI-generated content will affect the task of moderation and concerns over safety? How do you see that sort of working out?

Anna Gressel: Yeah, it's a great question. I want to take it in a few pieces, but also take a step back to start. I mean, I think we've had a number of comments here that have been really helpful, focused on the historical overlay. So, I'm just going to pick up on that again, which is that we've had all these different periods of time where we've been in moments of jumps in terms of content generation. And that includes things like having Photoshop help edit photographs. It includes things like the streaming platforms and also the rise of even just serial television.

And at each stage, there's really been a movement forward in terms of democratizing access and therefore creating additional volumes of content. So, I think the question is, what types of pressures does that present? And at each stage, there's been this burst, but also a settling of kind of market positioning, a settling of kind of competitive outlook towards all of that content that has now flooded

the market. And one of the dimensions of that, for what it's worth, is often on quality. And quality can be a real differentiator when it comes to content.

It can be something that people really look for like prestige. Television, I think, is a great example of that. Content that is by its own nature valuable because of how much time and how much energy is devoted to it. And that's really different from content that's out there. And we might think about user-generated and uploaded content, which is a massive market if we think about all the influencers now that exist, massive, massive market, but a totally different kind of content, a totally different kind of quality approach. And then we see platforms that pivot and orient towards these different kinds of quality dimensions. And that's all without AI. With AI, I think we're going to see a similar kind of burst and settling and movement around quality. And what is that going to mean for us? I think it raises a few different questions from the perspective of both content moderation and safety. So, I'll take them one at a time.

Bill Rosenblatt: Well, when you say movement around quality, what do you mean by movement around quality?

Anna Gressel: I think it means that with AI-generated content, people are going to start making decisions about what they think quality content even is and what merits getting put on the platform. So, you talked about platforms removing content. That's a decision about whether that platform is there for that AI-generated content or it's not. And that's a normative position that platforms are going to have to take. And one of those points that I think is going to end up being important.

Let me just talk first about moderation is this question of authenticity. That's not an easy question in the AI space, because a lot of this content is not going to be just AI-generated or not. It's not a binary. I We're going to start seeing content, and we already are seeing AI-generated content that's generated and modified and adapted. And AI is one tool in a creator's toolbox. So, is that going to be considered the kind of quality that's kept up or taken down? That is going to be a question that platforms are going to have to align themselves around, and each platform will probably have a different view of that.

But even discerning for platforms, what is AI-generated versus modified or changed is a difficult technical question. And so, we see that a lot in the deepfake space.[61] Understanding what is authentic and what is modified is not an easy technical task. It often requires things like watermarks or labels or content detectors. And so, we're going to see, I think, alongside these quality choices, a proliferation of tools to help with that moderation. And it is not something that can be easily done manually and certainly not without additional data about that content itself. So, those normative choices come with technical tools that are required.

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[61] Deepfake detection technologies such as Reality Defender have been marketing their technologies for use in detecting AI-generated content. Homepage, REALITY DEFENDER, https://www.realitydefender.com/ (last visited Dec. 18, 2024).

On the safety side, I mean, I think we see this now in all kinds of different contexts, but AI-generated content can include things that are infringing, it can include defamatory content, and it can include potentially harmful content. And we see this, let's take it out of the music industry, but we see non-consensual sexual imagery. We see other kinds of content that might include bullying, it might include hate speech, or slander. And that's content that in general is going to be the focus of significant moderation efforts again, as there's a deluge of content that has flooded platforms. That's not so different from what we already have today on major platforms. I think what is different is the number of websites, the number of platforms that will be affected is going to be significant. But the question is, again, how to deal with that. And that is going to again require the use of new tools and technologies to detect that content, and then really interesting and tricky decisions about when to take that content down and how to take that content down.

That might include things like using the DMCA,[62] Section 230 [of the Communications Act of 1934],[63] and even new mechanisms under Tennessee's updated ELVIS Act or other digital likeness rules that might actually require platforms to pull down content as they learn that it's not permissioned or not authorized by the person whose likeness is used.[64] And so, all of these moderation pieces are working together, and they all require technical tools to actually effectuate them. I guess what I would say is really, at bottom, I think this is both a series of choices we're going to be making about content and then a series of tools that we're going to have to overlay on top to then actually get those choices and those decisions working correctly.

Bill Rosenblatt: As a follow-up, copyright and safety issues, those are two broad buckets that online service providers manage. In my experience, I've seen them dealt with by the same group of people, whether that's a good idea or a bad idea.[65] How do you think AI is going to affect the way service providers manage those two buckets of issues, infringement versus safety?

Anna Gressel: I think that they are very similar. And this is what I meant earlier when I introduced myself. I think we're seeing these issues really begin to run together, and the kinds of technical tools to manage them really begin to run together as well, even including things like detection of harmful content that can sometimes be the same kinds of AI tools that will need to be created to deal with these issues. So, to the extent that we're talking about internal choices that platforms and other companies are making about how to run these processes. I mean, there certainly can be efficiencies at the same time that there can be different tensions, like different kinds of First Amendment tensions, for example, that run in countervailing directions. But those are choices that a lot of major

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[62] 17 U.S.C. § 512 (1998).

[63] 47 U.S.C. § 230 (2018).

[64] Ensuring Likeness Voice and Image Security (ELVIS) Act, S.B. 2096, 113th Gen. Assem., Reg. Sess. (Tenn. 2024).

[65] For example, some internet service providers handle copyright takedown notices in the same department as they handle safety issues such as harassment and abuse.

companies, and even smaller companies are going to have to make as they deal with the AI-generated content.

Bill Rosenblatt: And so, you think the tools have to evolve. And in our conference last year, we had a panel on deepfake detection tools, and things of that nature.[66] And I think we've heard some remarks today that it's going to be an arms race and whatnot. Do you have any opinion on how good the tools are, how good they're going to need to be, things of that nature?

Adrian Perry:, I think there's a lot of general principles getting thrown out there, and we'll use the deepfake thing as an example. There might be some products where actually the goal is to create a deepfake.[67] And celebrities have actually licensed their name, image, and likeness for use for that purpose. So, that's something I've seen a bunch in doing a bunch of these AI services or even AI data training deals or product counseling matters. A lot of times people start with these very broad and prescriptive restrictions that just don't work in practice.

And I think again, the sort of deal market or commercial market and regulation all has to kind of move in parallel, right? I mean, another example I'll throw out there is the principles around transparency of how you built your AI product, right? Which makes sense and is a good thing, but when you get down to it it also seems unfair to force companies to completely disclose their secret sauce that gives them a competitive advantage over someone else.

So, we've had big debates in audit provisions over how much information do you need to disclose to ensure that the counterparty is meeting their obligations without turning over their trade secrets. So, I mean, there's a lot of balance that has to be struck. When you put these filters and tools in place to get rid of certain types of content, like the First Amendment issue is a really good one. I mean I don't know, but what you counsel clients to do is you gotta make sure your stuff doesn't reproduce this or doesn't act in this manner. But there are times when actually that might be, in fact, the goal.

I mean, certainly, there are scenarios where it's never the goal to come up with objectionable content or pornographic stuff or whatever it is. But I guess I'm trying to say that you have to be focused on what the product is trying to do. And ultimately, it's up to the regulators to figure out, "Okay, how do we enable business to move forward within reasonable parameters?" Because I think there's a lot of opportunities for celebrities to license their NIL [name, image, and likeness] and enable use of their voice, their image in these tools in exchange for revenue or whatever deals they want to strike. So, just having a blanket, you can't use this ever, doesn't make sense. You have to have some sort of nuance there and some basic principles.

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[66] *Are You for Real? Identifying and Detecting AI-Generated Content Panel*, COPYRIGHT + TECHNOLOGY CONFERENCE 2023.

[67] For example, products that enable legitimate recreations of persons using AI, where the person has granted the rights to do so, such as for language localization reasons (e.g., an AI that manipulates video and audio of a singer so that they sing a song in another language).

Bill Rosenblatt: I think, to me, the analogies between copyright detecting tools and AI detecting tools, to use very coarse terms, are really striking because of what happened with the copyright detecting tools. They weren't perfect, they're not perfect, but they end up being good enough for certain purposes that you define.[68] And I guess that's where we're going to end up, right? Or maybe?

Adrian Perry: It's like all tech innovation: it's trial and error. There'll be bumps along the way. And that's why I think everyone that says, "Look, it's just another step along the line, this is a big advancement, but ultimately it's just another tech innovation that we have to adapt to," I think that's right on. And there's just going to have to be some trial and error like everything else. And the laws will eventually probably move, and the regulations will have to move because people won't be able to do business or do something which people think, "Well, that actually should be okay." We have to figure out a way around this so there's a bit of a practical side to it.

Bill Rosenblatt: Anyone else want to add anything to that?

Anna Gressel: I think we're in a moment where we talk about these things as though they're monolithic concerns, but really they're not. And a good example of that is content authenticity kind of labels, for example, or content provenance labels. And those can be great for certain circumstances, but if you're a human rights researcher and taking photos and need to remain anonymous, that's not a great tool for you to have. And so, there are always going to be these concerns we're balancing because these technologies are fundamentally multi-use, and the risks are so contextual.

And as we even just talked about, there are safety risks, there are IP risks, there are just general content moderation perspectives on this. And each of them is going to have to be balanced by the company, by the context, by their users. I mean, Soundful is a great example of a tool that is really focused on creators, and that's going to have different concerns and different equities than other kinds of platforms. So, I just couldn't agree more with a very balanced, fine-tuned approach to these types of tricky issues.

Olena V. Ripnick O-Farrell: That was such a good pun in your answer.

Bill Rosenblatt: The last topic I'd like to bring up is fraud. We've talked about safety. We've talked about infringement. We've talked about name, image, and likeness. Although this conference is called Copyright and Technology, and not NIL and technology, obviously they're related. But some of you may be familiar with this indictment that was handed down a couple of weeks ago. Someone was caught using music AI to produce a couple hundred thousand tracks and put them up on streaming services to fall under the radar of streaming fraud detection algorithms and claim royalties.[69] And over a period of time, Michael

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[68] For example, music recognition technology is used to detect uploads of copyrighted material on online services such as YouTube and to measure airplay on broadcast radio. It is considered to be highly accurate for current hit music, if perhaps less so for older or more obscure content.

[69] That is, his alleged techniques of uploading AI-generated music to streaming services were able to evade streaming fraud detection technologies.

Smith claimed $10 million in royalties by using AI music tools in this allegedly fraudulent way.[70] And so, my question is, what sorts of other allegedly fraudulent behavior do you think may come up that hasn't come up before, or is that the wrong way to think about it? Is this just yet another kind of instance of someone finding a loophole in the system and exploiting it?

Olena V. Ripnick O-Farrell: I think I said it earlier, bad actors are always going to find ways to do bad things. That's why outside of even the copyright space, there are so many concerns surrounding frontier models and making sure boards are informed about how things are being used. There are always bad ways to do things. So, I'm sure there are many, many ways that people could use Gen AI for bad reasons. But I think that goes to both of your points earlier about having to sort of take a broader contextual look at the uses and how things are being used and implemented. But I think it also goes to the broader question, which is definitely not for a copyright and tech panel, but right about ethical AI development, about safe AI development, about making sure you have all of those concerns so that you can cut those things off at the pass before versus here where you're seeing it after the fact.

Anna Gressel: I think the only thing I would mention is I think we have a paradigm shift coming on some of these issues. And so far, we've generally been talking about content that's created by humans, vetted by humans, and put on platforms by humans. I think there's a different set of issues around fraud where we're really talking about truly fully automated systems. And what I mean by that is including agents that are going to be able to take a goal and then use that, execute on that goal using contextual reasoning, potentially ensembles of systems where the humans' goals are going to be actioned in the real world.

And so, I think the world that we're looking at is going to look a little bit more dynamic. It's going to look a little more complex because the kinds of strategies those agents may use may not be completely supervised by humans. And the more we relinquish control, I think from a human perspective, the more interesting questions get raised about what fraud even looks like in a system where some of this is automated, and we can't necessarily show intent as easily, necessarily understand what the goal was even of the agent in doing something, and whether that was intentional or not. And so, I think we have a very tricky set of questions on the horizon, even if we're not there today.

Bill Rosenblatt: The trickiness of showing intent is a really interesting point. We've come a long way from the days when I was in high school, and you had these late-night television commercials for K-Tel's latest hit compilation album, featuring cover bands who can get a compulsory mechanical license to make a cover of the top hits of the day, where the original artists might not have liked

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[70] *North Carolina Musician Charged With Music Streaming Fraud Aided by Artificial Intelligence*, U.S. ATTORNEY'S OFFICE SOUTHERN DISTRICT OF NEW YORK: PRESS RELEASE (Sept. 4, 2024), https://www.justice.gov/usao-sdny/pr/north-carolina-musician-charged-music-streaming-fraud-aided-artificial-intelligence.

that.[71] We have 10 minutes left, and I'd like to open it up to the audience now. So, any questions? Any comments? Yes, Linda, let's give you a mic.[72]

Questions from the Audience

Speaker 1: Okay, I'm speaking in my own capacity as well. I'm hearing we lack clarity. We need the law to catch up. I'm also hearing a lot about new market solutions, both technological and deal-making and licensing. What role do you think law or regulation should play in this? Or should we be watching to see what the market does and whether or not the market produces adequate solutions?

Adrian Perry: I mean, I think the lawyers have to help push things forward, at least on the deal and product side. And a lot of us here are transactional or product counseling lawyers. You're not going to sit there and not help a client that's trying to do something. You just deal with the current set of legal parameters, and you help them move forward with the deal. And if there's a gray area, you just paper around it as best you can, and you keep moving. I mean, I think a litigator or disputes perspective will be different, potentially.

But I definitely see my role and other attorneys, in my capacity, either at a firm or in-house, to be trying to push things ahead. And sort of show what the open issues are and show what the roadblocks are by helping to facilitate the innovation, not just in the tech side, but actually like, creating a deal market for whatever it is, whether it's certain types of AI tools or licensing content and other data for training. I mean, I think you have to be pushing things ahead, but others may disagree.

Anna Gressel: Bill, before we go to the next question, I just want to also jump in on that really quickly. I do think there's a really interesting dynamic right now around AI regulation, and I'm just coming back from Abu Dhabi, where there's a lot of work being done. I think every company we're talking to right now is asking, "Where should we be doing this globally?" Whether it's development of AI tools or deployment of AI tools. People are looking for certainty. Companies are looking for certainty. And there are widely divergent regulatory approaches, including on IP globally right now. And so, I think there is opportunity for countries to mark out their positions. But I do also think it's likely that we're going to see a real reaction to that right now because of how important the investments in these technologies are, whether they're on the chip side, the compute side, or the training side, or the output side, including R&D for scientific companies. There's just so much investment that it's natural, I think, to have a very quick regulatory reaction and response time, and we're certainly seeing that.

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[71] *See, e.g.,* Ray Chelstowski, *Collecting K-tel Records,* GOLDMINE: THE MUSIC COLLECTOR'S MAGAZINE (Apr. 9, 2021), https://www.goldminemag.com/features/collecting-k-tel-records.

[72] Linda Quigley, Senior Level Attorney Advisor (Copyright), U.S. Patent and Trademark Office. Linda Quigley Speaker Biography, USPTO: PUBLIC SYMPOSIUM ON AI AND IP, https://www.uspto.gov/about-us/events/public-symposium-ai-and-ip#Quigley (last visited Dec. 18, 2024).

Bill Rosenblatt: All right, I'm going to move to a question from one of the virtual attendees. How confident are we that there is a sustainable business model in the music industry going forward with AI assistance allowing creators to constantly add so much competitive content to the market? Anyone want to take that one?

Adrian Perry: I understand the concern, but we're not quite there at like, "Well, screw the Beatles, let's listen to this AI thing." Eventually, I think AI generation, music generation tools are going to be phenomenal, and it's already impressive what they can do. But I don't know that anyone needs to hit the panic button yet. And I also think these things will coexist side by side, consistent with what I think what everyone is saying is that you have to kind of harness these technologies, find the balance. But I definitely think that there will be a music industry, there will continue to be musicians that go out there and tour and put out records. They just might be using more generative tools to create pieces of their songs and things like that. And maybe there will be AI-generated artists. That's already happening, right? There are already the Metaverse artists.

Bill Rosenblatt: The K-pop band with one artificial member.[73]

Adrian Perry: And it hasn't stopped BTS from going out there and selling tons of records, too. I think that there's no panic right now, but I do have an expectation that this trial and error will continue, and the laws and the market will evolve such that we'll kind of get there. If some crazy stuff happens with certain legal case decisions or regulation or legislation could upend anything. But even as it stands now, I don't think the music industry is going to disappear. I think it'll be more moving in parallel. Anyway, I certainly welcome others, though.

Bill Rosenblatt: Diaa, did you want to jump in here?

Diaa El All:, I agree with Adrian. I don't think there is a need to panic, even down the line, when it's as good and you can't even distinguish it at all. Right now, it's all about how, as an artist, there is going to be more content just by even tools like Ableton and Pro Tools. And we've been using AI as producers for a very long time, too. For mixing and mastering and even coming up with certain melodies with plugins. It's really not different. It's just like another step forward. But yes, there is going to be more content, but at the end of the day, it comes down to the artist and the creator. How are they going to show that art, and how do they connect with their fans and build fan bases and create experiences and leverage tools to create different experiences for their fans to make them stand out other than artists? But even today, it's not about just putting good music out anymore. It's about how you connect with and build your super fan ecosystem? How do you make different and offer different things for your fans and your social presence, your touring, et cetera, that's never going to stop. It's just an addition, really.

Diaa El All: Imagine a scenario, though, where you have just fully autonomous AI artists that are doing all that same stuff, right? And so, then you get into the questions, and Anna's right about all of the regulations needing to be

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[73] E.g., SUPERKIND.

examined from all the angles. Transparency. If you know that this artist is a human, but this artist is a generative AI artist and that's required to be disclosed, then okay, then that might impact the way someone decides what they're going to listen to or not. But if that isn't required, and again, I'm not saying that's good or bad, but if you don't know the difference, then it's all just about the quality and what resonates. But it's definitely not unrealistic to think that you could have human artists and AI artists side by side promoting records, and you wouldn't necessarily know the difference unless someone tells you.

Bill Rosenblatt: Any other questions? Yes. Let's get you a mic. Yeah.

Speaker 2: Can you talk through your business model again? I know you said 80/20. Is that to the labels, or to the artist whose music is being used to generate tracks? I was just a bit confused.

Diaa El All: Our business model, it's a SaaS model and it's a subscription.[74] And when you create something from Soundful and you download it's yours, and you own it. The 80/20 that I was referring to is when we build the artist models and we launch it for them. It's not a part of the subscription. That's more on the à la carte. Let's say it's $14.99 to get access to a Timbaland or a Cascade model. Then the money from that gets split between us and the artist.

Bill Rosenblatt: Okay, let's see. Any others? Yes. Here. Let's get you a mic.

Speaker 3: Thanks a lot. I gather that the Copyright Office requires you to disclaim anything which has been done by AI. And we can see that some collecting societies are embarking that route as well. You have to cross out anything that has been made by AI. The question I'm asking is, is that a fair way of dealing? Because, I mean, you can enter a prompt which is protected, which is very sophisticated, and the music which comes out could be a reflection of the prompt you've entered. Then it's a use of your prompt. So, is that a fair way of dealing, or do we need to end up somewhere else?

Anna Gressel: This is being litigated right now.

Bill Rosenblatt: Yeah, stay tuned, I think is the short answer. And I would add, as I added last year, this question of what does it even mean to use AI, what does that even mean? See, I studied AI in grad school, back when mastodons roamed the earth. And what people understood by AI then is very different from now. To me, AI is almost like a marketing term. It's not very precise. And so, what does that even mean?

Olena V. Ripnick O-Farrell: Well, and I think just to very quickly add to that point, and you described one specific use case. I don't know if anyone besides me reads The Ethicist, but he actually took on an ethical question around generative AI in last week's New York Sunday Times [Magazine] column.[75]

Personal favorite. Highly recommend it to everyone. One of my favorite reads every week. And it was interesting to get his thoughts on generative AI

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[74] *License*, *supra* note 48 (SaaS is short for "Software as a Service.").

[75] Kwame Anthony Appah, *Should You Be Allowed to Profit From A.I. - Generated Art?*, THE NEW YORK TIMES MAGAZINE (Sept. 27, 2024), https://www.nytimes.com/2024/09/27/magazine/ai-art-profit-ethics.html.

because he spoke quite extensively about the use of "centaur" models and humans and machines working together. And he ended the column, and I'll read it 'cause I actually think it's pretty telling for this panel and sort of the framing of how to look at things moving forward, "Plenty of people I know view AI systems as simply parasitic on human creativity and deny that they can be in service of it. I'm suggesting that there's something wrong with this picture." So, his position. Humans and machines can work together, and we're not necessarily in absolutes, which is why, back to my earlier point, I think to everyone's point on this panel, we need clarity. And whether that's going to require action by Congress or action by the copyright office right now, not having that clarity on what is owned and what is going to have an impact on incentives, to Anna's point, it's going to have an impact on everything. So, while we can all sit in kind of the hypothetical in that space moving forward, I think hopefully in a year or so, we'll have a little bit more information.

Bill Rosenblatt: Maybe a little. I mean, these cycles tend to take on the order of a decade to resolve themselves, as we found, from file sharing and from mechanical licensing, and from all sorts of other disruptive technologies. All right. With that ambiguous note, I'd like to thank our panelists, Olena, Adrian, Anna, and Diaa.