Before the
NETWORKING AND INFORMATION
TECHNOLOGY RESEARCH AND DEVELOPMENT
(NITRD) NATIONAL COORDINATION OFFICE
(NCO); NATIONAL SCIENCE FOUNDATION, ON BEHALF OF THE WHITE HOUSE
OFFICE OF SCIENCE AND TECHNOLOGY POLICY (OSTP)

In the Matter of Request for Information on the Development of an Artificial Intelligence (AI) Action Plan	Docket No. 2025–02305 Submitted March 14, 2025

COMMENTS OF THE MOTION PICTURE ASSOCIATION, INC.

The Motion Picture Association, Inc. ("MPA") appreciates the opportunity to submit the following comments in response to the Request for Information on the Development of an Artificial Intelligence ("AI") Action Plan (the "RFI"). [1]

MPA is a not-for-profit association founded in 1922 to address issues of concern to the motion picture industry. Over its more than 100-year history, MPA has grown to become the premier global advocate of the film, television, and streaming industry. MPA's members are: Amazon Studios LLC; Netflix Studios, LLC; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Universal City Studios LLC; Walt Disney Studios Motion Pictures; and Warner Bros. Entertainment Inc. MPA's members and their affiliates are the world's leading producers and distributors of filmed entertainment in the theatrical, television, and home-entertainment markets.

MPA applauds the Administration for championing American industry and American workers, and for its stated objective of promoting U.S. leadership in establishing a "gold standard" for AI innovation that works for all Americans. We welcome the opportunity to work with the Administration to support an AI Action Plan that: 1) clearly acknowledges the importance of safeguarding the intellectual property of America's creators; 2) ensures that the course of AI innovation charted by this Administration works for the millions of Americans who make their living in the creative industries, many of whom are employed by MPA's members; and 3) maintains the nation's global leadership in both the creative and innovation industries.

[1] 90 Fed. Reg. 9088 (Feb. 6, 2025), https://www.govinfo.gov/content/pkg/FR-2025-02-06/pdf/2025-02305.pdf. This document is approved for public dissemination. The document contains no business-proprietary or confidential information. Document contents may be reused by the government in developing the AI Action Plan and associated documents without attribution.

I. AN AI ACTION PLAN THAT RESPECTS INTELLECTUAL PROPERTY WILL ENABLE THE UNITED STATES TO EXPAND ITS LEADERSHIP IN *BOTH* THE AI AND CREATIVE SECTORS.

Of all the sectors of our economy, the U.S. has established itself as the clear leader in at least two areas: creativity and innovation. The RFI highlights the Administration's goal of "sustain[ing] and enhanc[ing] America's AI dominance"[2]—a goal indeed shared by MPA and our members. An AI Action Plan that respects intellectual property will enable the United States to expand its hard-won leadership in both AI and the creative industries. MPA is proud to represent an iconic American industry that itself has led its global competitors for over a century, fueled by uniquely American human creativity and technological innovation, and undergirded by the U.S. Constitution's protection of both free speech and intellectual property.[3] Here at home, and around the world, our industry delivers enormous economic value, drives innovation, promotes free expression, and serves as a global ambassador for the nation's creativity and dynamism, as well as its values. In formulating AI policy, the Administration should aim ***both*** to advance America's global leadership in AI technology innovation as well as maintain the preeminent position of the motion picture industry and other parts of the creative sector. Such a policy will be key to any successful effort to, in the words of the White House's announcement of the RFI, "promote human flourishing, economic competitiveness, and national security."[4]

II. STRONG COPYRIGHT PROTECTION IS KEY TO ENSURING THE CONTINUED GLOBAL LEADERSHIP OF THE U.S. MOTION PICTURE, TELEVISION, AND STREAMING INDUSTRY.

We applaud the first Trump Administration for advocating "AI with American Values,"[5] which recognized "respect for intellectual property" as among those values. MPA could not agree more, and we encourage the Administration to carry that goal forward in its AI Action Plan. Protection and enforcement of intellectual property is the foundation upon which many of our most successful and lucrative industries—including the motion picture, television, and streaming industry—thrive. Core copyright industries contribute more than $2 trillion to the U.S. GDP, accounting for 7.66% of the U.S. economy[6] and more than half of the U.S. digital economy.[7] Globally, foreign sales of U.S. copyright products outperform other major industries, including chemicals manufacturing, pharmaceuticals, agricultural products, and aerospace products.[8] In 2023, the enduring value and global appeal of U.S. entertainment earned $23

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[2] *Id*.

[3] *See* U.S. Const., Amend. I.Art. I, Sec. 8, Cl. 8 ("The Congress shall have the power To… promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.").

[4] The White House, Public Comment Invited on Artificial Intelligence Action Plan (Feb. 25, 2025), https://www.whitehouse.gov/briefings-statements/2025/02/public-comment-invited-on-artificial-intelligence-action-plan/.

[5] The National Artificial Intelligence Research and Development Strategic Plan: 2019 Update, https://trumpwhitehouse.archives.gov/ai/ai-american-values/.

[6] Jéssica Dutra & Robert Stoner, *Copyright Industries in the U.S. Economy: The 2024 Report*, at 6, https://www.iipa.org/files/uploads/2025/02/IIPA-Copyright-Industries-in-the-U.S.-Economy-Report-2024_ONLINE_FINAL.pdf.

[7] *Id.* at 20.

[8] *Id.* at 18.

billion in audiovisual exports.[9] This industry is one of the few that consistently generates a positive balance of trade with nearly every country in the world. In 2023, the industry's services trade surplus was $15.3 billion, or 6% of the total U.S. private-sector trade surplus in services.[10] And in terms of global competition, America's copyright industries continue to outpace the economic growth of other leading economies, including China, Germany, Japan, and India.[11] That growth and value add is a direct result of the United States' robust protection and enforcement of intellectual property rights domestically and around the world.

In formulating its AI Action Plan, the Administration should continue to center "respect for intellectual property" as a core pillar of U.S. AI policy. Strong copyright protection is the backbone of the motion picture industry, incentivizing the production and distribution of new works. Indeed, the Supreme Court has characterized copyright as the "engine of free expression," which, "[b]y establishing a marketable right to the use of one's expression, … supplies the economic incentive to create and disseminate ideas."[12] Copyright also provides a means to stop unscrupulous actors at home and abroad from free-riding on the hundreds of millions of dollars a U.S. producer may invest in a single motion picture or television program.

Strong copyright protection also aligns with Vice President Vance's declaration at the February 2025 Artificial Intelligence Action Summit in Paris that "We will always center American workers in our AI policy"—again, a sentiment with which MPA wholeheartedly agrees. MPA is proud that the American motion picture, television, and streaming industry is a major employer of U.S. workers that supported 2.3 million jobs and $229 billion in total wages in 2023.[13] Nearly 312,000 jobs were in the core business of producing, marketing, and manufacturing of motion pictures and television shows.[14] Another nearly 544,000 jobs were engaged in the distribution of motion pictures and television shows to consumers, including people employed at movie theaters, video retail and rental operations, television broadcasters, cable companies, and online video services.[15] The industry also supports indirect jobs in the hundreds of thousands across 122,000 businesses, most of which are small companies that do business with the industry such as caterers, dry cleaners, florists, hardware and lumber suppliers, and retailers.[16] This all just a portion of the more than 11.6 million jobs supported by the combined core copyright industries in this country.[17]

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[9] Motion Picture Association, *The American Motion Picture And Television Industry: Creating Jobs, Trading Around The World* (2023), https://www.motionpictures.org/wp-content/uploads/2025/01/MPA_Economic_contribution_US_infographic.pdf.
[10] *Id.*
[11] Dutra & Stoner, *supra* note 6, at 10.
[12] *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 558 (1985).
[13] Motion Picture Association, *supra* note 9.
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *See* Dutra & Stoner, *supra* note 6, at 1. In addition to the motion picture/television/streaming industry, core copyright industries include music, book publishing, software, videogames, photography, visual arts, and news publishing.

III. AN EFFECTIVE AI ACTION PLAN CAN AND MUST PROMOTE THE PROTECTION OF COPYRIGHT AS A PART OF FOSTERING AN AMERICAN-LED GOLD STANDARD FOR AI INNOVATION.

A. The Mutually Beneficial Relationship Between Copyright And AI.

AI, including potential uses of generative AI, can be a powerful tool in the hands of human creators to enhance the art of storytelling and serve the filmmaking process. A robust copyright system that facilitates and provides incentives to create movies, television programs, and other art forms—the types of high-quality works that AI developers often seek out to train AI models—will prove essential to paving the way for America's global dominance in AI innovation.

We need not sacrifice our well-established position as the global leader in intellectual property protection and enforcement to solidify our position as the world leader in AI. As stated in the President's Executive Order on Removing Barriers to American Leadership in AI,[18] the strength of our free markets has played a key role in the success of our AI innovation. Development and adoption of AI systems should continue to evolve as a function of the free market, which depends on a system of clearly defined property rights. Such a free-market approach anticipates that innovators will bear the actual costs of developing new AI systems, including by respecting others' property rights. Innovation is served through robust intellectual property rights, and a robust marketplace for the direct licensing of content by creators to AI companies has already emerged. These types of agreements and policies show that market-based solutions, which both respect copyright owners' rights (and provide creators with market-based compensation) and facilitate the training of generative AI models, continue to develop.[19]

Developments in AI, like preceding technological advancements, have great potential to enhance human creativity, promote human flourishing and further our nation's economic competitiveness. MPA's members believe that to do this, these developments can, and must, co-exist with a copyright system that incentivizes the creation of original expression and protects the rights of copyright owners. In fact, there is an important mutually beneficial relationship between the two. AI can facilitate human creativity, for example, by freeing creators from tedious and repetitive tasks that are a necessary component of creating world-class audiovisual content. AI provides more time and tools for content creators to be creative. Creators can use AI for everything from color correction, detail sharpening, and de-blurring; to removing unwanted objects from a scene; to more involved work like aging and de-aging an actor; or to adjusting the placement of computer-generated images to make sure everything in a scene flows smoothly and aligns properly. Artists have expressed enthusiasm for AI tools that enhance their work, and for continued technological development of these and similar tools. Technological advancements play a vital role in ensuring that our creative industries continue to thrive and compete worldwide.

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[18] Exec. Order No. 14179, 90 Fed. Reg. 8741 (Jan. 23, 2025).

[19] Examples abound. For instance, IBM is working with Adobe and its Firefly AI model to expand its commercial potential. Press Release, IBM Expands Partnership with Adobe to Deliver Content Supply Chain Solution Using Generative AI (June 19, 2023), https://newsroom.ibm.com/2023-06-19-IBM-Expands-Partnership-with-Adobe-To-Deliver-Content-Supply-Chain-Solution-Using-Generative-AI. And Reuters has licensed its news articles to Meta. *See* Meta Platforms to use Reuters news content in AI chatbot (Oct. 25, 2024), https://www.reuters.com/technology/artificial-intelligence/meta-platforms-use-reuters-news-content-ai-chatbot-2024-10-25/.

At the same time, AI creates heightened risks for creators. Generative AI platforms that are not developed in a way that respects copyright may violate copyright at the input stage during training and/or produce outputs that infringe on the rights of creators, thereby undermining creators' ability to earn a living practicing their chosen craft. Therefore, U.S. AI policy should encourage the development of AI systems that ***do*** accord respect for others' intellectual property rights. This is particularly crucial because other countries often look to the U.S. in setting their own AI policies, and if a U.S.-led "gold standard" for AI innovation does not adequately address the protection of IP, other countries will be sure to look to exploit American's valuable IP, inflicting harm not only on MPA's members but on others that comprise the U.S. creative sector. And of course, it is only a short hop from disregard for the intellectual property in creative works to a disregard for the intellectual property of AI technology itself. Indeed, there are already concerns that China may be making unauthorized use of U.S. AI technology to advance its own AI industry.[20]

The truth is that the protection of IP and innovation are mutually reinforcing values. In AI specifically, for example, copyright law incentivizes the creation of a variety of high-quality creative content, which AI developers in turn rely on to train their generative AI models. The quality of the content used to train AI affects the quality of the AI system—garbage in, garbage out; quality in, quality out. America's intellectual property is the embodiment of the quality content AI companies around the world seek in order to thrive, which in itself puts our economy and our pursuit of global AI dominance at a significant advantage. The United States has long set a global example on copyright law and policy and played a strong role in shaping international norms. This administration's role is critical in ensuring that we maintain our leadership in AI innovation without sacrificing our longstanding position as the world leader in intellectual property protection.

Competition for AI leadership among the world's leading nations will ensure that Americans, and the world at large, benefit from the best that AI technology has to offer. When innovative and trustworthy American AI companies license high-quality American content to develop high-quality AI technology, the U.S. economy thrives, and related industries are better able to compete in the global marketplace. The best way to solidify our competitive advantage in both AI and intellectual property protection is to embrace the important, mutually beneficial relationship between the two with optimism and respect, and with an eye toward policies that support the advancement of each without diminishing one or the other.

B. How The Law Should Address the Relationship Between Copyright And AI

MPA's overarching view is that, at this time, there is no need for new legislation or special rules in U.S. copyright law to address novel issues raised by AI. While AI technologies raise a host of novel legal questions, those questions implicate well-established copyright law doctrines and principles. At present, there is no reason to conclude that these existing doctrines and principles will be inadequate to answer AI-related questions as and when they arise. At the same time, it is important to maintain legal incentives for AI developers to respect the rights of creators in the design, development and deployment of AI systems, including in countries around

[20] *See* Stephanie Samsel, *There is a 'wake-up call' for US to be the leader in AI, says White House AI and crypto 'czar'*, Fox News (Jan. 28, 2025), https://www.foxnews.com/media/wake-up-call-us-leader-ai-says-white-house-ai-crypto-czar.

the world that might look to exploit the works of the American creative industries to promote AI development in their countries.

1. AI "Training" and Copyright

The debate about whether reproduction of copyrighted works to "train" AI models constitutes copyright infringement, or is permitted by the fair use defense, has become highly polarized, with many participants staking out "all or nothing" positions on this issue. But sweeping generalizations that training is *always*, or is *never*, lawful under the fair use doctrine are neither helpful nor correct. As the Supreme Court has instructed, "The task [of determining whether a use is fair] is not to be simplified with bright-line rules, for the statute, like the doctrine it recognizes, calls for case-by-case analysis."[21]

More than three dozen lawsuits raising the issue of whether AI training without the permission of the copyright owner constitutes infringement have been filed over the past two years in the U.S. and in other places around the world. Under the Copyright Act in the U.S. and the case law interpreting it, courts will apply four fair use factors to the facts before them and reach decisions in each case. If courts reach different conclusions in these cases based on the different facts before them, that is an inherent feature of fair use, which is "an equitable rule of reason," under which "each case raising the question must be decided on its own facts."[22] The fair use defense enables courts to consider all the statutory fair use factors and apply them in the context of specific facts. This type of inquiry is the appropriate way to address the many types of potential infringements that may arise under the broad umbrella of "training" a generative AI system in the U.S. As of now, there is no cause to believe the courts and existing law are not up to the task of applying existing copyright law to new technology—as courts have been doing for over a century—and thus MPA sees no reason for changes to U.S. law to resolve these fair use issues.

The U.S. Copyright Office is currently undertaking a comprehensive study of copyright and related issues raised by AI.[23] It has already issued the first two parts of its report, addressing digital replicas and copyrightability of AI-assisted works, and has indicated that it will issue Part 3, addressing issues related to infringement (including training), in 2025. MPA encourages the Administration to consult closely with colleagues in the Copyright Office, as well as the copyright experts at the U.S. Patent and Trademark Office, in developing the Administration's AI Action Plan.

Lastly, MPA sees benefits in a developer of an AI model keeping and making available appropriate records regarding the materials used to train AI systems and services offered to the general public or external commercial customers. As well as providing transparency for copyright holders, these records would allow the public and regulators to meaningfully assess the lawfulness as well as the reliability of the developers' activities. Maintenance of such records may also be required because of anticipated litigation. MPA's members believe regulators and policymakers should be thoughtful about the context and nuances of any recordkeeping

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[21] *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 577 (1994).
[22] *Harper & Row, Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 560 (1985) (quoting H. R. Rep. No. 94-1476, at 65 (1976)).
[23] *See* U.S. Copyright Office, Notice of Inquiry and Request for Comments, Artificial Intelligence and Copyright, 88 Fed. Reg. 59942 (Aug. 30, 2023), https://www.govinfo.gov/content/pkg/FR-2023-08-30/pdf/2023-18624.pdf; *see also* https://copyright.gov/policy/artificial-intelligence/.

requirements to ensure that policies are narrowly targeted to achieve the desired goal. To that end, it is important that any suggested transparency and disclosure requirements not be overbroad in scope. For example, where content creators use AI tools developed with their own content (or content licensed from others), a requirement to track and disclose the materials used for such internal purposes would provide no benefit but could impose significant burdens. Avoiding such a requirement would be consistent with the Administration's aim "to ensure that unnecessarily burdensome requirements do not hamper private sector AI innovation."[24]

2. Copyrightability

Questions about the copyrightability of works generated using AI can likewise be answered under existing copyright law doctrines and principles. As a general matter, MPA believes that when a creator uses AI as a tool for human expression, in the same way that other technologies are used as tools for creative expression, the resulting work should be protectable under copyright. For over a century, copyright law in this country has focused on whether a work is the product of the author's "original intellectual conceptions."[25] Consistent with this longstanding rule, MPA believes the authorship determination should focus broadly on the human author's overall interaction with the process for creating the work. This principle should apply to human uses of generative AI: material human creators provide to the AI tool (e.g., inputs, like a drawing or photo), refinements, direction, and then human use of the output all can involve intellectual and creative contributions that are inseparable from the ultimate work. Creators can employ generative AI systems as tools to enhance the creative process, just as they have availed themselves of cameras and Adobe Photoshop and while still obtaining copyright protection for their works.

3. The Administration Should Center U.S. Interests In Addressing International Copyright Considerations.

As a global leader in shaping international norms with respect to copyright law and policy, the United States should navigate the interplay between copyright and AI with a focus on ensuring that an American-led "gold standard" for AI innovation reflects appropriate respect for intellectual property and the rights of American creators. In particular, the AI Action Plan should take an approach that will ensure foreign countries' copyright regimes do not permit unfair exploitation of American creativity through their own AI policies in a way that violates international standards. Doing this counsels for moderation, restraint, and respect for copyright.[26] Some other jurisdictions have moved quickly to provide broad exemptions from copyright protections for "AI," or for so-called "text and data mining" ("TDM"). Such reflexive approaches have the potential to create unreasonably broad copyright exemptions and to hamper innovation.

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[24] RFI, 90 Fed. Reg at 9088.

[25] *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 58 (1884).

[26] Notably, MPA does not believe the issues relating to AI are clear candidates for WIPO SCCR norm-setting. *See, e.g.*, World Intellectual Property Organization General Assembly 2021, *Statement of the United States on the SCCR Work Program – Report on the Standing Committee on Copyright and Related Rights (SCCR)*, Statement Submitted by the United States (Oct. 6, 2021), https://www.keionline.org/36752 ("The United States believes that the current international framework for copyright exceptions and limitations provides the flexibility, consistent with well-established international standards, for countries to adopt exceptions and limitations to advance their own national social, cultural and economic policies. We therefore do not think it is advisable for WIPO to engage in norm-setting work that would impose minimum requirements in this area.").

In general, MPA supports the existing international legal framework for protection of copyright and related rights. That framework—established through American leadership—provides a principled consistency that has successfully shaped global norms while still allowing for differences in national approaches. For example, the United States generally relies on the fair use defense to determine whether an exception to the exclusive right of copyright may be appropriate in fact-specific circumstances. Other countries, in contrast, have adopted more specific exceptions-based systems.

As a contrast to the approach under U.S. law, some countries, including Japan[27] and Singapore,[28] have adopted overbroad TDM exceptions that unjustifiably intrude on the rights of U.S. creators, including MPA's members. MPA submits that these types of exemptions are bad policy, and they likely fail to comply with the Berne Convention's "three-step" test.[29] For example, bad actors may use overbroad TDM exceptions as a pretext for both piracy and the downstream use of pirated works for any purpose. As noted earlier, licensing markets for the use of copyright owners' content for training AI models have been developing. Legislation that would broadly exempt certain unauthorized uses would interfere with the interests of the United States in continued development of those markets. We therefore urge the Administration to oppose TDM and similar exceptions to copyright laws, whether introduced here in the U.S. or by foreign countries seeking to bolster their AI interests at the expense of U.S. creators.

4. Market-Based Licensing For Training AI Models Is Feasible And Preferrable To A Compulsory Licensing Regime.

MPA is a strong believer in free markets, property rights, and the ability of private individuals and entities to enter into mutually beneficial contractual relationships. Thus, in the AI context as in others, voluntary direct licensing is usually preferrable to compulsory or collective solutions. That said, some industries may believe that voluntary collective licensing better serves their needs. If collective licensing is established, that should be done on an opt-in and non-exclusive basis and be driven by the needs of the particular industry. At this time, MPA does not believe there is a need for any statutory changes (such as an antitrust exemption). Rather, the potential for different voluntary licensing arrangements should continue to play out in the market.

MPA agrees with the Copyright Office's longstanding position that a compulsory or statutory licensing scheme typically constitutes unjustified government intrusion into the marketplace; it is "a measure of last resort" that is warranted only if "Congress . . . conclude[s]

[27] Japan, for instance, has enacted a "non-enjoyment" exception for TDM. This exception generally exempts TDM from the requirements of Japanese copyright law, provided that (1) it is "not a person's purpose to personally enjoy or cause another person to enjoy the thoughts or sentiments expressed in [the copyrighted] work" and (2) the use does not "unreasonably prejudice the interests of the copyright owner in light of the nature or purpose of the work or the circumstances of its exploitation." *See* Chosakukenhō [Copyright Act], Law No. 48 of 1970, art. 30-4, https://www.japaneselawtranslation.go.jp/en/laws/view/4207#je_ch2sc3sb5at4.

[28] Singapore's TDM exception is overbroad and does not provide any ability for rightsholders to opt out. *See* Copyright Act of 2021, Law No. 22, pt. 5, div. 8, paras. 243-244 (Oct. 8, 2021).

[29] *See* Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, Annex 1C, TRIPS Agreement, art. 13 ("Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.").

that there is a compelling public need and that the need is frustrated by market failure."[30] Importantly, any compulsory licensing scheme would "also need to be sufficiently narrow to comply with treaty obligations of the United States"[31] designed to ensure adequate global protection of the works of American creative industry sectors. Market-based licensing for training AI models is feasible and preferrable to a compulsory licensing regime. Indeed, a voluntary direct licensing market already is emerging.

Although MPA speaks only for its members in the motion picture industry, those members would vigorously oppose their works being subjected to compulsory licensing mandates. To the extent any such licensing regimes are being considered, they should be at the initiation of a particular industry and narrowly tailored to serve that industry's needs.

IV. AI POLICY MUST RESPECT FREE SPEECH.

In his February 2025 Paris speech, Vice President Vance referred several times to the importance of AI policy respecting the fundamental American values of respecting free speech and abhorrence of censorship. Again, MPA wholeheartedly agrees. As noted above, our nation's commitment to principles of free speech, enshrined in the First Amendment to the Constitution, is, along with our strong protections for intellectual property, a primary reason that U.S. companies, including MPA's members, have remained the world's leaders in their field for over a century. And support for free speech is in no way incompatible with robust copyright protection. As the Supreme Court has stated, "The First Amendment securely protects the freedom to make—or decline to make—one's own speech; it bears less heavily when speakers assert the right to make other people's speeches."[32] We direct the Administration's attention to two specific issues related to the protection of free speech.

A. Digital Replicas

First, any legislation to address issues raised by digital replicas/deepfakes must be narrowly tailored to focus on real harms, without becoming a tool of censorship. MPA and its members share the concerns raised by actors and recording artists regarding unauthorized and harmful uses of AI-generated digital replicas of their likenesses or voices, including uses of such replicas in ways that could potentially replace performances by them and impact their ability to earn a living. To that end, MPA has endorsed the 2024 Nurture Originals, Foster Art, and Keep Entertainment Safe ("NO FAKES") Act, which would establish a new right governing the creation and use of digital replicas, while providing important safeguards to avoid encroaching on the First Amendment rights of filmmakers, documentarians, news organizations, political activists, and everyday citizens to use generative AI tools as a legitimate and constitutionally protected expressive technique. MPA expects the NO FAKES Act to be reintroduced this Congress, and we continue to believe it represents the best solution to addressing this issue.

[30] U.S Copyright Office, Legal Issues in Mass Digitization: A Preliminary Analysis and Discussion Document ("LIMD Report") 30 (2011), https://www.copyright.gov/docs/massdigitization/USCOMassDigitization_October2011.pdf.
[31] *Id*.
[32] *Eldred v. Ashcroft*, 537 U.S. 186, 221 (2003).

B. Output Disclosure Requirements

The topic of potential requirements to label or disclose the use of AI in producing video or audio content also requires a nuanced, context-specific approach. The ability of AI to facilitate the creation of realistic but false videos or audio recordings that deceive consumers or mislead the public about political candidates is concerning, and Congress may wish to consider legislation in this area. However, MPA opposes any requirement to label or disclose when AI tools are used in low-risk activities, such as the creation of works for expressive and entertainment purposes. Such a requirement is unnecessary; there is no reason, for example, to require a "MADE WITH AI" label on a scene in a movie where visual-effects tools that incorporate AI are used to depict a superhero zooming between skyscrapers to save a fictionalized version of New York, or to place historic figures in a fictional setting. In fact, such hypothetical labeling requirements would hinder creative freedom and could conflict with the First Amendment's prohibition against compelled speech.[33] Because strict constitutional scrutiny applies under those circumstances, courts have routinely struck down laws requiring speakers to include certain matters within their protected speech, thus preventing the speakers from expressing the message they wish to convey.

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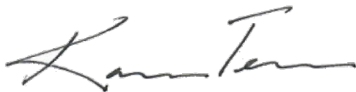
MPA and our members appreciate the opportunity to provide input for the AI Action Plan and look forward to working with the Administration on these and other topics of importance to our industry.

Respectfully submitted,



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[33] One such law, California's AB 2839 (2024), has been preliminary enjoined by a federal court on First Amendment Grounds. *See Kohls v. Bonta*, No. 2:24-cv-02527 (E.D. Cal., Oct. 2, 2024) (Order Granting Plaintiff's Motion for Preliminary Injunction), https://storage.courtlistener.com/recap/gov.uscourts.caed.453046/gov.uscourts.caed.453046.14.0.pdf.