

Opinion: Congress must protect intellectual property from AI theft

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The House Judiciary Committee just held a hearing on an issue that could shape the future of America's music and media industries — as well as nearly every other sector of our economy.

Congress is considering whether to ban state governments from imposing any restrictions or regulations on artificial intelligence. Big Tech companies and their allies — who unduly dominated the hearing — claim that such a moratorium would help America win the AI race against China and maximize the economic benefits from the new technology.

But in reality, such a ban is both unnecessary and unwise.

AI promises enormous benefits; it also poses fundamental challenges to the intellectual property rights that underpin America's innovation economy. Ensuring that state governments retain the flexibility to regulate this fast-changing technology is the best way to promote innovation and competition while still protecting American authors, inventors, and small businesses.

Intellectual property rights have fueled American innovation since our country's founding. They nurture the environment that can incentivize creators to invest time and energy in risky artistic and scientific pursuits.

Copyrights, for instance, protect original works from being reproduced without the author's permission. They allow composers and songwriters to earn royalties when their songs are played, and they allow authors to earn royalties when their books are sold. Without strong copyrights, our works could easily be copied or stolen — depriving creators of rightfully earned income streams, and disincentivizing others from entering creative fields in the future.

Unfortunately, the unchecked use and development of generative AI is increasingly undermining these longstanding and collectively beneficial rights. These systems are often trained on massive datasets that include music, books, photographs, and other works, without their original creators' consent.

Not only does that violate the copyrights on those works, but it also gives the world tacit approval and opportunities to circumvent creators' IP by using AI to mimic their works, styles, voices, and likenesses, positioning them in direct competition with the humans who created the works in the first place.

Knockoff AI media is already flooding the market, wreaking havoc on America's creative industries. More than 6 million American jobs that depend on strong copyright protections could be put at risk. Smaller artists and creators, who often lack the financial means to effectively fight back against stolen IP, would be particularly vulnerable.

Smart AI regulations are essential to avert this disastrous scenario. We must protect our creators.

At the same time, however, policymakers must be careful not to curtail the many positive applications of this new technology.

AI has tremendous potential for human good, with its ability to perform immense scales of data analysis. It's also driving scientific discoveries, from medicines to battery and semiconductor technology. U.S. leadership in AI will be vital to our nation's future economic prosperity and national security if we manage it responsibly.

That means we need nuanced policies: ones that encourage productive uses of AI while simultaneously safeguarding against IP-violating abuses.

Courts across the country are working through the nuances of this issue. One California judge recently ruled that using copyrighted material for AI training constitutes fair use, while another decided that written AI outputs don't infringe authors' copyrights. While it's too early to know the effects these decisions will have, the clarity they provide will help shape future reforms.

States will need to take an even more prominent role in devising balanced policies to guide AI adoption. Tennessee, for instance, recently passed the Ensuring Likeness Voice and Image Security (ELVIS) Act, which protects musicians and performers from illicit AI impersonation.

Federal lawmakers are now advancing a similar reform, but on a national level. The NO FAKES Act, which was recently reintroduced by a bipartisan group of senators and representatives, would codify all Americans' right to control their own voice and likeness, and create a legal foundation for fighting back against unauthorized AI "deepfakes."

And while we applaud this Act as a step in the right direction, it provides little solace to the creators of the source material: the underlying works, which have been stolen to create the AI models.

There's still more work to be done. In addition to establishing a national standard for protecting individuals' name, image, and likeness rights, policymakers should ensure that creators are protected from their works being absorbed into AI training data without permission.

Currently, many popular AI engines are known to be ingesting vast amounts of copyrighted works without respect to any of the "three C's": consent, credit, or compensation. Once that training data is processed, the engines may then be prompted to create unlimited numbers of derivative works that are built on the backs of the labor of our creators.

The AI policy decisions made in the coming years will guide the future of our creative industries, as well as economic, cultural, and scientific progress, for decades to come. State policymakers may not always get it right, but by rejecting attempts to impose an AI moratorium, Congress can ensure they retain the flexibility to adapt — and promote AI development that empowers, not exploits, American creators, workers, and innovators.

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