



January 27, 2025

Mr. Daniel Lee
 Assistant United States Trade Representative for Innovation and Intellectual Property
 Office of the United States Trade Representative
 600 17th Street, N.W. Washington, D.C. 20508

DCC Written Comments in Response to USTR’s Request for Comments Regarding the 2025 Special 301 Review (Docket No. USTR-2024-0023 89 Fed. Reg. 97161)

Dear Mr. Lee,

We, the signatories to this letter which include members of the Digital Creators Coalition (“DCC”), submit the following comments to the Office of the United States Trade Representative in its capacity as Chair of the Special 301 Committee. These comments are in response to the request for public comments regarding the 2025 Special 301 Review (Docket Number USTR-2024-0023, 89 FR 97161).

The DCC consists of member organizations that represent individual creators, independent producers, small-and-medium-size enterprises, large businesses, and labor organizations from across the American copyright-based creative sectors, including movies, music, television, illustrators, photographers, authors, and publishers, as well as news, magazine and digital media. We are committed to advancing the interests of the creative community in the digital environment, and are united in our resolve that strong copyright protection for American creators should be a top priority for US international engagement and economic diplomacy.

We appreciate the US Government’s annual review of countries that deny adequate and effective protection of intellectual property (“IP”) and deny fair and equitable market access to US persons who rely on IP protection. Given the rapid development and deployment of artificial intelligence (“AI”), and generative AI (“GenAI”) in particular, around the globe, this work is more critical than ever to defending the contributions of the US creative sector to US economic growth, job creation, and trade surplus.

To that end, these comments enumerate barriers to trade arising from AI development and deployment in foreign markets. In particular, the following addresses barriers related to GenAI, a technology that has largely been built on scraping data and using copyrighted works and sound recordings of America’s creators without authorization or compensation. These barriers confront US copyright holders overseas and arise out of: inadequate copyright and related laws, particularly where rights holders are unable to fully exercise their rights; inadequate and ineffective enforcement of existing copyright and related laws; and market access barriers that inhibit the licensing and dissemination of copyrighted works and sound recordings.

To alleviate these obstacles, we support and encourage US bilateral and multilateral engagement that advances human-centric and responsible AI, promotes creators, protects copyright, and ensures recordkeeping and transparency globally. To accomplish this, AI must be developed and implemented in a manner that respects copyright law.

The American Creative Sectors’ Contributions to US National Economic Security

Copyright is an individual property right that is an engine of enterprise and is responsible for important contributions to the US economy. The creative sector contributes significantly to US economic growth, employment, exports, and the digital economy. According to the most recent study, the copyright industries added more than \$2.9 trillion to the GDP, accounting for 12.52 percent of the US economy.¹

In terms of our digital economy, the total copyright industries accounted for 52.26 percent of the US digital economy, contributing over 58.9 percent to the US digital economy employment.² The copyright industries employ nearly 16.1 million workers, and the annual compensation paid to core copyright workers amounts to a 51 percent compensation premium over the average US annual wage.³ Regarding trade, the sales of select US copyrighted products in overseas markets amounted to \$230.3 billion.⁴

The creative sector’s significant contributions to the US economy are endangered by various efforts to undermine US copyright law and the American creative sector in favor of advancing AI technologies. Our comments address why incentivizing AI development does not justify uprooting US copyright law and the American creative sector, and in fact call for a strengthening of the US commitment to promoting copyright protection and enforcement, not only in the United States but around the world.

¹ Stoner, Robert and Dutra, Jéssica; Secretariat Economists; “Intellectual Property and the U.S. Economy, 2022 Edition”; Prepared for the International Intellectual Property Alliance; December 2022; p. 8; available at: [IIPA-Report-2022 Interactive 12-12-2022-1.pdf](#).

² Id., p. 9.

³ Id., p. 8.

⁴ Id., p. 9.

As with other technological developments, the creative community lives at the forefront of evolutions in AI technology. AI already serves as a tool to assist the creative process allowing for a wider range of people to express themselves creatively. The US creative sector continues to invest in and adopt new innovations to develop and use new tools to advance the creative process. This includes working with AI technologies, from the use of machine learning to better understand user behavior and preferences, to systems that assist in the creative process. This highlights a central principle that should be emphasized in any discussions concerning AI and copyright – *progress in AI innovation and strong copyright protection are not mutually exclusive.*

US Leadership in Protecting Copyright in the AI Environment

In its international engagement, the United States has led the way in calling for the protection of IP, including copyright, in the context of AI. In the G7, for example, the first Trump Administration was instrumental in driving key commitments regarding IP protection in the digital environment, including with respect to technologies, such as AI. For instance, the 2017 G7 ICT and Industry Ministers Declaration underscored:

...the role of intellectual property rights for promoting innovation, contributing to industry's productivity, growth and competitiveness in the digital economy and that IPR-intensive industries contribute more than other industries to increase GDP, employment and trade....The rise of IP infringements in the digital economy is of growing concern for governments, industries and consumers worldwide. Therefore, we recognize the need to have in place strong enforcement mechanisms for IP, including through international collaboration, to the benefit of IP right holders engaged in both large and small businesses, in light of serious risk of economic loss stemming from IP infringement including counterfeiting, piracy and misappropriation of trade secrets. [This includes the need to] strengthen capacity to protect and enforce intellectual property rights, also considering the impact of new digital technologies...⁵

Likewise, in 2018, the Trump Administration secured several critical commitments from G7 Leaders on AI including the need for effective protection and enforcement of IP.⁶

Notably, in 2020 the Administration issued *Artificial Intelligence for the American People*, which consisted of five pillars. The fifth pillar, i.e., “AI with American Values”, reaffirmed the President’s commitment to protecting IP in the AI environment, stating: “[t]he United States has long been a champion and defender of the core values of freedom, guarantees of human rights, the rule of law, stability in our institutions, rights to privacy, **respect for intellectual property**,

⁵ G7; ICT and Industry Ministers' Declaration; “Making the Next Production Revolution Inclusive, Open and Secure”; Turin, Italy; September 26, 2017; paras. 53-57; available at: [2017 G7 ICT and Industry Ministers' Declaration](#).

⁶ G7; Leaders Statement; “Common Vision for the Future of Artificial Intelligence”; Charlevoix, Canada; 2018; para. 12; available at: [2018-06-09-artificial-intelligence-artificielle-en.pdf](#).

and opportunities to all to pursue their dreams. The AI technologies we develop must also reflect these fundamental American values and our devotion to helping people.”⁷ Under this pillar, the Administration outlined its strategy for international leadership on AI consistent with the above values.

In furtherance of such leadership, the Trump Administration rejected attempts to weaken copyright protections in the US-Mexico-Canada Agreement (“USMCA”). Of particular importance in the AI context, the Administration dismissed proposals by certain stakeholders to add expansive language on copyright exceptions from the Trans-Pacific Partnership Agreement into the USMCA and to include a copyright exceptions for text and data mining (“TDM”) that would have permitted AI developers to use creative content to train AI models without authorization and without compensation.⁸ The Administration’s decision to reject this proposal was strongly supported by the creative sector and prevented the devastating impact of the proposal on American creators.

TDM Exceptions Threaten Creators’ Contributions to US National Economic Security

The United States must continue this trajectory of promoting respect for copyright and protection the US creative sector. We strongly oppose broad copyright exceptions for AI, including with respect to TDM, and reaffirm our position that its proponents have failed to demonstrate the need for such an exception. However, some countries are actively considering, or have already adopted, TDM exceptions that fundamentally weaken copyright protection in favor of promoting AI at the expense of the American creative sector.

These negative impacts of TDM exceptions would result from the use of creative content without authorization and without compensation, which are core components of copyright protection, and essential for further creation and dissemination of creative works. Moreover, where AI developers fail to maintain adequate records and provide recordkeeping and transparency regarding what content they use to train their AI models, rightsholders face enormous hurdles in enforcing their property rights, including in court. Left unchecked, these and other related harms threaten the sustainability and competitiveness of America’s creative sector and its ability to contribute to US economic growth and job creation.

Unfortunately, countries such as Japan and Singapore have already implemented broad TDM exceptions that weaken copyright protections in favor of allowing companies to train their AI models on copyrighted material without a license. China as well as other markets such as Brazil, Chile, Colombia, Hong Kong, Indonesia and the United Kingdom are all considering proposed copyright exceptions for TDM. Such measures often also lack recordkeeping and transparency obligations on AI developers regarding the creative content used in AI model training. These

⁷ Trump Administration; *Artificial Intelligence for the American People*; Pillar Five “AI with American Values”; emphasis added; available at: [Artificial Intelligence for the American People](#).

⁸ Trans-Pacific Partnership Agreement (draft text); Article 18.66 Balance in Copyright and Related Rights Systems; available at: [TPP-Final-Text-Intellectual-Property.pdf](#)

exceptions will undermine US property rights and cause irreparable harm to the creative sector by undermining the ability of US creators to create and disseminate new works, thereby impeding the creative sector's significant and sustained contributions to US national economic security. Such measures also facilitate the offshoring of the US AI sector and expose vast amounts of data to foreign control.

The borderless nature of digital exploitation means that negative impacts of one nation's TDM exception would be global as AI models trained in one country on creative content without consent from, or compensation to, rights holders would be exploited around the world. Such global copyright arbitrage would deny the creative community the opportunity to license their content for training and would contravene international copyright treaties, including the three-step test contained in the Berne Convention, TRIPS Agreement, WIPO Internet Treaties, and other international agreements.

In this context, we stress that so called "opt-out" provisions for rightsholders to reserve their rights are wholly inadequate to remedy the critical flaws inherent in TDM exceptions for a variety of practical reasons.⁹ Such schemes would create a fundamentally asymmetrical obligation, imposing the onus entirely on copyright holders and forcing them to rely on unproven means and nonexistent jurisprudence that will create legal uncertainty, chill licensing negotiations, and make enforcement highly challenging.

DCC Recommendations - Countries that Have or Are Considering TDM Exceptions

The DCC recommends that the following priority markets be the focus of increased US bilateral engagement concerning their existing or pending broad copyright exceptions for TDM.

Brazil

On December 10, 2024, a new AI bill was passed by the Senate of Brazil, which will be debated in the second legislative chamber in the Spring of 2025. The AI bill upholds the need for AI

⁹ Opt-out regimes fail to consider that copies of a creative work have downstream uses and can exist on a variety of online platforms (including being proliferated via user-generated content on social media platforms) or even illicitly offered as pirated goods—largely putting such downstream uses beyond the control of the creator or copyright owner and rendering opt-outs ineffective. Moreover, for individual creators and copyright owners, an opt-out regime unnecessarily makes copyright protections and the enjoyment of copyrights conditional on fulfilling certain requirements, raising questions of whether this approach would pass muster under international treaty obligations like the Berne Convention's prohibition of copyright formalities in Article 5. See Ed Newton Rex; "Generative AI opt-outs are unfair and unworkable. Let's drop the pretense that they're some sort of compromise." - Music Business Worldwide; November 18, 2024: available at: [Generative AI opt-outs are unfair and unworkable. Let's drop the pretense that they're some sort of compromise.](#) - Music Business Worldwide; and Ed Newton Rex; "The Insurmountable Problem With Generative AI Opt-Outs"; available at: [Opt-outs — Ed Newton-Rex.](#) See also Copyright Alliance Comments to the Commerce and Economic Development Bureau and the Intellectual Property Department of Hong Kong, *Public Consultation on Copyright and Artificial Intelligence*, September 6, 2024, available at: <https://copyrightalliance.org/wp-content/uploads/2024/09/Copyright-Alliance-Hong-Kong-IPD-Consultation-Comments.pdf>

developers to secure authorization from, and provide remuneration to, rightsholders for the use of their copyright-protected content in the training of AI models. While this is a positive development, it is critical that any legislation preserve the freedom of private parties to agree to contractual terms for the direct licensing of such content. It is notable that this bill represents a significant departure from Brazil's initial legislative effort in 2021 that proposed to establish a broad copyright exception for TDM similar to that in Japan and Singapore.

Chile

On May 7, 2024, the President of Chile introduced an AI bill to the Chamber of Deputies of the Chilean Congress, without consultations with creative community stakeholders. Article 31 of the bill would amend the Chilean Copyright Act to introduce a vast copyright exception for TDM. At the time of writing, we understand that the Chilean Government has withdrawn this original TDM proposal, which is a welcome step and represents a significant departure from Chile's initial proposal. At the end of 2024, however, the Chilean Government proposed an alternate TDM exception, which is expected to be the subject of deliberations in the coming months. We strongly oppose the introduction of a copyright exception for TDM in Chile and reaffirm our view that there is no need for such an exception.

China

On February 29, 2024, the National Information Security Standardisation Technical Committee enacted a technical document addressing data security, model security, and security assessments, among other issues, for AI service providers. Under the document, providers of GenAI must identify an IP infringement risk before using data for training and must not use that data if there is such a risk. Other Chinese governmental departments have also published draft regulations for consultation pertaining to other proposed AI national standards and measures and have been proactive in progressing guardrails seeking to safeguard IP rights in the context of GenAI. Despite this positive development, we understand that the Chinese government may seek to introduce a copyright exception for TDM, which would be extremely problematic for the US creative sector. We strongly oppose the introduction of a copyright exception for TDM in China and reaffirm our view that there is no need for such an exception, and that it would promote the offshoring of US AI sector investment, while exposing vast amounts of data to foreign control.

Colombia

On October 22, 2024, a member of the Colombian Senate introduced an AI bill (# 294-2024) that creates a TDM exception for the use of works and sound recordings by AI and denies the freedom of private parties to agree to contractual terms for the direct licensing of copyright-protected content. We strongly oppose the introduction of a copyright exception for TDM in Colombia and reaffirm our view that there is no need for such an exception.

EU

EU law provides for two TDM exceptions that were introduced in 2019 in Directive 2019/790/EU (“the DSM Directive”). Article 3 of the DSM Directive provides for an exception that may be relied upon by research organizations and cultural heritage institutions in order to carry out, for the purposes of scientific research, text and data mining of works or other subject matter to which they have lawful access. Article 4 of the DSM Directive then provides for a broader TDM exception but for which the subject matter must have been “lawfully accessible” and not expressly reserved by the right holders in an appropriate manner. While we do not consider that any TDM exception was, and is, needed, we support efforts via the adoption of the EU AI Act to ensure that copyright holders are able to exercise and enforce their rights effectively.

Hong Kong

On July 3, 2024, the Hong Kong Commerce and Economic Development Bureau and the Intellectual Property Department initiated a public consultation on copyright and AI, including a proposed amendment to the Copyright Ordinance to introduce a broad copyright exception for TDM for the development, training, and enhancement of AI models. According to the consultation paper, which suggests predetermined outcomes, it is “justifiable to introduce the Proposed TDM Exception [...which] should not be restricted to non-commercial research and study.” While the consultation paper lists a limited number of “adequate safeguards” for copyright holders, it offers flawed and limited assessments of the adequacy of such “safeguards” in their effectiveness in addressing critical copyright issues, including compliance with international treaty obligations. We strongly oppose the introduction of a copyright exception for TDM, reject any opt-out framework as unworkable, and reaffirm our view that there is no need for any AI exception.

Indonesia

As of March 20, 2024, a draft amendment to the Indonesia Copyright Act includes a copyright exception for TDM (currently Article 57). The draft TDM exception consists of two parts – the first appears unlimited in scope, while the drafting of the second seems to render it devoid of impact in practice. We strongly oppose the introduction of a copyright exception for TDM in Indonesia and reaffirm our view that there is no need for such an exception.

Japan

On January 1, 2019, Japan’s copyright exception for TDM went into effect. While this highly problematic exception, contained in Article 30(4) of the Copyright Act, provides that it does not apply if the action would unreasonably prejudice the interests of the copyright owner in light of the nature or purpose of the work or the circumstances of its exploitation, this caveat falls short

of key elements required under Japan’s international copyright treaty obligations. Otherwise, the exception lacks any adequate limitations. We strongly oppose Japan’s TDM exception and reaffirm our view that there is no need for such an exception.

On January 23, 2024, the Japan Agency for Cultural Affairs (ACA) issued a draft report for public comment that contained guidance on the training of AI models and the generation of synthetic outputs, which did little to address copyright holder concerns with the TDM exception. Following a short consultation period, ACA issued its final report on March 19, 2024. Despite receiving prolific recommendations to narrow or withdraw the TDM exception as well as to expand recordkeeping and transparency obligations for AI developers, the final report included no material changes. The non-binding nature of this ACA guidance further diminishes its ability to ameliorate copyright holder concerns, which remain extremely serious with respect to Japan’s TDM exception.

Singapore

Copyright Exception for TDM

On November 21, 2021, Singapore’s copyright exception for TDM went into effect. This deeply concerning exception provides that AI developers need to have lawful access to the copyright-protected content used in AI training, but otherwise lacks any adequate limitations. We strongly oppose Singapore’s TDM exception and reaffirm our view that there is no need for such an exception.

Technological Protection Measure (TPM) Exception for TDM

On April 22, 2024, Singapore’s Intellectual Property Policy Division of the Ministry of Law issued a call for public comments on exceptions to anti-circumvention provisions for .technological protection measures (“TPMs”), including with respect to the TDM exception introduced in the Copyright Act of 2021. Rights holders responded overwhelmingly to oppose an exception to TPM protections for TDM.

On December 19, 2024, the Government of Singapore issued its decision that it would not proceed with the proposed TPM exception for TDM. In its decision, the Government of Singapore stated that it agreed with rights holders that TPM protection is necessary to support the lawful access safeguard in the TDM exception (i.e., circumventing TPMs means that users would fail to meet the lawful access criteria in the TDM exception, and thus not be able to avail themselves of the TDM). The DCC strongly welcomes this decision and continues to strongly oppose the introduction of any TPM exception for TDM.

United Kingdom

The United Kingdom currently has a narrow copyright exception for TDM that is limited to the non-commercial use of copyright-protected content under section 29A of the Copyright, Designs and Patents Act 1988. On June 28, 2022, the UK Intellectual Property Office recommended the introduction of a new copyright exception for TDM for any purpose, commercial or non-commercial. However, in February 2023, following intense opposition to the proposal, the UK's Conservative Government announced that it would not move forward with the proposal.

The UK's current Labor Government launched a public consultation on AI and IP in December 2024, putting forward a preference for a new commercial TDM exception which, if adopted, would be highly detrimental to the continued sustainability of the creative industries operating in the United Kingdom. The UK's status as both a major, global exporter and consumer of copyright protected creative content makes it particularly important for it to stand up for copyright protection and the creative community. We strongly oppose any introduction of a copyright exception for TDM, reject any opt-out as unworkable, and reaffirm our view that there is no need for such an exception.¹⁰

Conclusion

The DCC strongly encourages the US Government to actively engage with countries and international organizations to promote strong copyright protection in the AI environment, including to oppose copyright exceptions for TDM, to continue the Administration's support for G7 commitments regarding copyright protection in the AI environment, and to ensure that all countries protect creators and respect copyright. We look forward to working with the US Government in its international engagement on these critical issues and stand ready to provide any assistance with respect to these priorities.

Sincerely,

Alliance for Recorded Music
American Association of Independent Music
American Society for Collective Rights Licensing
American Society of Composers, Authors and Publishers
American Society of Media Photographers
Artist Management Association
Artist Rights Alliance

¹⁰ See Copyright Alliance letter to Rt Hon Peter Kyle MP, Secretary of State for Science, Innovation and Technology, Department of Science, Innovation, and Technology; December 10, 2024; available at: <https://copyrightalliance.org/wp-content/uploads/2024/12/Copyright-Alliance-Letter-Re-AI-and-Copyright.pdf>. See also *Financial Times*, "US Media Groups Warn UK Over AI Content-Scrapping Rules", December 12, 2024; available at: [Financial Times 12 Dec 2024 US Media Groups Warn](#).

Artist Rights Institute
Association of American Literary Agents
Association of Independent Music Publishers
Association of Writers & Writing Programs
Austin Texas Musicians
The Authors Guild
Black Music Action Coalition
Choreographers Guild
Concept Art Association
Copyright Alliance
Copyright Clearance Center
Department for Professional Employees, AFL-CIO
Directors Guild of America
Entertainment Small Business Alliance
Fan Alliance
Folk Alliance International
Future of Music Coalition
Georgia Music Partners
Getty Images
Graphic Artists Guild
Independent Film & Television Alliance
International Alliance of Theatrical Stage Employees
International AntiCounterfeiting Coalition
Music Artists Coalition
Music Managers Forum - US
Music Workers Alliance
Nashville Songwriters Association International
National Association of Voice Actors
National Music Council
National Music Publishers' Association
News/Media Alliance
Production Music Association
Professional Photographers of America
Recording Academy
Recording Industry Association of America
Screen Actors Guild-American Federation of Television and Radio Artists
SESAC Music Group
The Society of Composers & Lyricists
Songwriters Guild of America
SoundExchange