Creative Commons' statement on artificial intelligence and copyright
Delivered by Brigitte Vézina, Open Policy Manager, Creative Commons to the Second Session of the WIPO Conversation on IP and AI (July 7-9, 2020, virtual meeting)

Mr. Chairman, thank you for the opportunity to participate in the WIPO Conversation on Intellectual Property (IP) and Artificial Intelligence (AI). I am making this statement on behalf of Creative Commons, the world's leading non-profit organization that stewards the Creative Commons open copyright licenses and that promotes a policy environment that supports creativity, collaboration and the sharing of creative works, upholds user rights and enables a rich, robust and thriving public domain. I am joined by the International Federation of Library Associations (IFLA), the Communia Association for the Public Domain and Electronic Information for Libraries (EIFL), who endorse this statement.

Session 1 - Issue 7 Copyright and Related Rights: Authorship and Ownership

No copyright on AI-generated output
Mr. Chairman, Creative Commons believes that copyright and related rights are unwarranted for AI-generated outputs as AI is currently understood, for two fundamental reasons: lack of a human author and lack of originality. First, the notion of human authorship is a bedrock principle of copyright. Direct human involvement should remain a precondition to determining whether a work is worthy of protection and whether copyright can be claimed. While the conceptualisation of AI is still in flux, the technical nature of human inputs, combined with the mechanistic nature of AI algorithms and the absence of any personality rights recognized to AI, currently provide very little ground to justify any copyright protection for AI outputs. Second, in most cases, AI algorithms use automated, mathematical means to encode statistical information about a set of input, such as copyright works. AI uses this statistical information, combined with some random seed, to generate output which is statistically similar to or indistinguishable from an arbitrary member of the set of input works. AI-generated output is composed of snippets chosen arbitrarily from thousands or millions of input works and generated as a result of a mathematical, stochastic function. Thus, AI output should similarly be presumed to lack originality. In short, AI-generated outputs should be in the public domain, at least pending clearer understanding of this evolving technology.

Session 1 - Issue 10 Copyright: General Policy Issues

Regulation is premature
Mr. Chairman, AI is an exciting, dynamic field that holds many promising possibilities. As much as AI has advanced in the past few years, there exists no clarity, let alone consensus, over how to define AI. Any attempt at regulation is premature, especially through an already over-taxed copyright system that has been commandeered for purposes that extend well beyond its original intended purposes. AI needs to be properly explored and understood before copyright or any intellectual property issues can be properly considered.

A coordinated policy approach is needed

Beyond the need for clarity, many issues raised by the development of AI should be addressed through the lens of ethics, liability, cultural rights, human rights, personality rights, privacy rights, and data protection.These other issues are key to a coordinated and inclusive policy approach on AI. Therefore, copyright discussions at WIPO cannot take place in a policy vacuum. Instead, WIPO's work should first embrace a broad-based approach to understanding AI and the issues it raises in other policy arenas. These other issues deserve equal attention, and should not be marginalized. Finally, we strongly advise against any attempt to twist and bend the copyright system to regulate the nascent and uncharted field of AI technology.

Session 3 - Issue 8 Copyright Infringement and Exceptions

Exceptions and limitations in relation to AI input

Mr. Chairman, as concerns AI inputs and the training of AI applications, Creative Commons supports broad and unfettered access and use of copyright works to help reduce bias, enhance inclusion, promote important activities such as education and research, and foster innovation in the development of AI. Assuming access to copyright works is legitimate at the point of input, use of such works to train AI should be considered non-infringing by default. Indeed, such uses are non-expressive and do not compete with the original works in any market. We believe that WIPO's work should focus on guidance and norm setting in the field of exceptions and limitations to enable such uses. In the context of openly licensed content used to train AI applications, our online FAQs[1] clarify how Creative Commons licenses work: from a copyright perspective, no special or explicit permission regarding new technologies is required from the licensor.

[1] Creative Commons, FAQs, "Artificial Intelligence and CC Licenses," https://creativecommons.org/faq/#artificial-intelligence-and-cc-licenses