

ESSAY

THE AUTHORS' PETITION

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This Essay is a plagiarism of Frédéric Bastiat's essay, Pétition des Fabricants de Chandelles [The Candlestickmakers' Petition]. Bastiat satirized protectionist import tariffs by purporting to present a petition from the candlestick makers of France to the French Parliament, asking it to prohibit the use of sunlight indoors, in order to stimulate the French economy. This Essay uses the form of Bastiat's petition to satirize the objections of authors and copyright owners to artificial intelligence models that use machine learning to generate new works.

A PETITION¹

From the Authors of Literary Works, Musical Works, Dramatic Works, Pantomimes, Choreographic Works, Pictorial, Graphic, and Sculptural Works, Motion Pictures, Audiovisual Works, Sound

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1. This Essay is a plagiarism of Frédéric Bastiat, *Pétition des Fabricants de Chandelles* [*The Candlestickmakers' Petition*], 12 JOURNAL DES ÉCONOMISTES [J. ECON.] 204 (1845) (Fr.), *translated in* READINGS IN ECONOMIC PROBLEMS 476–79 (David Friday ed., 1916).

Recordings, Architectural Works, Works of Visual Art, and All Other Works of Authorship, Fixed in Any Tangible Medium of Expression.²

To the Honorable Members of Congress.

Representatives and Senators:

You are on the right track. You reject abstract theories about incentives and have little regard for efficiency. Instead, you focus on the interests of producers. Specifically, you want to protect them from artificial competition by limiting the market to existing producers.

We offer a wonderful opportunity for you to put your preference into practice.

We are suffering from the unfair competition of rivals that work under conditions for the production of works of authorship so far superior to our own that they are flooding the market at incredibly low prices, often approaching zero.³ As soon as they appeared, the sales of many of our products ceased. All consumers turned to them. And many areas of American industry were reduced to stagnation. This competitor, none other than artificial intelligence or “AI,” is waging commercial warfare on us so mercilessly that we suspect it is being supported by none other than the treacherous Middle Kingdom,⁴ which has so much less respect for the sanctity of authorship than us.⁵

We ask you to pass a law prohibiting the creation of AI models and their use to create works of authorship of any kind, for any purpose, to the detriment of the authorship industries with which we have endowed this great nation, which cannot justly abandon us to such

2. See 17 U.S.C. § 102(a) (providing a non-exclusive (maybe?) list of the categories of works of authorship protected by copyright).

3. Cf. Mark A. Lemley, *IP in a World Without Scarcity*, 90 N.Y.U. L. REV. 460, 461–62 (2015) (observing that digital technology and the internet have reduced the efficiency of copyright as a policy tool for encouraging the creation of works of authorship by eliminating scarcity).

4. The most commonly used Chinese name for China is 中国 or *Zhōngguó*, which literally translates into English as “Middle Kingdom.”

5. Many U.S. politicians and pundits criticize China for “disrespecting” intellectual property rights, including copyright. *But see* WILLIAM P. ALFORD, *TO STEAL A BOOK IS AN ELEGANT OFFENSE: INTELLECTUAL PROPERTY LAW IN CHINESE CIVILIZATION* (1995) (providing a history of Chinese intellectual property law); BYUNG-CHUL HAN, *SHANZHAI: DECONSTRUCTION IN CHINESE* 72 (Philippa Hurd trans., 2017) (discussing the concept of *shanzhai* or “fake” in Chinese law and culture).

unfair competition.⁶ Please take our request seriously, and do not reject it without at least considering our arguments in support of it.

First, if you prohibit the creation of AI models and their use to create artificial works of authorship, it will benefit not only American authors, but also the American economy in general.

If America produces more works of authorship created by human authors, it will need more paper, pencils, pens, typewriters, computers, canvas, paint, clay, marble, musical instruments, cameras, and especially buildings, the basis of all urban wealth.

If America consumes more human-authored works, we shall see an expansion in the cultivation of the mind, through books, movies, music, painting, and photographs, among other things. This rich, but intellectually exhausting labor will increase the number of human authors, who will in turn produce even more works of authorship, creating a cornucopia of content.

Our bookstores will be full of books, our theaters full of patrons, and our galleries full of collectors. Every part of the creative economy will see a great increase in size, quality, and efficiency.

The same is true of technology. Thousands of companies will manufacture computers and write software, and in a short time, we will have a technology industry that is the envy of the world and the source of untold wealth. What is more, authors will customize computers and software alike to satisfy the particular demands of every consumer, no matter how costly or esoteric.

Every needy engineer and poor coder will receive a higher salary and more stock options. It is obvious that the quality of life of every American, from the bankers to the baristas, will improve if you grant our petition.

Of course, we anticipate some objections. But they all rely on the stale theories of welfare economics. There is nothing our critics can say against our proposal that you have not already rejected.

For example, what if you tell us that our proposal will benefit human authors, but will not benefit America, because consumers will bear the expense?

Easy, peasy.

6. See *Master List of Lawsuits v. AI, ChatGPT, OpenAI, Microsoft, Meta, Midjourney & Other AI Cos.*, CHATGPT IS EATING THE WORLD, <https://chatgptiseatingtheworld.com/2023/12/27/master-list-of-lawsuits-v-ai-chatgpt-openai-microsoft-meta-midjourney-other-ai-cos> [<https://perma.cc/269X-2EEM>] (last updated Mar. 11, 2024) (listing lawsuits filed against AI content-generation platforms).

Consumers are irrelevant. You cannot invoke consumer welfare, because you already reject it, when it is inconsistent with the interests of uncompetitive producers. You ignore consumer welfare in order to protect competition and increase employment. Human authors are uncompetitive producers, too.

Indeed, you have even anticipated this objection. When told that consumers have an interest in competitive markets in steel, cars, semiconductors, and medicine, you respond that producers have an interest in preventing competition. Very well. If consumers have an interest in AI-generated works, producers have an interest in their prohibition.

You may respond that producers are consumers and consumers are producers. If authors benefit from the prohibition of AI models, technology companies will benefit when authors buy their products. But if technology companies benefit from producing AI models, authors will benefit by using those models to produce works more efficiently. Fair enough. If you prohibit AI models, we promise to buy lots of computers and software. Moreover, as soon as we become rich, we will conspicuously consume as much as possible, and thereby make America prosperous again.

Will you say that ideas belong to no one, so prohibiting AI models that use old ideas to produce new works reduces net public welfare, under the pretext of increasing it? If so, you abandon your own policy. Remember that you have always prohibited new works of authorship that unfairly compete with existing ones, by requiring prospective competitors to ensure that their works are not “substantially similar” to any created by earlier authors.⁷ Why benefit only consumers by permitting AI models, when our proposal would benefit both consumers and producers by prohibiting them? It would be absurd.

Ideas and expression combine in varying proportions in the production of a work of authorship, depending on the author and the medium. Ideas are always free. It is the expression that is valuable. If a work of authorship produced by an AI model sells for less than a work of authorship produced by a human author, it is because the AI model works for free, but the human author demands a paycheck. So, when an AI model produces a work of authorship, we can get it at a discount to the cost of a work produced by a human author.

7. See, e.g., *Kalem Co. v. Harper Bros.*, 222 U.S. 55, 61–62 (1911) (holding that a motion picture can infringe the copyright in a novel).

How can human authors compete with free? When you regulate the market in other goods, it is because existing producers cannot compete with a new producer. Why should works of authorship be any different? If you regulate the market in steel, cars, semiconductors, medicine, and more in order to prevent unfair competition from producers with lower input costs, you should regulate the market in works of authorship the same way. In fact, you should regulate it even more zealously by prohibiting AI models, because no one can compete with free.

Even worse, consumers receive a gift when AI models produce works of authorship for free, rather than human authors producing them at considerable expense. Of course, it is expensive to create AI models. But when they exist, they can produce as many works of authorship as consumers want, as quickly as they want, for free. The Sun gives us energy, whether we want it or not. AI models do the same for works of authorship, for better or worse.

It is a dilemma. AI models promise to give American consumers as many and as many different works of authorship as they want, free of charge. We propose that you prohibit the creation and use of AI models, because consumers will benefit by paying more for the works of authorship we create. Make your choice, but be logical. You have always regulated authorship.⁸ Which is to say, you have always regulated speech.⁹ Why stop now?

8. *See* U.S. CONST. art. I, § 8, cl. 8 (granting Congress the power to create copyright); Copyright Act, 1 Stat. 124 (1790) (current version 17 U.S.C. § 101) (granting authors copyright in their original works of authorship).

9. *Cf.* *Eldred v. Ashcroft*, 537 U.S. 186, 221 (2003) (“To the extent such assertions raise First Amendment concerns, copyright’s built-in free speech safeguards are generally adequate to address them.”).