



April 29, 2024

VIA EMAIL

Ms. Suzanne Wilson  
General Counsel  
U.S. Copyright Office  
101 Independence Ave., S.E.  
Washington, DC 20559

Re: Summary of Ex Parte Meeting on April 23, 2024 Regarding the Office's AI Study

Dear Ms Wilson:

This letter summarizes the April 23, 2024 *ex parte* meeting that occurred via Zoom video conference between the Recording Industry Association of America (“RIAA”) and the U.S. Copyright Office (the “Office”) in connection with the Office’s ongoing Artificial Intelligence Study (Docket No. 2023–6).

The representatives participating in the April 23 meeting on behalf of the Copyright Office were: Ms. Suzy Wilson, General Counsel; Ms. Emily Chapuis, Deputy General Counsel; Ms. Maria Strong, Associate Register of Copyrights and Director of Policy and International Affairs; Mr. Andrew Foglia, Deputy Director of Policy and International Affairs; Mr. Chris Weston, Senior Counsel for Policy and International Affairs; Ms. Brandy Karl, Assistant General Counsel; Ms. Danielle Johnson, Counsel, Office of Policy and International Affairs; and Ms. Heather Walters, Barbara Ringer Copyright Fellow. The participants for RIAA were: Mr. Ken Doroshov, Chief Legal Officer and Ms. Susan Chertkof, Senior Vice President, Legal and Regulatory Affairs.

The purpose of the meeting was to update the Office on new developments (since the filing of the RIAA’s AI Reply Comments) regarding voice and likeness rights and to encourage the Office to express support for a new federal right in the report the Office plans to issue this spring on the use of AI to digitally replicate individuals’ appearances, voices, or other aspects of their personalities. *See* February 23, 2024 Letter from Register Perlmutter to Members of Congress, available at <https://copyright.gov/laws/hearings/USCO-Letter-on-AI-and-Copyright-Initiative-Update.pdf>. The meeting focused on two topics:

1. **Updates on Recent State and Federal Legislative Initiatives.** RIAA briefed the Office on the recent passage of the ELVIS Act in Tennessee, the federal No AID FRAUD Act that was introduced in the House of Representatives in January 2024, the discussion draft of the federal NO FAKES Act that was circulated last fall, and the April 30 hearing before the Senate Judiciary Committee Subcommittee on Intellectual Property regarding voice

and likeness rights. In discussing those developments, RIAA highlighted the key provisions of each piece of legislation and offered its views on the strengths and weaknesses of each. There was also a very high-level discussion of legislative initiatives in a few other states (namely, California, New York, Kentucky, and Texas).

2. **Discussion of Legal Issues Potentially Associated with a Federal Right of Publicity.**

The RIAA shared its views on four key legal issues that are the topic of discussion in connection with federal legislation to protect artists' voices and likenesses:

- **The First Amendment.** RIAA explained how categorical exclusions for certain speech-oriented uses are not constitutionally required and, in fact, risk overprotection of speech interests at the expense of important publicity interests. We highlighted the case of *Zacchini v. Scripps-Howard Broadcasting Co.*,<sup>1</sup> the Supreme Court's only decision to consider the right of publicity. RIAA also drew the Office's attention to the recent release of a paper written by Joshua Matz, Partner at Kaplan, Hecker & Fink, LLP, on behalf of the Human Artistry Campaign, and endorsed the views expressed by Matz in that paper. The paper is available at <https://www.humanartistrycampaign.com/rop-first-amendment>.
- **Section 230.** We discussed the circuit split regarding whether the intellectual property carve-out from the Section 230 safe harbor applies to state IP rights or only to federal IP rights and how that split negatively impacts RIAA's routine enforcement efforts. We explained that establishing a federal right to one's voice and likeness would bypass the circuit split and ensure that those rights are carved out from the Section 230 safe harbor in all circuits.
- **Descendibility and Assignability.** We expressed our view that the right to one's voice and likeness should be descendible to one's heirs. We also expressed our view that the right to one's voice and likeness should be assignable, although we also opined that the conditions on assignability that appear in the No AI FRAUD Act were appropriate.

In addition, we mentioned the ongoing enforcement challenges caused by the "black-box" nature of AI systems that do not disclose the material that was copied to build the systems and encouraged the Office to consider the administrative subpoena proposal we included with our Initial Comments on the AI NOI.

We thank you for your time and careful attention to these important issues.

Sincerely,

/Kenneth L. Doroshov/  
Kenneth L. Doroshov  
Chief Legal Officer  
RIAA  
1000 F Street NW, Floor 2  
Washington, DC 20004

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<sup>1</sup> 433 U.S. 562 (1977).