

SOS Policy on the Use of Machine Generated Images

“Till the Devil whispered behind the leaves: “It’s pretty, but is it Art?”
-Rudyard Kipling, *The Conundrum of the Workshops*

Background

- The term “AI art” is a common shorthand for computer generated images. Unfortunately, the term is loaded and assumes that the images in question are in fact “art”, without first addressing that basic question. For the purposes of this policy, we will NOT use the shorthand term, preferring to set aside the question of “is it art” for the time being.
- The U.S. Copyright Office recently ruled that a computer-generated work lacked “the required human authorship necessary to sustain a claim in copyright,” because the applicant “provided no evidence on sufficient creative input or intervention by a human author in the Work.” (See: <https://www.copyright.gov/rulings-filings/review-board/docs/a-recent-entrance-to-paradise.pdf>). This ruling is consistent with the case law presented in the U.S. Copyright Office’s letter and it is consistent with the holding in the seminal Supreme Court case, *Feist Publications, Inc., v. Rural Telephone Service Co.*, establishing that information alone without a minimum of original creativity cannot be protected by copyright.

Machine generated images (that have not undergone any further creative transformation) are not capable of registration or protection under copyright because such work lacks a person who has contributed the required modicum of creativity. The corollary to the foregoing is that it is possible for a person to creatively transform a machine generated image, thus meeting the minimum requirements for protection under copyright, namely a person’s original creative work fixed in a tangible medium of expression. We think that the U.S. Copyright office got this ruling correct, and we think that the Courts will adopt the same the position.

- We intend to modify our work-for-hire agreements to address some of the legal challenges presented by the introduction of digital and generative technologies. For works that we commission, we will prohibit our artists from submitting final pieces that were solely machine generated.
- We do NOT think that the use of machine generated images is inherently unethical or morally wrong. We do recognize that, as is common with the adoption of new technologies, AI technology will be both intentionally and unintentionally misused, with potentially devastating outcomes. We also recognize that the use of AI technology may result in significant economic disruptions including the displacement of illustrators and the cannibalization of rewards for creating art.

Policy

1.1 We hold our artists and illustrators in high regard and will strive to take no acts that deprive them of their rewards for creating art and illustrations. As a general principle and with the intent of mitigating possible economic disruptions from the advent of AI technologies, we agree that we will not intentionally substitute images that are solely machine generated for art that we would otherwise commission from an artist. This policy precludes the intentional use of machine generated images for covers, character portraits, and full-page pieces in any SOS commercial publication offered for sale.

Provided further, we will only intentionally use machine generated images in our publications when the following conditions are met:

- A. The machine generated image is used solely for concept development and to assist in communications with an artist OR the machine generated image will be creatively transformed and significantly altered by an artist before inclusion in a SOS commercial publication offered for sale; and
- B. The use of the machine generated image results in a material improvement to overall presentation of a greater work, compilation or collection without a material increase in costs of production.

1.2 SOS will also make every reasonable effort to ensure that images that are solely machine generated images are not passed off as the original creative expression of a human artist.

2.1 We do make use of public domain content, including for example works for which copyright has expired and works made available under an appropriate Creative Commons license.

2.2 SOS believes strongly in protecting the moral rights of artists, including rights of attribution, and will make every reasonable effort to ensure appropriate attribution for the works included within its publications.

