

ILLUSTRATION AND ARTIFICIAL INTELLIGENCE

MIRACLE OR MIRAGE?



PRESENTED BY

!Q ILLUSTRATION
QUÉBEC

This document was prepared by Illustration Québec (IQ) to raise awareness among creators, distributors, publishers, and clients regarding the issues surrounding the use of artificial intelligence in the field of illustration. The information contained in this document does not constitute legal advice and should not, under any circumstances, replace specific guidance from a lawyer. Illustration Québec, its board members, representatives, employees, and contractors cannot be held liable for any damages, errors, or omissions arising from the information in this document or its use.

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ILLUSTRATION QUÉBEC'S POSITION STATEMENT

Illustration Québec (IQ) embraces technological advancements and does not oppose all uses of artificial intelligence, which is already being leveraged beneficially in various industries. However, IQ observes that in the absence of transparent, fair, and respectful regulations for artists, generative AI in particular often infringes upon illustrators' copyright, jeopardizes their compensation and the value of their creative work, and undermines their working conditions. In light of these issues, IQ seeks to raise awareness among illustrators, clients, and the public to help everyone understand the challenges and make informed decisions.

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GENERATIVE ARTIFICIAL INTELLIGENCE (AI): WHAT IS IT?

Generative AI is a type of artificial intelligence capable of generating new content in various forms (such as text, images, audio, or video files) based on keywords or other requests known as “prompts.”

The specific type of generative AI addressed in this guide is the kind used to produce images. Examples include Stable Diffusion, Midjourney, DALL-E, and Adobe’s AI. **AI does not “create” images; it generates them.** To do this, it uses billions of illustrations and photos to feed an algorithm. It synthesizes styles, compositions, graphic elements, and colour palettes. Most current generative AI software is trained on billions of images from authors, artists, or rights holders. In the vast majority of cases, these images are harvested without authorization, without credit, and without financial compensation for the use of the work. Every new search and every new use of generative AI contribute to developing and improving the efficiency of the results these tools provide.

● NON-ETHICAL AND... ETHICAL GENERATIVE AI?

Most uses of software such as Stable Diffusion, Midjourney, and DALL-E are considered “non-ethical.” As discussed in more detail in Sections 2 and 3, in most cases, the software and its users do not respect intellectual property and copyright, lack transparency, may reinforce stereotypes (for example, regarding gender or race), and can contribute to misinformation, among other issues.

● DOES ETHICAL GENERATIVE AI EXIST?

Some individuals and software companies attempt to use generative AI ethically—for instance, by training the AI exclusively on their own original creations, or by obtaining permission from the artists whose works are used and compensating them. However, the practice of generating images with AI remains contested by many, as it risks dehumanizing and devaluing artistic work by automating image production, in addition to having significant social and ecological consequences (see Section 3).

2 ISSUES AND CHALLENGES

Unfortunately, there is a dark side to this tool, which allows anyone with a keyboard to generate complex visuals. The unregulated use of this technology can violate copyright, compromise illustrator compensation, and jeopardize the illustration profession.

● AI AND COPYRIGHT

In Canada, copyright is governed by the Copyright Act. The creator, who is generally the author (with some exceptions), holds proprietary (or economic) rights as well as **moral rights** (the right to the integrity of the work, the right to be associated with the work, and the right to remain anonymous) over their original work. In the vast majority of cases, the use of generative AI can directly violate artists' copyrights.

- Companies that create generative AI software are profiting by using the work of countless artists without authorization, attribution, notice, or compensation, and without the possibility of having these images removed from the AI's training process. Their financial model is therefore based on the theft of the intellectual property of millions of artists worldwide.
- The commercial use of images generated by generative AI software can violate the economic rights of creators. Users who make commercial use of generated images without authorization infringe upon copyright by indirectly appropriating the work of other artists, thereby causing them prejudice.
- Illustrators' names are used to generate images in their original styles, violating the moral rights of artists whose styles are usurped and associated with products, causes, services, or institutions without authorization. This can even damage the artist's reputation.
- The modification of an original work without the author's consent, as well as its use to train AI systems, is deemed to violate the creator's copyright.

● AI AND ILLUSTRATOR COMPENSATION

AI jeopardizes the compensation of illustrators because its current use:

- Deprives illustrators of copyright income by using their work without compensation, whereas the majority of an illustrator's income relies on selling usage licenses or the assignment of copyright.
- Devalues the work of artists by producing an unlimited supply of plagiarized images that can be sold at prices that defy all competition. Consequently, contracts for illustrators are decreasing massively, and usage rates are plummeting.

● AI AND THE PROFESSION OF ILLUSTRATION

Could the increased use of generative AI in the illustration field affect opportunities, recognition, and support for illustrators? This question raises several issues:

- Potential representation of generative AI users by professional associations and unions might come at the expense of advocating for the rights of artists.
- Access to government grants for creation (already insufficient to ensure good socioeconomic conditions for artists) and tax benefits for generative AI users could further undermine artists who rely on these resources.
- Access to excellence awards in illustration for AI users might diminish the already limited opportunities for artists to have their work recognized.
- The productivity and low costs of generative AI users drive down industry-wide pricing structures, further jeopardizing illustrators.

In light of these findings, without adequate protection, the working conditions of illustrators are compromised. Future generations of visual artists are at risk of abandoning their careers due to limited prospects in an AI-dominated future. Such a future could suffer from a depleted visual culture based on algorithmic automation at the expense of human creativity.

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FOR CLIENTS: THE REALITIES OF USING GENERATIVE AI

● THE DANGERS OF GENERATIVE AI

Artists are not the only ones who risk "drowning" in the massive wave of AI. The use of generative AI raises ethical questions and significant dangers for companies that choose to use it or do business with those who do. Here are some of the major issues:

- A client who pays for an AI-generated image runs the risk that the image could be copied, misappropriated, or used by others without any possible recourse and without being recognized as the author. The [Copyright Act](#) and Canadian courts have not yet ruled on the question of authorship for images generated exclusively by AI. There is, therefore, a danger that images generated by algorithms without human contribution may not be protected by copyright in the near future. For example:
 - In 2023, the U.S. Copyright Office rejected the registration of a work produced by a computer without human intervention, a decision that was upheld by the U.S. District Court (for the District of Columbia). The appeal of this decision is pending¹.
 - A publishing house that uses an AI-generated image for a book cover could find the same image on the cover of another book, or on other products, without any legal recourse. The client also faces the danger of being sued for plagiarism.
- AI operates using data and algorithms that lack discernment or moral values. Their results invariably lean toward more homogeneous representations and often fail to reflect diversity (for example, regarding gender, race, body type, ability, etc.). For example:
- The prompt "a successful person" tends to generate portraits of white men. In this sense, while technologically innovative, these tools do not keep pace with social progress and the drive toward inclusion. Unlike an illustrator who is aware of the social and political issues of our time, an algorithm has no sensitivity or sense of social responsibility. A client who commissions AI-generated work therefore risks outsourcing their ethical judgment to an algorithm and must ultimately bear the responsibility for it.

- The environmental impact of AI is skyrocketing. Generative AI requires massive amounts of energy to operate and vast quantities of water to cool the servers.
- The training of AI algorithms relies on the exploitation of precarious workers in countries like India, Bangladesh, and the Philippines, who decipher, organize, and annotate images for poverty wages.
- The constant refinement of generative AI software makes it increasingly difficult to distinguish between real and fictional images, as well as between human-made art and AI-generated content. This can lead to the spread of misinformation and the manipulation of public opinion.
- The proliferation of AI-generated images could lead to a homogenization and impoverishment of our visual culture.

● HOW TO TELL IF THE PERSON YOU HIRE IS USING GENERATIVE AI

Images generated by AI and the technology they depend on are evolving rapidly. It is becoming increasingly difficult—if not impossible—to distinguish them from artist-created images with the naked eye. For now, however, certain visible signs act as "red flags" indicating the probable use of generative AI:

- **Anatomical inconsistencies:** AI still struggles to accurately represent eyes and hands. It is not uncommon to see images with an incorrect number of fingers, or characters with missing or extra limbs.
- **Inconsistencies in details:** Look for elements that blend together implausibly (such as clothing with no defined beginning or end, fading or merging illogically) or signs and inscriptions containing illegible "text."
- **Blurred rendering:** Images often have a blurry or "smudged" look, especially in the background.

There are websites, such as AI or Not, that analyze images and provide a verdict, but they are not infallible.

Ultimately, it is both possible and advisable to speak with the illustrators, graphic designers, and agencies you hire to understand their process and ask directly if they use generative AI. You may also consider including a clause in your contracts to guarantee the creative process used.

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THE ADVANTAGES OF WORKING WITH AN ILLUSTRATOR

Here are several reasons why it is preferable to rely on an artist rather than AI.

● AN ILLUSTRATOR CREATES:

- An original work, the result of a unique and personal vision.
- Conceptual development using metaphors, symbols, humour, wit, cultural references, and more.
- An illustration with traceable and unambiguous intellectual property.
- A work protected by copyright that can only be used through a licensing agreement or an assignment of rights.
- A consistent and plausible result (if a character has twelve fingers, it's almost certainly intentional!).
- An illustration that addresses moral issues and the specific sensibilities of the target audience, resulting from a transparent creative process.
- Innovative graphic solutions based on the artist's expertise.
- Added value through the credibility of using an image attributed to a specific artist (don't forget to include the artist's name in your communications—it reflects well on you!).
- In some cases, the prestige and recognition that come with hiring a well-known artist.

All of this is built upon irreplaceable human experience and emotion, which have always been the foundation of art.

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ARTIFICIAL INTELLIGENCE: PERSPECTIVES AND REFLECTIONS

Do you have questions? Here are a few perspectives to help rethink some of the common ideas surrounding AI:

“Artists have always been inspired by the works of others. Why shouldn't AI be allowed to do the same?”

Unlike an artist who gathers inspiration and references throughout their life to create a unique body of work, AI cannot filter through the lens of human subjectivity. It archives and stores data only to "spit it back out" as is, whereas an illustrator uses human experience to make artistic choices. AI is not inspired; it compiles and copies to generate.

“This technology is here to stay. Illustrators will just have to live with it. We shouldn't be afraid of progress!”

For decades, illustrators have worked with pencils and brushes just as much as they have with digital tools. AI has already found a place in the creative process of some artists. Without necessarily questioning the technology itself, we must examine the model chosen by non-ethical generative AI developers—a model based on the theft of intellectual property, the devaluation of creative work, and the endangerment of the socioeconomic status of artists. Illustrators are not afraid of progress; they are protecting their rights and their profession!

“Since images are generated using keywords (prompts) chosen by the user, the user should be recognized as the author!”

The [Copyright Act](#) and legal precedents establish three conditions that must be met for a work to be protected by copyright: it must fall under a category of work covered by the Act, be fixed in a material form, and be an original work—meaning it demonstrates the author's exercise of skill, judgment, and labor. To date, Canadian courts have not ruled on the authorship of a work created by AI. Consequently, works created exclusively using AI may not be protected by copyright and could therefore be copied, modified, and used without limit by anyone.

"AI is just a tool like any other!"

It can be argued that AI can be used as a tool during certain stages of ideation or creation, as long as it does not represent the entirety of the image production process. When image production relies entirely on generative AI with little to no human intervention, it is more appropriate to speak of automation of the production process rather than a tool used for creation. Even when AI is used for only a small part of the process, it is not a neutral tool, as its use can have significant consequences for copyright and the environment, among other issues.

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CONCLUSION

IQ wishes to remind readers that behind generative AI—this somewhat magical and still highly opaque process—lie years of expertise, entire portfolios, and complete bodies of work that have, for the most part, been borrowed without the authorization of their authors and rights holders. These creators deserve to be consulted for their consent, and subsequently to be credited and compensated.

Technological advancements are inevitable, and it is always important to consider both sides of the coin. IQ recognizes that artificial intelligence, including generative AI programs, can be useful and powerful tools in various fields. However, to preserve human creativity and the veracity of content, and to respect artists' rights, it is essential to inform users of the ethical stakes. Furthermore, a legal framework must be established to prevent abuses regarding intellectual property rights.

Ultimately, what could be better than collaborating with a human intelligence capable of sensitivity, judgment, and communication? And what could be more rewarding than crediting the name of the artist who created a unique, original, and consistent work to illustrate an idea, a book, or a message!

QUELQUES RESSOURCES

- **A CONSULTATION ON A MODERN COPYRIGHT FRAMEWORK FOR ARTIFICIAL INTELLIGENCE AND THE INTERNET OF THINGS**, Government of Canada, 2021 (online): <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ised-isde.canada.ca/site/strategic-policy-sector/sites/default/files/attachments/2022/ConsultationPaperAIEN.pdf>
- **ARTIFICIAL INTELLIGENCE AND COPYRIGHT**, WIPO Magazine, Andres Guadamuz, october 2017, (online): <https://www.wipo.int/en/web/wipo-magazine/article-details?assetRef=40141&title=artificial-intelligence-and-copyright>

ANY QUESTIONS?

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