Comments of the Recording Industry Association of America on the National Institute of Standards and Technology Artificial Intelligence Risk Management Framework Second Draft and the AI Risk Management Framework Playbook each dated August 18, 2022

Delivered via email to aiframework@nist.gov

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The Recording Industry Association of America ("RIAA") welcomes this opportunity to provide comments to National Institute of Standards and Technology ("NIST") on its Artificial Intelligence Risk Management Framework: Second Draft ("AI RMF"), and the associated AI Risk Management Framework Playbook ("AI RMF Playbook"), each dated August 18, 2022.

The RIAA is the trade organization that supports and promotes the creative and commercial vitality of music labels in the United States, the most vibrant recorded music community in the world. Our membership – which includes several hundred companies, ranging from small-to-medium-sized enterprises to global businesses – creates, manufactures, and/or distributes sound recordings representing the majority of all legitimate recorded music consumption in the United States. In support of its mission, the RIAA works to protect the intellectual property and First Amendment rights of artists and music labels; conducts consumer, industry, and technical research; and monitors and reviews state and federal laws, regulations, and policies.

Introduction

As noted in our April 29, 2022 comments, human creative expression is at the core of our members' businesses and is vital to our nation's culture and economy. The United States boasts over one million revenue-generating sound recording artists and songwriters.[1] Overall, the music industry contributes $170 billion to the nation's economy, supports 2.47 million jobs, and accounts for over 236,000 businesses in the United States.[2]

The heart of all this activity is the creativity of sound recording artists, songwriters, musicians, producers, recording engineers, and countless other participants in the music industry that bring music to life. Their creative output is protected by copyright, which is both recognized in

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[1] Source: http://50statesofmusic.com/?USimpact.
[2] Source: http://50statesofmusic.com/?USimpact.

the U.S. Constitution[3] and in the U.N. Universal Declaration of Human Rights.[4] Because of the importance of copyright in our Constitution, as a human civil right, and to the U.S. economy and competitiveness, as well as the importance of the proper functioning of our society in accordance with the rule of law, we ask that you take into account the following comments on the next version of the AI RMF.

Comments on the AI RMF

Introduction. The AI RMF must better address the risks and best practices concerning assessment and compliance with applicable law and regulation generally, and specifically concerning the use of works covered by third-party intellectual property rights, including copyrights, as training data for an AI system. While the AI RMF alludes to the possibility of legal risk, the discussion of it is muted. It is only when you get to GOVERN 1.1 on p. 19 that there is a clearer statement about the need to understand, manage and document legal and regulatory requirements involving AI. It would be better if the AI RMF more clearly acknowledged that risk management involves limiting one's legal risk, including legal risks associated with the use of third-party materials. Below are some more specific comments related to these issues.

Section 4.5 – Transparent and Accountable. We appreciate that Section 4.5 of the AI RMF states that "Maintaining the provenance of training data and supporting attribution of decisions of the AI system to subsets of training data can assist with both transparency and accountability." However, this is insufficient to properly explain some of the risks associated with training material. [5]

This section should be expanded to expressly identify that training materials may be subject to copyright or other intellectual property rights. It should also explain that maintaining accurate information about the provenance of training materials should include information concerning the authors of the training materials, where and how the training materials were obtained, if the training materials are subject to third-party copyright or other intellectual property rights, copies of any licenses obtained that cover the training materials, and the purposes for which the training materials are used.

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[3] U.S. Const. art. 1, § 8, cl. 8 ("To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;").

[4] art. 27, § 2 ("Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author").

[5] Unauthorized uses of copyrighted materials for AI are happening every day and harming original creators. See, for example, Heikila, Melissa, "This artist is dominating AI-generated art. And he's not happy about it." MIT Technology Review, Sept. 16, 2022, available at https://www.technologyreview.com/2022/09/16/1059598/this-artist-is-dominating-ai-generated-art-and-hes-not-happy-about-it/, describing the issues with AI art generator Stable Diffusion.

This section should also promote as a best practice that AI developers obtain licenses or other clearances to use any copyrighted training materials for training an AI system, or that they instead rely on public domain materials for such training.

Other Sections. More broadly, the AI RMF should give greater prominence to the importance of compliance with applicable law and regulations, and to issues concerning third-party intellectual property rights in training materials. In addition to the changes noted above, the AI RMF should be modified as follows:

- In Figure 3 in Section 3.1, the language concerning Harm to People: Individual, should be modified to read:
     "Individual: Harm to a person's civil liberties (including their intellectual property rights), or physical safety."

- Section 3.2.1 should expressly identify the risk of infringement of third-party rights if an AI Actor uses third-party works as training materials without proper authorization or clearances. This can be done by modifying the last sentence of the second paragraph of Section 3.2.1 to read:
     "Risk measurement and management can be further complicated by how third-party data or systems are used or integrated into AI products or services, such as whether such third-party data or systems are properly licensed or cleared for such use or integration, etc."

- Section 3.2.4 should identify risk of intellectual property infringement by modifying the last sentence of the second paragraph to read:
     "Overlapping risks include privacy and intellectual property concerns related to the use of underlying data to train AI systems, and security concerns related to the confidentiality, integrity and availability of training and output data for AI systems."

- Section 6.1 should expressly state that good governance should also address legal issues related to the use of third-party data, software, or hardware, including issues related to third-party intellectual property and other rights in their data, software, or hardware. To do this, the last sentence of the second paragraph of Section 6.1 should be modified to read:
     "Governance should address legal and other issues concerning supply chains, including obtaining licensing or other clearances to use third-party software or hardware systems and data, as well as supply chain issues concerning internally developed AI systems."

  Also, the language for GOVERN 6.1 in Table 2 should be revised to read:
     "GOVERN 6.1: Policies and procedures are in place that address risks associated with third-party entities, including risks of infringement of a third party's intellectual property or other rights."

- In Section 6.2, the language for MAP 4.1 in Table 3 should be revised to read:

    "MAP 4.1: Approaches for mapping technology and legal risks concerning the use of third-party data or software are in place and documented, including risks of infringement of a third party's intellectual property or other rights."

- In Section 6.3, Table 4 should include a measure related to transparency and accountability risks. This should expressly address legal and other risks associated with third-party data, software, or hardware used to develop, train, or implement the AI system.

Comments on the AI RMF Playbook.

The Playbook's provisions on governance and mapping should be modified to be consistent with the comments noted above.

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We thank NIST for the opportunity to share these views on what should be included in the AI RMF and AI RMF Playbook. We look forward to continuing this conversation with NIST and other policy makers as AI technology and its impact on the marketplace and society evolves.