The Ethics and Legality of Suno as a Human-Centered AI

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Abstract

At the crossroads of artificial intelligence (AI) and creative rights, the music industry is grappling with how to balance innovation and copyright protection. This paper examines Suno AI as a test case for Human-Centered AI (HCAI), investigating how generative music platforms may either support or undermine artistic expression. Drawing on recent court decisions, legal theory, and stakeholder perspectives, the analysis explores key issues such as fair use, the idea/expression distinction, and the evolving role of AI in creative fields. Building on HCAI scholarship by Shneiderman (2022), Capel and Brereton (2023), and Shroff (2024), the paper evaluates tensions between technologists promoting open innovation and artists advocating for stronger rights protections. Cases like *Authors Guild v. Google* and *Andy Warhol Foundation v. Goldsmith* highlight the difficulty of applying traditional legal frameworks to AI-generated content. To address these challenges, the paper proposes new policy tools, including standardized "likeness thresholds" to detect AI replication, transparency requirements for generative systems, and metadata tagging for copyright enforcement. As AI continues to reshape creative industries, this analysis offers a path toward regulation that supports both artistic integrity and technological progress. The findings aim to inform policymakers, AI developers, and creative professionals seeking a sustainable future for human and machine-made art.

Introduction

Suno AI, a startup generating music in seconds from text-based prompts, has quickly gained popularity and notoriety in the music industry. With a community of over 12 million people as of May 2024 (Suno, 2024), Suno's platform allows users to create songs from a simple 120-character prompt. This innovation, however, has attracted legal challenges from entities like the Recording Industry Association of America (RIAA) and Universal Music Group. Critics such as RIAA Chairman Mitch Glazier argue that Suno "sets back the promise of genuinely innovative AI for everyone," while Chief Legal Officer Ken Doroshow views the lawsuits as essential for "reinforcing responsible and lawful AI development" (Glazier, 2024; Doroshow, 2024). At the heart of the controversy is Suno's dependence on large language models (LLMs), which draw from extensive datasets, often including copyrighted material. This paper examines Suno as a test case for Human-Centered AI (HCAI), which is an approach that seeks to design AI systems prioritizing human values, ethics, and accountability.

Popularized by the Stanford Institute for Human-Centered AI, and elaborated on by scholars including Ben Shneiderman (2022), Capel and Brereton (2023), Schmager, Pappas, and

Vassilakopoulou (2023) and Shroff (2024), HCAI aims to balance human agency and technological advancement by promoting ethical alignment, transparency, and user empowerment. Suno exemplifies how AI democratizes creativity but also challenges artistic rights. By exploring Suno's model, this paper navigates the legal and ethical tensions between AI-driven creativity and copyright law, focusing on how HCAI principles might guide the responsible integration of generative AI into creative industries.

In the following paper, I build upon the work of Lila Shroff's "AI & Copyright: A Case Study of the Music Industry" and apply her research on Human-Centered AI to Suno AI as a concrete example unfolding with real-time implications. First, I will provide background information on the tension between copyright law and generative AI. I will establish why Suno qualifies as an informative test case for human-centered AI models. Next, I will briefly explain how technology always produces specific responses from proponents and those fearful of its impact. This section will expand on these basic beliefs and incorporate AI-centered testimonies from Suno's founding team, members of the RIAA, and subsequent alliances and campaigns promoting artists' rights and fair compensation. Afterwards, I will explain how this dispute magnifies an internal tension between copyright law and the freedom of expression. I will investigate the leading legal arguments from both technologists and traditionalists by drawing on a diverse range of sources, including legal coalitions, Supreme Court opinions, and analyses from legal experts. These legal arguments directly apply to Suno as a test case for the viability of creative HCAI and may be extrapolated to other types of HCAI. Finally, I will provide one recommendation each for AI developers, policymakers, and record companies to better work together and create a fair and sustainable framework for the future of human-centered generative AI.

Background: Copyright Law vs. Generative AI

Generative AI models, like Suno's, conflict with copyright law in two key areas: (1) authorship rights, as machines cannot be "authors" under copyright law, and (2) the legality of training on copyrighted materials. The U.S. Copyright Office has reaffirmed that copyright applies only to works produced with human creativity (U.S. Copyright Office, n.d.), and recent cases, such as *Thaler v. Perlmutter*, have denied copyright protection for works created without direct human involvement (Hanson, 2023). Furthermore, since users lack control over how systems interpret prompts for material generation, these prompts function like instructions to a commissioned artist: they specify what the prompter wants depicted, but the machine decides how to implement those instructions in its output (U.S. Copyright Office, n.d.). Exemplifying this distinction, the U.S. Copyright Office initially granted copyright protection to the comic book *Zarya of the Dawn*, which included human-authored text and AI-generated images. Upon review, the Office revoked protection for the images, limiting copyright to the comic's text and arrangement (U.S. Copyright Office, n.d.). The decision excluded

images generated by Midjourney, a digital art AI startup for image generation (MacArthur, 2023).

While there are guidelines in place for defining authorship, there is a much weaker consensus regarding LLM training set sources. Moreover, LLMs require vast amounts of data for training, often sourced from copyrighted materials. Cases like *Anderson v. Stability AI* and *Concord Music Group v. Anthropic* are testing the boundaries of what constitutes copyright infringement in AI training datasets (Weisenberger, 2024). These legal challenges illustrate the growing pressure on AI companies to navigate the gray areas of copyright law. In *Concord Music Group v. Anthropic PBC*, song lyrics are at the center of the dispute with multiple large music publishers alleging that Anthropic improperly created and used unauthorized copies of copyrighted lyrics to train an LLM called "Claude" (Weisenberger, 2024).

Within this bird's eye view of creative generative AI, human-centered generative AI (HCAI) introduces additional complexity. Unlike traditional AI's focus on task automation, HCAI is intent on amplifying and augmenting human abilities (Greyer, Weisz, Pinhanez, & Daly, 2022). IBM defines the new criteria for the human aspect of HCAI as, "human users being responsible for the specification, goal-setting, steering, high-level creativity, low-level detail work, and the ability to design at scale" (Shroff, 2024, p. 5). Suno exemplifies this through user-directed music generation. While similar to *Thaler*, Suno's variable amount of user interaction with the final product raises legal uncertainties about properly-oriented HCAI.

Suno as a Test Case

Human-Centered AI (HCAI) emphasizes the design of AI systems that enhance human creativity and decision-making rather than replace them. This approach has been supported by various scholars, each bringing unique perspectives to the ethical challenges within creative industries, particularly regarding copyright infringement versus permissible inspiration. Ben Shneiderman (2022) advocates for HCAI frameworks centered on user agency and transparency, underscoring three principles: high levels of human control, protection of human agency, and mitigation of automation risks. Shneiderman's model is particularly relevant in creative fields, where he argues that AI should serve as a tool to amplify rather than overshadow human creativity. However, Shneiderman's framework does not address the specific complexities of copyright infringement in cases where AI-generated outputs are inspired by or derived from copyrighted content.

Building on Shneiderman's emphasis on user agency, Capel and Brereton (2023) map the HCAI research landscape across four main areas: Explainable and Interpretable AI, Human-Centered Design, Ethical AI, and Human-AI Teaming. They contend that HCAI can address complex issues like transparency, accountability, and user interaction—elements crucial in ensuring that AI respects established artists and existing legal protections. In high-stakes industries like music, they argue for a balanced design that values human input and ethical responsibility. While their work highlights the ethical need for transparency and control,

however, it stops short of prescribing how to manage legal nuances like copyright, leaving room for a more explicit legal framework.

In their 2023 study, Schmager, Pappas, and Vasilakopoulou tackle this gap by examining HCAI in sectors where AI relies on copyrighted material for training, such as music and visual arts. They argue that HCAI frameworks should establish clearer guidelines for legal compliance and responsible data use, particularly when training AI on copyrighted works. Their work emphasizes the risks of ethical erosion when AI is trained on unlicensed content, a concern that echoes Shneiderman's caution against unchecked autonomy. However, while they support ethical frameworks, they acknowledge that HCAI alone lacks the legal mechanisms needed to fully protect copyright holders, highlighting the need for additional legislative support.

Lila Shroff's 2024 essay, *AI & Copyright: A Case Study of the Music Industry*, addresses these legal challenges directly. She proposes a set of principles specifically for the creative sector, including open communication between AI developers and stakeholders, transparency in dataset composition, opt-in options for artists, and a careful application of the "fair use" doctrine. Shroff's framework is the most comprehensive in addressing copyright concerns, offering practical solutions to mitigate the risks of infringement while promoting ethical AI practices. Nevertheless, Suno AI presents challenges that go beyond her principles, especially in distinguishing between lawful inspiration and infringement (Shroff, 2024, pp. 8-9). Suno's generative AI allows users to shape original creations with inputs like lyrics and style, yet because it relies on copyrighted works, it raises unresolved questions about the line between permissible inspiration and unlawful copying.

Based on contrasting opinions regarding Suno's impact in the context of the current landscape of generative AI, two schools of thought arise. Technologists argue that LLM training is similar to human processes and therefore not considered infringement. Additionally, any number of iterations where users interact with Suno's HCAI creates a novel outcome because the user uniquely tailors it to their vision (Suno, 2024). As a result, proponents believe that Suno is an effective HCAI that can redefine how music is created and distributed (Suno, 2024). Alternatively, several artists and record labels view Suno as an irresponsible HCAI shrouded in mystery. From this perspective, Suno's HCAI is only able to generate music because it sources its inputs from the work of other artists' copyrighted music. Any amount of iterations does not discount the fact that the source of these generated works relies on the invasive use of copyrighted works (*UMG Recordings, Inc. v. Suno, Inc.*, 2024). These traditionalists believe Suno's HCAI infringes the work of established artists and allows users to profit off of AI generated copies. Ultimately, if Suno is to survive, traditionalists believe the technology requires serious modifications to exist safely within the music ecosystem (RIAA, 2024).

Experts like Mathew Sag, a professor of Law in Artificial Intelligence at Emory University, believe Suno has a case to continue its operations by claiming a fair use defense of the copyrighted music in

question for training its model. Sy Damle, a former general counsel at the U.S. Copyright Office, testified before a House subcommittee earlier this year, asserting that using copyrighted material for AI training is categorically fair. Conversely, Recording Industry Association of America Chairman and CEO Mitch Glazier vocally disapproves of Suno's negligence towards respecting artists' rights and providing fair compensation. The RIAA has several supporters, including organizations such as the Music Workers Alliance, the Artist Rights Alliance, and the Human Artistry Campaign, all of which advocate for the protection of established musical artists. Many of these organizations believe that AI platforms like Suno risk diluting the music market and should therefore either be severely curtailed or shut down completely. The following section will examine technologists' and traditionalists' different ethical views for artificial intelligence and Suno's training set outputs.

The Ethical Impact of Technology as Applied to Suno

AI as an Emerging Technology

Although technology itself does not have inherent values, its application can be positive, neutral, or negative depending on use. Most people agree that technology can serve as a great equalizer by removing barriers related to social characteristics, geographic location, and physical or sensory abilities (Kanevsky, 2012). However, these benefits are accompanied by recurring concerns about job security, safety, and living standards related to technology (Bughin, 2019). As a result, the ever-present need to keep technology ethical is readily accepted.

Artificial intelligence, despite its unprecedented capabilities, follows a similar pattern to previous technological developments like the Internet. Tension between technologists and traditionalists stems from the fact that AI is an *emerging* technology and not an entrenched technology (Horn, Jarvis, Kosmowski, & Silverglate, 2021). The Internet, for instance, is an entrenched technology in the sense that enough time has passed for people to understand its capabilities and construct regulations for its operation. However, there was a time when the Internet was newly introduced, and its full potential was still being understood. Artificial intelligence is currently in a formative phase. Both technologists and traditionalists acknowledge AI's potential for good, but they diverge on how to balance its benefits with the need for accountability. Striking a balance, and using Suno as a proxy of sorts, is crucial in addressing fears while allowing technology to thrive as a valuable tool.

Traditionalists vs. Technologists

The optimism of human-centered generative AI tools is accepted by both traditionalists and technologists alike. However, three main issues prevent traditionalists from endorsing Suno's technology: artists (1) have no say as to whether their works are utilized in creating LLMs for companies like Suno, (2) do not receive any form of compensation for their works being used to create effective LLMs, and (3) cannot prevent Suno users from profiting off of these problematic LLMs. The RIAA's deepest fear is that Suno is being used to create identical copies in the style of specific

artists and enabling users to profit off of these works as their own (Rys, 2024). As a result, several traditionalists believe services like Suno are devaluing art (Horton et al., 2023). Traditionalists argue that reliance on AI models discourages creativity and pollutes the music information ecosystem (Berger, 2024). By flooding the market with cheap AI products, generative HCAI companies like Suno are making it harder than ever for all but elite creatives to earn a living (Berger, 2024).

It is important to note that instead of functioning as a technology which enhances production like auto-tune or facilitates distribution like Spotify, Suno represents a big step beyond the normal capabilities of technology thus far. Human artists and industry stakeholders explain how there is a larger fear that musical HCAI has the ability to displace human artists altogether (MWA, 2024). The Music Worker's Alliance argues that Suno's outputs place artists in unfair competition with an inexhaustible supply of knock-offs, capable of displacing them in record production, film, video, television scoring, and other markets (MWA, 2024). Traditionalists urge companies like Suno to be more transparent and forthcoming with their inputs. Traditionalists also want artists to have more of a say in the use of their discographies. Proposed solutions include licensing schemes and opt-out models, but paramount to any resolution, traditionalists want confirmation that AI copies of established artists' works are not able to be distributed on Suno. They view this use of AI as predatory and a form of massive theft which is completely unacceptable (Rys, 2024).

Technologists are in complete agreement with the rejection of AI copies and therefore believe that traditionalists have a fundamentally flawed perception of what AI tools like Suno purport to do. On behalf of technologists, Suno founders clarify how the tool helps people create music through a similar process humans have used forever: by learning styles, patterns, and forms (in essence, the "grammar" of music), and then inventing new music around them. Major record labels argue that neural networks are mere parrots, copying and repeating while technologists believe the reality is that model training looks a lot more like someone learning to write new rock songs by listening religiously to rock music (Suno, 2024). Suno's outputs improve as the AI learns more. This difference in conception of how and why LLMs learn is what underscores most of this ethical dilemma.

Technologists emphasize Suno's potential for prosperity by focusing on the fact that the HCAI tool can be a new kind of musical instrument, designed for originality, that opens new business opportunities for the industry. Antonio Rodriguez, one of Suno's initial investors, believes Suno could bring music-making to everyone, much like camera phones and Instagram democratized photography. The idea, he says, is to once again "move the bar on the number of people that are allowed to be creators (Rodriguez, 2024)." The democratization Rodriguez mentions is analogous to the way technologists often view technology as a great equalizer. As aforementioned, the capability of technology to improve life at the click of a button by removing limitations is powerful. In terms of leveling the

playing field and allowing more people previously excluded from participating in the music industry, Suno's founding team shared their goal of getting a billion people much more engaged with music than they are now (Hiatt, 2024). While the ethics of increased accessibility seems maximally advantageous since the number of people with access to this form of creative expression is increasing, the fact that *more* people can benefit does not always immediately qualify technology as ethically good.

In response to artists expressing their fears about being displaced and art being devalued, Shulman and his colleagues explain how there is little to fear since people still read despite being able to write. However, this weak analogy is not enough to alleviate the very real worries several musicians and industry stakeholders have regarding Suno (Burgess, 2024). Although Suno strictly views its HCAI as an extension of human creativity and a mechanism to endorse originality for those previously unable to express themselves in this way, Suno does not address the very real distress of artists regarding the impact of AI outputs which aren't AI copies (also known as deepfakes) on the music ecosystem. Suno seems to believe the proliferation of music generated via its service is no different from millions of people deciding to become musicians. However, even if technologists believe Suno's HCAI features a model of fair learning, artist compensation and models which seek the permission of artists' before utilizing their work should be considered to make Suno more accountable and transparent. These mechanisms can ease some fears of traditionalists and foster a more conducive environment for HCAI to coexist with current industry players. If Suno truly wants to remain a tool for the masses to benefit from, it could incorporate some of these suggestions. If not to ease the concerns of organizational and bureaucratic heads, Suno could at least make an effort to cooperate with artists directly since their sound recordings fuel Suno's outputs.

The ethical concerns of traditionalists and technologists are textbook responses to many emerging technologies. However, the nature of human-centered generative AI and its capabilities in terms of volume and quality present a heightened sense of apprehension in comparison with other technological advancements. These fears set the bedrock of legal arguments within the lawsuit Suno currently faces. While ethical considerations are crucial, the legal arguments are ultimately more consequential for Suno as they determine its operational standing as an HCAI moving forward. The following section explores this legal debate in the context of judicial decisions, precedents, and the mechanisms currently in place for balancing copyright law and freedom of expression.

The Mechanics of Copyright and Its Safety Valves

Current Legal Debate

The legal debate around Suno centers on whether training AI models on copyrighted works constitutes fair use. Under U.S. copyright law, fair use allows limited use of copyrighted works for purposes such as criticism, research, and teaching, provided the new work is "transformative" (U.S. Copyright Office, 2023). Suno's defenders argue that the AI's outputs are sufficiently

transformative, creating new compositions from existing materials in much the same way humans learn and create. However, opponents argue that AI-generated works devalue human creativity by flooding the market with music that mimics established artists (RIAA, 2024).

Built upon the ethical fears of job displacement and the devaluation of art, traditionalists argue that Suno should not qualify for fair use protection since the AI model copies protected sound recordings which require permission from rights holders (Hiatt, 2024). Instead of arguing that Suno *ought* to take artists into account more proactively, traditionalists claim that it is illegal not to gain artists' permission and provide fair compensation. As detailed above, technologists analogize Suno's LLM learning to the way humans learn by vast exposure to sources of inspiration. Technologists view this type of learning as legal since it falls under fair use, which allows the copying of a protected work as part of a back-end technological process that is invisible to the public, ultimately serving to create a non-infringing new product (Hiatt, 2024). Suno's defenders argue that the AI's outputs are sufficiently transformative, creating new compositions from existing materials in much the same way humans learn and create. However, opponents argue that AI-generated works devalue human creativity by flooding the market with music that mimics established artists (RIAA, 2024). This rejection is based on the idea that fair use promotes human expression by permitting the unlicensed use of copyrighted works in certain circumstances, but Suno's outputs are seen as imitative and not cases of genuine human creativity or expression (Hiatt, 2024). Suno proponents view this opinion as diminutive of Suno's true purpose and factually incorrect regarding the actual outputs which are meant to boost originality in music production.

Before unpacking the validity of each argument, it is necessary to understand how the copyright system currently operates and why the dispute over Suno strikes at its very core. Broadly, copyright is a branch of intellectual property designed to protect creators from using their works without permission. The Constitution created copyright to promote the progress of science and arts by securing authors and inventors the exclusive right to their respective writings and discoveries (U.S. Const., art. I, § 8, cl. 8). While developing copyright, the founders were concerned about whether the law would stifle the freedom of expression it aimed to support. As a result, copyright incorporates internal safeguards that prevent it from infringing upon First Amendment rights. These safeguards include the idea/expression dichotomy and the fair use doctrine.

The idea/expression dichotomy states that copyright protects an author's expression but not their ideas (Netanel, 2011). Ideas fall on the free speech side of the line, while the statement of an idea in a specific form and the selection and arrangement of ideas fall on the copyright side (Nimmer, 1970). Fair use allows for the few circumstances when free speech interests require the use of another's particular expression and not just their idea (Wang, 2011, p. 1480). Four factors need to be analyzed when determining whether a work qualifies under fair use: the purpose and character of the work, the nature of the copyrighted work, the amount and

substantiality of the portion used with the copyrighted work as a whole, and the effect on the potential market for the original work. The first factor has gained the most importance over the past years, and it has become a test for whether a work has 'transformative' value – such that it provides a new meaning, message, or purpose distinct from the original work.

In recent years, the courts have begun to grapple with these issues. In *Authors Guild v. Google Inc.*, the court ruled that the use of copyrighted material for building a searchable database was fair use because it served a transformative purpose (Sheehan & McSherry, 2018). However, in the *Warhol Foundation v. Goldsmith* case, the Supreme Court held that Warhol's adaptation of a photograph did not qualify as fair use because it served the same market as the original (Guo et al., 2023). Similarly, Suno's AI-generated songs compete directly with human-created music, raising significant legal questions about market impact.

Is Suno's LLM Fair Use?

Purpose and Nature of the Use

Analyzing all four criteria for fair use showcases opinions from traditionalists and technologists in a counterpoint which reflects the blueprint of copyright with all of its safety valves. Keeping in mind that the fair use doctrine functions as a manner in which the needs of free expression are balanced against the protection of intellectual property, the first criterion of fair use gauges the purpose and character of the use. Traditionally, the fair use doctrine is only applicable when the use in question advances a socially beneficial activity like those listed in the statute: criticism, comment, news reporting, teaching, scholarship, or research (Harvard Office of the General Counsel, n.d.).

Noncommercial uses, like those within a classroom or non-profit, are much more likely to qualify as fair use in comparison with commercial uses. However, the Court has made it evident that the commercial use of a work could still qualify as fair use if there is a significant degree of transformation from the inputs. Courts are increasingly emphasizing the extent of difference between works and a use is more readily "transformative" when it has a different purpose from the original (Koski, 2024, pp. 1009-1013). Since Suno fails to neatly fit into any of the existing socially beneficial activities listed in the statute for fair use and users have the option to profit off of their creations, the question of whether Suno's outputs are transformative enough is central to this dilemma.

The nature of "transformative" value is highly variable, such that two recent fair use cases support the views of proponents and opponents of Suno equally. *Author's Guild v. Google Inc.,* established the purpose of databases as transformative. Judge Chin of the U.S. Court of Appeals for the Second Circuit mentioned how the service is highly beneficial for all of society and therefore qualifies for fair use, despite being for profit and making copies of works by various authors without their permission (See *Author's Guild*). Conversely, in *Andy Warhol Foundation for Visual Arts v. Goldsmith,* regardless of Warhol's alterations and creative additions to an original photograph by Goldsmith, the Court ruling emphasized that Warhol's 'Orange Prince' and

Goldsmith's photographs functioned as profile images of the same musician within magazine articles, serving essentially the same purpose. This similar purpose is one of the main reasons Warhol's works did not ultimately qualify as fair use (Berger, 2024).

Author's Guild supports Suno's viability since permission wasn't granted by authors for the compilation of the database and the Court found it to be fair use. Yet, databases which increase the ease with which people can find resources for a small fee and HCAI generated works where users can profit and compete against musical works by established human artists doesn't seem like a one-to-one comparison (U.S. Copyright Office, 2015). Suno's works and the works of original artists are both vying for fans and streams within the music ecosystem, so the purpose of these two products seems to be one and the same. *Warhol* undermines claims of Suno's HCAI possessing enough "transformative value" from the sole perspective of purpose although Suno generated outputs differ in terms of content.

Nature of the Copyrighted Work

The second factor of fair use focuses on the nature of the copyrighted work, where works that are more factual are likely to qualify for fair use protection in comparison with imaginative and highly creative works (Harvard Office of the General Counsel, n.d.). This factor is meant to emphasize how fair use is not designed to protect factual information. Although this factor is often regarded as the least important of the four factors when analyzing fair use claims, it provides a foundation for understanding traditionalists' fears regarding the devaluation of art. This factor illustrates the heightened sense of importance creative works receive when it comes to protecting human ingenuity. If creative works and factual works received the same level of fair use protection, it would be easier for artists to copy from each other without gaining permission or providing credit and compensation. Ben Zhao, a professor of computer science at the University of Chicago, coins this phenomenon as a "race to the bottom" for art which echoes the fears traditionalists express in response to generative AI companies like Suno and others within the creative space such as StabilityAI and Midjourney (Carter, 2023). While the current legal framework may need to expand to accommodate the technological advancements, artists must also receive enhanced protection in the age of such open access and ease of replication.

Amount and Substantiality

The third fair use factor, amount an substantiality, asks whether Suno uses excessive or core elements of the copyrighted work. While LLMs train on entire works, Suno's outputs aim to be distinct, raising the question of whether copying the full source material for training qualifies as fair use. Even if the percentage is small, if the copied content strikes at the "heart" of the original work, this factor may weigh against fair use. In *Harper & Row Publishers, Inc v. Nation Enters* (1985), *The Nation* magazine included 300-400 words verbatim from Gerald Ford's memoir discussing the pardoning of Nixon and the Court explained that the work didn't qualify as fair use since the copied portions were too central to the

original work. The "heart" of a musical work can be difficult to pinpoint, but musicologists in copyright infringement cases between human creators are able to gauge this subjective concept with a degree of pragmatism based on the average listener (Harvard Office of the General Counsel, n.d.).

This pragmatism stems from assessing the "substantial similarity" between works. Substantial similarity is a level of similarity that shows improper appropriation of the plaintiff's work. If the similarity of the defendant's work to protectable elements in the plaintiff's work is minimal, or if similarity only exists with regard to unprotectable elements of the work, then there is no substantial similarity (University of Michigan Library, n.d.). This concept has an extrinsic test which is more objective, but it also has an intrinsic test which focuses on the overall feel of pieces (United States Court of Appeals for the Ninth Circuit, n.d.). The latter test is where Suno outputs pose a higher risk of running afoul. Additionally, the third factor for fair use ties into the first factor, since the extent of permissible copying varies with the purpose and character of the use.

For instance, if Suno was copying more material than necessary to build its LLM, such copying would weigh against fair use. LLMs learn from copied works in their entirety, however, so the Court would be more primed to view this substantial use as a neutral interpretation of the third factor since the copies themselves aren't directly being used to favor the potential fair user. Here, technologists stand to benefit with this factor because Suno's HCAI may train on copied works, but the outputs aim to be completely distinct. Whether Suno generated works convey the "heart" of existing works is still up for debate, especially since Suno's HCAI can generate human vocals which would most naturally lend themselves to being the "heart" of a musical work.

Effect of the New Work on the Potential Market

The fourth and final factor of the fair use doctrine examines the effect of the new work on the potential market of the original work to account for what original creators may be losing in terms of financial and reputational gains. Use that adversely affects the market for the copyrighted work is less likely to be fair use. This also ties into the first factor since courts must acknowledge whether the putative fair use supplants or substitutes the copyrighted work. If a use results in lost sales to the copyright owner or if this type of use becomes widespread, it will be more difficult to weigh as fair use.

Traditionalists believe Suno creates imitative works, so these outputs directly result in lost sales for established artists. Deepfakes, AI generated copies of established artists, directly impinge on the market of established artists because these AI generated works are intentionally deceptive. However, Suno's outputs are not deepfakes. Suno has protocols to prevent deepfakes, such as prohibiting users from entering specific artists' names. From this perspective, Suno outputs are impacting the market of copyrighted works the same way other songs being released do. HCAI merely allows the number of songs created per hour of work to be substantially greater than human creators.

Traditionalists worry about the dilution of the music market with 'cheap' AI generated works and cite this

as a negative effect on the market of copyrighted works. However, AI works are simply competing the same way all songs compete in the music ecosystem. While Suno outputs may not be deepfakes, the fourth factor of fair use still considers the effects of new works on both the established and derivative markets of the original work. Derivative markets are indirect markets for the copyrighted work. For instance, if a novel were made into a movie without permission, the movie may not affect book sales, but if there is harm to the author's market for a movie based on the book, this would count against fair use. There is an argument that Suno works will cause a loss of sales to established artists, since there will be a dilution effect from the sheer increased amount of music available for consumption in the digital music market (*UMG Recordings, Inc. v. Suno, Inc.*, 2024). However this doesn't constitute a direct threat to established or derivative markets. Since Suno's outputs are not deepfakes, the way these works affect the market does not present a lost opportunity for artists to profit on their own works in established or derivative markets. Suno-generated songs simply lower the market share of human artists as more musicians are able to participate.

Through analyzing all four factors of fair use, neither stance emerges as a clear winner with a solid solution. Arguments from both traditionalists and technologists have strengths and deserve equal consideration. This balancing act illustrates the central purpose of copyright as an institution. In *Feist Publications, Inc. v. Rural Telephone*, Justice Brennan explained how the primary objective of copyright is not to reward the labor of authors but "[t]o promote the Progress of Science and useful Arts (Brennan, 1991)." This may justify the fact that artists don't require monetary compensation for their work being used to create an LLM, but the matter of permission is wholly separate. Permission is explicitly mentioned in the definition of infringement and represents a core protection within copyright to protect creators. While Suno may adopt an approach which focuses on building relationships with artists and earning consent, some technologists still believe LLM training sets do not require such permission, since the learning style qualifies as fair use through the idea/expression dichotomy.

Is LLM Learning Inherently Fair?

Idea/Expression Dichotomy

Technologists and Suno founders reiterate the way Suno's LLM operates as a way to illustrate why LLM training sets may appear like copyright infringement, but in reality, they are learning in ways which humans often do. Proponents of Suno do not view permission as a requirement because humans do not face the same limitations when writing music to match a certain genre or style of a specific artist. Mike Masnick of Techdirt posits that the legality of using the original material is irrelevant. He argues that if someone inspires a musician to create new music after hearing pirated songs, it does not follow that the new songs would infringe on copyright (Masnick, 2024). This kind of learning, if analogous to training LLMs on copyrighted material, qualifies for protection under the idea/expression dichotomy. This dichotomy provides another way to better understand how Suno's HCAI fits

within the larger context of copyright law and its impact on the music industry. The idea/expression dichotomy within copyright delineates what can be privately monopolized under copyright and what cannot (Wang, 2011, p. 1476). For example, the fact that Jane Yolen wrote about a teenage wizard in a magic school didn't stop J.K. Rowling from doing the same. While authors can't copy specific words, characters, or dialogue, they can still use the general idea of a teenage wizard in a magic school, which is not protected by copyright (Wang, 2011, pp. 1476-1478). In *Feist Publications*, Justice Brennan further explains this concept within the context of copyright by explaining how, "copyright assures authors the right to their original expression but encourages others to build freely upon the ideas and information conveyed by a work (Brennan, 1991)."

Generative AI models that do not, in their ordinary and routine operation, copy (or produce copies of) the original expression in their training data are an example of non-expressive use. To be clear, a generative AI model, like Suno, might be used to create expressive work in a First Amendment sense. In this context, "non-expressive use" tracks copyright's idea-expression distinction, not broader notions of free expression (Sag, 2023, p. 1914). Courts have consistently held that technical acts of copying that do not communicate an author's original expression to a new audience constitute fair use under the idea/expression dichotomy (Sag, 2023, p. 1903). For instance, an automated process of copying student term papers for plagiarism detection or copying printed library books to create a search engine index are both examples of non-expressive use (Sag, 2023, p. 1903). So long as precautions prevent memorization, the link between the training data and the output of generative AI is attenuated by a process of decomposition, abstraction, and remix. These models "learn latent features and associations within the training data; they do not memorize snippets of original expression from individual works (Sag, 2023, pp. 295-96)." A new non-infringing expression is not a problem—the latest expression shows that the system is working (Sag, 2023, p. 309). As previously mentioned, traditionalists do not view Suno's outputs as constituting non-expressive use since the content is highly creative.

However, technologists and Suno's founders see Suno's HCAI as non-expressive use because the copies it utilizes are solely used for learning purposes. There is an argument to be made that technology like Suno's is precisely why copyright law exists since the ability for any user to create new musical works will broaden the marketplace of musical ideas. Therefore, proponents of Suno believe the service promotes the purpose of copyright by bolstering competition and expanding musical ideas. Although traditionalists see the oversaturation of the music market as a negative, technologists support this outcome as an extension of the 'marketplace of ideas' within the music industry since the free competition of ideas is the best way to promote variety of expression (Breyer, 2015).

Exceptions or the Rule?

When applying the idea/expression distinction to music, copyright law protects lyrics and melodies, but doesn't protect underlying

themes such as love songs about heartbreak because various musicians can express this idea in different ways. Traditionalists believe the manner in which LLMs utilize copies to generate outputs is imitative based on cases of replication which immediately register as "substantially similar". These cases represent evidence to substantiate the claims of traditionalists in the context of copyright violations. Plaintiffs in the lawsuit Suno currently faces found that certain patterns of prompts can cause Suno's HCAI to generate digital music files that contain melodic and stylistic similarities to well-known copyrighted sound recordings (RIAA, 2024, p. 16). Within the case brief filed by the RIAA, several examples ranging from Chuck Berry's "Johnny B. Goode" to Michael Buble's "Sway" were replicated when prompted with descriptions of the original artists and the original lyrics (RIAA, 2024, pp. 16-23). These examples, however, simply prove that if a user wants to replicate a work, they can. When fed with such descriptions and the lyrics of a piece in its entirety, the HCAI may be unable to recognize these outputs as infringement at this point in time. This begs the question as to whether the potential for Suno users to do this warrants shutting down the service when a majority of users are most likely not using it for this purpose. Additionally, this brings context into consideration. If 90% of Suno generated songs imitate previous works as seen in the case brief, there would be a compelling case of copyright infringement. However, if these cases are possible, but occur less than 1% of the time, the hyperfocus on such cases would seem to be taken out of context.

In addition to these examples, the RIAA case brief also cites a few examples where Suno's service generated audio outputs that contain vocals that are instantly recognizable due to their resemblance to those of famous recording artists. The biggest ABBA fan would have trouble distinguishing between sound recordings created by the real band and the vocals in the Suno output "Prancing Queen" which Suno's HCAI created using the prompt, "disco abba 70s pop" (RIAA, 2024, p. 23). Imitating original expression is immediately problematic and unprotectable by law since Suno outputs are being accessed by the same market as established works are. The replication of human vocals is a blatant imitation of a song's original expression since these vocals comprise the essence of the sound recordings. Yet, Suno and technologists continue to stress that LLMs which power its HCAI do not seek to imitate or deceive. The cases cited in the case brief from the view of technologists are deemed as exceptions rather than the rule (Congressional Research Service, 2023). When understanding how LLMs are truly meant to create original content and simply 'learn' by exposure to the rules and conventions of music, Suno ultimately represents a tool which can be used for good or bad, like any technology. This circles back to the fact that the value of technology will always depend on the way people interact with it (McKinsey & Company, 2023). Beyond the copying and mimicking stage, Suno could grow to present a real paradigm shift in terms of what it means to be a musician and what it means to be creative. However, to maximize the potential of this becoming a reality, Suno would benefit from taking current musicians into account to a greater degree. The recommendations in the

following section promote fairness without exerting an undue burden on Suno's HCAI.

The Path Forward: Solutions for 2024

As of 2024, the legal landscape surrounding AI-generated music remains unsettled, highlighting a core conflict between copyright protections and free expression. To navigate this, it's essential that policymakers work closely with domain experts in AI and music to create legislation that keeps pace with rapidly evolving technology. With expert insights, balanced solutions can emerge that consider the interests of artists, technologists, and policymakers alike.

Legislative Recommendations

Policymakers must distinguish between deepfakes and other AI models through a standardized "likeness threshold." Several technologists have cautioned that overly broad legislation could unfairly burden legitimate AI-generated works under laws intended to restrict deepfakes (Merchant, 2024). Overbroad legislation targeting deepfakes harms innovation by unfairly treating works which use other AI deep learning models as equivalent violations. To set a fair boundary, forensic musicologists could help establish an "x% likeness" threshold that determines when AI-generated content infringes upon copyrighted material. This would protect artists without overly restricting tools like Suno, which enable creative expression (Handy, 2024). Although such a threshold might seem arbitrary, it could allow for AI models like Suno to support user creativity while still respecting established artists' rights. Legislators should avoid sweeping measures that stifle innovation, instead focusing on targeted guidelines that protect both original content and fair use.

Transparency and Accountability for AI Companies

Suno could improve its transparency through more frequent and detailed public communications. Although Suno shares updates on a blog, these posts largely serve investors and users, rather than addressing industry concerns about the datasets it uses. One way Suno can increase accountability is by publicly verifying that its HCAI model avoids scraping copyrighted material from specific artists without permission. Legal analyst Cameron Kerry emphasizes the importance of demonstrating that AI models do not intentionally imitate existing artists when released for profit (Kerry, 2023). By maintaining a public commitment to ethical practices, Suno can mitigate concerns about infringement and foster trust with the broader music industry. If an AI-generated song becomes profitable and exhibits a high similarity to an established artist's work, a public transparency pledge could serve as evidence in any infringement claim.

Metadata Tagging for Copyright Protection

Record companies could also use metadata tagging as a tool to discourage unauthorized use of copyrighted content in AI training datasets. Inspired by DeviantArt's metadata tags, which discourage AI researchers from scraping images without permission, music metadata tags could signal ownership details to

potential infringers (Wiggers, 2022). This would allow artists to more easily detect imitation, although implementing this technology for audio files poses unique challenges due to their complex, dynamic nature. Nonetheless, metadata tagging could enable artists to verify unauthorized imitation of their sound recordings, providing a valuable tool for identifying potential infringement cases. While not a comprehensive solution, this approach supports artists' rights and enables legal recourse if AI-generated works closely mimic their original sound (Pastukhov, 2023).

Conclusion

Suno represents a compelling test case in the evolving intersection of generative AI and copyright law. While its AI-driven platform expands creative possibilities in music, it also brings forward ethical and legal challenges related to the use of copyrighted materials. Ensuring AI coexists with human artistry will require legal clarity, enhanced transparency, and fair compensation for artists. As AI continues to develop, the music industry must adapt, striking a balance between fostering innovation and protecting creators' rights.

This analysis demonstrates how stakeholders advocate for solutions based on their perspectives and values: technologists push for innovation and creative freedom, while traditionalists emphasize protecting the established rights of artists. Navigating these perspectives can yield cohesive solutions that respect both technological progress and artists' rights.

Future Research Considerations

Future research should explore projects aimed at resolving ethical challenges between artists and AI platforms. For instance, YouTube's *Dream Track* project allows users to create AI-generated songs featuring artists who have explicitly consented to the use of their voices, such as Troye Sivan, Sia, and John Legend (Millman, 2023). Analyzing responses to such consent-based models could offer valuable insights for AI and copyright policy. By examining how artist-approved AI tools impact both creators and users, future studies could help to identify further ethical safeguards and enhance collaborative possibilities in the music industry.

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