It Sounds Like Generative AI Music Services Are Infringing Copyrights

by

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On June 24, owners of copyrighted music recordings filed infringement lawsuits against generative AI music services Suno, Inc., and Udio.com. The copyright owners allege that those services unlawfully copied thousands of copyrighted music recordings to train their generative AI models used for commercial services. If the allegations are true, Suno, Inc., and Udio.com could be on the hook for damage awards of enormous proportions.

UMG Recordings, Inc. v. Suno, Inc. and *UMG Recordings, Inc. v. Uncharted Labs, Inc.* are among the latest copyright infringement cases to be filed nationwide against startup generative AI companies. Both lawsuits spotlight the ease by which sophisticated generative AI technologies may usurp the value of copyrighted property and harm the owners of original creative works. The two cases are important for vindicating the copyrights at stake and ensuring the integrity of copyright protections for other sound recording owners. Judicial decisions in the cases also may become valuable legal precedents regarding generative AI-based infringements of the right of reproduction.

The emergence of artificial intelligence (AI) technologies that generate different forms of media content – including images, video, sound, and more – poses novel challenges for intellectual

property (IP) law. I wrote about the challenge of copyrightability from (supposedly) autonomously generated AI in my November 2023 *Perspectives from FSF Scholars*, "[Copyright Case Affirming Human Creativity Sets the Stage for AI Issues](#)." The need for legal protections for IP rights in individuals' likenesses and voices and potential harms posed by deepfakes or other AI replica technology was the subject of my January 2024 *Perspectives from FSF Scholars, "T*[he 'No AI Fraud Act' Would Secure IP Rights Consistent With the First Amendment](#)." This *Perspectives from FSF Scholars* addresses copyright law's protections for creative works from unauthorized third-party use as inputs for generative AI technologies.

The plaintiff copyright owners in both cases are record companies that own or control many valuable original sound recordings. In their complaints filed in the District of Massachusetts and the Southern District of New York, they allege that the services offered by Suno and Udio.com unlawfully copy "vast quantities of sound recordings from artists across every genre, style, and era," and that those services train their AI models on "the expressive features of these copyrighted sound recordings." Both services allow users to create new digital music files using their respective generative AI models by inputting desired musical genres and styles, as well as vocal and instrumentation features that the users prefer, including lyrical themes or specific words. Also, both services allow users to upload their own short sound files to combine with the generative AI models to produce new digital music files. All of this is designed, according to the complaints, "for the ultimate purpose of poaching the listeners, fans, and potential licensees of the sound recordings" that were copied without authorization.

The copyright owners are seeking injunctive relief to prevent all alleged infringing activities by Suno and Udio.com, statutory damages for willful infringement of up to $150,000 per work infringed, as well as awards of costs and reasonable attorneys' fees. Their complaints include schedules containing lengthy lists of copyrighted sound recordings that they allege have been infringed.

The infringement allegations in the complaints are based in part on the copyright owners' testing Suno's and Udio.com's services "using a series of prompts that pinpoint a particular sound recording by referencing specific subject matter, genre, artist, instruments, vocal style, and the like." After using those prompts, the copyright owners allege that both services "repeatedly generated outputs that closely match the targeted copyrighted sound recording," and they allege further that those outputs show the services copied the pinpointed sound recordings in their respective AI model training data. Indeed, many or most regular music listeners who use one of the services, even on a free trial basis, probably will perceive close similarities between well-known sound recording artists and recordings and aspects of the digital music files that they receive.

Although the copyright owners rely on certain potentially infringing outputs as evidence for their allegations, at the core of their complaints are claims about inputs. According to the complaints, Suno and Udio.com violates the sound recording owners' exclusive rights under copyright law to control reproductions. That is, by inputting or ingesting vast numbers of copyrighted sound recordings into their respective generative AI models, Suno and Udio.com created new copies and used them without permission.

Those input-related infringement claims are distinct from output-related infringement claims for digital music files produced using their generative AI models and for publicly performing them on the Internet. The sound recording owners are not making infringement claims based on outputs. However, their complaints acknowledge that the civil discovery process could reveal that Suno and Udio.com directly or indirectly recapture portions of protected sound recordings in digital music file outputs, violating copyright law in additional respects. Thus, there is a distinct possibility that Suno and Udio.com will face damage awards of massive proportions.

The fair use doctrine, codified in Section 107 of the Copyright Act, provides an affirmative defense from liability in case-specific situations where copyright restrictions can stifle creativity and speech on matters of public importance. When users of a copyrighted work raise a "fair use" affirmative defense, they must show that a specific use for the creative work is fair under the circumstances according to four non-exclusive factors: (1) "the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes"; (2) "the nature of the copyrighted work"; (3) "the amount and substantiality of the portion used in relation to the copyrighted work as a whole"; and (4) "the effect of the use upon the potential market for or value of the copyrighted work."

But Suno and Udio.com would face a steep uphill battle in asserting fair use as a defense against claims that they have infringed copyright owners' right to exclusive control over reproductions of sound recordings. The first fair use factor includes consideration of whether a secondary use of a copyrighted work is transformative and whether the use has a commercial purpose or a different purpose. In *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith* (2023), the Supreme Court concluded that the use of an original work for a purpose that is highly similar to that of the original work is more likely to be a substitute for that work and less likely to be transformative. The apparent copying and uses of those new copies by Suno and Udio.com potentially substitute for original copyrighted sound recordings in the commercial retail music market. And if that is so, the fourth factor also would cut against fair use. The potential effect of mass-scale royalty-free use of those copyrighted sound recordings by both generative AI services likely would significantly impact that market and diminish the market value of the copyrighted property.

The second factor is straightforward: copyrighted sound recordings are at the core of intended copyright protections. Federal copyright statutes expressly protect them. Additionally, if the allegations are correct that the digital music files generated by Suno and Udio.com include distinctive features of copyrighted sound recordings, then that would indicate that the most important parts of those recordings were copied and used – thereby making the third factor weigh against fair use.

In the end, however impressive Suno's and Udio.com's generative AI capabilities appear to be as a technological phenomenon, their alleged mass copying and use of those copies as inputs for their training models – if true – almost certainly violated copyright law because the sound recordings' owners did not authorize it. Conceivably, generative AI services may provide some highly beneficial new revenue streams for owners of copyrighted content. Yet realizing such potential requires, in every instance, a licensing agreement between copyright owners and generative AI services that, by its terms, authorizes use of the copyrighted content.

The law secures to copyright owners the exclusive rights to control reproductions of their original sound recordings. The cases of *UMG Recordings, Inc. v. Suno, Inc*. and *UMG Recordings, Inc. v. Uncharted Labs, Inc.* will give the owners of those sound recordings their day in court to vindicate those rights. Judicial decisions in both cases may serve as valuable precedents regarding the applicability of copyright protections to preventing infringement by generative AI technologies.

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Further Readings

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