Position Statement on AI image generators
April 2023

Methods for processing and generating images using artificial intelligence (AI) will have a fundamental and disruptive impact on methods and workflows in all areas of photography. The German Photographic Council is in principle receptive to the advancement of image-generating techniques. Generative AI opens up new possibilities for expanding the creative spectrum. However, it will also bring serious economic upheaval to the creative industry and may pose a serious threat to democratic social discourse.

The Council calls on all institutions involved in the creation and dissemination of news documentary content to develop ethical standards for the way they treat their sources. These rules and working practices must ensure that authentic material is verified and shared in a way that is recognizable and verifiable as such. In clear distinction, generated images should not be called photographs, even if their photorealism is reaching an ever higher level.

Without the act of creative design by humans through the inclusion of new imagery and the formulation of original prompts, AI image generators tend to encourage the reproduction and variation of what already exists, as they always generate their images by recourse to pre-existing content. However, central legal issues when working with AI image generators are currently unresolved. For example, it is disputed under what circumstances photographers can obtain copyright to their own works when using AI tools, and what rights the users of these works are entitled to.

Without permission and compensation, AI systems use photographers' intellectual property as training material or disguise the origin of data. The Photographic Council calls for more urgency in legal clarification to provide legal certainty in the use of AI tools and a basis for the further development of creative professionals' business models.

AI images are not photographs

It is important to the German Photo Council to distinguish between camera-based photographs and synthetically generated AI images, because photographs are created exclusively by imaging light inside a camera.

AI-generated images are therefore not photographs and should not be referred to as such, even if their photo-realistic presentation conveys this impression. Because the qualitative boundaries disappear, a clear differentiation between photographs on the one hand and generated images on the other is crucial for their classification and perception and strengthens the media literacy of viewers.

This also touches on aspects of photographic pedagogy, the goal of which must be a "school of seeing" that already guides children and young people to critically question images. With regard to forming opinions through democratic discourse, there is an urgent need to raise awareness of the importance of consulting multiple sources or eyewitnesses.

Consequences for creators

The uninvited exploitation of their copyrighted image material by means of data mining for publicly accessible image generators represents an economic loss for photographers that threatens their very existence.

This is due to the fact that the current mode of operation of AI systems is in contradiction to the fundamental principle of copyright law whereby creators themselves and exclusively derive the profits from the exploitation of their works and receive an appropriate remuneration.

The German Photographic Council would like to see the fastest possible legal clarification with regard to the copyright and commercialization rights of the creators of photographs used as training data. It must be traceable on what data basis an AI image was generated. If images from photographers are processed for this purpose, there must also be mechanisms for fair compensation for creators of these images.

Transparency in AI training material

In any case, creators must be able to exercise the right of disposal over the use of their works and object to the use of their images by AI systems. Photographers currently have only very limited possibilities to do this. Therefore, the Council calls for simple opt-out or opt-in options. For example, photographers can opt out of having their work used as AI training material or opt in to have their work explicitly released for this purpose as soon as viable compensation mechanisms for this use have been established. Initial approaches are the "Do not train" certificates of the Content Authenticity Initiative (CAI). The German Photographic Council has become a member of the CAI.

In particular, the Council calls on the legislator to immediately define how the reservation provided for by law against the use of image material for the purpose of so-called data mining in "machine-readable form" can be made in concrete terms. For this purpose, the Council strives for a regulation in which the embedding of such a note in the EXIF/IPTC data of an image file is sufficient.

At the same time, the Council agrees with the demand that such metadata must not be separated from or deleted from the associated image data, as often happens today when images are uploaded to platforms or used.

The German Photographic Council supports the proposal to review in in the near future the non-profit status of the German-registered datamining organization Large-scale Artificial Intelligence Open Network (LAION), which makes works available on a large scale to AI system providers for commercial use as training material without the consent and appropriate remuneration of the creators.

Ensure authenticity

Authentic photographs are essential for the credibility of images in journalistic media. Distinguishing between generated and camera-based images is already difficult or impossible, even for experts. Democratic discourse is endangered by manipulation through persuasive image forgeries, but just as much by the general doubt about the authenticity of images, which will be fully justified in the future.

Photographers must take responsibility for what they photograph, how they photograph and edit it, and to whom they pass on their images.

The Council therefore supports the demand for the development of internationally uniform and consistently open technical standards for the verification of image creation in cameras and for the documentation of subsequent processing steps.

To ensure their credibility, the Council calls on image users in the media in particular to mark image material clearly visible similar to the copyright notice directly on the image according to its origin

Copyright in AI images

Copyright is a protection right for human intellectual creation. The Council suggests that the recognition of copyright protection of AI-generated images be examined on the basis of existing law. Solutions need to be worked out as to how to draw the line between human computer-assisted design eligible for copyright protection and allegedly purely computer-generated machine product in which, according to widespread legal opinion, no copyright can be acquired. Given the disruptive nature of AI tools, it is also necessary to question whether the existing mechanisms for assessing copyright need to be adapted.

We urgently and quickly need legal clarity both for the creators of AI-generated images and for users and commissioners of such works.

Conclusion

The German Photographic Council regards AI systems as an additional, new method for image creation, the products of which, however, must be clearly distinguished from photographs. It urges for the fastest possible regulations that prevent AI systems from being trained and applied to the detriment of creators of camera-based photographic images.

The impact of the new systems on our society is emerging clearly already. By combining synthetic images, which can be disseminated in almost any quantity desired, with AI-generated text and sound documents, a complex web of seemingly coherent pseudo-realities can be created.

Especially in light of the working conditions in most areas of the media industry, which are geared toward economic optimization, serious efforts to effectively counter the danger posed by manipulative content created with AI tools are hardly recognizable at present. Declarations of intent are not enough to achieve this. Protecting democratic discourse requires authoritative editorial guidelines and adequate resources to implement them.