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District Court Affirms United States Copyright Office's Denial of Copyright Registration for AI-Generated Visual Art

Pursuant to the [Copyright Act of 1976](#), "original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device" are eligible for immediate copyright protection, provided certain requirements are met. Against this backdrop, Stephen Thaler applied for copyright registration with the United States Copyright Office (USCO) of a piece of visual art produced by a generative artificial intelligence system he created – the "Creativity Machine." The USCO subsequently denied the application, reasoning that Thaler's work "'lack[ed] the human authorship necessary to support a copyright claim,'" as "copyright law only extends to works created by human beings." After Thaler filed suit against the USCO, both parties moved for summary judgment on the sole issue of whether a work generated entirely by an artificial system should be eligible for copyright protection. On August 18, 2023, in [Thaler v. Perlmutter](#) the United States District Court for the District of Columbia granted the USCO's motion for summary judgment, concluding that "human authorship is an essential part of a valid copyright claim."

The court rejected as contrary to the Copyright Act's plain language Thaler's contention that because he created the AI system that "autonomously" produced the work, he was the "author" of the AI-generated "work-made-for-hire." While the term "author" is not defined by statute, its ordinary meaning is "'one that is the source of some form of intellectual or creative work,'" "[t]he creator of an artistic work; a painter, photographer, filmmaker, etc.'" Accordingly, the court ruled that "[b]y its plain text, the 1976 Act thus requires a copyrightable work to have an originator with the capacity for intellectual, creative, or artistic labor."

Indeed, the court emphasized that the “human authorship requirement” has long been recognized by the U.S. Supreme Court. For example, in Burrow-Giles Lithographic Co. v. Sarony, the Supreme Court determined that a photograph was eligible for a copyright “on the fact that the human creator, not the camera, conceived of and designed the image and then used the camera to capture the image.” Likewise, in *Mazer v. Stein*, the Supreme Court again opined that works of art may be copyrighted only if they are “original, that is, the author’s tangible expression of his ideas.” Lastly, in *Goldstein v. California*, the Supreme Court declared that the term author, “in its constitutional sense, has been construed to mean an ‘originator,’ ‘he to whom anything owes its origin.’” In all these cases, the court wrote, “authorship centers on acts of human creativity.” Therefore, the court held that the USCO acted properly in denying Thaler’s application.

As *Thaler* illustrates, AI-generated content raises significant questions about authorship – i.e., whether the developer of the AI program can claim to be the author for purposes of obtaining copyright protections. However, as the court also noted, we are “approaching new frontiers in copyright as artists put AI in their toolbox to be used in the generation of new visual and other artistic works.” Accordingly, as AI becomes more prevalent, it is highly possible that our intellectual property laws will need to adapt in the face of this evolving technology.

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