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no entrance to legal paradise: d.c. court of appeals affirms denial of copyright registration for ai-generated artwork

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In *Thaler v. Perlmutter*, No. 23-5233, 2025 WL 839178 (D.C. Cir. Mar. 18, 2025), the latest opinion exploring the intersection between generative AI and copyright law, the United States Court of Appeals for the District of Columbia Circuit tackled a fundamental question: "Can a non-human machine be an author under the Copyright Act of 1976?" Ultimately, the Court affirmed the Copyright Office's denial of registration where the application listed a generative AI named the "Creativity Machine" as the sole author of a piece of AI-generated artwork. The case reaffirms the long-held principle that to receive copyright protection (and thus be eligible for registration), a work must "be authored in the first instance by a human being." Thus, despite the recent and accelerating advances in generative AI technology that have given rise to a booming industry, copyright registrations remain out of reach for purely AI generated works, and, absent a change in settled law, will continue to be unregisterable.

Dr. Stephen Thaler Is Denied A Copyright Registration for an Artwork After Listing a Generative AI as its Sole Author

The appellant, computer scientist Dr. Stephen Thaler, applied to the United States Copyright Office to register his AI-generated artwork, "A Recent Entrance to Paradise." The work was wholly created using a generative AI tool that Dr. Thaler calls the "Creativity Machine." Dr. Thaler's application listed the Creativity Machine as the work's sole author and Dr. Thaler himself as the work's owner. In the section labeled "Author Created," Dr. Thaler wrote "2-D artwork, Created autonomously by machine."

In denying Dr. Thaler's application, the Copyright Office relied on the "human-authorship requirement," which "requires work to be authored in the first instance by a human being to be eligible for copyright registration." Dr. Thaler initially sought review in the D.C. federal court, which upheld the decision on

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summary judgment, concluding that "human authorship is a bedrock requirement of copyright." Dr. Thaler then appealed the district court's ruling to the D.C. Circuit.

The Court of Appeals Reaffirms the Human-Authorship Requirement

The D.C. Circuit affirmed. The Court observed that "federal copyright protection extends only as far as Congress designates by statute." The Court then reiterated that "[a]uthors are at the center of the Copyright Act" and that "traditional tools of statutory interpretation show" that "author" refers only to human beings.

In support, the Court noted the following regarding the Copyright Act: (1) its ownership provision "is premised on the author's legal capacity to own property"; (2) the duration of copyright protection is tied to a human author's lifespan ("the life of the author and 70 years after the author's death"); (3) its inheritance provisions speak of "widower[s]" and "surviving children"; (4) its transfer provisions speak of authenticating signatures, which the Court concluded that machines lack; (5) it speaks of authors' nationalities and domiciles, which machines do not have; and (6) its provisions on joint works speak of the authors' "intentions," but machines "do not intend anything."

The Court further explained that one of the underlying purposes of copyright protection is to ensure that "easily reproducible work is protected" and "individuals are incentivized to undertake the effort of creating original works." To carry out that function, "the Copyright Office has authority to establish regulations to implement the Copyright Act." And, the Copyright Office's regulations require that any registered works are authored by a human.

The Court of Appeal Rejects Dr. Thaler's Statutory Construction and Policy Arguments

The Court also rejected Dr. Thaler's arguments against the human-authorship requirement. While he cited a dictionary definition of "author" as "one that originates or creates something" to argue that human authorship is not a requirement of the Copyright Act, the Court countered that "statutory construction requires more than just finding a sympathetic dictionary definition." The Court stressed that the key task "is to discern how Congress used a word in the law." In response to Dr. Thaler's argument that the Copyright Act's work-for-hire provisions contemplate non-human authors, such as corporations and governments, the Court noted that the provision states that such entities are "*consider*[*ed*] the author[s] for purposes of [that] title," not that they *are* authors within the meaning of the Copyright Act.

The Court was careful to clarify that "the human authorship requirement does not prohibit copyrighting work made by or with the assistance of artificial intelligence." In those cases, the question becomes a matter of assessing the degree of human authorship involved. But the Court held that "line-drawing disagreements over how much artificial intelligence contributed to a particular human author's work are neither here nor there in this case," because the fact that Dr. Thaler listed the Creativity Machine as the sole author of the work was dispositive.

Finally, the Court rejected Dr. Thaler's policy argument that the human-authorship requirement frustrates creativity, concluding that "even if the human authorship requirement were at some point to stymy the creation of original work, that would be a policy argument for Congress to address."

One other point: because the Court relied on statutory construction, it declined to consider the Copyright Office's argument that the Constitution's copyright clause requires human authorship.

Key Takeaways

In the end, the Court's ruling is consistent with longstanding law, reaffirming that works exclusively created by AI are ineligible for copyright protection. While this opinion ultimately leaves more nuanced "line-drawing" questions for another day, authors of AI-generated works are likely to continue to register their works with the Copyright Office and engage in legal fights to determine just where those lines fall.

Mitchell Silberberg & Knupp LLP will continue to watch litigation in this area as it develops.

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