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Intellectual Property Alert

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Humanity a necessary condition for copyright protection

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The DC Circuit upheld the human-authorship requirement for authorship under the Copyright Act, excluding works created solely by AI from eligibility.



What's the impact?

- The ruling emphasized that multiple Copyright Act provisions assume human authorship and rejected arguments premised on work-for-hire provisions.
- The decision highlights the need for Congress and the Copyright Office to address the evolving complexities of AI-generated works and their copyright eligibility.

The United States Court of Appeals for the District of Columbia Circuit recently affirmed a district court ruling that the Copyright Act of 1976 (the Act) requires all eligible works be authored by a human being, and that works created solely by artificial intelligence (AI) are not eligible for copyright protection. In *Thaler v. Perlmutter*, the court decided that “the current Copyright Act’s text, taken as a whole, is best read as making humanity a necessary condition for authorship under the Copyright Act.”

***Thaler v. Perlmutter* tests human authorship requirement**

Computer scientist Dr. Stephen Thaler submitted a copyright registration application to the US Copyright Office for an artwork titled “A Recent Entrance to Paradise.” On the application, Thaler attributed sole authorship to the “Creativity Machine”—a generative AI he invented—and listed himself as the work’s owner. The Copyright Office denied Thaler’s application and request for reconsideration based on its established human-authorship requirement. The United States District Court for the District of Columbia affirmed the Copyright Office’s decision, as did the DC Circuit.

The Court analyzes AI authorship against the Copyright Act

The DC Circuit gave several reasons for upholding the human-authorship requirement. First, the text of multiple provisions of the Act indicates that authors must be humans, not machines. The Act’s ownership provision is premised on the author’s legal capacity to hold property; the Act limits the duration of a copyright to the author’s lifespan or to a period that approximates how long a human might live; the Act’s inheritance provision refers to surviving spouses or heirs; copyright transfers require a signature; and, the language of the Act refers to authors’ domiciles, national identities, and intentions. Machines do not have property, traditional human lifespans, family members, domiciles, nationalities, intentions, or signatures. The court found that “[t]he human-authorship requirement ... eliminates the need to pound a square peg into a textual round hole by attributing unprecedented and mismatched meanings to common words in the Copyright Act.”

Second, the Copyright Office consistently interpreted the word “author” to mean a human prior to the Act’s passage. The court inferred that Congress adopted that “well-settled” interpretation when it enacted the Act.

The court rejected Thaler’s argument that the Act’s work-made-for-hire provision allows him to be considered the author, holding that the human-authorship requires that all “original works of authorship” be created in the first instance by a human being, including those who make work for hire. The court also rejected Thaler’s argument that he should be deemed the author because he made and used the Creativity Machine, holding that Thaler waived this argument by not asserting it before the Copyright Office.

The future of copyright protection in the age of AI

The DC Circuit acknowledged that it did not address two issues: (1) whether the Constitution’s Intellectual Property Clause requires human authorship, and (2) the extent to which works created by humans with the assistance of AI are eligible for copyright protection. The court noted that these issues are best addressed by Congress and the Copyright Office. In March 2023, the Copyright Office issued copyright registration guidance on works containing material generated

by AI, concluding that registrability will depend on how the AI tool operates and was used to create the final work. The Copyright Office also is studying how copyright law should respond to AI, and has been making recommendations based on its findings. In December 2024, Congress completed a report that addressed the problem of AI and intellectual property.

The copyrightability of AI-assisted works will be increasingly relevant as more creators use AI to create images and artwork. Some have predicted that in the near future most images online will be generated by or with the assistance of AI. Current AI models generate 10 million images a day with a 50% growth rate according to researchers.

The DC Circuit's decision demonstrates a growing pressure to address the complex question of authorship and ownership pertaining to AI-generated works. As technology evolves, it likely will demand a more nuanced legal framework to define the boundaries of copyright protection in the age of artificial intelligence.

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