
Thaler v. Perlmutter Further Confirms Human Authorship Required for Copyright Protection

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The U.S. Court of Appeals for the District of Columbia recently affirmed the lower court's decision to deny copyright registration for an artificial intelligence (AI)-generated artwork where the AI was listed as the sole author. The court relied on a longstanding interpretation of the Copyright Act, which requires that a copyrightable work must be "authored in the first instance by a human being."¹ Applying that rule, the court held that the AI-generated artwork could not be registered because an AI model is not human. The court stated that its role is to apply the law as written and that any policy debates about AI authorship should be left to Congress. Because the AI was listed as the sole author on the copyright application, the court did not opine on how much human input in the work was required to qualify an AI user as the author such that the work would be eligible for copyright protection. Nor did the court opine on whether the creator of a generative AI model could be considered the author of an AI-generated work.

Case Background

Thaler, a computer scientist, submitted a copyright application on May 19, 2019² for a work he titled "A Recent Entrance to Paradise," a visual artwork generated by his AI system, the "Creativity Machine."³ In his application, Thaler named the Creativity Machine the sole author and himself only as the claimant, explicitly stating that the work was created "autonomously by machine."⁴ The U.S.

Copyright Office (USCO) rejected his copyright application for this work, adhering to its policy that human authorship is required for copyright eligibility.⁵ When Thaler sought reconsideration of the USCO's decision, he admitted the piece lacked "traditional human authorship" but argued that the requirement was "unconstitutional and unsupported by either statute or case law."⁶ The USCO again denied Thaler's application.⁷

Thaler then appealed the decision to the U.S. District Court for the District of Columbia, which sided with the USCO, ruling that human authorship is a cornerstone of copyright law.⁸ The court granted summary judgment in favor of the USCO, affirming its decision to deny Thaler's copyright application and reinforcing the rule that AI-generated works cannot be copyrighted without human authorship.⁹ Thaler again appealed the decision, this time to the U.S. Court of Appeals for the District of Columbia Circuit, which affirmed the District Court's decision.

Statutory Interpretation Supports the Human Authorship Requirement

The current U.S. statute governing copyright, the Copyright Act of 1976 (the Copyright Act), establishes protections for original works of authorship by granting authors a set of exclusive property rights. These statutory rights are subject to various restrictions and limitations, such as:

- (1) A limited term (ensuring that works pass into the public domain upon expiration of the statutory period);
- (2) The idea/expression dichotomy (providing that only original expression, not facts or ideas, are covered by copyright);

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- (3) The fair use doctrine, which provides that fair use of a copyrighted work is “not an infringement of copyright;” and
- (4) Key to this case, the requirement that a work be created by a human author.

The first three restrictions are all expressly codified in the Copyright Act.¹⁰ However, the Copyright Act does not define the term “author” or otherwise define who can qualify as one.

Because copyright protection “extends only as far as Congress designates by statute,”¹¹ the human authorship requirement is a matter of statutory interpretation. Looking at the definitions in the Copyright Act, the court found that “machine” is defined similarly to “device” and “process,” with references to machines as tools assisting authors, rather than being authors themselves.¹² Further, throughout the Copyright Act, provisions refer to authors using concepts and terms that imply that an “author” must be human, including the requirement that the author be able to own property; references to lifespan, widows, and descendants; and references to other qualities that we would typically ascribe only to humans, such as legal capacity, nationality, and the ability to form intentions.¹³

First, the Copyright Act assumes that an author can hold and transfer property rights.¹⁴ Thaler argued that organizations, which are not themselves

human, are able to own a copyright under the work-made-for-hire provision of the Copyright Act, so he should similarly be able to hold the copyright for the work generated by his “Creativity Machine.”¹⁵ The court rejected this argument, noting that the provision allows for the employer to be “considered” the author for copyright purposes. As the court notes, this word “considered” is key – if the non-human hiring entity were itself able to be the author, the statute would say so directly.¹⁶ Moreover, even under the work-made-for-hire doctrine, the original creation still requires a human author (i.e., a human employee); the authorship protections attaching to such work transfer instantaneously as a matter of law

from that human author to the person or entity who hired him or her.¹⁷

Second, many provisions of the Copyright Act make reference to human lifespan and inheritance. When an author creates a new work, the copyright endures for 70 years after the death of the author.¹⁸ If the USCO cannot determine when an author died, then the copyright lasts for 95 years from first publication or 120 years from creation.¹⁹ These are the same time periods that apply when an entity owns a work under a work-made-for-hire arrangement.²⁰ When an author dies, under the Copyright Act’s inheritance provision, the copyright interest is passed to surviving family members. As the court notes, machines do not live and die or have family members to which rights could transfer.²¹ Thus, these provisions of the Copyright Act cannot apply to machines.

Lastly, the Copyright Act describes authors using qualities and actions that apply only to humans. The court noted that the transfer of a copyright interest requires a signature as a demonstration of legal conveyance, something that machines cannot provide.²² Further, protection of unpublished works is extended to authors regardless of nationality or domicile, concepts irrelevant to machines.²³ And the Copyright Act’s definition of a “joint work,” which is prepared by multiple authors “with the intention that their contribution be merged” into a single

work, does not apply to AI systems, as “[m]achines lack minds and do not intend anything.”²⁴ The court found that these provisions would be meaningless if the term “author” included non-humans.²⁵

Longstanding Recognition that Copyright Requires Human Authorship

The USCO’s well-established human authorship rule, along with consistent caselaw, reinforced the court’s conclusion that authors must be human. The court acknowledged that the USCO and federal courts have applied the human authorship rule for decades, and Congress has never changed it.

The court noted that as early as 1966 – ten years before enactment of the 1976 Copyright Act – the USCO had already decided machines could not be authors. In 1973, the USCO formally adopted the rule that “works must owe their origin to a human agent.” In 1974, Congress created the National Commission on New Technological Uses of Copyrighted Works (CONTU) to study how copyright law should apply to works made using computers and automated machines. CONTU concluded there was “no reasonable basis for considering that a computer in any way contributes authorship to a work produced through its use.”²⁶ The court reasoned that when Congress passed the 1976 Act, it knew the USCO required human authorship and chose not to define the term “author,” even after studying the issue.

The court recognized that when faced with the question of human authorship, district and circuit courts have consistently held that authors must be human. In *Kelley v. Chicago Park District*, the U.S. Court of Appeals for the Seventh Circuit explicitly held that an author must be human in rejecting protection for a living garden.²⁷ The U.S. Court of Appeals for the Ninth Circuit held in *Urantia Foundation v. Maaherra* that an author must be a “worldly entity,” and found protection based on the contributions of human authors.²⁸ In *Naruto v. Slater* – a case in which a monkey named Naruto allegedly took a selfie using photographer David Slater’s camera – the Ninth Circuit ruled that animals, as non-humans, lacked standing to sue under the Copyright Act.²⁹ In *Naruto*, as in *Thaler*, the court observed that the Copyright Act references “children” and “widows or widowers” of the author – indicating that the Act assumes authors are human.³⁰ And yet, faced with this long history of caselaw, Congress has never amended the 1976 Act to

include non-human entities like artificial intelligence as authors.

Future Developments of Law

While the *Thaler* court did not grant a copyright for the machine-generated artwork, it emphasized that the decision was a straightforward application of current law. The decision was not intended to stymie the use of AI to create art or preclude the possibility of changing the law to provide a more expansive view of authorship.

First, the decision does not declare that all work developed with the help of AI is ineligible for copyright; rather, the court held only that a copyright application naming a machine as the sole author is properly denied for lack of human authorship. The court never reached any arguments regarding how much human input is required for a work to be copyrightable because that question was not before it.³¹ Thaler had listed the “Creativity Machine” as the sole author, and the only question presented was whether a machine-made work could be copyrighted. As a result, the court found that Thaler waived any argument that he contributed human authorship.³²

Thaler also contended that denying his copyright would preclude any creations involving AI from receiving copyright protection.³³ In response to Thaler’s argument, the court highlighted that the USCO has registered copyrights for works that the author created, in part, using AI.³⁴ As the court further noted, the USCO has issued guidance on how much human input is required when using AI to develop a work, and based on that guidance, the USCO has granted some copyrights and denied others.³⁵ Because Thaler named the “Creativity Machine” as the sole author, the issue of how much human authorship or control is required to support registration was not before the court.

The court also expressed no opinion on whether the USCO has been applying the correct standard or requiring the appropriate amount of human input.³⁶ The USCO guidance looks at “whether the ‘work’ is basically one of human authorship, with the computer merely being an assisting instrument” or if the traditional elements of human authorship – “literary, artistic, or musical expression or elements of selection, arrangement, etc.” – were “actually conceived and executed” by a machine.³⁷ The USCO has granted registrations in cases where

all content was generated by AI, so long as a human selected, arranged, or coordinated the material in a way that reflects original authorship.³⁸

One example is *A Single Piece of American Cheese*, created by AI developer Invoke. The USCO granted it a registration stating that the work “contains a sufficient amount of human original authorship in the selection, arrangement, and coordination of the AI-generated material that may be regarded as copyrightable.”³⁹ In *Thaler*, the court did not consider the creative elements of the work at issue, such as its arrangement or creative expression, because Thaler’s application disclaimed human involvement in creating the work.

Second, the court clarified that its decision does not seek to prevent the law from evolving as technology advances. Rather, it determined that any expansion of the Copyright Act’s definition of an author should be left to Congress.⁴⁰ Even if AI were to become as advanced as Data (a humanlike android) from *Star Trek*, the court said Congress – not the courts – should decide whether and how to change the law, because it alone “has the constitutional authority and the institutional ability to accommodate fully the varied permutations of competing interests that are inevitably implicated by such new technology,”⁴¹ whereas the role of the courts is “to apply the statute as it is written.”⁴²

Lastly, the court refused to decide whether the U.S. Constitution requires human authorship. Although Thaler argued, without further elaboration, that the human authorship requirement is unconstitutional,⁴³ the court found it unnecessary to reach this issue since copyright protection is purely statutory and the Copyright Act plainly does require human authorship.⁴⁴ Any further developments on the constitutionality of the human authorship requirement are therefore left for future courts to decide.

Conclusions and Takeaways

The court’s decision was a straightforward application of current law: an AI model or platform cannot be the sole author of a copyrighted work, and human authorship is a requirement for copyright protection. The court confined the scope of its decision to the facts of the case before it and did not weigh in on broader debates about AI and copyright.

The ruling does not preclude AI-assisted works from being copyrighted. The court held that a sole AI author is not enough, but left for other courts to decide, in the specific contexts presented to them, how much human input is required to trigger copyright protection. The court also acknowledged that the USCO has issued guidance on how much human input is required, and expressed no opinion on whether this guidance is correct or has been correctly applied in other cases.

Artists, creators, and innovators should not read the decision as an attempt to hamper the development of AI or AI-created works. As the court acknowledged several times in its opinion, “copyright law is intended to benefit the public, not authors,” and as such, copyright law will develop as needed in response to technological advancements.⁴⁵ Copyright law is meant to “promote the Progress of Science and the useful Arts”⁴⁶ by granting limited rights to authors to incentivize them to create and publish their works for the collective benefit of the public.⁴⁷ Through its balance of author’s rights and public benefits, copyright serves as the “engine of free expression.”⁴⁸ When a new, transformative technology emerges, it creates a new space for authors to work in, often sparking greater innovation and creation. The court’s decision in *Thaler*, like the long body of case law preceding it, places the human author at the center of continued innovation, ensuring that as new tools are developed, it is people – those who shape, direct, and use these tools – who remain eligible to obtain protection for their works under the law as it now exists or may be modified by Congress.

Notes

1. *Thaler v. Perlmutter*, No. 23-5233, 2025 WL 839178, at *4 (D.C. Cir. Mar. 18, 2025).
2. *Thaler*, 2025 WL 839178, at *3.
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Thaler v. Perlmutter*, 687 F.Supp.3d 140, 149-50 (D.D.C. 2023), *aff’d*, 2025 WL 839178.
9. *Thaler*, 687 F.Supp.3d at 149-50.
10. 17 U.S.C. §§ 302, 102, and 107, respectively.
11. *Thaler*, 2025 WL 839178, at *1 (citing *Wheaton v. Peters*, 33 U.S. 591, 661 (1834)).

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12. Id. at 5 and 17 U.S.C. § 101.
13. Thaler, 2025 WL 839178, at *4-5.
14. Id. at *4.
15. Id. at *7.
16. Id.
17. Id.
18. Id. at *4.
19. Id.
20. Id.
21. Id. at *5.
22. Id. at *5 and *11.
23. Id. at *5.
24. Id.
25. Id. at *7.
26. Id. at *6; citing CONTU, Final Report at 44 (1978), <https://perma.cc/7S8TTAB5>.
27. Id. at *9; Kelley v. Chicago Park Dist., 635 F.3d 290, 304 (7th Cir. 2011).
28. Id. at *9; Urantia Foundation v. Maaherra, 114 F.3d 955, 958 (9th Cir. 1997).
29. Naruto v. Slater, 888 F.3d 418, 425-426 (9th Cir. 2018).
30. Naruto, 888 F.3d at 425-426; Thaler, 2025 WL 839178, at *5.
31. Thaler, 2025 WL 839178, at *3.
32. Id.
33. Id. at *8.
34. Id.
35. Id.; See Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence, 88 Fed. Reg. 16,190, 16,192 (March 16, 2023).
36. Thaler, 2025 WL 839178, at *8.
37. Copyright Office, Sixty-Eighth Annual Report of the Register of Copyrights at 5 (1966), <https://perma.cc/QU7P-TY6N>.
38. Kent Keirsey, Invoke Secures Copyright in Landmark Ruling for AI-Assisted Artwork, Invoke Blog (Feb. 10, 2025), <https://www.invoke.com/post/invoke-receives-copyright-in-landmark-ruling-for-ai-assisted-artwork>.
39. Letter from U.S. Copyright Office to Judd Lauter, Cooley LLP (Jan. 30, 2025) found in Kent Keirsey, Invoke Secures Copyright in Landmark Ruling for AI-Assisted Artwork, Invoke Blog (Feb. 10, 2025), <https://www.invoke.com/post/invoke-receives-copyright-in-landmark-ruling-for-ai-assisted-artwork>.
40. As the Supreme Court has long acknowledged, copyright law is meant to evolve with “significant changes in technology.” Google LLC v. Oracle Am., Inc., 593 U.S. 1 (2021); Sony Corp. of Am. v. U. City Studios, Inc., 464 U.S. 417, 430-31 (1984) (“From its beginning, the law of copyright has developed in response to significant changes in technology. Indeed, it was the invention of a new form of copying equipment—the printing press—that gave rise to the original need for copyright protection. Repeatedly, as new developments have occurred in this country, it has been the Congress that has fashioned the new rules that new technology made necessary....It may well be that Congress will take a fresh look at this new technology, just as it so often has examined other innovations in the past. But it is not our job to apply laws that have not yet been written.”).
41. Thaler, 2025 WL 839178, at *9 (quoting Sony, 464 U.S. at 431).
42. Thaler, 2025 WL 839178, at *9 (citing Burrage v. United States, 571 U.S. 204, 218 (2014)).
43. Thaler, 2025 WL 839178, at *3.
44. Id. at *1.
45. Id. at *7-8.
46. U.S. Const., Art. 1, § 8.
47. United States v. Paramount Pictures, Inc., 334 U.S. 131, 158 (1948).
48. Harper & Row, Publishers, Inc. v. Nation Enters., 471 U.S. 539, 558 (1985).

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