



D.C. Court Denies Copyright Protection for AI-Generated Art

August 28, 2023

On August 18, 2023, the United States District Court for the District of Columbia (the “Court”) held the U.S. Copyright Office (“USCO”) acted properly in denying the copyright registration for work created by artificial intelligence (“AI”).^[i] The Court held “human authorship is a bedrock requirement of copyright” and U.S. copyright law protects only works of human creation.^[ii] The Court’s decision that AI-generated works are not eligible for copyright protection will likely have an immediate impact on digital artists worldwide.

In November 2018, Plaintiff Stephen Thaler sought to register an AI-generated two-dimensional visual work titled “A Recent Entrance to Paradise” with the USCO.^[iii] On the application, Mr. Thaler listed his computer system, referred to as “Creativity Machine,” as the “author” and listed himself as a “Copyright Claimant,” alongside a transfer statement labelled “Ownership of Machine.”^[iv] In August 2019, the USCO denied the application on the basis that the work “lacked the human authorship necessary to support a copyright claim.”^[v] Mr. Thaler subsequently filed two requests for reconsideration; however, the USCO denied both requests. The Copyright Office Review Board, which hears final administrative appeals of refusals of copyright registration, later affirmed the denial of the registration, “agreeing that the copyright protection does not extend to the creations of non-human entities.”^[vi] Mr. Thaler challenged this decision, arguing that the USCO’s denial of copyright registration was “arbitrary, capricious, an abuse of discretion and not in accordance with the law, unsupported by substantial evidence, and in excess of [USCO’s] statutory authority, in violation of the Administrative Procedure Act.”^[vii]

In its decision, the Court discussed the history of U.S. copyright law and the meaning of “authorship.”^[viii] Citing to James Madison’s Federalist Paper No. 43, the Court explained that both copyright and patent were “conceived of as forms of property that the government was established to protect, and it was understood that recognizing exclusive rights in that property would further the public good by incentivizing individuals to create and invent.”^[ix] The Court explained, “The act of human creation—and how to best encourage human individuals to engage in that creation, and thereby promote science and the useful arts—was thus central to American copyright from its very inception. Non-human actors need no incentivization with the promise of exclusive rights under United States law, and copyright was therefore not designed to reach them.”^[x] Humanity, therefore, is essential to the existence of copyright law.

Ultimately, the Court determined that the AI-generated work was never eligible for copyright because it completely lacked human input; therefore, the USCO did not err in denying Mr. Thaler’s copyright registration application.^[xi] As explicitly stated by the Court throughout the opinion, in the absence of any human

involvement in the creation of the work, a work generated autonomously by a computer system is not eligible for copyright protections. The Court acknowledged that Mr. Thaler’s challenge is likely the first of many to come “as artists put AI in their toolbox to be used in the generation of new visual and other artistic works.”^[xii] Notably, despite drawing a boundary around the meaning of “authorship,” the Court did not opine or set a definitive amount of human input necessary to afford copyright protection.

This decision is likely to be one of many setting forth what, if any, intellectual property protections apply to AI generated works of art and literature.

Cullen and Dykman’s Intellectual Property team continues to monitor important developments in trademark and copyright law. Should you have any questions about this legal alert, please feel free to contact Karen Levin (klevin@cullenllp.com) at (516) 296-9110 or Ariel Ronneburger (aronneburger@cullenllp.com) at (516) 296-9182.

This advisory provides a brief overview of the most significant changes in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

Footnotes

^[i] *Thaler v. Perlmutter*, No. CV 22-1564 (BAH), 2023 WL 5333236 (D.D.C. Aug. 18, 2023).

^[ii] *Id.* at 4.

^[iii] *Id.* at 1.

^[iv] *Id.*

^[v] *Id.*

^[vi] *Id.*

^[vii] *Id.* at 2.

^[viii] *Id.* at 3.

^[ix] *Id.* at 4.

^[x] *Id.*

^[xi] *Id.* at 6.

^[xii] *Id.*

Practices

- Intellectual Property

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