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Insights

When the Machine Becomes the Creator: Artificial Intelligence v. the Human Creator Requirements of U.S. Copyright Law

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On March 18, 2025 the U.S. Court of Appeals for the D.C. Circuit (U.S.C.A.) issued its decision in *Stephen Thaler v. Shira Perlmutter et al.*, confirming that U.S. law requires human authorship. Specifically, the question presented to the Court was "can a non-human machine be an author under the Copyright Act of 1976"?

Dr. Thayer is a computer scientist in the field of artificial intelligence systems. In 2019, Dr. Thayer filed a copyright registration application for artwork he created using a generative AI tool he developed termed the "Creativity Machine". He titled the work "A Recent Entrance to Paradise." Importantly, on the copyright application he listed the author as the Creativity Machine, indicating on the application that the work was "2-D artwork, created autonomously by machine". He listed himself, individually, as the copyright claimant. Thus, he informed the Copyright Office that the work was created autonomously by the Creativity Machine.

Dr. Thayer's application for registration was refused because the Copyright Office determined, from the clear language used in the application, that a human being did not create the work. Dr. Thayer sought reconsideration of the refusal by the Copyright Office review board. The board, however, agreed with the prior findings of non-registrability. Interestingly, Dr. Thayer argued that the work should be registerable on the grounds that it was a work for hire. The board disagreed because *Dr. Thayer had no contract with the Creativity Machine*. Which sound, and is, preposterous. And, thus, we enter the bizarre universe of strange arguments made possible by new, and unforeseen, technologies operating within an archaic framework of controlling law. Surely, when the authors of the Copyright Act set down the Act in writing, they could not have imagined that non-human, machine intelligence would one day author creative works.

Dr. Thayer's next stop on the copyright appeal train was the U.S. District Court for the District of Columbia, who agreed with the Copyright Office and again refused registration. However, this time, Dr. Thayer made a new

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argument. He argued that the work should be copyrightable because Dr. Thayer (a human) "provided instructions and directed his A.I." But this argument contradicted his earlier statement on the copyright registration application that the art was "created autonomously by machine."

And so, finally, the U.S.C.A. weighed in. The U.S.C.A. determined that copyright is a property right, and that the Act's ownership provision is premised on the author's legal capacity to hold property. This right initially invests in the author. Thus, an entity that cannot own property cannot be an author under the statute. Next, the U.S.C.A. reasoned that the duration of a copyright is limited based the author's life (currently, the life of the author plus 70 years). Since machines do not have lives (and some would argue that it is the software life that would matter, persisting indefinitely in the cloud), no duration could be applied to an AI-generated work. Further, the U.S.C.A. reasoned that the Copyright Act's inheritance provision requires a widow or some other survivor. Machines do not have survivors. Also copyright transfers require a signature, and so on. Finally, the U.S.C.A. reasoned that the Copyright Act only contemplates machines as tools, not as authors.

Still, Dr. Thayer argued that under the work-made-for-hire provisions of the act, an allowance is made for those to hire creators to be "considered the author" under the Act. This is why business entities, such as Disney, for example, can be legally recognized as authors. See for example the registration PA0001871077, for a Motion Picture entitled "FROZEN", for which the authorship is listed as "Walt Disney Animation Studios, employer for hire". The U.S.C.A., however, pointed out that the word "considered" in the Act allows "the copyright and authorship protections attaching to a work originally created by a human author to transfer instantaneously, as a matter of law, to the person who hired the creator". Since a machine-created work cannot be an author, there is no copyright to transfer such that the transferee may be considered the author.

So, no copyright for Dr. Thayer or for his Creative Machine. Presumably, one could reproduce A Recent Entrance to Paradise at will, and publicly display the work, without transgressing anyone's copyright.

This seemingly academic question, can a non-human machine be an author under the Copyright Act of 1976?, may not appear to be of much consequence until it is considered that some types of works that lend themselves to AI generation can be worth an incredible sum. For example, Disney's Frozen (2013) – an entirely computer-animated film - grossed $1.206 billion dollars worldwide on a $150 million budget. This was just for the first movie, not the following movies and not including merchandise. The entire Frozen franchise has reportedly grossed in excess of $14 billion. This success was made possible, of course, by Disney's massive production and distribution assets. But, at the heart of the franchise is the protection afforded the film, its characters, and merchandise by the U.S. Copyright Act.

The law will need to change if AI-generated works will ever be afforded copyright protection. It is not foreseeable that AI-generated art, text, software code, and architectural works will ever be afforded copyright protection under the current legal framework. As cited in the U.S.C.A.'s *Thayer* opinion, "Congress 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." *Citing Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417, 431 (1984).*

When in doubt about the details of copyright registration (or trademark registration, patent application filing, or protection of trade secrets, for that matter), qualified counsel should be consulted as early in the process as possible to ensure that rights are not lost (that is, if there *are* any rights).

A Recent Entrance to Paradise