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What Does It Mean to be Human: Copyright Office Confirms That AI-Generated Works Are Not Works of Human Authorship

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The U.S. District Court for the District of Columbia recently found that human prompting of AI-generated works does not satisfy the "authorship" requirement for copyright protection. Under the Copyright Act of 1976, copyright protection attaches "immediately" upon the creation of "original works of authorship fixed in any tangible medium of expression," provided those works meet certain requirements. Human authorship is one such requirement. In order to sure up protection, a copyright claimant can register their work with the Register of Copyrights. Through this process, the Register will confirm that the work is indeed eligible for copyright protection and ultimately — assuming the work is copyrightable — issue a certificate of registration. However, where the Register denies an application for registration for lack of copyrightable subject matter, the work at issue was never subject to copyright protection at all.

The district court considered whether the Copyright Office was correct in denying Stephen Thaler's copyright application for a piece of art generated by a computer system he owns — the Creativity Machine. The district court found that "the Copyright Office acted properly in denying copyright registration for a work created absent any human involvement."

In Thaler's original application, "he identified the author as the Creativity Machine, and explained the work had been 'autonomously created by a computer algorithm running on a machine,' but that plaintiff sought to claim the copyright of the 'computer-generated work' himself 'as a work-for-hire to the owner of the Creativity Machine.'" In its most basic sense, work made for hire is work that "the employer or other person for whom the work was prepared is considered the author for purposes of this title . . . [and] owns all of the rights comprised in the copyright" (17 U.S.C. § 201). Neither the Copyright Office nor the district court were persuaded by Thaler's argument.

The district court ultimately decided that the "single legal question presented… is whether a work generated autonomously by a computer falls under the protection of copyright law upon its creation." The district court acknowledged that copyright is designed to adapt with the times but that there "has been a consistent understanding that human creativity is the sine qua non at the core of copyrightability, even as that human creativity is channeled through new tools or into new media." Further, "[h]uman involvement in, and ultimate creative control over, the work . . . [is] key to the conclusion that [a] new type of work [falls] within the bounds of copyright." The district court

acknowledged that it is dealing with “new frontiers in copyright as artists put AI in their toolbox…” but was unwilling, at least for now, to relax the 1976 Copyright Act’s human authorship requirement.

This decision does not act as a complete ban on any and all AI-generated work. The district court was instead more nuanced in its decision, finding that “the Copyright Office acted properly in denying copyright registration for a work created absent any human involvement.” This leaves open the question of just how much human involvement is necessary for a work to qualify for copyright protection. Bradley will continue to stay abreast of these development as the courts begin to address this question, among others.

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