

Drawn by AI, Denied by Law

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Should artwork created by artificial intelligence get intellectual property protection? A federal appeals court recently said no, and did so unanimously. With the rapid increase in original work produced by AI, some are wondering whether this decision should be reconsidered. Is the U.S. Copyright Office's human authorship requirement outdated, or even unconstitutional? One computer scientist certainly thinks so. This blog will discuss a recent court decision denying a copyright for a painting that was created using generative AI.

In March 2025, a three-judge panel of the U.S. Circuit Court of Appeals for the District of Columbia upheld the U.S. Copyright Office's decision denying computer scientist Stephen Thaler a copyright for the painting *A Recent Entrance to Paradise*. According to Thaler, the painting was created in 2012 by his AI platform "Creativity Machine." Unprompted and on its own, the machine generated the painting while meditating. Thaler said he merely acted as a tutor for the machine and that it "learned cumulatively."

The legal battle began back in 2018, when Thaler submitted a copyright registration application listing the Creativity Machine as the sole "author" of the painting, and himself as the owner. In August 2019, the Copyright Office denied Thaler's application, citing the lack of "human authorship necessary to support a copyright claim." A month later, Thaler requested that the Copyright Office reconsider its initial refusal to register the painting, arguing that "the human authorship requirement is unconstitutional and unsupported by either statute or case law." In March 2020, the Copyright Office re-evaluated the claims and again concluded that the painting "lacked the required human authorship necessary to sustain a claim in copyright." The Copyright Office came to this decision because Thaler had "provided no evidence on sufficient creative input or intervention by a human author in the [painting]." Thaler submitted another reconsideration request in 2022, it was also rejected.

After the second denial, Thaler took legal action and sued the Copyright Office in the U.S. District Court in Washington, D.C., seeking a reversal of the decision. In August 2023, District Court Judge Beryl Howell ruled against him, holding, "[h]uman authorship is a bedrock requirement of copyright." Thaler then appealed Howell's ruling to the D.C. Circuit Court of Appeals, where they upheld the ruling in March 2025.

In its decision, the appeals panel highlighted an important question: "Can a non-human machine be an author under the Copyright Act of 1976?" For now, the answer remains no. However, the decision notes that the use of AI to produce original work is increasing at a rapid pace across a variety of industries and creative fields. Although they acknowledge the development, the appeals panel still cited that "authors are at the center of the Copyright Act," and that "traditional

tools of statutory interpretation show that within the meaning of the Copyright Act, ‘author’ refers only to human beings.” So, the current law is still that only human authors can receive copyright protections. Thaler intends to appeal once again, first to the full judicial lineup of the Circuit Court of Appeals, and if necessary, to the United States Supreme Court.

With this recent decision, is it time to reconsider the copyright requirements? As technology evolves and innovation adapts, so too must our laws. Even in 1965, the Copyright Office in their annual report to Congress foreshadowed that computer-generated works would one day pose “difficult questions of authorship.” I believe that day is upon us. Now is the time we update our laws to meet today’s realities.

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