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If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the last page or call your regular Skadden contact.

Stuart D. Levi

Partner / New York
212.735.2750
stuart.levi@skadden.com

Jordan Feirman

Counsel / New York
212.735.3067
jordan.feirman@skadden.com

Mana Ghaemmaghani

Associate / New York
212.735.2594
mana.ghaemmaghani@skadden.com

MacKinzie M. Neal

Associate / New York
212.735.2856
mackinzie.neal@skadden.com

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One Manhattan West
New York, NY 10001
212.735.3000

Appellate Court Affirms Human Authorship Requirement for Copyrighting AI-Generated Works

The U.S. Court of Appeals for the D.C. Circuit has affirmed a district court ruling that human authorship is a bedrock requirement to register a copyright, and that an artificial intelligence system cannot be deemed the author of a work for copyright purposes. The court's decision in *Thaler v. Perlmutter*,¹ on March 18, 2025, supports the position adopted by the United States Copyright Office and is the latest chapter in the long-running saga of an attempt by a computer scientist to challenge that fundamental principle.

Background

Dr. Stephen Thaler, a computer scientist, created an artificial intelligence system known as the Creativity Machine, which generated an artwork titled "A Recent Entrance to Paradise." Dr. Thaler submitted a copyright registration application to the United States Copyright Office, listing the Creativity Machine as the sole author and himself as the copyright claimant. The Copyright Office denied the application and rejected Dr. Thaler's subsequent reconsideration requests, citing its requirement that a work must be authored by a human being to be eligible for copyright protection. Dr. Thaler then sought judicial review of this decision, arguing that the human authorship requirement was unconstitutional and unsupported by statute or case law. The district court affirmed the Copyright Office's decision, and Dr. Thaler subsequently appealed to the United States Court of Appeals for the District of Columbia Circuit.²

Court's Analysis

The court emphasized that the Copyright Act of 1976 requires all works to be authored by a human being. While the court acknowledged that the Copyright Act does not define the term "author," multiple provisions within the act, and the act "taken as a whole," make clear that authors must be humans, not machines. For example:

- The Copyright Act's ownership provision is premised on the author's legal capacity to hold property, and a machine cannot own property.
- The Copyright Act's inheritance provision states that, when an author dies, their "termination interest is owned, and may be exercised" by their "widow or widower" or their "surviving children or grandchildren," which are attributes machines do not possess.
- The Copyright Act bases the duration of a copyright on the author's lifespan which is a concept that cannot be applied to machines.
- The Copyright Act requires a signature for copyright transfers, and machines lack the legal capacity to provide an authenticating signature.

¹ 2025 WL 839178, D.C. Cir., March 18, 2025.

² See Stuart Levi, Shannon Morgan, MacKinzie Neal, "District Court Affirms Human Authorship Requirement for the Copyrightability of Autonomously Generated AI Works," Skadden Publications, August, 2023.

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Dr. Thaler argued that the natural meaning of “author” is not confined to human beings, citing a dictionary definition. However, the court rejected this argument, stating that statutory construction requires interpreting words in their statutory context, and not relying on one-off dictionary definitions.

Dr. Thaler also contended that the work-made-for-hire provision allows nonhuman entities to be considered authors. The court also rejected this argument, noting that the text of the work-for-hire provision states that the party who hired the creator is merely “considered” the author, an implicit acknowledgment that the hiring entity is not *actually* an “author.”

Finally, Dr. Thaler argued that the United States Copyright Office’s human authorship requirement would disincentivize creativity by creators and operators of AI. The court dismissed this concern, noting that the requirement still incentivizes humans to create and pursue exclusive rights to works made with the assistance of AI. The court acknowledged that there might be disagreements over how much AI contribution is permissible for a work to still be considered authored by a human; however, these line-drawing issues are separate from the core question of whether a machine can be an author. Moreover, such line-drawing issues were not pertinent to Dr. Thaler’s appeal, since any arguments that he was the work’s author by virtue of having created the Creativity Machine were waived in the Copyright Office.

The court also pointed out that machines, including the Creativity Machine, do not respond to economic incentives. Therefore, the

human authorship requirement does not result in less original work, as the incentives for human creators remain intact. The court acknowledged that if future AI systems were capable of responding to economic incentives, or if the human authorship requirement stymied the creation of original works, Congress and the Copyright Office could address those issues at that time.

Key Points

The court’s decision in *Thaler v. Perlmutter* aligns with the findings and recommendations of the U.S. Copyright Office’s January 2025 report on copyright and artificial intelligence. That report reaffirmed the necessity of human authorship for copyright protection, emphasizing that while AI can assist in the creative process, the final work must reflect human creative input to be eligible for copyright. Given the limited scope of the decision to whether AI models themselves constitute “authors,” however, it is not likely to have significant impact on the thornier and more fact-specific questions regarding the degree to which human creativity reflected in AI-generated works may be copyrightable.

Nevertheless, the court’s reaffirmance of the basic human authorship principle serves as an important reminder that companies that use AI to generate new content must be mindful that the generated output may not be copyrightable. To the extent that companies want such protection for their generated content — which importantly could include AI-generated computer code — using AI could present certain important limitations.