

# Can AI Author Copyrightable Work? The Supreme Court Just Declined to Say Yes

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As artists and creators integrate artificial intelligence (AI) tools into their work, courts are re-evaluating traditional notions of authorship under the Copyright Act of 1976. This past March, the issue of whether an AI system may qualify as an “author” under the Copyright Act reached the United States Supreme Court. In denying certiorari in *Thaler v. Perlmutter* (25-449) (the “*Thaler Case*”) on March 2, 2026, the Supreme Court left intact a D.C. Circuit Court of Appeals Decision holding AI-generated artwork without meaningful human contribution is not entitled to copyright protection under the Copyright Act’s human authorship requirement.

The *Thaler Case* arose from the work titled “A Recent Entrance to Paradise” (“Work”), which was made by the “Creativity Machine,” a generative AI system developed by computer scientist Dr. Stephen Thaler:



On May 19, 2019, Dr. Thaler submitted a copyright registration application for the Work, describing it as a “2-D artwork, Created autonomously by machine.” Dr. Thaler identified the Creativity Machine as the sole author, listed himself as the Copyright Claimant, and characterized the Work as one made for hire.

During the administrative proceedings addressing registrability, the United States Copyright Office denied Dr. Thaler’s application because the Work failed to meet the human authorship requirement necessary to support a copyright registration claim. The Copyright Office reasoned that copyright law is limited to “original intellectual conceptions of the author” and protects “the fruits of intellectual labor” derived from “the creative powers of the mind.” Dr. Thaler sought reconsideration twice, arguing (a) the human authorship requirement was unconstitutional; (b) AI-generated works should qualify for copyright protection with the ownership vesting in the AI system’s owner, programmer, or user; and (c) the work-made-for-hire doctrine applied, which allows employers that are non-human legal entities, such as companies, to be authors. The Copyright Review Board affirmed the denial of the application based on the human authorship requirement.

Dr. Thaler subsequently filed suit in the United States District Court for the District of Columbia seeking judicial review under the Administrative Procedure Act. On cross-motions for summary judgment, Dr. Thaler largely repeated the same arguments he raised during the administrative proceedings. In addition, he contended for the first time that his Work was copyrightable because he instructed and directed the Creativity Machine to make the Work. The District Court framed the central legal question as whether a work generated autonomously by a computer qualifies for copyright protection upon its creation. In its August 18, 2023 Order, the District Court answered in the negative, granting summary judgment in favor of the Copyright Office. Dr. Thaler

appealed.

The United States Court of Appeals for the D.C. Circuit affirmed the District Court's ruling in a [March 18, 2025 Decision](#). Like the District Court, the D.C. Circuit concluded that although the Copyright Act does not define the word "author," numerous provisions within the statute make sense only if authors are human beings. The D.C. Circuit pointed to provisions concerning property ownership, inheritance, domicile, nationality, signatures, intent, and copyright duration tied to the author's lifespan as evidence that Congress contemplated human authorship when enacting the Copyright Act. The court also emphasized the Copyright Office's longstanding enforcement of the human authorship requirement. It noted that the Copyright Office first addressed whether machines could qualify as authors in 1966 before formally adopting the human authorship requirement in 1973—writing in the Copyright Office's annual report to Congress that "[t]he crucial question appears to be whether the 'work' is basically one of human authorship, with the computer merely being an assisting instrument[.]"

To be sure, the D.C. Circuit recognized that the human authorship requirement does not categorically prohibit copyright protection for works created with the assistance of AI so long as the author of the work is ultimately a human being, not the machine itself. But the court explained that because Dr. Thaler identified the Creativity Machine as the sole author of the Work in his copyright application, the *Thaler* Case did not present the issue of how much AI contribution is permissible in a copyrighted work.

The D.C. Circuit further rejected Dr. Thaler's alternative arguments. First, it concluded that the work-made-for-hire doctrine was inapplicable because it requires that there be an underlying work created by a human author in the first instance. Second, the court rejected Dr. Thaler's argument that he had instructed and directed his Creativity Machine in generating the Work. That position was belied by his repeated representations throughout the initial Copyright Office administrative process that the Creativity Machine was an autonomous AI system that created the Work independently. Because the Work was generated without meaningful human authorship, it could never be eligible for copyright protection.

By denying certiorari in the *Thaler* Case, the Supreme Court left intact several key principles flowing from the D.C. Circuit's application of the Copyright Act's human authorship requirement:

- A work generated autonomously by an AI system, without meaningful human contribution, lacks the human authorship necessary to qualify for copyright protection.
- The human authorship requirement does not impose a blanket prohibition against works created with the assistance of AI—rather, it requires that the author of that work be a human being and not the machine itself.
- Whether a work created with the help of AI is registerable depends on the specific facts and circumstances surrounding the work's creation, including how the AI tool operates and at what stage of the creative process it is used, and the overall extent of human creativity involved.
- The manner in which an applicant describes the role of AI in a copyright application will influence how the Copyright Office will assess the work under the human

authorship requirement.

These principles serve as an important reminder that artists and creators should carefully consider the extent to which they rely on AI in their creative processes if they intend to seek copyright protection for their work. The *Thaler* Case underscores that while AI may offer innovative creative tools, protection under the Copyright Act remains grounded in human creativity, input, and judgment.