

# Only Humans Can Be Authors of Copyrightable Works

*Thaler v. Perlmutter*, No. 1-22-cv-01564, 2023 WL 5333236, (D.D.C. Aug. 18, 2023)

According to the first court in the nation to address the issue, only human beings—and not robots, computers or other machines—can be “authors” of copyrightable works. In *Thaler v. Perlmutter*, the federal district court for the District of Columbia ruled in favor of the U.S. Copyright Office, which had denied the copyright application of the owner of an artificial system who claimed that the system had created the artwork in question “without any human involvement.”

The decision is not binding nationwide and will do little to slow the spread of artificial intelligence (AI), or the stream of products, works and services created or enhanced by AI. However, the decision is consistent with guidance from the U.S. Copyright Office earlier this year that underscores that for now, *some* human creative involvement is required if a work is to enjoy copyright protection.

The plaintiff, Stephen L. Thaler, Ph.D., is an inventor and theorist associated with the Artificial Inventor Project (AIP). According to its website, the AIP “includes a series of *pro bono* legal cases seeking intellectual property rights for AI-generated output in the absence of a traditional human inventor or author.” Thaler created and owns a computer system, the “Creativity Machine,” capable of creating works of visual art. Thaler sought to register the copyright in one such work, listing only the Creativity Machine as the author and stating that the work had been created “autonomously by machine.” Neither Thaler nor any other human being claimed to have contributed anything as a co-author

The Copyright Office refused to register the copyright in the work, finding that copyright law is limited to “original intellectual conceptions of the author” and refusing to register a copyright claim if it determines “that a human being did not create the work.” Thaler then sued, arguing that the rejection was “arbitrary, capricious, an abuse of discretion and not in accordance with [copyright] law, unsupported by substantial evidence, and in excess of [the Copyright Office’s] statutory authority.”

The D.C. District Court sided with the Copyright Office, stating simply, “United States copyright law protects only works of human creation.” The court recognized that copyright law “is designed to adapt with the times,” having

## POSTED:

Sep 7, 2023

## RELATED PRACTICES:

[Intellectual Property](#)

<https://www.reinhartlaw.com/practices/intellectual-property>

## RELATED SERVICES:

[Artificial Intelligence](#)

<https://www.reinhartlaw.com/services/artificial-intelligence>

## RELATED PEOPLE:

[David G. Hanson](#)

<https://www.reinhartlaw.com/people/david-hanson>



expanded, for example, to recognize copyright in photographs despite the role non-human cameras play in the process, but “[u]nderlying that adaptability, however, 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.”

For “pure” test cases like *Thaler*, where no human being claims to have contributed anything to what the machine produced, the work will be ineligible for copyright protection. Far less clear is the amount of “human creativity” required to qualify as enough to secure a copyright, or how to locate the line between human and non-human contributions

For more information or questions regarding AI legal matters, contact [David Hanson](#) or another member of Reinhart’s [Artificial Intelligence Group](#).

*These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.*