

Who Can Be the Author of AI-Generated Art?

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Abstract:

Taking the question “Who can be the author of AI-generated art?” as its central inquiry, this article examines the Thaler case’s affirmation of the threshold of human authorship, analyzes the layered handling in the Zarya case and the notion of “identifiable human contribution,” and, through *Getty v. Stability AI*, discusses the evidentiary challenges of establishing the sources of training data and their “traceability.” It also considers the duties of disclosure and the issue of public trust arising from Christie’s AI-only special auction. The article argues that, within the current legal framework, the stance that “only humans can be authors” should be maintained; that the conditions for the formation of a work should be refined through minimal yet verifiable disclosure and record-keeping; and that licensing and auditability in the training stage should be advanced, so as to rebuild trust in both the market and the public.

Keywords:

AI-generated Art, Tiered Registration, Training Data, Public Domain

1. Introduction

In recent years, AI-generated art has given rise to extensive legal and ethical controversies, one of whose core issues concerns how to define the “author” of a work. The traditional copyright regime rests on the cornerstone of human creativity: a work must be created by a natural person possessing creativity in order to be protected [1]. However, when algorithms can automatically generate images or music based on prompts, we are confronted with an unprecedented difficulty: when the creative process relies heavily on intelligent algorithms, who is the true author? Centering on four landmark cases, this article gradually explores this question. Starting from concrete disputes, it examines the law’s insistence on “the human,” the impact of technical tools on creative control, the involvement of others’ works in AI training data, and the public’s demand for transparency in AI art. On this basis, the author will put forward his own position and discuss how, under current legal and technological conditions, the “author” of AI art should be defined, and whether the conditions for the formation of a work need to be rethought.

2. Thaler v. Perlmutter: Upholding the Copyright Principle of Human Authorship

The first case is Thaler v. Perlmutter, which directly interrogates the copyright system's insistence on human authorship. The plaintiff, Stephen Thaler, is a computer scientist who attempted to register copyright in an image generated entirely by his AI system ("Creativity Machine"), listing the AI as the author and himself as the claimant of rights [2]. The U.S. Copyright Office rejected the application on the ground that the work lacked human authorship. Unconvinced, Thaler brought suit, arguing that the copyright statute does not expressly require human creation and questioning the legitimacy of such a requirement. However, both the trial court and the appellate court unequivocally upheld the principle of "human authorship" [2]. The court pointed out that, although the 1976 Copyright Act does not directly define "author," the overall statutory context presupposes that an author must be a natural person: machines cannot hold property rights, do not possess legal-person characteristics such as attribution of authorship or succession, and the copyright term is calculated with reference to the life of the author. All of this indicates that the legislative intent is confined to humans.

In this case, the judge spoke with unusual candor in treating human authorship as the "cornerstone" of copyright. This means that a work generated by AI with no human input whatsoever is not regarded as a "work" under copyright law. The court even invoked precedents such as the famous "monkey selfie" incident to support this position: just as creations attributed to animals or deities do not enjoy copyright protection, products completed independently by machines likewise fall outside the scope of protection [3]. Thaler thus establishes a clear stance in current law regarding the role of AI—AI itself cannot be an author. Does this then imply that such works are in fact part of the public domain, freely usable by anyone? This outcome prompts further reflection: when creation is carried out by non-human intelligence, is the traditional copyright incentive mechanism still necessary? The court noted in its judgment that the requirement of human authorship does not stifle creativity; on the contrary, it encourages people to make use of AI as an auxiliary tool in creation, provided that the final output manifests the human's original contribution [2]. Yet for "zero human involvement" situations such as Thaler's, the legal answer is quite firm: without a human, there is no author. This principle lays the foundation for subsequent discussion and leads to the next question: if humans are involved in the AI creative process, but machine-generated content constitutes the major portion, how then should copyright be allocated?

3. The "Zarya of the Dawn" Case: A Layered Copyright Strategy in Human-AI Collaboration

The "Zarya of the Dawn" case offers a concrete example of the issues outlined above. Comic creator Kristina Kashtanova used the AI image-generation tool Midjourney to produce a graphic novel, Zarya of the Dawn, in which the images were generated by AI according to her prompts, while the text and layout were created by Kashtanova herself. Initially, the U.S. Copyright Office approved registration of the work as a whole, but later partially cancelled the registration after discovering that it contained AI-generated content. In its decision issued in February 2023, the Office adopted a "layered" approach: it affirmed that Kashtanova holds copyright in the text and in the selection and arrangement of the work as a whole, but explicitly excluded

the purely AI-generated images, concluding that these images “are not the product of human authorship” [3].

The Copyright Office’s analysis brings into focus a key question: when humans use AI tools in creation, who is actually controlling the final expression of the work? Kashtanova claimed that she input more than a hundred prompts and went through hundreds of iterations to “guide” the image generation [4]. The Office, however, held that even so, the process by which Midjourney generates images on the basis of its training data exhibits a substantial degree of unpredictability and autonomy, and that the user is not the true “mastermind” behind these visual contents. The decision compares this mode of creation to photography: photographers exercise a high level of control over the resulting image through composition, lighting, shutter speed, and other choices, whereas Midjourney users cannot precisely predict or determine the output. Precisely because the user cannot in fact control the original expressive elements in AI-generated images, the Office concluded that these images lack human authorship and therefore do not qualify as protectable works.

Interestingly, the Office stressed at the same time that it was not categorically denying copyright protection to works containing AI elements, so long as the final form embodies sufficient human creativity. For example, if AI-generated material is subjected to substantial modification or processing by the author such that it reflects human originality, the work as a whole may still be protected. In this case, Kashtanova failed to provide evidence that she had made sufficiently creative alterations to the AI images, and so those portions were excluded from registration. This “tiered” approach indicates that, under the current regime, human–AI collaborative works can be analytically separated into two levels: human contributions, which may obtain copyright, and machine contributions, which fall into the public domain. Yet this distinction is not easy to apply in practice. How much human creativity must be invested for AI-generated content to be “transformed” into an expression with authorship? Clearly, mere prompting is insufficient, but does manually adjusting several details count as an “original” contribution? The Office itself acknowledges in its report that there is a “line-drawing” difficulty here. Thus, the “Zarya of the Dawn” case prompts us to further ask: when creation is jointly accomplished by humans and AI, how should we measure and allocate authorship? It sets the stage for the subsequent discussion of technological tools and the attribution of responsibility.

4. Getty Images v. Stability AI: The Battle over Training Data and the Dilemma of Traceability

With the rise of generative AI in the field of visual art, another focal point of authorship-related controversy is the training process of AI models: if an AI system’s “creativity” is derived from massive amounts of others’ works used as training data, how are the rights of these original authors to be reflected? This question is particularly salient in the litigation of Getty Images v. Stability AI. Seattle-based Getty Images has accused the image-generation company Stability AI of scraping millions of copyright-protected images from its website without permission to train the Stable Diffusion model, thereby infringing Getty’s copyrights and related database rights [5]. Even more alarming, Getty discovered that some images generated by Stable Diffusion actually bear the “Getty Images” watermark, seemingly indicating that the model reproduces marks from the training data in the absence of any prompt to do so [6]. On this basis, Getty contends that Stability AI not only copied protected

works during the training phase, but that its generated outputs also, to some extent, reproduce distinctive elements of those works.

In legal practice, however, proving an infringing nexus—“traceability”—between a given AI output and specific items of training data is far from straightforward. First, Stability AI has argued in its defense that its model generates new works through statistical learning over vast numbers of images and does not store or memorize the complete content of any particular image. It has submitted expert testimony explaining that the model’s weights do not directly preserve specific images, but rather extract patterns and features, and thus there is no verbatim, image-for-image copying of any single work. This implies that, unless an output is highly similar to or even identical with a particular original, it is difficult to establish infringing reproduction. In fact, Getty encountered evidentiary hurdles in its UK action: some of the allegedly infringing generated images approximated Getty originals only when very deliberately crafted prompts were used, while under ordinary conditions the outputs did not amount to substantial reproduction of any one picture. Owing to insufficient evidence that Stable Diffusion had carried out specific infringing training acts within the United Kingdom, Getty at one point withdrew its principal claims of direct infringement [6]. It thus becomes apparent that, once an AI system has “blended” tens of thousands of works together, disentangling which output derives from which inputs is fraught with technical and legal challenges.

Even so, the Getty litigation has helped advance several cutting-edge legal questions. For instance, a procedural ruling by the High Court of England and Wales introduced a thought-provoking view: the AI model itself may be considered an infringing copy of its training data [7]. The judge intimated that, if it can be shown that the model parameters embed the expressive content of protected works, then making the Stable Diffusion software available to the public as an integrated whole might constitute possession and dissemination of an “infringing copy.” This perspective breaks through the traditional limitation under which “infringing copies” in copyright law were largely confined to tangible carriers, extending the concept to encompass intangible algorithmic models. It reflects a demand for verifiability regarding the internal operation of AI systems, aspiring to technically trace and confirm the extent to which the model exploits original works. Although the final judgment has yet to clarify this theory, the core tension revealed by the Getty case is this: when AI outputs condense the shadows of innumerable prior works without readily corresponding to any single one, are the conventional standards for determining copyright infringement adequate? At a deeper level, the dispute essentially asks: whose creation is the “creation” embodied in AI-generated art? That of the algorithm designers, the model trainers, or the multitude of human authors who provided the source material? Current law tends to rely on infringement suits to hold AI developers accountable for the rights of original authors. Yet in terms of authorship, it neither recognizes the original artists as having direct rights in the new AI-generated works, nor accords any status to the AI itself. Thus, under the existing framework, the category of authors remains strictly confined to situations involving human creative input, and conflicts arising from AI’s dependence on others’ works for training can only be addressed indirectly through the established copyright-infringement paradigm. Whether this institutional arrangement can adequately respond to concerns of fairness and incentive in the age of AI is a question that has also provoked public skepticism in the practice of the art market.

5. The Christie's AI Auction Controversy: Authorial Identity and the Duty of Explanation to the Public

Beyond the legal sphere, the art world and the broader public have also engaged in heated debate over the authorial status and transparency of AI-generated art. In early 2025, Christie's announced that it would hold its first dedicated AI art auction in New York, featuring more than twenty artworks created with the participation of artificial intelligence. The announcement swiftly provoked large-scale protest: over three thousand artists jointly issued an open letter calling for the auction to be cancelled [8]. The protesters' focus was not on the artistic quality of these works, but on the legality and morality of their production process. The letter pointed out that many of the AI models used for the auction pieces had been trained without copyright authorization, and that the companies involved had unilaterally exploited vast numbers of human-made artworks to build commercial AI tools. In other words, these artists questioned whether commodifying and auctioning AI art built upon the "appropriation" of others' creative achievements effectively encourages the exploitation of human creativity. One signatory commentator sharply asked: "Why is Christie's facilitating the sale of these models and profiting from them? These models are directly worsening the situation of the original authors whose works have been plundered." In their view, the production of AI-generated art in fact aggregates the latent contributions of numerous human creators behind the scenes, yet affords them neither recognition nor compensation, which is tantamount to "large-scale theft of human artistic achievement."

Faced with mounting public pressure, Christie's issued a statement in an attempt to clarify matters, emphasizing that most of the participating artists had trained their AI on proprietary data and that the AI technology used in the works merely extends and amplifies their own creative practice, rather than simply appropriating others' output [9]. This response highlights the complexity of the issue: in the realm of AI art, it is difficult to conclude across the board that all works are tainted by infringement. Some renowned artists (such as Refik Anadol and others) do in fact train models on their own or duly licensed data, and their AI-based practice is more akin to the use of a controllable tool. Nevertheless, some works may rely on publicly available models (such as Stable Diffusion or Midjourney) and thereby indirectly implicate unlicensed training data. What the open letter effectively demands is a "duty of explanation": it calls on auction houses and artists to disclose the AI models and data sources used, so that the public can assess the originality and compliance of the works. This demand reflects the art market's concern for the traceability of provenance. In traditional art, the authenticity and provenance of a work are central to collectors' interests; analogously, in AI art the transparency of models and training data has already become a factor shaping public acceptance and moral evaluation.

The Christie's AI auction controversy shows that, while copyright law is still feeling its way, public opinion has already begun to respond to the ethics of AI-based creation. Although the law at present does not require artists to disclose the technologies or data used in the creation of works offered for sale, public skepticism reveals a deeper concern with authorial identity and the allocation of contributions: when an AI-generated painting fetches a high price, to whom should the honor and the proceeds belong? To the artist who provides the concept and refines the details, to the programmers who supply the algorithms, or to the nameless creators whose works populate the vast datasets behind the system? There are no simple answers to these

questions, but public debate is already pushing the field toward a nascent consensus: honest disclosure and respect for the rights of original authors will be prerequisites for AI art to gain long-term recognition.

6. Conclusions

Contemporary debates over the authorship of AI-generated art reflect the ways in which traditional copyright concepts are being recalibrated under the impact of new technologies. The cases discussed above show that the identification of authorship continues to revolve around “human creativity.” The current framework conveys a cautious yet steady message: only works that embody original expression contributed by humans qualify as works in the legal sense, and their authors must be human subjects. This position is likely to endure in the short term, and it is not without justification: copyright is designed to stimulate human creative activity, whereas AI has neither personality nor consciousness and cannot respond to legal incentives [2]. Treating AI outputs as part of the public domain helps to avoid granting excessive monopolistic protection to machine-generated content, thereby preserving the openness of the commons of knowledge.

At the same time, technological developments compel us to revisit the conditions under which a work comes into being. As more and more artworks are produced through human-machine collaboration, we need a more fine-grained delineation of the boundaries of human contribution. It is time to ask whether the requirement of “originality” should explicitly incorporate “human mental labor.” Many countries and institutions have already begun to formulate guidelines for AI-assisted creation. In its latest policy, the U.S. Copyright Office reiterates its refusal to protect purely AI-generated content while recognizing copyright in works that involve AI but still manifest human creativity. Looking ahead, we may need more detailed standards at the legislative or judicial level, for example by requiring applicants to disclose the extent of AI involvement when registering works, and by withholding independent protection from machine-generated portions. As for the legality of AI model training, collective licensing mechanisms or special legislation may be needed to balance the interests of all parties—protecting the rights of original artists without stifling the development of AI technologies. This does not mean redefining “author” as such, but rather adjusting the system’s understanding and regulation of the creative process so that it can accommodate the creative ecology of the AI era.

In sum, under current conditions the answer to the question “Who can be the author of AI-generated art?” remains: only human beings. AI can be a powerful tool, medium, or even creative partner, but the law does not recognize it as an author. We should uphold this bottom line to ensure that copyright protection remains faithful to its fundamental purpose of encouraging human intellectual creation. At the same time, we must confront the grey areas introduced by AI and, through improved rules and greater transparency, give clear and persuasive answers to the two progressively deeper questions of “who created the work” and “whose achievements the creation has drawn upon.” Only in this way can we, while respecting human creativity, fully embrace the expansion and transformation that AI brings to the arts, enabling humans and intelligent tools to co-create new artistic value within a framework that is both fair and intelligible.

Conflicts of Interest

The author declares that there is no conflict of interest regarding the publication of this article.

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