

No. 25-

IN THE
Supreme Court of the United States

STEPHEN THALER,

Petitioner,

v.

SHIRA PERLMUTTER, REGISTER OF COPYRIGHTS
AND DIRECTOR OF THE UNITED STATES
COPYRIGHT OFFICE, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether works outputted by an AI system without a direct, traditional authorial contribution by a natural person can be copyrighted.

RELATED PROCEEDINGS

Thaler v. Perlmutter, No. 23-5233 (D.C. Cir.) (opinion and judgment issued on March 18, 2025).

Thaler v. Perlmutter, No. 22-1564-BAH (D.D.C.) (order and memorandum of opinion denying plaintiff's motion for summary judgment and granting defendants' cross-motion for summary judgment issued on August 18, 2023).

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Petitioner asks this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia in this case.

OPINIONS AND ORDERS BELOW

The opinion of the United States Court of Appeals for the District of Columbia is reported at *Thaler v. Perlmutter*, 130 F.4th 1039 (D.C. Cir. 2025), and is reproduced at Pet. App. 1a-27a.

The memorandum opinion of the United States District Court for the District of Columbia is reported at *Thaler v. Perlmutter*, 687 F. Supp. 3d 140 (D.D.C. 2023), *aff'd*, 130 F.4th 1039 (D.C. Cir. 2025), and is reproduced at Pet. App. 28a-46a.

The order of the United States Court of Appeals for the District of Columbia denying the petition for rehearing (unreported) is available at D.C. Cir., Case No. 23-5233, Document No. 2115319, May 12, 2025, and is reproduced at Pet. App. 47a-48a.

The order of the United States Court of Appeals for the District of Columbia denying the petition for rehearing en banc (unreported) is available at D.C. Cir., Case No. 23-5233, Document No. 2115321, May 12, 2025, and is reproduced at Pet. App. 49a-50a.

The order of the United States District Court for the District of Columbia denying Plaintiff Stephen Thaler's Motion for Summary Judgment and granting Defendants Shira Perlmutter's and the United States Copyright Office's Cross-Motion for Summary Judgment,

and directing the Clerk to close the case (unreported) is docketed at *Thaler v. Perlmutter*, 1:22-cv-01564-BAH, Document No. 23 (D.D.C. Aug. 18, 2023).

JURISDICTION

The D.C. Circuit Court of Appeal filed its opinion on March 18, 2025, Pet. App. 1, and denied rehearing and rehearing en banc on May 12, 2025, Pet. App. 48a and 50a. The Chief Justice extended the time for filing a petition for writ of certiorari to October 9, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The U.S. Constitution's Copyright and Patent Clause, art. I, § 8, cl. 8, provides, in relevant part:

The Congress shall have Power . . . To promote the Progress of Science and the Useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;. . . The U.S. Constitution's art. I, § 1, provides: All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

17 U.S.C. § 102(a) provides, in relevant part:

Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression[.]

17 U.S.C. § 102(b) provides, in relevant part:

In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

17 U.S.C. § 201(b) provides, in relevant part:

[T]he employer or other person for whom the work was prepared is considered the author for purposes of this title[.]

17 U.S.C. § 203(a) provides, in relevant part:

In the case of any work other than a work made for hire, the exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, otherwise than by will, is subject to termination under the following conditions[.]

17 U.S.C. § 302(c) provides, in relevant part:

In the case of an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of 95 years from the year of its first publication, or a term of 120 years from the year of its creation, whichever expires first.

INTRODUCTION

This case presents the question of whether a work outputted by an artificial-intelligence (“AI”) system without a direct, traditional authorial contribution by a natural person can be copyrighted. A straightforward reading of the Copyright Act leads to the conclusion that it can and should be. The U.S. Copyright Office, however, imports words into the Act that Congress never drafted and requires vague elements of human authorship that arose from the Copyright Office itself—without statutory support. Indeed, the Copyright Act explicitly permits nonhuman authorship.

The Copyright Office sometimes enforces a requirement that defies Supreme Court precedent by policing methods of creation and by setting onerous limitations on the use of technology. If this requirement was consistently enforced, it would spell the end of copyright protection for many photographs and other works created with technological assistance. The Copyright Office has ambiguously deemed humanity as the *sine qua non* of copyright, when this Court has explained the only *sine qua non* is originality.

By denying copyright in an original work, the Copyright Office denied Dr. Thaler his rightful property—property generated by his machine which he created, owned, and operated. In doing so, the Copyright Office created a chilling effect on anyone else considering using AI creatively. This defies the constitutional goals from which Congress was empowered to create copyright, namely, the creation and dissemination of creative works.

The immense importance of copyright and the surge of AI development in the United States and abroad make the question presented here of paramount importance. Because this case is a clean vehicle, as it purely presents the question of whether a work generated using AI can be owned, and because it comes at a time where the question has never been more economically and artistically relevant, the petition for a writ of certiorari should be granted.

STATEMENT OF THE CASE

The 1976 Copyright Act does not require a particular sort of traditional human contribution for a work to obtain copyright protection. Instead, the Act goes so far as to explicitly allow nonhuman authorship of copyrighted works. Nonetheless, the U.S. Copyright Office and the U.S. Court of Appeals for the District of Columbia have determined that an unwritten, and unclear, rule of human authorship should be read into the statute. This interpretation is both contrary to the plain language of the Act and it defies basic canons of statutory construction. It also frustrates the purpose of the Act and runs counter to decades of Supreme Court precedent that favor copyright law adapting to accommodate technological progress.

Dr. Stephen Thaler develops, owns, and applies AI systems capable of generating creative output including visual art in the absence of a direct contribution from a traditional human author (“AI-Generated Works”). Plaintiff’s AI system outputted a two-dimensional artwork

(the “Work”) titled “A Recent Entrance to Paradise,” reproduced below:



Pet. App. 29a–30a. The Work would undoubtedly qualify for copyright protection had it been made directly and solely by Dr. Thaler without any computer assistance.

However, the Copyright Office denied Dr. Thaler’s application for copyright registration, holding that a work created by a nonhuman cannot be registered. Its primary source for its decision was its own agency Circular, which articulates a “human-authorship requirement,” mandating that a natural person execute the traditional elements of authorship, a requirement found nowhere within the Act. Pet. App. 2a. The district court granted the Copyright Office summary judgment against Dr. Thaler, Pet. App.

28a, and the D.C. Circuit affirmed, Pet. App. 1. In doing so, it imported “absent word[s] into the statute.” *Lamie v. United States Trustee*, 540 U.S. 526, 538 (2004). This was contrary not only to the plain text of the Copyright Act, but it also has an effect that is contrary to the purpose of the Copyright Act as articulated by this Court.

The Act has a comprehensive design that encompasses nonhuman authorship and therefore fully incorporates AI-Generated Works. This Court need look no further than the fact that nonhuman authors such as corporations and other nonhuman “persons” have been authors without controversy for over a century. *See, e.g., Marvel Characters, Inc. v. Kirby*, 726 F.3d 119, 143 (2d Cir. 2013); *Warren v. Fox Fam. Worldwide, Inc.*, 328 F.3d 1136, 1140–41 (9th Cir. 2003). Indeed, when registering such works, there is no requirement to disclose any involvement by a natural person, much less the sort of traditional authorial contributions the Copyright Office now demands.

The Copyright Office has vastly overstepped its authority by engaging in extra-statutory policy making. Worse, it is enforcing a policy that is deeply hostile to the use of technology at a time when the United States is seeking to be a world leader in AI.

This case is the ideal vehicle for the Supreme Court to resolve the critically important question of whether AI output can receive copyright protection. That is because, first, there are no factual disputes. On the record, Dr. Thaler built, used, and owned the AI system that outputted the relevant work, and specifically disclaimed a traditional authorial contribution in line with the Copyright Office’s own stated test for registration. The Copyright Office’s

refusal was solely based on its opinion that too much AI had been used in the Work’s creation. Second, this case is timely, as in the time between the Dr. Thaler’s application for copyright registration and today, the creation of AI-Generated Works has become a mainstream activity both in the creative industry and by the American public.

Obtaining an answer now to this question presented is of paramount importance. If the Court denies certiorari, even if it later overturns the Copyright Office’s test in another case, it will be too late. The Copyright Office will have irreversibly and negatively impacted AI development and use in the creative industry during critically important years.

I. Factual and Procedural History

Dr. Thaler appeals from: (1) the Judgment entered on August 18, 2023, see *Thaler v. Perlmutter*, District Court Case No. 1:22-cv-01564-BAH, Document No. 23 (D.D.C. Aug. 18, 2023); and (2) the Memorandum Opinion dated August 18, 2023, Pet. App. 28a, denying Dr. Thaler’s motion for summary judgment and granting the U.S. Copyright Office’s motion for summary judgment denying copyright in the Work described in the Statement of the Case. Pet. App. 46a.

On November 3, 2018, Dr. Thaler filed an application to register the Work with the Copyright Office. Critically, he transparently disclosed that that the submission lacked traditional human authorship—providing that it was “autonomously created by a computer algorithm running on a machine.” See *Thaler v. Perlmutter*, 1:22-cv-01564-BAH, Document No. 13-2 (D.D.C. Aug. 18, 2023). Dr.

Thaler further explained that he, Stephen Thaler, is the owner of the AI that generated the AI-Generated Work and should thus be the owner of any copyright. *Id.* And he explained that he, Stephen Thaler, is also the AI's user and programmer. *Id.*

On August 12, 2019, the Copyright Office refused to register the copyright on the grounds that it “lack[ed] the human authorship necessary to support a copyright claim.” See *Thaler v. Perlmutter*, 1:22-cv-01564-BAH, Document No. 13-4 (D.D.C. Aug. 18, 2023). It emphasized that according to the application, the Work was “created autonomously by machine.” *Id.*

On September 8, 2019, Dr. Thaler filed a request for reconsideration to the Copyright Office. See *Thaler v. Perlmutter*, 1:22-cv-01564-BAH, Document No. 13-5 (D.D.C. Aug. 18, 2023). In that Request, he expounded that obvious ownership options other than the AI include the machine's owner, user, or programmer(s). *Id.* Specifically, he reiterated that he was the AI's **user and programmer**. *Id.* He explained that there is no other individual involved with the AI who would be an appropriate recipient of any copyright to the submitted work. *Id.*

The Copyright Office denied the request for reconsideration, by arguing it only vests in the “the fruits of intellectual labor” that “are founded in the creative powers of the mind,” relying on *In re Trade-Mark Cases*, 100 U.S. 82, 94 (1879). See *Thaler v. Perlmutter*, 1:22-cv-01564-BAH, Document No. 13-8 (D.D.C. Aug. 18, 2023). The Copyright Office argued that since copyright law is limited to “original intellectual conceptions of the author,”

it refused to register the Work because it determined it was not created by a human being. *Id.*

On May 27, 2020, Dr. Thaler filed a second request for reconsideration with the Copyright Office. See *Thaler v. Perlmutter*, 1:22-cv-01564-BAH, Document No. 13-7 (D.D.C. Aug. 18, 2023). The Copyright Office denied this request on February 14, 2022. See *Thaler v. Perlmutter*, 1:22-cv-01564-BAH, Document No. 13-8 (D.D.C. Aug. 18, 2023). The Copyright Office accepted that the Work was autonomously created by artificial intelligence without any creative contribution from a human actor. *Id.* And it limited its review to whether the human-authorship requirement was unconstitutional and unsupported by case law. *Id.*

Seeking relief under the Administrative Procedure Act in the D.C. District Court, Dr. Thaler challenged “traditional” human authorship. Pet. App. 7a. He emphasized that “the present submission lacks **traditional** human authorship—it was autonomously generated by an AI,” and that he should own the copyright, given his status as the owner of the AI that generated the AI-Generated Work. Pet. App. 7a (emphasis added).

The District Court issued an order and memorandum of opinion on August 18, 2023, denying Thaler’s motion for summary judgment and granting Copyright Office’s motion for summary judgment. See *Thaler v. Perlmutter*, District Court Case No. 1:22-cv-01564-BAH, Document No. 23 (D.D.C. Aug. 18, 2023) and Pet. App. 28a–46a. The Court based its decision on its framing of the question at issue: “the single legal question presented here is whether a work generated autonomously by a computer falls

under the protection of copyright law upon its creation.” Pet. App. 35a. The Court concluded that, “United States copyright law protects only works of human creation.” Pet. App. 36a.

On October 11, 2023, Dr. Thaler filed a notice of appeal. Following briefing and an oral argument on September 19, 2024, the D.C. Circuit Court of Appeal affirmed the lower court’s judgment. Pet. App. 1a–24a. Dr. Thaler sought reconsideration and reconsideration en banc, filing a petition on May 2, 2025, which the D.C. Circuit denied on May 12, 2025. Pet. App. 48a and 50a. Following this denial, Dr. Thaler was granted a 60-day extension to file the instant Petition for Certiorari; so, this Petition is timely.

THE REASONS FOR GRANTING THE WRIT

I. The Decision Below Conflicts with the Text and Structure of the Copyright Act

A. The Copyright Office’s Human Authorship Requirement Is Untenable

The Copyright Office will only register works created by a natural person. U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 306 (3d ed. 2021) (“The U.S. Copyright Office will register an original work of authorship, provided that the work was created by a human being”). The Copyright Office refers to this limitation on copyright protection as “The Human Authorship Requirement.” *Id.* To qualify as a human-made work, the Copyright Office has introduced a test called “traditional elements of authorship” in its most recent Circular. *Id.* This test originates from the

Copyright Office, not from any case law or statute. The Copyright Office has also not defined what the traditional elements of authorship are, nor has it consistently enforced the test in a manner from which any principles can be gleaned, which is clearly “arbitrary” and “capricious.” 5 U.S.C. § 706(2); see Edward Lee, *Prompting Progress: Authorship in the Age of AI*, 76 FLA. L. REV. 1445, 1466 (2024)1445, 1466 (2024).

The Copyright Office’s test, instead of coming from a statute or federal court, comes from the musings of a former Register of Copyrights in 1965. See U.S. COPYRIGHT OFFICE, SIXTY-EIGHTH ANNUAL REPORT OF THE REGISTER OF COPYRIGHTS 5 (1965) (stating that “traditional elements of authorship in the work (literary, artistic, or musical expression or elements of selection, arrangement, etc.) [must be] actually conceived and executed not by man but by a machine”). Outside of this statement, there is no other basis for a test based on the “traditional elements of authorship,” and the Copyright Office’s Compendium has never even explained what the traditional elements are. See COMPENDIUM (THIRD) § 313.2.

Without a clear definition, the Copyright Office provides the public a moving target instead of a real standard or rule. The test was never subject to notice and comment procedures, much less rulemaking, despite such being required, so it provides no real guidance in the most critical emerging area of technology in copyright law. See Edward Lee, *The Code Red for Copyright Law*, 76 Fla. L. Rev. F. 1, 7–15 (2024); *Syncor Int’l Corp. v. Shalala*, 127 F.3d 90, 95 (D.C. Cir. 1997) (finding the agency’s “guidance” for new technology, especially one presenting “unique” factual considerations, is “exactly the sort[]

of change[] in fact and circumstance which notice and comment rulemaking is meant to inform”). The Copyright Office’s test is untenable and tremendously harmful to American creators in a critically important sector of the economy.

- 1. The Copyright Office Is Policing Methods of Creation, when the Supreme Court Has Already Rejected this Approach**

The Supreme Court has explained that the question of whether copyright exists in a work cannot hinge on the government “consider[ing] evidence of the creator’s design methods, purposes, and reasons.” *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405, 422 (2017). While the Supreme Court in *Star Athletica* was interpreting specific language as to what elements to consider in the copyrightability of the decorative portions of useful articles, the case’s holding has broad applicability to the copyrightability of any artwork. *Id.* at 412–19 (discussing 17 U.S.C. § 101). Given consideration of the design in a useful article is literally carving out those portions that are otherwise graphical art as if it were “separated . . . and applied in another medium” which “would qualify as two-dimensional works of art,” as in this case, the Supreme Court’s determination applies equally that one is not supposed to consider design methods. *Id.* at 417. Likewise, the Supreme Court’s determination is also applicable in this case because no requirement to consider methods exists in the Act regarding authorship. *See id.* Nothing in the Act makes decorative portions of a useful article subject to *less* scrutiny than any other artwork; rather, the test is purely designed to add further elements to be considered when there are artful elements of useful articles. *See id.* at 417–19; 17 U.S.C. § 101.

As Justice O'Connor observed, "copyright rewards originality, not effort" and "[w]ithout a doubt, the 'sweat of the brow' doctrine flouted basic copyright principles." *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 354, 364 (1991).

Justice Holmes likewise explained that:

It would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of the worth of pictorial illustrations, outside of the narrowest and most obvious limits. *At the one extreme, some works of genius would be sure to miss appreciation. Their very novelty would make them repulsive until the public had learned the new language in which their author spoke.* It may be more than doubted, for instance, whether the etchings of Goya or the paintings of Manet would have been sure of protection when seen for the first time. At the other end, copyright would be denied to pictures which appealed to a public less educated than the judge. Yet if they command the interest of any public, they have a commercial value,—it would be bold to say that they have not an aesthetic and educational value,—and the taste of any public is not to be treated with contempt. It is an ultimate fact for the moment, whatever may be our hopes for a change.

Bleistein v. Donaldson Lithographing Co., 188 U.S. 239, 251–52 (1903) (emphasis added).

Yet, in the case at bar, this is exactly what the Copyright Office is doing. It is placing a judgment on AI users, policing the methodology of generating creative works and explicitly denying copyright based solely on the manner in which a work was made.

2. Unintentional and Unforeseen Results Are a Cornerstone of Copyrightable Works and the Creative Process

The Copyright Office objects to the use of AI because it believes human beings are not responsible for creative choices when AI is used or because it believes the use of AI involves randomness. *See* COMPENDIUM (THIRD) § 313.2 (“Similarly, the Office will not register works produced by a machine or mere mechanical process that operates randomly or automatically without any creative input or intervention from a human author.”).

Contrary to the Copyright Office’s objection, unintentional and unforeseen results have a long history of protectability that the Copyright Office seeks to arbitrarily unravel in certain AI contexts. In *Chamberlin v. Uris Sales Corp.*, 150 F.2d 512 (2d Cir. 1945), the Court made it clear that copyright cannot unravel the intentional from the unintentional, as it requires too much uncertainty for courts to engage in such metaphysical pursuits in the creative process. *Id.* at 513 n.4 (“It is not easy to ascertain what is intended and what inadvertent in the work of genius: That a man is color-blind may make him a master of black and white art; a painter’s unique distortions, hailed as a sign of his genius, may be due to defective muscles. Consider the great scientific discoveries- such as the X-ray and the galvanic circuit- which resulted

from accidents.”). Such accidents are therefore not less protected. *Id.*

The Second Circuit further refined this understanding of the value of randomness when Judge Frank observed that

even if their substantial departures from the paintings were inadvertent, the copyrights would be valid. A copyist’s bad eyesight or defective musculature, or a shock caused by a clap of thunder, may yield sufficiently distinguishable variations. Having hit upon such a variation unintentionally, the ‘author’ may adopt it as his and copyright it.

Alfred Bell & Co. v. Catalda Fine Arts, 191 F.2d 99, 105 (2d Cir. 1951).

3. The Office’s Test, if Applied Across the Board, Would Mark the End of Copyright Registration for Photography

Nothing illustrates the arbitrary and capricious nature of the Copyright Office’s policy more than copyright jurisprudence defending photography. As discussed in the prior section, Courts do not search for randomness or police methods to prohibit copyright in a work. For example, the First Circuit did not determine that there was too much random chance to allow a lucky photograph copyright protection. *See Harney v. Sony Pictures Television, Inc.*, 704 F.3d 173, 181–82 (1st Cir. 2013).

Courts have never denied photographers copyrights by claiming they have not exercised “sufficient control” to dictate specific results of their photographs, so it is arbitrary for the Copyright Office to require users of AI systems to do so. A photographer’s luck at being in the right place at the right time, even when capturing newsworthy events that are, essentially, purely factual moments, does not preclude copyright. *See Mannion v. Coors Brewing Co.*, 377 F. Supp. 2d 444, 452–53 (S.D.N.Y. 2005) (“[A] person may create a worthwhile photograph by being at the right place at the right time. I will refer to this type of originality as originality in timing.” (alteration in original) (citation omitted)); *Cruz v. Cox Media Grp., LLC*, 444 F. Supp. 3d 457, 465 (E.D.N.Y. 2020) (photograph taken by amateur photographer of terror suspect arrest was sufficiently original to qualify for protection, though media outlet asserted that photographer did not make a creative choice in taking the photograph; photograph reflected creative choices, including photographer’s timing of when he took the photograph, which occurred after photographer recognized “big commotion”); *see also Ets-Hokin v. Skyy Spirits, Inc.*, 225 F.3d 1068, 1076 (9th Cir. 2000) (“[N]o photograph, however simple, can be unaffected by the personal influence of the author.” (quoting Judge Learned Hand’s opinion in *Jewelers’ Circular Pub. Co. v. Keystone Pub. Co.*, 274 F. 932, 934 (S.D.N.Y. 1921))).

This approach, according to a leading treatise in the copyright area, “has become the prevailing view,” and as a result, “almost any[] photograph may claim the necessary originality to support a copyright merely by virtue of the photographers’ [sic] personal choice of subject

matter, angle of photograph, lighting, and determination of the precise time when the photograph is to be taken.”

Ets-Hokin, 225 F.3d at 1076 (alteration in original) (quoting 1 MELVIN B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 2.08[E][1], at 2–130 (1999)).

Yet, by denying copyright to human users of AI programs that generate visual artworks in a fixed medium or other copyrightable material, the Copyright Office is requiring more direct control than in any other context without justification. If Dr. Thaler were to randomly take photos throughout the day without any rhyme or reason, he would be the author of those photographs. By using an AI to create throughout the day, however, the Copyright Office has deemed the Work uncopyrightable. No consistent principle disallows Dr. Thaler’s ownership of the Work, and certainly no principle that can be derived from the Act itself.

B. The Copyright Office’s Rule Contravenes the Plain Language of the Copyright Act

This case is an issue of statutory construction, and in all such cases, the Court “begins where all such inquiries must begin: with the language of the statute itself.” *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989); *see also Bittner v. United States*, 598 U.S. 85, 92 (2023) (“To resolve who has the better reading of the law, we begin with the terms of the most immediately relevant statutory provisions[.]”). The Act’s only requirement is that copyright vests in “[a]n original work of authorship,” without any human restriction or requirement. 17 U.S.C.

§ 102(a). The Act does contain prohibitions elsewhere, indicating is intentionally broad: § 102(b) contains explicit prohibitions on what cannot be copyrighted: “In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.” *Id.* That the Act contains explicit limitations, but does not limit nonhuman creation, is therefore a clear choice.

This is especially true because, instead of including any limitation of copyrights vesting only in human authors, the Act explicitly allows for nonhuman authorship. Non-humans, such as corporations and governments, may author works made for hire. *See Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 753 (1989) (examining whether the organization Community for Creative Non-Violence was the non-human author of a sculpture, the Court found that while it was not a work for hire, it could have been the author but for that test and positing that “CCNV nevertheless may be a joint author of the sculpture . . . , on remand,” given other factual questions).

Numerous provisions of the Copyright Act reflect the clear Congressional intent to encourage nonhuman authorship. For example, copyright duration is linked to lifespans *except* 17 U.S.C. § 302(c) sets a different duration for *works made for hire* divorced from any lifespan, because works for hire can be created by nonhuman entities. As another example, transfers of works for hire, for instance, cannot be terminated, because termination is designed largely to benefit an author’s family, which a corporation or AI would not have. *See* 17 U.S.C. § 203; *see*

also See *Warren v. Fox Fam. Worldwide, Inc.*, 328 F.3d 1136, 1140–41 (9th Cir. 2003). Similarly, non-humans have been declared authors by the courts without controversy. See, e.g., *Marvel Characters, Inc. v. Kirby*, 726 F.3d 119, 143 (2d Cir. 2013); *Warren*, 328 F.3d at 1140–41.

The language and design of the Act additionally reinforce this interpretation, and “[i]t is a ‘fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.’” *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (citation omitted); *Southern California Edison Co. v. F.E.R.C.*, 195 F.3d 17, 23 (D.C. Cir. 1999). As just discussed, the Act has detailed provisions for non-human authorship of Works including works lacking any direct or identifiable contribution by a natural person. The Copyright Office’s claim that authorship is human-centric or that protection of a work requires a particular contribution by a natural person is thus directly at odds with the Act’s language and well-settled law.

It is not disputed that the Work “owes its origin” to Thaler and was a “product of the independent efforts of the author,” so it meets the only statutory requirements for copyright. See 1 MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 2.01(A)(1) (rev. ed. 2022). Copyright Office cannot point to a single explicit statutory prohibition on protection of AI-Generated Works.

Absent an explicit statutory limitation, it is not the role of the Copyright Office to deny protection for an AI-Generated Work if the basic elements of copyright protection are met. If Congress elects to limit protection

for AI-Generated Works it is Congress' prerogative to amend the Act to do so, but it has done the opposite in the current Act.

C. As the Work Is Entitled to Copyright Protection, the Copyright Office Is Denying Dr. Thaler His Rightful Property

1. The Work Is a Work for Hire Pursuant to the Application of Common Law Principles

The “work for hire” provision in the Act allows authorship and copyrights to vest in persons other than the actual creators of a work. 17 U.S.C. § 201 (“Copyright in a work protected under this title vests initially in the author or authors of the work . . . [i]n the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author. . .”). According to traditional agency principles, and based on how Dr. Thaler used AI to generate the work, Dr. Thaler’s AI was acting as an employee solely for purposes of the “work for hire” doctrine. In his registration form, Dr. Thaler listed the Work as a “work for hire” Thaler further listing himself as the Creativity Machine’s owner. See *Thaler v. Perlmutter*, 1:22-cv-01564-BAH, Document No. 13-2 (D.D.C. Aug. 18, 2023). There is no reason why the AI could not be considered an employee solely for purposes of the Act.

A determination that work for hire applies would not have any broader implication, as shown in *Horror Inc. v. Miller*, 15 F.4th 232, 244–47 (2d Cir. 2021). It found the same word as used in the Copyright Act can

have a different meaning than in other employment related statutes because the “Copyright Act and the NLRA serve altogether different purposes and focus on different economic sectors.” *Id.* at 244. As such, the terms used in the Act can have different meanings, and expressly, “employee” also has different meanings. *Id.* at 245. Instead, the Court held that the employment factors applied in *Reid* should be applied for a copyright case. *Id.* at 243–44. In applying those factors, it is clear that Dr. Thaler, as the operator, had total control over the AI itself, more so than even required to find control as an employer in *Reid*. *See id.* (citing *Reid*, 490 U.S. at 750–53) (analyzing all factors).

Control and ownership are clear on the face of the application and the letters to the Copyright Office stating that Dr. Thaler owned, programmed, and used the AI. *See Thaler v. Perlmutter*, 1:22-cv-01564-BAH, Document No. 13-7 (D.D.C. Aug. 18, 2023). While the AI performed the traditional elements of authorship, whatever it is the Copyright Office believes those to be, in terms of ownership, and control of the AI itself, Dr. Thaler is the “user” and “programmer” who directed the AI to make the Work, which is in a manner entirely analogous to a work for hire. Pet. App. 44a.

2. In the Alternative the Work is Dr. Thaler’s Under the Classic Property Principle of Accession

There is a longstanding principle in property law, sometimes referred to as accession or the fruit of the tree doctrine, under which a property owner owns property made by their property. *See* Thomas W. Merrill, *Accession*

and Original Ownership, 1 J. LEGAL ANALYSIS 459, 462–63 (2009). This rule has applied since at least Roman times, governing ownership of tangible fruits such as literal fruits from a tree, or less literal fruits like calves from a cow. *Id.* at 464–65. It also applies to intangible property, like goodwill in a business, or cryptocurrency like Bitcoin generated from computer software. See Juliet M. Moringiello & Christopher K. Odet, *The Property Law of Tokens*, 74 FLA. L. REV. 607, 636–39 (discussing how ownership rights in non-fungible tokens are “protected by chattel property law”). “The general rule, in the absence of an agreement to the contrary, is that the offspring or increase of tame or domestic animals belongs to the owner of the dam or mother.” *Carruth v. Easterling*, 247 Miss. 364 (1963); see also Merrill, *supra*, at 463.

Indeed, in a 6th Century case sometimes cited as the earliest example of copyright, King Diarmed of Ireland recognized this ancient rule of property and its relevance to intangible property in pronouncing that, “to every cow belongs her calf, therefore to every book belongs its copy.” *The Cathach / The Psalter of St Columba*, Royal Irish Academy), <https://www.ria.ie/collections/manuscripts/manuscripts-in-languages-other-than-irish/the-cathach-the-psalter-of-st-columba/#further-reading> (last visited Aug. 7, 2022) (emphasis omitted).

The same principle applies in the context of newly formed land caused by alluvial formations vesting in the riparian landowner. See *Nebraska v. Iowa*, 143 U.S. 359, 365–66 (1892). In addition, the Supreme Court has repeatedly upheld the same general principle ruling that interest also flows to the owner of the principal. See *Brown v. Legal Found. of Washington*, 538 U.S. 216, 235 (2003);

Phillips v. Washington Legal Found., 524 U.S. 156, 164–71 (1998); *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 162–64 (1980).

Just like with all these examples, Dr. Thaler created and owns the original property—the AI system he used to generate the work. Its output, of all kinds, automatically vests in him. That is evident in the fact that if his AI had made a physical painting, he would own that tangible property. Just as interest is a concept, an intangible form of property like copyright also belongs in the owner of the underlying property “by process of law.” Another way to view the principle comes through accession to, for instance, improvements to property.

[T]he general rule is quite well settled that, where the articles later attached to an automobile or other principal article of personal property became so closely incorporated with the principal article that they cannot be identified and detached therefrom without injury to the automobile or principal article, such articles become part of the machine or principal article to which they are so attached and will pass by accession to one having a chattel mortgage or other lien upon the principal article, if the lien is enforced.

In re C Tek Software, Inc., 127 B.R. 501, 507–08 (Bankr. D.N.H. 1991) (citing *Goodrich Silvertown Stores of B.F. Goodrich Co. v. Pratt Motor Co.*, 198 Minn. 259, 261–62 (1936)).

In this case, therefore, in the case of an AI-generated work, the owner of the AI owns any inseparable addition to his property.

II. The Copyright Office’s Decision Defies the Constitutionally Mandated Purpose of the Copyright Act

The Copyright Office’s bar on copyrights for AI-Generated Works would discourage investment in a critically new and important developing field. It will also harm AI development even outside of the creative industry. See Gary Meyers, *The Future Is Now: Copyright Protection for Works Created by Artificial Intelligence*, 102 TEX. L. REV. ONLINE (2023).

The purpose of the Copyright Act arises out of the Constitutional mandate “[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” U.S. CONST. art. I, § 8, cl. 8. The Copyright Clause has been interpreted by the Supreme Court to provide an explicit rationale for granting copyright protection—namely to encourage the creation and dissemination of works for the public benefit rather than for the purpose of benefiting authors.

Copyright is “intended definitely to grant valuable, enforceable rights to authors, publishers, etc., without burden-some requirements; ‘to afford greater encouragement to the production of literary [or artistic] works of lasting benefit to the world.’” *Washingtonian Pub. Co. v. Pearson*, 306 U.S. 30, 36 (1939) (citations omitted).

The Act is also intended to promote dissemination of those works. *See, e.g., Golan v. Holder*, 565 U.S. 302 (2012).

Protecting human authors is *not* the purpose of the Act.

The copyright law, like the patent statutes, makes reward to the owner a secondary consideration. In *Fox Film Corp. v. Doyal*, 286 U.S. 123, 127, 52 S.Ct. 546, 76 L.Ed. 1010, Chief Justice Hughes spoke as follows respecting the copyright monopoly granted by Congress, ‘The sole interest of the United States and the primary object in conferring the monopoly lie in the general benefits derived by the public from the labors of authors.’ It is said that reward to the author or artist serves to induce release to the public of the products of his creative genius.” 334 U.S., at 158, 68 S.Ct. 915.

Eldred v. Ashcroft, 537 U.S. 186, 227 n.4 (2003) (Sevens, J., dissenting).

The Supreme Court has often corrected the mistaken belief that the rewards for authors are the end instead of a means. “The immediate effect of our copyright law is to secure a fair return for an author’s creative labor. But the ultimate aim is, by this incentive, to stimulate artistic creativity for the general public good.” *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 156 (1975); *see also United States v. Paramount Pictures*, 334 U.S. 131, 158 (1948) (“It is said that reward to the author or artist serves to induce release to the public of the products of his creative genius.”); Stewart E. Sterk, *Rhetoric*

& Reality in Copyright Law, 94 MICH. L. REV. 1197, 1203 (1996) (“[I]t is incentive language that pervades the Supreme Court’s copyright jurisprudence.”). “The primary objective of copyright is not to reward the labor of authors, but [t]o promote the Progress of Science and useful Arts.” *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 349 (1991) (alteration in original); *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 546 (1985) (“It is evident that the monopoly granted by copyright actively served its intended purpose of inducing the creation of new material of potential historical value.”). In a case relied on by the Copyright Office, *Mazer v. Stein*, 347 U.S. 201 (1954), the Court also explained that “the economic philosophy behind the clause empowering Congress to grant patents and copyrights is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors in ‘Science and the useful arts.’” *Id.* at 219.

Congress has been equally consistent in communicating its goals to promote creation and dissemination of copyrightable work. Congress passed its first Copyright Act in 1790, which inherited numerous provisions from the Statute of Anne. *See* Act of May 31, 1790, 1 Stat. 124. The Act stated it was “for the encouragement of learning, by securing copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned.” *Id.* Authors and proprietors are mentioned, but the public remained the law’s primary beneficiaries. *See* Jane C. Ginsburg, *A Tale of Two Copyrights: Literary Prop. in Revolutionary France & Am.*, 64 TUL. L. REV. 991, 1015 (1990) (“Congress adopted a rather pragmatic view of the kinds of works that achieved that objective: the

first copyright law protected maps, charts, and books-in that order. The great majority of works for which authors or publishers sought copyright protection under that first statute were highly useful productions.”).

The legislative history of the more recent copyright acts shows this is still the purpose Congress hoped to achieve. The House of Representatives committee most responsible for the 1909 Copyright Act noted the following:

The enactment of copyright legislation by Congress under the terms of the Constitution is not based upon any natural right that the author has in his writings, for the Supreme Court has held that such rights as he has are purely statutory rights, but upon the ground that the welfare of the public will be served and progress of science and useful arts will be promoted by securing to authors for limited periods the exclusive rights to their writings. The Constitution does not establish copyrights, but provides that Congress shall have the power to grant such rights if it thinks best. Not primarily for the benefit of the author, but primarily for the benefit of the public, such rights are given. Not that any particular class of citizens, however worthy, may benefit, but because the policy is believed to be for the benefit of the great body of people, in that it will stimulate writing and invention, to give some bonus to authors and inventors.

H.R. Rep. No. 2222, 60th Cong., 2d Sess., at 5 (1909). The House of Representatives made a similar note when

preparing and finalizing the current iteration of the Copyright Act:

The history of copyright law has been one of gradual expansion in the types of works accorded protection, and the subject matter affected by this expansion has fallen into two general categories. In the first, scientific discoveries and technological developments have made possible new forms of creative expression that never existed before. In some of these cases the new expressive forms—electronic music, filmstrips, and computer programs, for example—could be regarded as an extension of copyrightable subject matter Congress had already intended to protect, and were thus considered copyrightable from the outset without the need of new legislation. In other cases, such as photographs, sound recordings, and motion pictures, statutory enactment was deemed necessary to give them full recognition as copyrightable works.

H.R. Rep. No. 94-1476, 94th Cong., 2d Sess., at 51 (1976).

If AI-Generated Works are ineligible for copyright protection, this would eliminate critical financial incentives to create and disseminate such works because anyone could freely use them, eliminating any incentive whatsoever to use a tool that would only encourage and simplify creation for authors. *See Meyers, The Future Is Now, supra.*

This aligns with the expansive principle this Court has enunciated that “our inquiry cannot be limited to ordinary meaning and legislative history, for this is a statute that was drafted long before the development of the electronic phenomena with which we deal here.” *Fortnightly Corp. v. United Artists Television, Inc.*, 392 U.S. 390, 395 (1968). Thus, “[w]e must read the statutory language of 60 years ago in the light of drastic technological change.” *Id.* at 396. In the past, this has meant that the Supreme Court applied this principle to determine that radio plays of music constituted a “performance” of copyrighted work. *Id.* at 395–402. The Supreme Court came to this determination because “[t]hese terms have not been construed in their narrow literal sense but, rather, with the reach necessary to reflect the broad scope of constitutional principles.” *Goldstein v. California*, 412 U.S. 546, 561 (1973). The Copyright Office is specifically asking this Court to apply the sort of narrow literal language the Supreme Court has rejected in the past.

Granting copyright to the Work would ensure that “[c]opyright protection extends to *all* ‘original works of authorship fixed in any tangible medium’ of expression.” *Action Tapes, Inc. v. Mattson*, 462 F.3d 1010, 1013 (8th Cir. 2006) (emphasis added); *see also Bell Atl. Bus. Sys. Services, Inc. v. Hitachi Data Sys. Corp.*, No. C 93-20079 JW, 1995 WL 836331, at *3 (N.D. Cal. Dec. 14, 1995) (same). This would result in public benefit by encouraging people to develop and use creative AI to generate and disseminate socially valuable goods as the Act and Constitution mandate.

III. This Case Is a Necessary Vehicle for Deciding Whether AI-Generated Works Are Eligible for Copyright Protection

This case is an ideal vehicle because outside of the legal issue presented, the copyrightability of works created by AI, there are no other issues present. There are no factual disputes in this case, as the facts are limited to a relatively simple administrative record. The procedural posture is that the legal issue is reviewed *de novo* by each successive appellate court. *See Holland v. Nat'l Mining Ass'n*, 309 F.3d 808, 814 (D.C. Cir. 2002) (noting that the court will “review the administrative action directly, according no particular deference to the judgment of the District Court”). Thus, the question is simply whether the AI owner/user/developer is the owner of the otherwise copyrightable work the AI creates. Because the copyright registration was filed explicitly taking the position that Dr. Thaler did not directly execute the traditional elements of authorship himself, this allow the Court to consider the issue itself without complex factual disputes about the degree of human versus AI- system involvement, which are simply not present here.

The question presented needs to be resolved by the Court today, not years from now. The creative and AI industries cannot wait. At this moment, AI presents a major economic innovation whose usage continues to increase. *See Michael Chui & Lareina Yee, AI Could Increase Corporate Profits by \$4.4 Trillion a Year, According to New Research*, MCKINSEY GLOB. INST. (Jul. 7, 2023), <https://www.mckinsey.com/mgi/media-center/ai-could-increase-corporate-profits-by-4-trillion-a-year-according-to-new-research>; David De Cremer et

al., *How Generative AI Could Disrupt Creative Work*, HARV. BUS. REV. (Apr. 13, 2023), <https://hbr.org/2023/04/how-generative-ai-could-disrupt-creative-work>; Simon Torkington, *How Might Generative AI Change Creative Jobs?*, WORLD ECON. F. (May 9, 2023), <https://www.weforum.org/agenda/2023/05/generative-ai-creative-jobs/>. AI has become so ubiquitous, widespread, and easy to access that one can generate artistic works accessing Google on their web browser. *See* Sarah Perez, *Google’s AI-Powered Search Experience Can Now Generate Images, Write Drafts*, TECHCRUNCH (Oct. 12, 2023, 11:00 AM), <https://techcrunch.com/2023/10/12/googles-ai-powered-search-experience-can-now-generate-images-write-drafts/>.

Soon, if it is not already the case, the vast majority of commercial works registered for copyright will rely at least in part on generative AI tools, given their widespread integration in Adobe Photoshop, Canva, DALL-E, Figma, Microsoft, Midjourney, Google, Stable Diffusion, Synthesia, and many other creative applications. *See generally* De Cremer et al., *supra*. The world is already in what AI researcher and DeepMind co-founder Mustafa Suleyman calls the next “wave” in which a new technology proliferates rapidly and globally, changing society. MUSTAFA SULEYMAN, *THE COMING WAVE: TECHNOLOGY, POWER, AND THE TWENTY-FIRST CENTURY’S GREATEST DILEMMA* 30 (2023). Regarding copyright in particular, generative AI tools are likely to increase the total amount of creative works produced each year, given the efficiency, speed, and decreased costs by which creative works can be produced—assuming such works are protected. *See* Dan L. Burk, *Cheap Creativity and What It Will Do*, 57 GA. L. REV. 1669, 1680 (2023).

When faced with revolutionary new technologies in the past, the Supreme Court has risen to the occasion to ensure the proper role of copyright and to allow Americans to pursue new opportunities that were otherwise unavailable to them in the arts. The Court has said that “[w]e must read the statutory language of 60 years ago in the light of drastic technological change.” *Fort. Corp. v. United Artists Television, Inc.*, 392 U.S. 390, 396 (1968). In the past, this has meant that the Supreme Court applied this principle to determine that radio plays of music constituted a “performance” of copyrighted work. *Id.* at 403 (Fortas, J., dissenting). The Supreme Court came to this determination because “[t]hese terms have not been construed in their narrow literal sense but, rather, with the reach necessary to reflect the broad scope of constitutional principles.” *Goldstein v. California*, 412 U.S. 546, 561 (1973). The Copyright Office’s Human Authorship Requirement is a narrow reading that shrinks instead of expands the universe of copyrightable works.

The last watershed moment when technology changed the world of copyright was in 1884, when this Court expanded the definition of “writing” to include photography. *See Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 58 (1884) (“[P]hotography, as an art, was then unknown, and the scientific principle on which it rests, and the chemicals and machinery by which it is operated, have all been discovered long since that statute was enacted.”). The Court thus determined that “[w]e entertain no doubt that the constitution is broad enough to cover an act authorizing copyright of photographs, so far as they are representatives of original intellectual conceptions of the author.” *Id.* The Court further explained what an author, an undefined term in the current Act,

is, referring to an English decision: “‘author’ involves originating, making, producing, as the inventive or master mind, the thing which is to be protected, whether it be a drawing, or a painting, or a photograph,” and agreeing with the same, “[t]hese views of the nature of authorship and of originality, intellectual creation, and right to protection, confirm what we have already said.” *Id.* at 61. The world today without photography protected by copyright is unimaginable. This Court has the opportunity to make an equally important decision and once again stand firm for the ideals embodied in the Copyright Clause.

IV. CONCLUSION

For the foregoing reasons, Dr. Thaler respectfully asks that the Court grant his Petition for Certiorari and ultimately determine that the Work can be registered for copyright.

Respectfully submitted,

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**APPENDIX A — OPINION OF THE UNITED
STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT, FILED
MARCH 18, 2025**

UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

No. 23-5233

STEPHEN THALER, AN INDIVIDUAL,

Appellant,

v.

SHIRA PERLMUTTER, IN HER OFFICIAL
CAPACITY AS REGISTER OF COPYRIGHTS
AND DIRECTOR OF THE UNITED STATES
COPYRIGHT OFFICE AND U.S. COPYRIGHT
OFFICE,

Appellees.

Appeal from the United States District Court
for the District of Columbia
(No. 1:22-cv-01564)

September 19, 2024, Argued; March 18, 2025, Decided

Before: MILLETT and WILKINS, *Circuit Judges*, and
ROGERS, *Senior Circuit Judge*.

Opinion for the Court filed by *Circuit Judge* MILLETT

*Appendix A***OPINION.**

MILLETT, *Circuit Judge*: This case presents a question made salient by recent advances in artificial intelligence: Can a non-human machine be an author under the Copyright Act of 1976? The use of artificial intelligence to produce original work is rapidly increasing across industries and creative fields. Who—or what—is the “author” of such work is a question that implicates important property rights undergirding economic growth and creative innovation.

In this case, a computer scientist attributes authorship of an artwork to the operation of software. Dr. Stephen Thaler created a generative artificial intelligence named the “Creativity Machine.” The Creativity Machine made a picture that Dr. Thaler titled “A Recent Entrance to Paradise.” Dr. Thaler submitted a copyright registration application for “A Recent Entrance to Paradise” to the United States Copyright Office. On the application, Dr. Thaler listed the Creativity Machine as the work’s sole author and himself as just the work’s owner.

The Copyright Office denied Dr. Thaler’s application based on its established human-authorship requirement. This policy requires work to be authored in the first instance by a human being to be eligible for copyright registration. Dr. Thaler sought review of the Office’s decision in federal district court and that court affirmed.

We affirm the denial of Dr. Thaler’s copyright application. The Creativity Machine cannot be the

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recognized author of a copyrighted work because the Copyright Act of 1976 requires all eligible work to be authored in the first instance by a human being. Given that holding, we need not address the Copyright Office’s argument that the Constitution itself requires human authorship of all copyrighted material. Nor do we reach Dr. Thaler’s argument that he is the work’s author by virtue of making and using the Creativity Machine because that argument was waived before the agency.

I**A**

The Constitution’s Intellectual Property Clause gives Congress authority to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries[.]” U.S. CONST. Art. I, § 8, cl. 8. Under that provision, federal copyright protection extends only as far as Congress designates by statute. *Wheaton v. Peters*, 33 U.S. 591, 661, 8 L. Ed. 1055 (1834).

Copyright law incentivizes the creation of original works so they can be used and enjoyed by the public. Since the founding, Congress has given authors short term monopolies over their original work. *See* Act of May 31, 1790, ch. 15, 1st Cong., 1 Stat. 124. This protection is not extended as “a special reward” to the author, but rather “to encourage the production of works that others might reproduce more cheaply.” *Google LLC v. Oracle Am., Inc.*, 593 U.S. 1, 16, 141 S. Ct. 1183, 209 L. Ed. 2d 311 (2021).

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By ensuring that easily reproducible work is protected, individuals are incentivized to undertake the effort of creating original works that otherwise would be easily plagiarized.

The Copyright Act of 1976 is the current federal copyright statute. Three of its provisions are relevant here.

First, the Copyright Act preempts state common law copyright protection by immediately vesting federal copyright ownership in a work's author as soon as a work is created. 17 U.S.C. §§ 102(a); 201(a); 301(a). Although domestic authors generally must register their copyrights to exercise other rights, like the right to sue for infringement, *id.* § 411(a), the right to own a copyright does not depend on registration or publication.

Second, the Copyright Act incentivizes authors by protecting their work “for a term consisting of the life of the author and 70 years after the author's death.” 17 U.S.C. § 302(a). In that way, authors are encouraged to produce work because they know that they can profit from it for their entire life and that their heirs and assigns can continue to benefit for seven decades thereafter.

Third, individuals and organizations can own copyrights by hiring someone to create work. The Copyright Act's work-made-for-hire provision allows “the employer or other person for whom the work was prepared” to be “considered the author” and “own[] all of the rights comprised in the copyright.” 17 U.S.C. § 201(b).

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Rather than enduring for the author’s lifetime, a work-made-for-hire copyright lasts “95 years from the year of its first publication, or a term of 120 years from the year of its creation, whichever expires first.” *Id.* § 302(c).

B

The Copyright Act is administered by the United States Copyright Office. 17 U.S.C. § 701(a). That Office has a duty to “[a]dvice Congress” on issues “relating to copyright,” to “[p]rovide information and assistance” to “Federal departments and agencies and the Judiciary,” and to “[c]onduct studies and programs regarding copyright[.]” *Id.* § 701(b)(1), (2), (4).

In addition, the Copyright Office has authority to establish regulations to implement the Copyright Act. 17 U.S.C. § 702. Pursuant to that authority, the Copyright Office issues regulations governing the “conditions for the registration of copyright, and the application to be made for registration[.]” 37 C.F.R. § 202.3(a)(1). The Copyright Office publishes these registration regulations in the *Compendium of Copyright Office Practices* to inform authors about registration criteria for different types of work. See Copyright Office, *Compendium of U.S. Copyright Office Practices* (3d ed. 2021), <https://perma.cc/9N9N-C3VU> (*Compendium Third Edition*).

Individuals whose registration applications are denied can seek reconsideration by the Copyright Office’s Registration Program. If still dissatisfied, they can ask the Copyright Office’s Review Board to reconsider their

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case. 37 C.F.R. § 202.5(b), (c). A decision by the Review Board “constitutes final agency action,” *id.* § 202.5(g), and is reviewable under the Administrative Procedure Act, 5 U.S.C. § 704; 17 U.S.C. § 701(e).

Copyright Office regulations have long required that any registered work be authored by a human. See Copyright Office, *Compendium of Copyright Office Practices* § 2.8.3(I), (I)(a)(1)(b) (1st ed. 1973), <https://perma.cc/J7ML-BZK6> (*Compendium First Edition*) (“[N]othing can be considered the ‘writing of an author’” unless it owes its “origin to a human agent[.]”); Copyright Office, *Compendium of Copyright Office Practices* § 202.02(b) (2d ed. 1984), <https://perma.cc/52MX-6YPD> (*Compendium Second Edition*) (“The term “authorship” implies that, for a work to be copyrightable, it must owe its origin to a human being.”). The current *Compendium* advises that the Copyright Office “will refuse to register a claim if it determines that a human being did not create the work.” *Compendium Third Edition* § 306. That refusal extends to works “produced by a machine or mere mechanical process that operates randomly or automatically without any creative input or intervention from a human author.” *Id.* § 313.2

C

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Dr. Thaler is a computer scientist who creates and works with artificial intelligence systems, Thaler Opening Br. ii, and who invented the Creativity Machine, *id.* 43-

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44. On May 19, 2019, Dr. Thaler submitted a copyright registration application to the Copyright Office for an artwork titled “A Recent Entrance to Paradise.” J.A. 43. On the application, Dr. Thaler listed the “Author” of that work as the “Creativity Machine.” J.A. 43. Under “Copyright Claimant,” Dr. Thaler provided his own name. J.A. 43. In the section labeled “Author Created,” Dr. Thaler wrote “2-D artwork, Created autonomously by machine.” J.A. 43.

The Copyright Office denied Dr. Thaler’s application because “a human being did not create the work.” J.A. 45. The letter cited the Supreme Court’s decision in *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 4 S. Ct. 279, 28 L. Ed. 349, 1884 Dec. Comm’r Pat. 186 (1884), in support of its decision. J.A. 45.

In seeking reconsideration by the Registration Program, Dr. Thaler acknowledged the Copyright Office’s decision “was made on the basis that the present submission lacks human authorship[.]” J.A. 49. Dr. Thaler confirmed this “is correct” and “that the present submission lacks traditional human authorship—it was autonomously generated by an AI.” J.A. 49. Dr. Thaler then argued that “the Human Authorship Requirement is unconstitutional and unsupported by either statute or case law.” J.A. 49. Dr. Thaler claimed judicial opinions “from the Gilded Age” could not settle the question of whether computer generated works are copyrightable today. J.A. 55.

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The Registration Program again denied Dr. Thaler’s application because the work lacked “sufficient creative input or intervention from a human author.” J.A. 59.

In his request for reconsideration by the Review Board, Dr. Thaler reaffirmed that “the present submission lacks traditional human authorship—it was autonomously generated by an AI.” J.A. 63. He then reiterated his constitutional, statutory, and policy arguments against the human-authorship requirement. J.A. 63-69. Dr. Thaler also argued he should own the copyright under the work-made-for-hire doctrine because “non-human, artificial persons such as companies can already be authors under this doctrine.” J.A. 66.

The Review Board affirmed the denial of Dr. Thaler’s copyright application based on the human-authorship requirement. J.A. 73. The Board relied upon Dr. Thaler’s “representation that the Work was autonomously created by artificial intelligence without any creative contribution from a human actor[.]” J.A. 72. The Board also rejected Dr. Thaler’s argument that the work was made for hire on the ground that there was no contract between Dr. Thaler and the Creativity Machine. J.A. 76-77.

Dr. Thaler sought review in the United States District Court for the District of Columbia, and both sides moved for summary judgment. *Thaler v. Perlmutter*, 687 F. Supp. 3d 140, 142 (D.D.C. 2023). In his motion, Dr. Thaler asserted the same constitutional, statutory, and policy

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arguments that he had advanced before the agency, including the argument that he owns the copyright under the work-made-for-hire provision. J.A. 80-115. In addition, he claimed for the first time that the work is copyrightable because a human—Dr. Thaler—“provided instructions and directed his AI[.]” J.A. 113.

The district court affirmed the Copyright Office’s denial of registration. Based on the caselaw and the Copyright Act’s text, the district court concluded that “[h]uman authorship is a bedrock requirement of copyright.” *Thaler*, 687 F. Supp. 3d at 146. The court also held that Dr. Thaler could not rely on the work-made-for-hire provision because that provision “presuppose[s] that an interest exists to be claimed.” *Id.* at 150. The “image autonomously generated” by the Creativity Machine was not such an interest because it “was never eligible for copyright,” so the Machine had no copyright to transfer to Dr. Thaler even if he were the Creativity Machine’s employer. *Id.* Finally, the court found that Dr. Thaler waived his argument that he should own the copyright because he created and used the Creativity Machine. The court stressed that, “[o]n the record designed by plaintiff from the outset of his application for copyright registration,” the case had presented “only the question of whether a work generated autonomously by a computer system is eligible for copyright.” *Id.* at 149-150.

II

We review a district court’s grant of summary judgment in a case concerning agency action *de novo* and,

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like the district court, will set aside the agency action only if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]” *Jicarilla Apache Nation v. United States Dep’t of Interior*, 613 F.3d 1112, 1118, 392 U.S. App. D.C. 145 (D.C. Cir. 2010) (quoting 5 U.S.C. § 706(2)(A)). We “exercise independent judgment in determining the meaning of statutory provisions.” *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 394, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).

The district court had jurisdiction under 28 U.S.C. § 1331. This court has jurisdiction under 28 U.S.C. § 1291.

III

As a matter of statutory law, the Copyright Act requires all work to be authored in the first instance by a human being. Dr. Thaler’s copyright registration application listed the Creativity Machine as the work’s sole author, even though the Creativity Machine is not a human being. As a result, the Copyright Office appropriately denied Dr. Thaler’s application.

A

Authors are at the center of the Copyright Act. A copyright “vests initially in the author or authors of the work.” 17 U.S.C. § 201(a). And copyright protection only “subsists * * * in original works of authorship[.]” *Id.* § 102(a).

The Copyright Act does not define the word “author.” But traditional tools of statutory interpretation show

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that, within the meaning of the Copyright Act, “author” refers only to human beings. To start, the text of multiple provisions of the statute indicates that authors must be humans, not machines. In addition, the Copyright Office consistently interpreted the word author to mean a human prior to the Copyright Act’s passage, and we infer that Congress adopted the agency’s longstanding interpretation of the word “author” when it re-enacted that term in the 1976 Copyright Act.

1

Numerous Copyright Act provisions both identify authors as human beings and define “machines” as tools used by humans in the creative process rather than as creators themselves. Because many of the Copyright Act’s provisions make sense only if an author is a human being, the best reading of the Copyright Act is that human authorship is required for registration.

First, the Copyright Act’s ownership provision is premised on the author’s legal capacity to hold property. A copyright “vests initially in the author[.]” 17 U.S.C. § 201(a). This means an “author gains ‘exclusive rights’ in her work immediately upon the work’s creation.” *Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*, 586 U.S. 296, 300-301, 139 S. Ct. 881, 203 L. Ed. 2d 147, (2019) (quoting 17 U.S.C. § 106). Because a copyright is fundamentally a property right created by Congress, and Congress specified that authors immediately own their copyrights, an entity that cannot own property cannot be an author under the statute.

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Second, the Copyright Act limits the duration of a copyright to the author's lifespan or to a period that approximates how long a human might live. A copyright generally "endures for a term consisting of the life of the author and 70 years after the author's death." 17 U.S.C. § 302(a). The Copyright Office maintains "current records of information relating to the death of authors of copyrighted works" so that it can determine when copyrights expire. *Id.* § 302(d). If the author's death is unknown, the Copyright Act presumes death after "a period of 95 years from the year of first publication of a work, or a period of 120 years from the year of its creation[.]" *Id.* § 302(e). And even when a corporation owns a copyright under the work-made-for-hire provision, the copyright endures for the same amount of time—"95 years from the year of first publication" or "120 years from the year of its creation[.]" *Id.* § 302(e). Of course, machines do not have "lives" nor is the length of their operability generally measured in the same terms as a human life.

Third, the Copyright Act's inheritance provision states that, when an author dies, that person's "termination interest is owned, and may be exercised" by their "widow or widower," or their "surviving children or grandchildren," 17 U.S.C. § 203(a)(2), (A). Machines, needless to say, have no surviving spouses or heirs.

Fourth, copyright transfers require a signature. To transfer copyright ownership, there must be "an instrument of conveyance" that is "signed by the owner[.]" 17 U.S.C. § 204(a). Machines lack signatures, as well as the legal capacity to provide an authenticating signature.

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Fifth, authors of unpublished works are protected regardless of the author's "nationality or domicile." 17 U.S.C. § 104(a). Machines do not have domiciles, nor do they have a national identity.

Sixth, authors have intentions. A joint work is one "prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole." 17 U.S.C. § 101. Machines lack minds and do not intend anything.

Seventh, and by comparison, every time the Copyright Act discusses machines, the context indicates that machines are tools, not authors. For example, the Copyright Act defines a "computer program" as "a set of statements or instructions to be used directly or indirectly" to "bring about a certain result." 17 U.S.C. § 101. The word "machine" is given the same definition as the words "device" and "process," *id.*, and those terms are consistently used in the statute as mechanisms that assist authors, rather than as authors themselves, *id.* §§ 102(a); 108(c)(2); 109(b)(1)(B)(i); 116(d)(1); 117(a)(1), (c); 401(a); 1001(2), (3). In addition, when computer programs and machines are referenced in the statute, the statute presumes they have an "owner," *id.* § 117(a), (c), who can perform "maintenance," "servic[e]," or "repair" on them, *id.* § 117(d)(1), (2).

All of these statutory provisions collectively identify an "author" as a human being. Machines do not have property, traditional human lifespans, family members, domiciles, nationalities, *mentes reae*, or signatures. By

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contrast, reading the Copyright Act to require human authorship comports with the statute's text, structure, and design because humans have all the attributes the Copyright Act treats authors as possessing. The human-authorship requirement, in short, eliminates the need to pound a square peg into a textual round hole by attributing unprecedented and mismatched meanings to common words in the Copyright Act. *See Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133, 120 S. Ct. 1291, 146 L. Ed. 2d 121 (2000) ("It is a 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'") (quoting *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809, 109 S. Ct. 1500, 103 L. Ed. 2d 891 (1989)).

To be clear, we do not hold that any one of those statutory provisions states a necessary condition for someone to be the author of a copyrightable work. An author need not have children, nor a domicile, nor a conventional signature. Even the ability to own property has not always been required for copyright authorship. Married women in the nineteenth century authored work that was eligible for copyright protection even though coverture laws forbade them from owning copyrights. *See* Melissa Homestead, *AMERICAN WOMEN AUTHORS AND LITERARY PROPERTY, 1822-1869*, at 21-62 (2005); *Belford, Clarke & Co. v. Scribner*, 144 U.S. 488, 504, 12 S. Ct. 734, 36 L. Ed. 514 (1892) (recognizing Mrs. Terhune's authorship when her book's copyright was infringed, even though, as a married woman, she could not own property).

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The point, instead, is that the current Copyright Act’s text, taken as a whole, is best read as making humanity a necessary condition for authorship under the Copyright Act. That is the reading to which “the provisions of the whole law” point. *John Hancock Mut. Life Ins. Co. v. Harris Tr. & Sav. Bank*, 510 U.S. 86, 94, 114 S. Ct. 517, 126 L. Ed. 2d 524 (1993) (quoting *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 51, 107 S. Ct. 1549, 95 L. Ed. 2d 39 (1987)).

2

The Copyright Office’s longstanding rule requiring a human author reinforces the natural meaning of those statutory terms.

The Copyright Office first addressed whether machines could be authors in 1966—ten years before the Copyright Act of 1976 was passed. That year, the Register of Copyrights wrote in the Copyright Office’s annual report to Congress that, as “computer technology develops and becomes more sophisticated, difficult questions of authorship are emerging. * * * The crucial question appears to be whether the ‘work’ is basically one of human authorship, with the computer merely being an assisting instrument[.]” Copyright Office, *Sixty-Eighth Annual Report of the Register of Copyrights* at 5 (1966), <https://perma.cc/QU7P-TY6N>.

The Copyright Office formally adopted the human authorship requirement in 1973. That year, the Copyright Office updated its regulations to state explicitly that works

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must “owe their origin to a human agent[.]” *Compendium First Edition* § 2.8.3(I)(a)(1)(b).

In 1974, Congress created the National Commission on New Technological Uses of Copyrighted Works (“CONTU”) to study how copyright law should accommodate “the creation of new works by the application or intervention of such automatic systems or machine reproduction.” Pub. L. 93-573, § 201(b)(2), 88 Stat. 1873 (1974). CONTU assembled copyright experts from the government, academia, and the private sector to make recommendations to Congress. Prior to the Copyright Act’s passage, the Library of Congress published summaries of CONTU’s meetings, several of which focused on copyright law and computer technology. In none of these meetings did members of CONTU suggest that computers were authors rather than tools used by authors to create original work. *See* CONTU, *Meeting No. 2* at 10-11 (Nov. 19, 1975), <https://perma.cc/857K-VRSB>; CONTU, *Meeting No. 3* at 1-11 (Dec. 18-19, 1975), <https://perma.cc/EB3T-KNR4>; CONTU, *Meeting No. 4* at 1-8 (Feb. 11-13, 1976), <https://perma.cc/NPG6-J8E3>; CONTU, *Meeting No. 6* (May 6-7, 1976), <https://perma.cc/HCX5-6ZYX>; CONTU, *Meeting No. 7* at 46-148 (June 9-10, 1976), <https://perma.cc/Q795-YVQ4>.

This understanding of authorship and computer technology is reflected in CONTU’s final report:

On the basis of its investigations and society’s experience with the computer, the Commission believes that there is no reasonable basis for considering that a computer in any way

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contributes authorship to a work produced through its use. The computer, like a camera or a typewriter, is an inert instrument, capable of functioning only when activated either directly or indirectly by a human. When so activated it is capable of doing only what it is directed to do in the way it is directed to perform.

CONTU, *Final Report* at 44 (1978), <https://perma.cc/7S8T-TAB5>.

Although CONTU's final report was not published until 1978, its conclusion that machines cannot be authors reflects the state of play at the time Congress enacted the Copyright Act in 1976. And when Congress amended the Copyright Act's provision governing computer programs shortly following CONTU's final report, Congress preserved the Act's provisions governing authorship and the language describing machines as devices used by authors. Pub. L. No. 96-517, 94 Stat. 3015, 3028 (1980) (stating it is not infringement to copy a computer program if the copy "is created as an essential step in the utilization of the computer program in conjunction with a machine[.]").

In short, at the time the Copyright Act was passed and for at least a decade before, computers were not considered to be capable of acting as authors, but instead served as "inert instrument[s]" controlled "directly or indirectly by a human" who could be an author. CONTU, *Final Report* at 44 (1978), <https://perma.cc/7S8T-TAB5>. We infer Congress adopts an agency's interpretation of a

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term “when a term’s meaning was well-settled[.]” *Sackett v. Environmental Prot. Agency*, 598 U.S. 651, 683, 143 S. Ct. 1322, 215 L. Ed. 2d 579 (2023). And that rule applies with double force here where the commission Congress designated to study the issue, CONTU, came to the same conclusion. Given all that, the interpretation of “author” as requiring human authorship was well-settled at the time the 1976 Copyright Act was enacted.

3

Dr. Thaler’s contrary reading of the statutory text fails.

A

Dr. Thaler argues first that the natural meaning of “author” is not confined to human beings. Dr. Thaler points to a 2023 dictionary definition defining “author” as “one that originates or creates something[.]” Thaler Opening Br. 23 (citing *Author*, Merriam-Webster Dictionary (2023)), <https://perma.cc/S96L-WYTS>.

But statutory construction requires more than just finding a sympathetic dictionary definition. We “do not read statutes in little bites,” or words in isolation from their statutory context. *Kircher v. Putnam Funds Tr.*, 547 U.S. 633, 643, 126 S. Ct. 2145, 165 L. Ed. 2d 92 (2006). The judicial task when interpreting statutory language, instead, is to discern how Congress used a word in the law.

That process includes “a natural presumption that identical words used in different parts of the same act

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are intended to have the same meaning.” *Atl. Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433, 52 S. Ct. 607, 76 L. Ed. 1204 (1932). Here, the Copyright Act makes no sense if an “author” is not a human being. If “machine” is substituted for “author,” the Copyright Act would refer to a machine’s “children,” 17 U.S.C. § 203(a) (2), a machine’s “widow,” *id.*, a machine’s “domicile,” *id.* § 104(a), a machine’s *mens rea*, *id.* § 101, and a machine’s “nationality,” *id.* Problematic questions would arise about a machine’s “life” and “death[.]” *Id.* § 302(a). And “machine” would inconsistently mean both an author and a tool used by authors. *Id.* § 117(d)(1); *see id.* §§ 102(a); 108(c)(2); 116(d)(1); 117(c); 1001(2), (3).

Dr. Thaler points out that the Copyright Act’s work-made-for-hire provision allows those who hire creators to be “considered the author” under the Act. 17 U.S.C. § 201(b). That is why corporations, *e.g.*, *Warren v. Fox Fam. Worldwide, Inc.*, 328 F.3d 1136, 1140 (9th Cir. 2003), and governments, *e.g.*, *Georgia v. Public.Resource.Org, Inc.*, 590 U.S. 255, 270, 140 S. Ct. 1498, 206 L. Ed. 2d 732 (2020), can be legally recognized as authors.

But the word “considered” in the work-made-for-hire provision does the critical work here. It allows the copyright and authorship protections attaching to a work originally created by a human author to transfer instantaneously, as a matter of law, to the person who hired the creator. *See Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 737, 109 S. Ct. 2166, 104 L. Ed. 2d 811 (1989). Congress, in other words, was careful to avoid using the word “author” by itself to cover non-human

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entities. For if Congress had intended otherwise, the work-made-for-hire provision would say straightforwardly that those who hire creators “*are* the author for purposes of this title,” not that they are “*considered* the author for purposes of this title.”

B

Dr. Thaler also argues that the human-authorship requirement wrongly prevents copyright law from protecting works made with artificial intelligence. Thaler Opening Br. 38.

But the Supreme Court has long held that copyright law is intended to benefit the public, not authors. Copyright law “makes reward to the owner a secondary consideration. * * * [T]he primary object in conferring the monopoly lie[s] in the general benefits derived by the public from the labors of authors.” *United States v. Loew’s, Inc.*, 371 U.S. 38, 46-47, 83 S. Ct. 97, 9 L. Ed. 2d 11 (1962) (quoting *Fox Film Co. v. Doyal*, 286 U.S. 123, 127, 52 S. Ct. 546, 76 L. Ed. 1010 (1932)).

To that public-benefit end, “the law of copyright has developed in response to significant changes in technology.” *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417, 430, 104 S. Ct. 774, 78 L. Ed. 2d 574 (1984). Photography, sound recordings, video recordings, and computer programs are all technologies that were once novel, but which copyright law now protects. See *Burrow-Giles*, 111 U.S. at 58; *Goldstein v. California*, 412 U.S. 546, 565-566, 93 S. Ct. 2303, 37 L. Ed.

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2d 163 (1973); *Sony*, 464 U.S. at 442; *Google*, 593 U.S. at 21. Importantly, that evolution in copyright protection has been at Congress’s direction, not through courts giving new meaning to settled statutory terms.

Contrary to Dr. Thaler’s assumption, adhering to the human-authorship requirement does not impede the protection of works made with artificial intelligence. Thaler Opening Br. 38-39.

First, the human authorship requirement does not prohibit copyrighting work that was made by or with the assistance of artificial intelligence. The rule requires only that the author of that work be a human being—the person who created, operated, or used artificial intelligence—and not the machine itself. The Copyright Office, in fact, has allowed the registration of works made by human authors who use artificial intelligence. *See Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence*, 88 Fed. Reg. 16,190, 16,192 (March 16, 2023) (Whether a work made with artificial intelligence is registerable depends “on the circumstances, particularly how the AI tool operates and how it was used to create the final work.”).

To be sure, the Copyright Office has rejected some copyright applications based on the human-authorship requirement even when a human being is listed as the author. *See* Copyright Office, *Re: Zarya of the Dawn (Registration # VAu001480196)* (Feb. 21, 2023), <https://perma.cc/AD86-WGPM> (denying copyright registration for a comic book’s images made with generative artificial

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intelligence). Some have disagreed with these decisions. See Motion Picture Association, *Comment Letter on Artificial Intelligence and Copyright* at 5 (Oct. 30, 2023), <https://perma.cc/9W9X-3EZE> (This “very broad definition of ‘generative AI’ has the potential to sweep in technologies that are not new and that members use to assist creators in making motion pictures.”); 2 W. PATRY, COPYRIGHT § 3:60.52 (2024); Legal Professors Amicus Br. 36-37 (“The U.S. Copyright Office guidelines are somewhat paradoxical: human contributions must be demonstrated within the creative works generated by AI.”).

Those line-drawing disagreements over how much artificial intelligence contributed to a particular human author’s work are neither here nor there in this case. That is because Dr. Thaler listed the Creativity Machine as the *sole* author of the work before us, and it is undeniably a machine, not a human being. Dr. Thaler, in other words, argues only for the copyrightability of a work authored exclusively by artificial intelligence. Contrast *Rearden LLC v. Walt Disney Co.*, 293 F. Supp. 3d 963 (N.D. Cal. 2018) (holding that companies may copyright work made with motion capture software).

Second, Dr. Thaler has not explained how a ban on machines being authors would result in less original work because machines, including the Creativity Machine, do not respond to economic incentives.

Dr. Thaler worries that the human-authorship requirement will disincentivize creativity by the creators and operators of artificial intelligence. Thaler Opening

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Br. 36. That argument overlooks that the requirement still incentivizes humans like Dr. Thaler to create and to pursue exclusive rights to works that they make with the assistance of artificial intelligence.

Of course, the Creativity Machine does not represent the limits of human technical ingenuity when it comes to artificial intelligence. Humans at some point might produce creative non-humans capable of responding to economic incentives. Science fiction is replete with examples of creative machines that far exceed the capacities of current generative artificial intelligence. For example, Star Trek's Data might be worse than ChatGPT at writing poetry, but Data's intelligence is comparable to that of a human being. *See Star Trek: The Next Generation: Schism* (Paramount television broadcast Oct. 19, 1992) ("Felis catus is your taxonomic nomenclature, an endothermic quadruped, carnivorous by nature"). There will be time enough for Congress and the Copyright Office to tackle those issues when they arise.

Third, Congress's choice not to amend the law since 1976 to allow artificial-intelligence authorship "might well be taken to be an acquiescence in the judicial construction given to the copyright laws." *White-Smith Music Pub. Co. v. Apollo Co.*, 209 U.S. 1, 14, 28 S. Ct. 319, 52 L. Ed. 655, 1908 Dec. Comm'r Pat. 562 (1908). The human-authorship requirement is not new and has been the subject of multiple judicial decisions. The Seventh Circuit has squarely held that authors "of copyrightable works must be human." *Kelley v. Chicago Park Dist.*, 635 F.3d 290, 304 (7th Cir. 2011). And the Ninth Circuit has strongly implied the same

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when deciding that an author must be a “worldly entity,” *Urantia Foundation v. Maaherra*, 114 F.3d 955, 958 (9th Cir. 1997), and cannot be an animal, *Naruto v. Slater*, 888 F.3d 418, 426 (9th Cir. 2018).

Finally, even if the human authorship requirement were at some point to stymie the creation of original work, that would be a policy argument for Congress to address. U.S. CONST. Art. I, § 8, cl. 8. “Congress has the constitutional authority and the institutional ability to accommodate fully the varied permutations of competing interests that are inevitably implicated by such new technology.” *Sony*, 464 U.S. at 431.

This court’s job, by contrast, “is to apply the statute as it is written,” not to wade into technologically uncharted copyright waters and try to decide what “might ‘accord with good policy.’” *Burrage v. United States*, 571 U.S. 204, 218, 134 S. Ct. 881, 187 L. Ed. 2d 715 (2014) (quoting *Commissioner v. Lundy*, 516 U.S. 235, 252, 116 S. Ct. 647, 133 L. Ed. 2d 611 (1996)); *see also Teleprompter Corp. v. Columbia Broad. Sys., Inc.*, 415 U.S. 394, 414, 94 S. Ct. 1129, 39 L. Ed. 2d 415 (1974) (“Detailed regulation of these relationships, and any ultimate resolution of the many sensitive and important problems in this field, must be left to Congress.”). Accommodating new technology “is for Congress.” *Fortnightly Corp. v. United Artists Television, Inc.*, 392 U.S. 390, 401, 88 S. Ct. 2084, 20 L. Ed. 2d 1176 (1968).

In that regard, it bears noting that the Political Branches have been grappling with how copyright law

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should adapt to new technology. The Copyright Office is studying how copyright law should respond to artificial intelligence, *Artificial Intelligence and Copyright*, 88 Fed. Reg. 59,942, 59,942 (Aug. 30, 2023), and is making recommendations based on its findings, *see* Copyright Office, *Copyright and Artificial Intelligence, Part 1: Digital Replicas* at 57 (Jul. 31, 2024), <https://perma.cc/8CUH-DN5A> (recommending a statutory right for individuals to sue those who make deepfakes with their likeness); Copyright Office, *Copyright and Artificial Intelligence, Part 2: Copyrightability* at 32-40 (Jan. 29, 2025), <https://perma.cc/W9VR-TLQP> (recommending against changing the law governing the copyrightability of work generated by artificial intelligence). Also, Congress recently completed a report that addresses the problem of artificial intelligence and intellectual property. U.S. House of Rep., *Bipartisan House Task Force Report on Artificial Intelligence* at 111-136 (Dec. 2024), <https://perma.cc/Y69R-DM3D>. Congress and the Copyright Office are the proper audiences for Dr. Thaler’s policy and practical arguments.

4

Because the Copyright Act itself requires human authorship, we need not and do not address the Copyright Office’s argument that the Constitution’s Intellectual Property Clause requires human authorship. The Copyright Act provides “a sufficient ground for deciding this case, and the cardinal principle of judicial restraint—if it is not necessary to decide more, it is necessary not to decide more—counsels us to go no further.” *PDK Laboratories Inc. v. United States Drug Enforcement*

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Agency, 362 F.3d 786, 799, 360 U.S. App. D.C. 344 (D.C. Cir. 2004) (Roberts, J., concurring in part and concurring in the judgment).

IV

Dr. Thaler raises two alternative arguments in support of his copyright application. Neither succeeds.

First, Dr. Thaler argues that the Copyright Act's work-made-for-hire provision allows him to be "considered the author" of the work at issue because the Creativity Machine is his employee. Thaler Opening Br. 52-56; 17 U.S.C. § 201(b).

That argument misunderstands the human authorship requirement. The Copyright Act only protects "original works of authorship." 17 U.S.C. § 102(a). The authorship requirement applies to all copyrightable work, including work-made-for-hire. The word "authorship," like the word "author," refers to a human being. As a result, the human-authorship requirement necessitates that all "original works of authorship" be created in the first instance by a human being, including those who make work for hire.

Second, Dr. Thaler argues that he is the work's author because he made and used the Creativity Machine. Thaler Opening Br. 42-51. We cannot reach that argument. The district court held that Dr. Thaler forwent any such argument before the Copyright Office. *Thaler*, 687 F.Supp.3d at 150. And in his opening brief, Dr. Thaler did not challenge the district court's finding of waiver. Dr.

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Thaler offered only a single sentence in his opening brief, in which he describes the district court's conclusion as "based on a misunderstanding of the record below." Thaler Opening Br. 43. That "bare and conclusory assertion" is insufficient to preserve an argument for resolution on the merits. *Abdullah v. Obama*, 753 F.3d 193, 199, 410 U.S. App. D.C. 80 (D.C. Cir. 2014).

V

For the foregoing reasons, the district court's denial of Dr. Thaler's copyright application is affirmed.

So ordered.

**APPENDIX B — MEMORANDUM OPINION
OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA,
FILED AUGUST 18, 2023**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 22-1564 (BAH)

STEPHEN THALER,

Plaintiff,

v.

SHIRA PERLMUTTER, REGISTER OF
COPYRIGHTS AND DIRECTOR OF THE
UNITED STATES COPYRIGHT OFFICE, *et al.*,

Defendants.

Filed August 18, 2023

MEMORANDUM OPINION

Plaintiff Stephen Thaler owns a computer system he calls the “Creativity Machine,” which he claims generated a piece of visual art of its own accord. He sought to register the work for a copyright, listing the computer system as the author and explaining that the copyright should transfer to him as the owner of the machine. The Copyright Office denied the application on the grounds

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that the work lacked human authorship, a prerequisite for a valid copyright to issue, in the view of the Register of Copyrights. Plaintiff challenged that denial, culminating in this lawsuit against the United States Copyright Office and Shira Perlmutter, in her official capacity as the Register of Copyrights and the Director of the United States Copyright Office (“defendants”). Both parties have now moved for summary judgment, which motions present the sole issue of whether a work generated entirely by an artificial system absent human involvement should be eligible for copyright. *See* Pl.’s Mot. Summ. J. (Pl.’s Mot.”), ECF No. 16; Defs.’ Cross-Mot. Summ. J. (“Defs.’ Mot.”), ECF No. 17. For the reasons explained below, defendants are correct that human authorship is an essential part of a valid copyright claim, and therefore plaintiff’s pending motion for summary judgment is denied and defendants’ pending cross-motion for summary judgment is granted.

I. BACKGROUND

Plaintiff develops and owns computer programs he describes as having “artificial intelligence” (“AI”) capable of generating original pieces of visual art, akin to the output of a human artist. *See* Pl.’s Mem. Supp. Mot. Summ. J. (“Pl.’s Mem.”) at 13, ECF No. 16. One such AI system—the so-called “Creativity Machine”—produced the work at issue here, titled “A Recent Entrance to Paradise:”

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Admin. Record (“AR”), Ex. H, Copyright Review Board Refusal Letter Dated February 14, 2022 “(Final Refusal Letter”) at 1, ECF No. 13-8.

After its creation, plaintiff attempted to register this work with the Copyright Office. In his application, he identified the author as the Creativity Machine, and explained the work had been “autonomously created by a computer algorithm running on a machine,” but that plaintiff sought to claim the copyright of the “computer-generated work” himself “as a work-for-hire to the owner of the Creativity Machine.” *Id.*, Ex. B, Copyright Application (“Application”) at 1, ECF No. 13-2; *see also id.* at 2 (listing “Author” as “Creativity Machine,” the work as “[c]reated autonomously by machine,” and the “Copyright Claimant” as “Steven [*sic*] Thaler” with the transfer statement, “Ownership of the machine”). The Copyright Office denied the application on the basis that

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the work “lack[ed] the human authorship necessary to support a copyright claim,” noting that copyright law only extends to works created by human beings. *Id.*, Ex. D, Copyright Office Refusal Letter Dated August 12, 2019 (“First Refusal Letter”) at 1, ECF No. 13-4.

Plaintiff requested reconsideration of his application, confirming that the work “was autonomously generated by an AI” and “lack[ed] traditional human authorship,” but contesting the Copyright Office’s human authorship requirement and urging that AI should be “acknowledge[d] . . . as an author where it otherwise meets authorship criteria, with any copyright ownership vesting in the AI’s owner.” *Id.*, Ex. E, First Request for Reconsideration at 2, ECF No. 13-5. Again, the Copyright Office refused to register the work, reiterating its original rationale that “[b]ecause copyright law is limited to ‘original intellectual conceptions of the author,’ the Office will refuse to register a claim if it determines that a human being did not create the work.” *Id.*, Ex. F, Copyright Office Refusal Letter Dated March 30, 2020 (“Second Refusal Letter”) at 1, ECF No. 13-6 (quoting *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 58, 4 S. Ct. 279, 28 L. Ed. 349, 1884 Dec. Comm’r Pat. 186 (1884) and citing 17 U.S.C. § 102(a); *U.S. Copyright Office, Compendium of U.S. Copyright Office Practices* § 306 (3d ed. 2017)). Plaintiff made a second request for reconsideration along the same lines as his first, *see id.*, Ex. G, Second Request for Reconsideration at 2, ECF No. 13-7, and the Copyright Office Review Board affirmed the denial of registration, agreeing that copyright protection does not extend to the creations of non-human entities, Final Refusal Letter at

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4, 7.

Plaintiff timely challenged that decision in this Court, claiming that defendants' denial of copyright registration to the work titled "A Recent Entrance to Paradise," was "arbitrary, capricious, an abuse of discretion and not in accordance with the law, unsupported by substantial evidence, and in excess of Defendants' statutory authority," in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2). *See* Compl. ¶¶ 62–66, ECF No. 1. The parties agree upon the key facts narrated above to focus, in the pending cross-motions for summary judgment, on the sole legal issue of whether a work autonomously generated by an AI system is copyrightable. *See* Pl.'s Mem. at 13; Defs.' Mem. Supp. Cross-Mot. Summ. J. & Opp'n Pl.'s Mot. Summ. J. ("Defs.' Opp'n") at 7, ECF No. 17. Those motions are now ripe for resolution. *See* Defs.' Reply Supp. Cross-Mot. Summ. J. ("Defs.' Reply"), ECF No. 21.

II. LEGAL STANDARD**A. Administrative Procedure Act**

The APA provides for judicial review of any "final agency action for which there is no other adequate remedy in a court," 5 U.S.C. § 704, and "instructs a reviewing court to set aside agency action found to be 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,'" *Cigar Ass'n of Am. v. FDA*, 964 F.3d 56, 61, 448 U.S. App. D.C. 56 (D.C. Cir. 2020) (quoting 5 U.S.C. § 706(2)(A)). This standard "requires agencies to

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engage in reasoned decisionmaking,’ and . . . to reasonably explain to reviewing courts the bases for the actions they take and the conclusions they reach.” *Brotherhood of Locomotive Eng’rs & Trainmen v. Fed. R.R. Admin.*, 972 F.3d 83, 115, 449 U.S. App. D.C. 249 (D.C. Cir. 2020) (quoting *Dep’t of Homeland Sec. v. Regents of Univ. of Cal.* (“*Regents*”), 140 S. Ct. 1891, 1905, 207 L. Ed. 2d 353 (2020)). Judicial review of agency action is limited to “the grounds that the agency invoked when it took the action,” *Regents*, 140 S. Ct. at 1907 (quoting *Michigan v. EPA*, 576 U.S. 743, 758, 135 S. Ct. 2699, 192 L. Ed. 2d 674 (2015)), and the agency, too, “must defend its actions based on the reasons it gave when it acted,” *id.* at 1909.

B. Summary Judgment

Pursuant to Federal Rule of Civil Procedure 56, “[a] party is entitled to summary judgment only if there is no genuine issue of material fact and judgment in the movant’s favor is proper as a matter of law.” *Soundboard Ass’n v. FTC*, 888 F.3d 1261, 1267, 435 U.S. App. D.C. 208 (D.C. Cir. 2018) (quoting *Ctr. for Auto Safety v. Nat’l Highway Traffic Safety Admin.*, 452 F.3d 798, 805, 371 U.S. App. D.C. 422 (D.C. Cir. 2006)); *see also* Fed. R. Civ. P. 56(a). In APA cases such as this one, involving cross-motions for summary judgment, “the district judge sits as an appellate tribunal. The ‘entire case’ on review is a question of law.” *Am. Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1083–84, 348 U.S. App. D.C. 77 (D.C. Cir. 2001) (footnote omitted) (collecting cases). Thus, a court need not and ought not engage in fact finding, since “[g]enerally speaking, district courts reviewing agency action under

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the APA's arbitrary and capricious standard do not resolve factual issues, but operate instead as appellate courts resolving legal questions." *James Madison Ltd. by Hecht v. Ludwig*, 82 F.3d 1085, 1096, 317 U.S. App. D.C. 281 (D.C. Cir. 1996); *see also Lacson v. U.S. Dep't of Homeland Sec.*, 726 F.3d 170, 171, 406 U.S. App. D.C. 402 (D.C. Cir. 2013) (noting, in an APA case, that "determining the facts is generally the agency's responsibility, not [the court's]"). Judicial review, when available, is typically limited to the administrative record, since "[i]t is black-letter administrative law that in an [APA] case, a reviewing court should have before it neither more nor less information than did the agency when it made its decision." *CTS Corp. v. EPA*, 759 F.3d 52, 64, 411 U.S. App. D.C. 243 (D.C. Cir. 2014) (internal quotation marks and citation omitted).

III. DISCUSSION

Under the Copyright Act of 1976, copyright protection attaches "immediately" upon the creation of "original works of authorship fixed in any tangible medium of expression," provided those works meet certain requirements. *Fourth Estate v. Public Benefit Corporation v. Wall-Street.com, LLC*, 139 S. Ct. 881, 887, 203 L. Ed. 2d 147 (2019); 17 U.S.C. § 102(a). A copyright claimant can also register the work with the Register of Copyrights. Upon concluding that the work is indeed copyrightable, the Register will issue a certificate of registration, which, among other advantages, allows the claimant to pursue infringement claims in court. 17 U.S.C. §§ 410(a), 411(a); *Unicolors v. H&M Hennes & Mauritz, L.P.*, 595 U.S. 178, 142 S. Ct. 941, 944–45, 211 L. Ed. 2d 586 (2022). A valid copyright

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exists upon a qualifying work's creation and "apart" from registration, however; a certificate of registration merely confirms that the copyright has existed all along. *See Fourth Estate*, 139 S. Ct. at 887. Conversely, if the Register denies an application for registration for lack of copyrightable subject matter—and did not err in doing so—then the work at issue was never subject to copyright protection at all.

In considering plaintiff's copyright registration application as to "A Recent Entrance to Paradise," the Register concluded that "this particular work will not support a claim to copyright" because the work lacked human authorship and thus no copyright existed in the first instance. First Refusal Letter at 1; *see also* Final Refusal Letter at 3 (providing the same rationale in the final reconsideration decision). By design in plaintiff's framing of the registration application, then, the single legal question presented here is whether a work generated autonomously by a computer falls under the protection of copyright law upon its creation.

Plaintiff attempts to complicate the issues presented by devoting a substantial portion of his briefing to the viability of various legal theories under which a copyright in the computer's work would transfer to him, as the computer's owner; for example, by operation of common law property principles or the work-for-hire doctrine. *See* Pl.'s Mem. at 31–37; Pl.'s Reply Supp. Mot. Summ. J. & Opp'n Def.'s Cross-Mot. Summ. J. ("Pl.'s Opp'n") at 11–15, ECF No. 18. These arguments concern *to whom* a valid copyright should have been registered, and in so doing

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put the cart before the horse.¹ By denying registration, the Register concluded that no valid copyright had ever existed in a work generated absent human involvement, leaving nothing at all to register and thus no question as to whom that registration belonged.

The only question properly presented, then, is whether the Register acted arbitrarily or capriciously or otherwise in violation of the APA in reaching that conclusion. The Register did not err in denying the copyright registration application presented by plaintiff. United States copyright law protects only works of human creation.

Plaintiff correctly observes that throughout its long history, copyright law has proven malleable enough to cover works created with or involving technologies developed long after traditional media of writings memorialized on paper. *See, e.g., Goldstein v. California*, 412 U.S. 546, 561, 93 S. Ct. 2303, 37 L. Ed. 2d 163 (1973) (explaining that the constitutional scope of Congress’s power to “protect the ‘Writings’ of ‘Authors’” is “broad,” such that “writings” is not “limited to script or printed material,” but rather encompasses “any physical rendering of the fruits of

1. In pursuing these arguments, plaintiff elaborates on his development, use, ownership, and prompting of the AI generating software in the so-called “Creativity Machine,” implying a level of human involvement in this case entirely absent in the administrative record. As detailed, *supra*, in Part I, plaintiff consistently represented to the Register that the AI system generated the work “autonomously” and that he played no role in its creation, *see* Application at 2, and judicial review of the Register’s final decision must be based on those same facts.

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creative intellectual or aesthetic labor”); *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 58, 4 S. Ct. 279, 28 L. Ed. 349, 1884 Dec. Comm’r Pat. 186 (1884) (upholding the constitutionality of an amendment to the Copyright Act to cover photographs). In fact, that malleability is explicitly baked into the modern incarnation of the Copyright Act, which provides that copyright attaches to “original works of authorship fixed in any tangible medium of expression, *now known or later developed.*” 17 U.S.C. § 102(a) (emphasis added). Copyright is designed to adapt with the times. Underlying 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. In *Sarony*, for example, the Supreme Court reasoned that photographs amounted to copyrightable creations of “authors,” despite issuing from a mechanical device that merely reproduced an image of what is in front of the device, because the photographic result nonetheless “represent[ed]” the “original intellectual conceptions of the author.” *Sarony*, 111 U.S. at 59. A camera may generate only a “mechanical reproduction” of a scene, but does so only after the photographer develops a “mental conception” of the photograph, which is given its final form by that photographer’s decisions like “posing the [subject] in front of the camera, selecting and arranging the costume, draperies, and other various accessories in said photograph, arranging the subject so as to present graceful outlines, arranging and disposing the light and shade, suggesting and evoking the desired expression, and from such disposition, arrangement, or representation” crafting the overall image. *Id.* at 59–60.

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Human involvement in, and ultimate creative control over, the work at issue was key to the conclusion that the new type of work fell within the bounds of copyright.

Copyright has never stretched so far, however, as to protect works generated by new forms of technology operating absent any guiding human hand, as plaintiff urges here. Human authorship is a bedrock requirement of copyright.

That principle follows from the plain text of the Copyright Act. The current incarnation of the copyright law, the Copyright Act of 1976, provides copyright protection to “original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.” 17 U.S.C. § 102(a). The “fixing” of the work in the tangible medium must be done “by or under the authority of the author.” *Id.* § 101. In order to be eligible for copyright, then, a work must have an “author.”

To be sure, as plaintiff points out, the critical word “author” is not defined in the Copyright Act. *See* Pl.’s Mem. at 24. “Author,” in its relevant sense, means “one that is the source of some form of intellectual or creative work,” “[t]he creator of an artistic work; a painter, photographer, filmmaker, etc.” *Author*, MERRIAM-WEBSTER UNABRIDGED DICTIONARY, <https://unabridged.merriam-webster.com/unabridged/author> (last visited Aug. 18, 2023); *Author*, OXFORD ENGLISH DICTIONARY, https://www.oed.com/dictionary/author_n (last visited Aug. 10, 2023). By its

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plain text, the 1976 Act thus requires a copyrightable work to have an originator with the capacity for intellectual, creative, or artistic labor. Must that originator be a human being to claim copyright protection? The answer is yes.²

The 1976 Act’s “authorship” requirement as presumptively being *human* rests on centuries of settled understanding. The Constitution enables the enactment of copyright and patent law by granting Congress the authority to “promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” U.S. Const. art. 1, cl. 8. As James Madison explained, “[t]he utility of this power will scarcely be questioned,” for “[t]he public good fully coincides in both cases [of copyright and patent] with the claims of individuals.” THE FEDERALIST NO. 43 (James Madison). At the founding, both copyright and patent were conceived of as forms of property that the government was established to protect, and it was understood that recognizing exclusive rights in that property would further the public good by incentivizing individuals to create and invent.

2. The issue of whether non-human sentient beings may be covered by “person” in the Copyright Act is only “fun conjecture for academics,” Justin Hughes, *Restating Copyright Law’s Originality Requirement*, 44 *Columbia J. L. & ARTS* 383, 408–09 (2021), though useful in illuminating the purposes and limits of copyright protection as AI is increasingly employed. Nonetheless, delving into this debate is an unnecessary detour since “[t]he day sentient refugees from some intergalactic war arrive on Earth and are granted asylum in Iceland, copyright law will be the least of our problems.” *Id.* at 408.

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The act of human creation—and how to best encourage human individuals to engage in that creation, and thereby promote science and the useful arts—was thus central to American copyright from its very inception. Non-human actors need no incentivization with the promise of exclusive rights under United States law, and copyright was therefore not designed to reach them.

The understanding that “authorship” is synonymous with human creation has persisted even as the copyright law has otherwise evolved. The immediate precursor to the modern copyright law—the Copyright Act of 1909—explicitly provided that only a “person” could “secure copyright for his work” under the Act. Act of Mar. 4, 1909, ch. 320, §§ 9, 10, 35 Stat. 1075, 1077. Copyright under the 1909 Act was thus unambiguously limited to the works of human creators. There is absolutely no indication that Congress intended to effect any change to this longstanding requirement with the modern incarnation of the copyright law. To the contrary, the relevant congressional report indicates that in enacting the 1976 Act, Congress intended to incorporate the “original work of authorship” standard “without change” from the previous 1909 Act. *See* H.R. REP. NO. 94-1476, at 51 (1976).

The human authorship requirement has also been consistently recognized by the Supreme Court when called upon to interpret the copyright law. As already noted, in *Sarony*, the Court’s recognition of the copyrightability of a photograph rested on the fact that the human creator, not the camera, conceived of and designed the image and then used the camera to capture the image. *See Sarony*,

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111 U.S. at 60. The photograph was “the product of [the photographer’s] intellectual invention,” and given “the nature of authorship,” was deemed “an original work of art . . . of which [the photographer] is the author.” *Id.* at 60–61. Similarly, in *Mazer v. Stein*, the Court delineated a prerequisite for copyrightability to be that a work “must be original, that is, the author’s tangible expression of his ideas.” 347 U.S. 201, 214, 74 S. Ct. 460, 98 L. Ed. 630, 1954 Dec. Comm’r Pat. 308 (1954). *Goldstein v. California*, too, defines “author” as “an ‘originator,’ he to whom anything owes its origin,” 412 U.S. at 561 (quoting *Sarony*, 111 U.S. at 58). In all these cases, authorship centers on acts of human creativity.

Accordingly, courts have uniformly declined to recognize copyright in works created absent any human involvement, even when, for example, the claimed author was divine. The Ninth Circuit, when confronted with a book “claimed to embody the words of celestial beings rather than human beings,” concluded that “some element of human creativity must have occurred in order for the Book to be copyrightable,” for “it is not creations of divine beings that the copyright laws were intended to protect.” *Urantia Found. v. Kristen Maaherra*, 114 F.3d 955, 958–59 (9th Cir. 1997) (finding that because the “members of the Contact Commission chose and formulated the specific questions asked” of the celestial beings, and then “select[ed] and arrange[d]” the resultant “revelations,” the Urantia Book was “at least partially the product of human creativity” and thus protected by copyright); *see also Penguin Books U.S.A., Inc. v. New Christian Church of Full Endeavor*, 96-cv-4126 (RWS), 2000 U.S. Dist. LEXIS

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10394, 2000 WL 1028634, at *2, 10–11 (S.D.N.Y. July 25, 2000) (finding a valid copyright where a woman had “filled nearly thirty stenographic notebooks with words she believed were dictated to her” by a “‘Voice’ which would speak to her whenever she was prepared to listen,” and who had worked with two human co-collaborators to revise and edit those notes into a book, a process which involved enough creativity to support human authorship); *Oliver v. St. Germain Found.*, 41 F. Supp. 296, 297, 299 (S.D. Cal. 1941) (finding no copyright infringement where plaintiff claimed to have transcribed “letters” dictated to him by a spirit named Phylos the Thibetan, and defendant copied the same “spiritual world messages for recordation and use by the living” but was not charged with infringing plaintiff’s “style or arrangement” of those messages). Similarly, in *Kelley v. Chicago Park District*, the Seventh Circuit refused to “recognize[] copyright” in a cultivated garden, as doing so would “press[] too hard on the[] basic principle[]” that “[a]uthors of copyrightable works must be human.” 635 F.3d 290, 304–06 (7th Cir. 2011). The garden “ow[ed] [its] form to the forces of nature,” even if a human had originated the plan for the “initial arrangement of the plants,” and as such lay outside the bounds of copyright. *Id.* at 304. Finally, in *Naruto v. Slater*, the Ninth Circuit held that a crested macaque could not sue under the Copyright Act for the alleged infringement of photographs this monkey had taken of himself, for “all animals, since they are not human” lacked statutory standing under the Act. 888 F.3d 418, 420 (9th Cir. 2018). While resolving the case on standing grounds, rather than the copyrightability of the monkey’s work, the *Naruto* Court nonetheless had to consider whom the Copyright Act was designed

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to protect and, as with those courts confronted with the nature of authorship, concluded that only humans had standing, explaining that the terms used to describe who has rights under the Act, like “‘children,’ ‘grandchildren,’ ‘legitimate,’ ‘widow,’ and ‘widower[,]’ all imply humanity and necessarily exclude animals.” *Id.* at 426. Plaintiff can point to no case in which a court has recognized copyright in a work originating with a non-human.

Undoubtedly, we are approaching new frontiers in copyright as artists put AI in their toolbox to be used in the generation of new visual and other artistic works. The increased attenuation of human creativity from the actual generation of the final work will prompt challenging questions regarding how much human input is necessary to qualify the user of an AI system as an “author” of a generated work, the scope of the protection obtained over the resultant image, how to assess the originality of AI-generated works where the systems may have been trained on unknown pre-existing works, how copyright might best be used to incentivize creative works involving AI, and more. *See, e.g.*, Letter from Senators Thom Tillis and Chris Coons to Kathi Vidal, Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office, and Shira Perlmutter, Register of Copyrights and Director of the U.S. Copyright Office (Oct. 27, 2022), <https://www.copyright.gov/laws/hearings/Letter-to-USPTO-USCO-on-National-Commission-on-AI-1.pdf> (requesting that the United States Patent and Trademark Office and the United States Copyright Office “jointly establish a national commission on AI” to assess, among other topics,

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how intellectual property law may best “incentivize future AI related innovations and creations”).

This case, however, is not nearly so complex. While plaintiff attempts to transform the issue presented here, by asserting new facts that he “provided instructions and directed his AI to create the Work,” that “the AI is entirely controlled by [him],” and that “the AI only operates at [his] direction,” Pl.’s Mem. at 36–37—implying that he played a controlling role in generating the work—these statements directly contradict the administrative record. Judicial review of a final agency action under the APA is limited to the administrative record, because “[i]t is black-letter administrative law that in an [APA] case, a reviewing court should have before it neither more nor less information than did the agency when it made its decision.” *CTS Corp.*, 759 F.3d at 64 (internal quotation marks and citation omitted). Here, plaintiff informed the Register that the work was “[c]reated autonomously by machine,” and that his claim to the copyright was only based on the fact of his “[o]wnership of the machine.” Application at 2. The Register therefore made her decision based on the fact the application presented that plaintiff played no role in using the AI to generate the work, which plaintiff never attempted to correct. *See* First Request for Reconsideration at 2 (“It is correct that the present submission lacks traditional human authorship—it was autonomously generated by an AI.”); Second Request for Reconsideration at 2 (same). Plaintiff’s effort to update and modify the facts for judicial review on an APA claim is too late. On the record designed by plaintiff from the outset of his application for copyright registration,

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this case presents only the question of whether a work generated autonomously by a computer system is eligible for copyright. In the absence of any human involvement in the creation of the work, the clear and straightforward answer is the one given by the Register: No.

Given that the work at issue did not give rise to a valid copyright upon its creation, plaintiff's myriad theories for how ownership of such a copyright could have passed to him need not be further addressed. Common law doctrines of property transfer cannot be implicated where no property right exists to transfer in the first instance. The work-for-hire provisions of the Copyright Act, too, presuppose that an interest exists to be claimed. *See* 17 U.S.C. § 201(b) ("In the case of a work made for hire, the employer . . . owns all of the rights comprised in the copyright.").³ Here, the image autonomously generated by plaintiff's computer system was never eligible for copyright, so none of the doctrines invoked by plaintiff conjure up a copyright over which ownership may be claimed.

3. In any event, plaintiff's attempts to cast the work as a work-for-hire must fail as both definitions of a "work made for hire" available under the Copyright Act require that the individual who prepares the work is a human being. The first definition provides that "a 'work made for hire' is . . . a work prepared by an *employee* within the scope of *his or her* employment," while the second qualifies certain eligible works "*if the parties expressly agree in a written instrument signed by them* that the work shall be considered a work made for hire." 17 U.S.C. § 101 (emphasis added). The use of personal pronouns in the first definition clearly contemplates only human beings as eligible "employees," while the second necessitates a meeting of the minds and exchange of signatures in a valid contract not possible with a non-human entity.

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IV. CONCLUSION

For the foregoing reasons, defendants are correct that the Copyright Office acted properly in denying copyright registration for a work created absent any human involvement. Plaintiff's motion for summary judgment is therefore denied and defendants' cross-motion for summary judgment is granted.

An Order consistent with this Memorandum Opinion will be entered contemporaneously.

Date: August 18, 2023

/s/ Beryl A. Howell
BERYL A. HOWELL
United States District Judge

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**APPENDIX C — ORDER OF THE UNITED
STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT,
FILED MAY 12, 2025**

UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

No. 23-5233
September Term, 2024
1:22-cv-01564-BAH

STEPHEN THALER, AN INDIVIDUAL,

Appellant,

v.

SHIRA PERLMUTTER, IN HER OFFICIAL
CAPACITY AS REGISTER OF COPYRIGHTS
AND DIRECTOR OF THE UNITED STATES
COPYRIGHT OFFICE AND U.S. COPYRIGHT
OFFICE,

Appellees.

Filed On: May 12, 2025

BEFORE: Millett and Wilkins, Circuit Judges;
Rogers, Senior Circuit Judge

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Appendix C

ORDER

Upon consideration of appellant's petition for panel rehearing filed on May 2, 2025, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:

Clifton B. Cislak, Clerk

BY: /s/

Lillian R. Wright
Deputy Clerk

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**APPENDIX D — ORDER OF THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT, FILED MAY 12, 2025**

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-5233
September Term, 2024
1:22-cv-01564-BAH

STEPHEN THALER, AN INDIVIDUAL,

Appellant,

v.

SHIRA PERLMUTTER, IN HER
OFFICIAL CAPACITY AS REGISTER OF
COPYRIGHTS AND DIRECTOR OF THE
UNITED STATES COPYRIGHT OFFICE
AND U.S. COPYRIGHT OFFICE,

Appellees.

BEFORE: Srinivasan, Chief Judge; Henderson,
Millett, Pillard, Wilkins, Katsas, Rao,
Walker, Childs, Pan, and Garcia, Circuit
Judges; Rogers, Senior Circuit Judge

Filed On: May 12, 2025

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Appendix D

ORDER

Upon consideration of appellant's petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:

Clifton B. Cislak, Clerk

BY: /s/
Lillian R. Wright
Deputy Clerk