

PUBLICATION

Supreme Court Denies Certiorari in *Thaler v. Perlmutter*: AI Cannot Be an Author Under the Copyright Act

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The Supreme Court of the United States on March 2, 2026, denied certiorari in *Thaler v. Perlmutter*, leaving intact the D.C. Circuit's ruling that the Copyright Act requires copyrightable works to be authored by a human being. For businesses incorporating generative artificial intelligence (GAI) into their workflows, this decision reinforces the Copyright Office's position that, under current law, AI is a tool, not an author. Accordingly, the law remains that AI – by itself – is fundamentally incapable of creating a work that is subject to copyright protection under the Copyright Act.

Background

Dr. Stephen Thaler developed a GAI system called the "Creativity Machine," which autonomously generated an artwork titled "A Recent Entrance to Paradise." In 2018, he submitted a copyright registration application listing the AI as the work's sole author, conceding the work "lacks traditional human authorship." The Copyright Office denied registration, citing its established policy that works must be created by a human being.

Dr. Thaler then sought judicial review in the U.S. District Court for the District of Columbia, raising constitutional, statutory, and policy arguments and asserting ownership through the work-made-for-hire doctrine. The district court granted summary judgment for the Copyright Office, holding that human authorship is a "bedrock requirement of copyright." *Thaler v. Perlmutter*, 687 F. Supp. 3d 140, 146 (D.D.C. 2023).

The D.C. Circuit's Decision

On March 18, 2025, a D.C. Circuit panel affirmed the district court's ruling. Although the Copyright Act does not explicitly define "author," the court found that multiple provisions make clear that authors must be human beings. Ownership provisions assume the author can hold property; duration provisions measure terms by the author's lifespan; joint authorship requires intent; and registration requires a signature – all capacities only humans possess. The court also noted that Congress adopted the Copyright Office's longstanding human authorship requirement when enacting the 1976 Act.

The court rejected Dr. Thaler's alternative arguments. His work-made-for-hire claim failed because that doctrine presupposes the underlying work is copyrightable – which requires human authorship. His argument that he should be recognized as author by virtue of creating the AI was waived for not being raised during the administrative proceedings. The court acknowledged, however, that Congress could revisit these questions if AI evolution renders the human authorship requirement counterproductive.

Supreme Court Denies Review

Dr. Thaler petitioned for certiorari, arguing that the lower courts' decisions created a "chilling effect on anyone else considering using AI creatively." The Department of Justice opposed, emphasizing that this case was a poor vehicle for broader questions about AI-assisted authorship because Dr. Thaler consistently disclaimed any human creative contribution. The Court denied certiorari on March 2, 2026, concluding this particular litigation, though the broader legal landscape remains in flux.

What This Decision Leaves Unresolved

The D.C. Circuit noted that the human authorship requirement does not prohibit copyrighting work "made by or with the assistance of artificial intelligence" – only that the author must be a human, not the machine itself. *Thaler v. Perlmutter*, 130 F.4th 1039, 1049 (D.C. Cir. 2025). Because Dr. Thaler disclaimed any human creative input, the court did not address how much human involvement is sufficient to support a copyright claim for AI-assisted works.

That question, however, is presented in another case pending in Colorado, *Allen v. Perlmutter*, where an artist challenges the Copyright Office's denial of registration for an image generated using Midjourney with more than 600 iterative prompts. The Copyright Office's 2023 Registration Guidance acknowledges that works incorporating AI-generated material may contain sufficient human authorship to support registration where a human selects or arranges AI-generated elements creatively.

Practical Recommendations for Businesses

Businesses using GAI should consider the following strategies:

1. **Embed meaningful human creativity:** The current framework rewards identifiable human contributions to the conception, selection, arrangement, and editing of AI outputs. Simply pressing "generate" is unlikely to produce copyrightable output.
2. **Document the human role:** Maintain records of prompts, iterative revisions, curation decisions, and post-generation creative choices. These records may become critical evidence in establishing human authorship.
3. **Monitor AI use across your organization:** AI-generated code, marketing materials, and design assets may all raise copyrightability questions.
4. **Consider alternative protections:** Trade secrets, contractual restrictions, and first-mover advantage can provide commercial value even absent copyright.
5. **Review disclosure obligations:** The Copyright Office requires applicants to disclose AI involvement, which helps establish the scope of human contribution.

Conclusion

Thaler v. Perlmutter addresses a narrow but foundational question: under current interpretations of the Copyright Act, an AI system cannot be listed as the author of a copyrightable work. But the harder questions – about where human creativity ends and machine autonomy begins – remain open. Congress may revisit these issues as AI evolves, and courts will have opportunities to refine the boundaries of human authorship. Businesses should design AI workflows around human creativity, maintain thorough documentation, and monitor developments in *Allen v. Perlmutter* and future Copyright Office guidance.

If you have questions about how this decision may affect your organization's use of GAI or copyright strategy, please contact [Edward D. Lanquist](#), [Benjamin West Janke](#), [Dominic Rota](#), and [Lesli Harris](#), who are members of [Baker Donelson's Intellectual Property Team](#).