No. 25-449

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

BRIEF OF *AMICI CURIAE* PROF. SHLOMIT YANISKY-RAVID, PROF. LAWRENCE LESSIG, PROF. SEAN O'BRIEN, PROF. BULELANI JILI, DR. PATRICIA VARGAS LEÓN, DR. GE CHEN, DR. EIRLIANI ABDUL RAHMAN, PROF. JONATHAN MARCELINUS D'SILVA, PENN STATE DICKINSON LAW SCHOOL IP CLINIC, AND 5 OTHERS IN SUPPORT OF PETITIONER

MICHAEL R. WEINER
Counsel of Record
RYAN N. PHELAN
ISAKU BEGERT
MARSHALL, GERSTEIN & BORUN, LLP
233 South Wacker Drive, Suite 6300
Chicago, IL 60606
(312) 474-6300
mweiner@marshallip.com

Counsel for Amici Curiae

387137

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

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INTEREST OF AMICI CURIAE[1]

Amici are 14 professors, researchers, and attorneys at the forefront of IP and AI. *See* Appendix I. Collectively, they bring decades of experience to bear on this important copyright question. Amici have a continuing and abiding interest in the general welfare of society and promoting and protecting creative expression and industry.

SUMMARY OF ARGUMENT

Excluding AI-generated works from copyright protection threatens the foundations of American creativity, innovation, and economic growth. Copyright's purpose—to promote the progress of science and the arts—cannot be served by denying protection to works created through AI that now define modern creation. As history shows, from photography to software, this Court has consistently broadened interpretation to embrace new technologies safeguarding artistic advancement.

The Copyright Office's rigid, narrow and vague guidance has created uncertainty, a chilling effect on investment, and severe economic and competitive disadvantages for the U.S., including for individual creators, small businesses, persons with disabilities, and the entire creative industries, that heavily rely on AI. Other leading jurisdictions already recognize or adapt

1. Pursuant to Sup. Ct. R. 37.6, amici state that no counsel for any party authored this brief. No entity or person, aside from amici and their counsel on this brief, made any monetary contribution intended to fund this brief. This brief is being filed more than 10 days prior to the deadline, which satisfies the notice requirement of Sup. Ct. R. 37.2.

to protect AI-generated works, leaving the U.S. at risk of falling behind.

This case offers an opportunity for the Court to restore legal clarity and reaffirm its constitutional authority to interpret ambiguous statutes after *Loper Bright*, ensuring that administrative agencies do not constrain creativity through overreach. Recognizing authorship and protection for AI-generated works—whether through the work-made-for-hire doctrine or comparable frameworks—will align copyright law with its constitutional purpose, uphold innovation, and preserve the nation's leadership in global creative industries.

ARGUMENTS

I. The Perils of Excluding AI-Generated Works from Authorship and Copyright Protection

The U.S. Constitution empowers Congress "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,"[2] authorizing Congress to create Intellectual Property (IP) laws towards that ultimate goal by fostering innovation and progress.

As this Honorable Court noted in *Mazer v. Stein*, public welfare is encouraged "through the talents of authors and inventors in 'Science and useful Arts.'"[3] AI can provide this encouragement. A recent University of Arkansas study

2. U.S. Const. art. I, §8, cl. 8.

3. Mazer v. Stein, 347 U.S. 201, 219 (1954).

found that OpenAI's ChatGPT-4 creatively outperformed humans in divergent thinking tasks, and noted that other researchers found "AI's creative potential scores within the top 1% of human responses in terms of originality," exemplifying the remarkable opportunity AI provides in the creative process.[4]

The Copyright Office recently published a three-part report acknowledging AI's use by creative professionals in various industries.[5] The Office stated, "[b]y the fall of 2022, millions of Americans were utilizing generative AI systems and services to produce an astonishing array of expressive material, including visual art, text, and music."[6] A 2025 study by AI-powered audio production studio Wondercraft determined over 80% of its users implemented AI into their creative workflows, with nearly 40% using AI throughout their entire projects.[7]

With AI-generated works becoming a mainstream feature in the U.S. creative industry, denying copyright protection for such works undermines innovation and associated industries.[8] Denying protection would

4. Kent Hubert et al., *The current state of artificial intelligence generative language models is more creative than humans on divergent thinking tasks*, 14 Sci. Rep. 1, 8–9 (2024).

5. *See generally Copyright and Artificial Intelligence*, U.S. Copyright Office, https://www.copyright.gov/ai/ (last visited Sept. 21, 2025).

6. Shira Perlmutter, *foreward* to U.S. Copyright Office, Copyright and Artificial Intelligence Part 1 (2024).

7. *See* Wondercraft, AI in Content Creation 5 (2025).

8. *See generally*, U.S. Chamber of Com., Unlocking Creativity: The Socioeconomic Benefits of Copyright (2024).

ultimately erode the goals of copyright law to support the broader creative arts ecosystem, including the fields of publishing, architecture, software design, visual arts, music, and film.

II. Denial of Copyright Protection for AI-Generated Works Would Lead to Severe Adverse Economic Consequences

According to the U.S. Chamber of Commerce, core copyright industries are responsible for generating billions of dollars annually and employing millions of Americans,[9] in 2023 alone contributing approximately 12.31% ($3.37 trillion) to the U.S. GDP.[10] The copyright industry employed approximately 9.91% (21.14 million) of the nation's workforce in 2023, with employees earning approximately 50% more wages than the average American.[11]

Simultaneously, corporate use of AI grows annually. McKinsey & Co. found that 78% of global survey respondents used AI in at least one of their business functions, like AI-image generation, a 23% increase from 2023.[12] Broader use of AI can likewise improve efficiency,

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9. *See id.* at 6.

10. *See id.*

11. *See id.*

12. *See* Alex Singla et al., *The state of AI: How organizations are rewiring to capture value*, McKinsey & Co. (Mar. 12, 2025) https://www.mckinsey.com/capabilities/quantumblack/our-insights/the-state-of-ai.

with some enterprises seeing such an increase by 30–40% in technical development and graphic design.[13]

Generative AI can potentially completely reshape creative industries and the U.S. economy. In 2023, McKinsey & Co. predicted generative AI could deliver a total value of $2.6–$4.4 trillion to the U.S. economy when applied across different sectors, especially creative industries.[14] In 2023, Goldman Sachs suggested that AI-generated works could raise the Global GDP by 7%.[15] In September 2025, Goldman Sachs now believes AI's impact on the U.S. economy has been greatly understated, and could amount to an unaccounted for additional $115 billion.[16]

Technology historically drives new job growth,[17] and investment into AI could boost the development of new positions. However, a 2025 Pew Research Center Study found that 58% of U.S. adults and 56% of AI experts believe the U.S. government will not adequately regulate

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13. *See* Tucker J. Marion et al., *When Generative AI Meets Product Development*, 66 MIT Sloan Mgmt. Rev. 14, 14–15 (2024).

14. *See* Michael Chui et al., The Economic Potential of Generative AI 10 (2023).

15. *See Generative AI could raise global GDP by 7%*, Goldman Sachs (Apr. 5, 2023), https://www.goldmansachs.com/insights/articles/generative-ai-could-raise-global-gdp-by-7-percent.html.

16. *See* Huileng Tan, *AI's economic boost isn't showing up in GDP, and Goldman says that's a $115 billion blind spot*, Bus. Insider (Sept. 15, 2025), https://www.businessinsider.com/ai-tech-economy-us-gdp-boost-chips-blindspot-goldman-sachs-2025-9.

17. *See* Goldman Sachs, *supra* note 14.

or oversee the use of AI.[18] This data reflects significant concerns over the potential consequences arising from lack of legal clarity surrounding AI if left unaddressed. As various industries continue to produce works using AI, clear and predictable policies on copyrightability of AI-generated works is critical. Development of AI requires executive leaders in organizations and corporations to embrace generative AI's unique opportunities for long-term success, where only "[u]nified and consistent governance are the rails on which AI can speed forward."[19]

Without copyright protection for AI-generated works which are thrown into the public domain, free-riders can plagiarize and exploit the works and investments of others who remain uncompensated, disincentivizing use of and innovation in AI. The Ninth Circuit previously held that animals cannot sue under the Copyright Act due largely to absent statutory authority, and lack of "humanity" implied by family relations and property interests that animals typically cannot possess or convey.[20] Practically, corporations which lack family relations nonetheless retain the right to hold copyrights and sue under copyright law, considering the financial interest corporations hold in such works. Similarly, while AI lacks traditional "humanity,"

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18. *See* Colleen McClain et al., *How the U.S. Public and AI Experts View Artificial Intelligence*, Pew Rsch. Ctr. (Apr. 3, 2025), https://www.pewresearch.org/internet/2025/04/03/how-the-us-public-and-ai-experts-view-artificial-intelligence/.

19. *The great acceleration: CIO perspectives on generative AI*, MIT Tec. Rev. (July 18, 2023) https://www.technologyreview.com/2023/07/18/1076423/the-great-acceleration-cio-perspectives-on-generative-ai/.

20. *See* Naruto v. Slater, 888 F.3d 418, 426 (9th Cir. 2018).

like corporations there is a financial interest in an AI's creations for end-users prompting the AI for any number of personal, business, or charitable purposes, and real risk for AI investments to be exploited by free-riders if left to the public domain.

The U.S. is a leader of creative industries, yet the lower court's interpretation of copyright law requiring human authorship threatens future investments in AI and disregards the spirit of the Copyright Act. Categorically denying copyright protection to such works introduces profound uncertainty, disincentivizes innovation, and limits the ability of artists to express their works through experimental forms of generative AI, subsequently hindering artistic, cultural, and technological progress. If AI-generated works are not provided copyright, the U.S. could lose traditionally risk-averse professionals and corporations to other more appealing jurisdictions which welcome the use of, and investment in, AI for creative works in exchange for copyright protection.

III. Copyright Office Guidelines are Unclear and Unmanageable by Applicants

The lower court misapplied copyright law by construing the human-authorship requirement as a prerequisite to copyright registration.[21] With this interpretation forcing AI-generated works into the public domain without protection. Even authors and companies when creating, programming and uploading their data to AI system that is independently developed, extensively

21. See Thaler v. Perlmutter, 130 F.4th 1039, 1051 (D.C. Cir. 2025).

trained, and supplied with proprietary data lose all rights and protections over its outputs.

The interpretation adopted by the lower court erroneously follows Copyright Office guidelines which vaguely require AI-generated works contain "sufficient human authorship" to establish a copyright claim.[22] These guidelines are unworkable, impracticable, and create uncertainty among authors and within the creative industries.[23] There appears to be no case in the U.S. where copyright protection has been granted for works utilizing AI, even when substantial human contribution was demonstrated.

Strict adherence to paradoxical Copyright Office guidelines has resulted in several cases where works with significant human contribution have been rejected copyright protection. User selection and arrangement of creative elements in a work were found insufficient to establish authorship when AI tools were utilized.[24] Copyright registration was likewise denied despite user control and prompting to properly adjust an AI-generated

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22. *See id.*; Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence, 88 Fed. Reg. 16190, 16192 (Mar. 16, 2023).

23. *See* Atreya Mathur, *Recent Developments in AI, Art & Copyright*, Ctr for Art L. (Mar. 4, 2025), https://itsartlaw.org/art-law/recent-developments-in-ai-art-copyright-copyright-office-report-new-registrations/.

24. *See* Copyright Office, Re: Second Request for Reconsideration for Refusal to Register SURYAST (SR # 1-11016599571; Correspondence ID: 1-5PR2XKJ) (Dec. 11, 2023) https://www.copyright.gov/rulings-filings/review-board/docs/SURYAST.pdf.

image to achieve the user's vision.[25] Ongoing District of Colorado case *Allen v. Perlmutter* illustrates that even over 600 prompts displaying an applicant's creative control to express his personal conception of an AI-generated image was insufficient for the Copyright Office.[26] In Dr. Thaler's case, despite his substantial contributions designing, programming, training, and curating his AI system,[27] all judicial bodies have denied his creative contributions as sufficient, again demonstrating the lack of reliable assurances over use of generative AI tools from the Copyright Office, and depriving him of rights over the very works his efforts enabled.

The lower court's contradictory reasoning opposes the traditionally broad interpretation of the Copyright Act and discourages those in the creative industry from publicly sharing their works if using AI, and may inadvertently discourage artists from using established software such as procedural generation or algorithmic assistance programs. With unclear guidance, although the Copyright Office's guidelines necessitate a "case-by-case inquiry,"[28] they burden applicants who may strive to follow their guidelines and ultimately face rejection depending on how the guidelines are applied. If this Honorable Court finds that such works are indeed distinguishable,

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25. Copyright Office, Re: Zarya of the Dawn (Registration # VAu001480196) (Feb. 21, 2023), https://www.copyright.gov/docs/zarya-of-the-dawn.pdf.

26. *See* Complaint at 21, Allen v. Perlmutter, No. 1:24cv2665 (D. Colo filed Sept. 26, 2024).

27. *See id.* at 1043–44.

28. See 88 Fed. Reg. at 16192.

then given the lack of clear guidance, further clarification and concrete guidelines are essential. The Copyright Office's position stems from a narrow interpretation of the Supreme Court's definition of "author" (human only)—an interpretation this brief argues is partial and therefore flawed, as the work made for hire doctrine reflects.

IV. Uncertainty Regarding Rights to AI-Generated Works Causes a Chilling Effect that Harms the Economy

Academic studies demonstrate that uncertainty generally encourages evasive action, exiting of the marketplace, and "large-scale adoption of unproductive or even destructive entrepreneurship;"[29] undesirable effects for the U.S. economy. Conversely, even limited copyright protection could stimulate the marketplace by reducing uncertainty and promoting confidence and stability in the market. Most jobs in the arts, design, entertainment, sports, and media-related occupations are likely to be using AI systems.[30] Where AI is already a pervasive element in these industries, this Honorable Court could significantly benefit the U.S. by providing clarity on what copyright protections AI-generated works are warranted.

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29. Per L. Bylund & Matthew McCaffery, *A Theory of Entrepreneurship and Institutional Uncertainty*, 32 J. Bus. Venturing 461, 472 (2017).

30. *See* Joseph Briggs & Devesh Kodnani, *The Potentially Large Effects of Artificial Intelligence on Economic Growth*, Goldman Sachs 9–10 (Mar. 26, 2023), https://www.gspublishing.com/content/research/en/reports/2023/03/27/d64e052b-0f6e-45d7-967b-d7be35fabd16.pdf.

V. Excluding AI Works May Disproportionately Harm Individual Creators and Small Businesses, Exacerbating Inequality

89% of small businesses in the U.S. are leveraging AI for automating tasks relevant to data analysis, marketing, and public relations, with 60% seeing positive changes in productivity and employee satisfaction.[31] According to the Census Bureau, businesses with less than four employees increased adoption of AI by 4.6%–5.8% since 2023,[32] with American Express observing that 38% of small businesses expect AI to define top business trends for the near future.[33] If AI-generated works are thrown into the public domain, small businesses would thus experience significant burdens for their use of innovative AI technology to increase business efficiency and lower operational costs.

Copyright for AI works would even promote equity and level the playing field for artists with disabilities. According to the Americans with Disabilities Act, accommodation for people with disabilities may include equipment based on

31. *See* Miles Chandler et al., AI in Business 5 (2025).

32. *See* Emin Dinlersoz & Nathan Goldschlag, *Is AI Use Increasing Among Small Businesses*, U.S. Census Bureau (Dec. 3, 2024), https://www.census.gov/newsroom/blogs/research-matters/2024/12/ai-use-small-businesses.html.

33. *See Amex Trendex: How Small Businesses Are Navigating an Evolving Customer Landscape*, Am. Express (May 1, 2025), https://www.americanexpress.com/en-us/newsroom/articles/shop-small/amex-trendex—how-small-businesses-are-navigating-an-evolving-cu.html.

an individual's needs.[34] Where approximately 28.7% of all U.S. adults experience some form of disability,[35] and 6.6% of all U.S. artists had a disability in 2022,[36] AI can be such a specialized tool providing an opportunity for those otherwise unable to engage in creative processes. Audio tools allow individuals to vocalize prompts for AI-generated images, providing opportunities for disabled artists to monetize their creations.[37] One example is Sean Aaberg, image designer for the board game *Dungeon Degenerates*, who could continue his artistic career and passion after suffering a stroke by using generative AI.[38]

Creativity takes on many forms. Discounting AI-generated works from copyright disadvantages disabled artists, individual creators, and small businesses, preventing meaningful engagement in creative industries.

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34. *See* Americans with Disabilities Act, 42 U.S.C. §12111(9).

35. *See Disability Impacts All of Us*, CDC (July 15, 2024), https://www.cdc.gov/disability-and-health/articles-documents/disability-impacts-all-of-us-infographic.html.

36. *See Artists in the Workforce*, Nat'l Endowment for the Arts 10 (July 2022), https://www.arts.gov/sites/default/files/Artists-in-the-Workforce-Selected-Demographic-Characteristics-Prior-to-COVID%E2%80%9019.pdf.

37. *See* Brief for Stephen Thaler as Amici Curiae Supporting Appellee at 34–35, Thaler v. Perlmutter, 130 F.4th 1039 (D.C. Cir. 2025).

38. *See id.*; Dale Rappaneau, *Art-generating AI as an accessibility tool for disabled artists*, The Techtualist (Jan. 25, 2023), https://techtualist.substack.com/p/art-generating-ai-as-an-accessibility.

VI. Copyright Law Long Predates the Advancement of AI Technology

The 1976 U.S. Copyright Act does not explicitly or adequately anticipate recent advancements in AI technology beyond general legislative deliberation on the storage, processing, retrieval, transfer, and use of copyrighted material by computers, which is otherwise inapplicable to Dr. Thaler's case of generative AI creating artistic works.[39] Statutory framework of the Copyright Act which fails to account for advanced generative AI in the "3A Era"[40] must adapt to reflect current widespread use and potential of AI in creative sectors and businesses.

VII. The Supreme Court Broadened its Interpretations of Copyright Upon Introduction of New Technologies to Safeguard Creativity

Copyright law must adapt alongside technological advancements as it has in previous cases decided by this Court. *Burrow-Giles Lithographic v. Sarony* raised questions on the copyrightability of photographs when camera technology was still relatively new.[41] This Court ruled that despite being captured by a camera, a nonhuman machine, the user's arrangement, selection, and determination of the scene for the photograph

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39. *See* H.R. Rep. No. 94-1476, at 116 (1976).

40. See Shlomit Yanisky-Ravid, *Generating Rembrandt: Artificial Intelligence, Copyright, and Accountability in the 3a Era-The Human-Like Authors Are Already Here-A New Model*, 2017 Mich. State L. Rev. 659, 663 (2017).

41. *See* Burrow-Giles Lithographic Co. v. Sarony, 111 U.S. 53, 54–55 (1884).

classified as authorship and warranted copyright.[42] Where this Court then stated that photographs captured by cameras constituted "original intellectual conceptions of the author,"[43] so too, here, should AI-generated works as new technology constitute the intellectual conceptions of its author.

In *Bleinstein v. Donaldson Lithographic Co.*, this Court found that copyright protection covered original chromolithographs used for advertisements.[44] Relevant to streaming services, this Court in *ABC, Inc. v. Aereo, Inc.* found copyrights for broadcasters were warranted broader protections where a streaming service infringed on broadcasters' exclusive right to perform under their copyright by allowing individual users to capture and restream the broadcaster's signals.[45] In 2021, this court in *Google, LLC v. Oracle America, Inc.*, expanded fair use in copyright law to permit limited copying of programming code in order to promote the progress of science and useful arts.[46]

With Dr. Thaler's case, this Honorable Court should once again broaden its interpretation of copyright to include AI-generated works, an advancing technology on the forefront of evolving artistic expression, businesses, and governance.

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42. *See id.* at 58–60.

43. *Id.* at 58.

44. *See* Bleistein v. Donaldson Lithographing Co., 188 U.S. 239, 250–51 (1903).

45. *See* ABC, Inc. v. Aereo, Inc., 573 U.S. 431, 448–49 (2014).

46. *See* Google LLC v. Oracle Am., *Inc.*, 593 U.S. 1, 40 (2021).

VIII. The Goals of Copyright Regime

This Court has consistently recognized that the primary goal of U.S. copyright law is to promote public welfare by providing economic incentives to creators in the arts and sciences,[47] with copyright law providing "the best way" to achieve that goal.[48] Granting exclusive rights to control and profit from copyrighted works creates economic incentives for creators to originate and distribute new works, ultimately enriching the nation's artistic and intellectual environment.[49]

The labor and personality theories are dominant justifications behind copyright regime.[50] Labor theory is rooted in the Lockean belief that one should own the fruits of their labor by virtue of the labor itself.[51] Under the personality theory, an author's work expresses their personality and individuality, giving rise to moral and economic rights, thus justifying protection.[52] While these

47. *See generally* Yanisky-Ravid, *supra* note 39.

48. *Mazer v. Stein*, 347 U.S. 201, 219 (1954).

49. *See* Yanisky-Ravid, *supra* note 39, at 705–06.

50. *See* Shlomit Yanisky-Ravid, *The Hidden Though Flourishing Justification of Intellectual Property Laws: Distributive Justice, National Versus International Approaches*, 21 Lewis & Clark L.Rev. 1, 4–9 (2017).

51. *See id.* at 9–10.

52. *See* Justin Hughes, *The Personality Interest of Artists and Inventors in Intellectual Property*, 16 Cardozo Arts & Ent. L.J. 81, 83 (1998).

theories are not as applicable to AI,[53] the ultimate main goal of the U.S. copyright law is nonetheless to stimulate artistic creativity for the public good. Furthermore, the Court acknowledged a shift away from the labor theory, stating that "originality, not 'sweat of the brow,' is the touchstone of copyright protection."[54]

A lack of copyright protection for AI-generated works, though, is inconsistent with law and economics theory, the dominant U.S. justification for copyright.[55] Copyright protection gives assurances that investments in creative projects are secure from unauthorized copying. By building a reliable legal framework for protection, financial risk is reduced and funding needed to produce capital-intensive works is promoted.

To deny Dr. Thaler copyright ownership would produce a troubling asymmetry: those that invest substantial resources into programming their own AI systems, curating proprietary datasets, and directing outputs would, under the lower court's interpretation, be divested of rights in, and the safety of economically exploiting, their works merely because the final expression lacks traditional direct human authorship while missing the main goal of U.S. copyright regime.

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53. *See* Yanisky-Ravid, *supra* note 39, at 682.

54. *See* Feist Publ'ns v. Rural Tel. Serv., 499 U.S. 340, 359–60 (1991).

55. *See generally* Yanisky-Ravid, *supra* note 39.

IX. Authorship of AI-Generated Works Under Work Made for Hire Doctrine, the "Control" and "Predictability" Tests

Copyright law already accommodates nonhuman authors—corporations—through the Work Made for Hire Doctrine.[56] This doctrine vests copyright in employers or a commissioning party as legal authors of a work, rather than an employee or contractor who actually created the work.[57] The employer or hiring party therefore retains the right to control the work product and accepts responsibility regarding copyright infringement caused by the work.[58]

The Work Made for Hire doctrine properly reflects the human-like, autonomous, creative, and independent features of AI systems analogous to employees or contractors, and provides a practical answer already codified into law to the question of copyrightability of AI-generated works.[59] By treating AI systems similarly to employees or contractors while assigning ownership and accountability to the end-users or owners of these AI systems, careful use of AI to avoid infringement would be encouraged and enable the legal system to regulate their outputs.[60] Applying this model may even promote accountability in other areas, like criminal and

56. *See* 17 U.S.C. §201(b); Annemarie Bridy, *The Evolution of Authorship: Work Made by Code*, 39 Colum. J.L. & Arts 395, 400–01 (2016).

57. *See* 17 U.S.C. §201(b).

58. 17 U.S.C. §§101, 201.

59. *See* Yanisky-Ravid, *supra* note 39, at 716–18.

60. *See id.*

tort law, which face similar accountability concerns for harms caused by autonomous systems.[61] Applying this established doctrine to AI preserves legal stability, rather than rendering existing copyright laws outdated and obsolete.

In U.S. Copyright Office Copyright and Artificial Intelligence, Part 2: Copyrightability: the office use the predictability and control of expressive elements tests as key criteria to deny copyright protection for AI-generated works, as the work fails authorship test, when the human's role was limited and the AI, rather than the human author, under this view, determined the expressive outcome. However, the user and more so Dr. Thaler who made the major contribution's expressive intent and decision-making in choosing the result, dominate the outcome, exercise meaningful creative control analogous to a photographer composing a shot or a director shaping a film, justifying full copyright protection for the resulting AI-generated artwork. Moreover, Copyright law has never required predictability—spontaneous or experimental works, like improvised jazz or wildlife photography, remain protected so long as they result from human creative conception. Likewise, artists or other users using AI to achieve certain result such as painting, especially when contributing to the programing and training, such as the case of Dr. Thaler—act as true authors. Therefore, the inherent unpredictability of AI tools should not negate protection.

61. *See id.* at 678.

X. AI Can Be Deemed Authors for Doing the Lion's Share of Work

Alternatively, the 9th Circuit has acknowledged that copyright protection for a computer program may extend to its generated outputs if the program completes the "lion's share" of creative work when the user's role is minimal.[62] Where copyright law seeks to incentivize creators to develop the arts and sciences, copyright can still subsist in AI-generated works when an AI engages in its own complex creative processes even where end-user input is relatively limited.

XI. Comparative Overview

U.S. copyright law must expand beyond restrictive human authorship constraints in order to embrace AI innovation in content creation amid rapid technological advancement where international allies and competitors already recognize the copyrightability of AI-generated works.

Copyright for computer-generated works without direct human authorship is an established legal reality in multiple jurisdictions. The U.K.,[63] Ireland,[64] New

62. *See* Rearden LLC v. Walt Disney Co., 293 F. Supp. 3d 963, 969–70 (N.D. Cal. 2018).

63. *See* Copyright, Designs and Patents Act 1988, c. I, §9(3) (UK).

64. *See* Copyright and Related Rights Act 2000 (Act No. 28/2000), §§2(1), 21(f) (Ir.).

Zealand,[65] India,[66] South Africa,[67] and Hong Kong[68] all vest copyright of computer-generated works in the individual who undertook the necessary arrangements for a computer to independently generate a work, irrespective of direct human intervention in the creative process itself.

Furthermore, several jurisdictions began efforts to amend their respective copyright systems to adapt to AI. The U.K. declined to amend its copyright law to exclude AI-generated works after public consultations in 2021,[69] and is reanalyzing AI's position in copyright law following renewed public consultations in February 2025. Likewise, the U.K. since July 2025 established several working groups comprised of industry experts and enterprises to discuss legal frameworks to protect AI-generated outputs and the creative sector.[70]

E.U. Member States generally concur that AI-generated works fail to satisfy natural person authorship

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65. *See* Copyright Act 1994, §5(2)(a) (N.Z.).

66. *See* Copyright Act 1957, §2(d)(vi) (India).

67. *See* Copyright Act 98 of 1978 §1 (S. Afr.).

68. *See* Copyright Ordinance, (2022) Cap. 528, §11(3) (H.K.).

69. *See Consultation outcome*, U.K. Intell. Prop. Office, ¶¶29–30 (June 28, 2022), https://www.gov.uk/government/consultations/artificial-intelligence-and-ip-copyright-and-patents/outcome/artificial-intelligence-and-intellectual-property-copyright-and-patents-government-response-to-consultation.

70. *See Creative and AI sectors kick-off next steps in finding solutions to AI and copyright*, U.K. Gov't (July 13, 2025), https://www.gov.uk/government/news/creative-and-ai-sectors-kick-off-next-steps-in-finding-solutions-to-ai-and-copyright.

requirements necessary for copyright protection, but recognize AI-assisted works may on a case-by-case basis obtain copyright.[71] Nonetheless, September 2023 legislation in the French Parliament would vest copyright for AI-generated works in the prompter making conception of a work possible.[72] While the bill has yet to develop, French President Emanuel Macron recently acknowledged at the AI Action Summit in February 2025 that Europe must deregulate in order to remain a globally attractive environment for AI investments.[73]

Japan, like the U.S., has no explicit provision in its Copyright Act recognizing authorship of computer-generated works without direct human authorship.[74]

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71. *See Policy questionnaire on the relationship between generative Artificial Intelligence and*

copyright and related rights, Council of the E.U. 16–17 (Dec. 20, 2024),

https://data.consilium.europa.eu/doc/document/ST-16710-2024-REV-1/en/pdf.

72. *See Proposition de loi no 1630 du 12 septembre 2023 visant à encadrer l'intelligence artificielle par le droit d'auteur* [*bill no 1630 of September 12, 2023, to regulate artificial intelligence through copyright law*], Assemblée Nationale [National Assembly], https://www.assemblee-nationale.fr/dyn/16/textes/l16b1630_proposition-loi# (last visited July 31, 2025).

73. *See Clôture de la première journée du Sommet pour l'action sur l'IA* [*Closing of the first day of the AI Action Summit*], Élysée (Feb. 10, 2025), https://www.elysee.fr/emmanuel-macron/2025/02/10/cloture-de-la-premiere-journee-du-sommet-pour-laction-sur-lia.

74. *See* Chosakukenh [Copyright Act], Act No. 48 of 1970, art. 2(i) (Japan).

Nonetheless, Japan's Copyright Office published a May 2024 guidance dictating that AI-generated works could on a case-by-case basis warrant copyright if individual users display sufficient human creativity.[75] Japan's Copyright Office explicitly aims to develop copyright law fostering a "mutually beneficial relationship" between AI and creative industries,[76] complementing its 2019 amendment to the Copyright Act permitting broad exploitation of copyrighted works for AI training without consent from the copyright holder.[77]

In November 2023, China first recognized copyright of an AI-generated work when the Beijing Internet Court in *Li v. Liu* deemed the prompter displayed sufficient intellectual and creative input in prompting the AI.[78] Another Chinese municipal court held similarly in March 2025 when an AI-generated image was taken, marketed, and economically exploited by a copyright infringing defendant.[79] These recent decisions harmonize AI's

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75. *See General Understanding on AI and Copyright in Japan*, Agency for Cultural Aff. 16–17 (May 2024), https://www.bunka.go.jp/english/policy/copyright/pdf/94055801_01.pdf.

76. *See id.* at 19.

77. *See* Chosakukenhō [Copyright Act], Act No. 48 of 1970, art. 30-4 (Japan).

78. *See* 李某某诉刘某某侵害作品署名权, 信息网络传播权纠纷案[Li v. Liu, Dispute over Copyright Infringement of the Right of Attribution and Right of Information Network Distribution of Works], at 11–13 (Beijing Internet Ct. Nov. 27, 2023),

https://english.bjinternetcourt.gov.cn/pdf/BeijingInternetCourtCivilJudgment112792023.pdf.

79. *See* 常熟市人民法院 [Changshu Municipal People's Court], 关注!常熟法院作出江苏首例、全国第二例 AIGC 著作权

technological advancement and China's copyright law which otherwise requires human authorship.[80] A Senior Judge of the Supreme People's Court of China even emphasized that AI does not fundamentally alter Chinese copyright doctrine where human input remains.[81]

These Chinese decisions likewise reflect adherence to China's 2017 New Generation AI Development Plan which detailed the government's strategy to improve innovation in the AI creative industry by developing AI intellectual property rights.[82] In a 2024 study of contemporary artists in China, the vast majority now use AI during their

侵权案件, 实现"人与科技"美美与共 [*Changshu Court has rendered AI-generated-content copyright-infringement judgment*], WeiXin [WeChat] (Mar. 7, 2025), https://mp.weixin.qq.com/s/qKuRwkVFwGem8UaVjfyjiA. *But cf.* Seagull Song, *Chinese Court Found AI-Generated Pictures Not Copyrightable*, King & Wood Mallesons (Sept. 11, 2025), https://www.kwm.com/cn/en/insights/latest-thinking/chinese-court-found-ai-generated-pictures-not-copyrightable-convergence-with-the-us-standard.html (holding against a prompter displaying insufficient creative input).

80. *See* 著作权法 [Copyright Law] (promulgated by the Standing Comm. Nat'l People's Cong., Feb 26, 2010, effective April 1, 2010), art. 11 (China).

81. *See* Zhou Bo, *Artificial Intelligence and Copyright Protection—Judicial Practice in Chinese Courts*, World Intell. Prop. Org. 4 (2020), https://www.wipo.int/export/sites/www/about-ip/en/artificial_intelligence/conversation_ip_ai/pdf/ms_china_1_en.pdf.

82. *See* 国务院关于印发 新一代人工智能发展规划的通知 [*Notice of the State Council on Issuing the New Generation Artificial Intelligence Development Plan*], China St. Council 12, 25–26 (July 20, 2017) https://d1y8sb8igg2f8e.cloudfront.net/documents/translation-fulltext-8.1.17.pdf.

creative processes.[83] Having competed with the U.K. since 2017 for the position of second largest international art market, art experts now expect China to compete with the U.S. in fostering the most attractive environment for AI-driven art innovation.[84]

The U.S. risks its position as an attractive market for investment in AI where other jurisdictions are already adapting their copyright systems. Recognizing this and seeking to protect investments in AI,[85] the state of Arkansas passed legislation which explicitly recognizes a prompter's ownership over original AI-generated outputs.[86]

In the patent world, Switzerland's Federal Administrative Court, in June 2025, recognized Dr. Thaler as the inventor for a patent application of an AI-generated invention created by his AI system DABUS.[87] While the

83. *See* Emma Duester & Ruyin Zhang, *Digital and AI transformation in the contemporary art industry in China*, 3(2) Arts & Commc'n 1, 8–10 (2024).

84. *See* Clare McAndrew, Arts Economics, The Art Basel & UBS Art Market Report 2025 24, 40–41 (Jeni Fulton & Lesley Kilmurray eds., 2025).

85. *See Regarding the Ownership of Model Training and Content Generated by a Generative Artificial Intelligence Tool: Hearing on HB1876 Before S. Public Transportation, Technology & Legislative Affairs*, 95th Gen. Assemb. (Ark. 2025) (statement by Rep. Scott Richardson), https://sg001-harmony.sliq.net/00284/Harmony/en/PowerBrowser/PowerBrowserV2/20250414/-1/31088?mediaStartTime=20250414094345.

86. *See* Ark. Code Ann. §18-4-101 (West 2025).

87. *See* Bundesverwaltungsgericht [BVGE] [Federal Administrative Court] June 26, 2025, 12, 15 B-2532/2024 (Switz.).

court reaffirmed that Swiss patent law traditionally requires human authorship, the court acknowledged that legislators could not have predicted AI inventorship during the legislative process, thereby warranting reinterpretation.[88] The court found Dr. Thaler sufficiently contributed to the invention by providing data to, training, and prompting DABUS, and by recognizing its generated output as a unique and protectable invention.[89] Analogously, just as the court recognized the patentability of AI-generated works, so too should Dr. Thaler's AI-generated painting qualify for copyright in light of his similar contributions.

Dr. Thaler's actions in programming, training, and instructing his AI[90] would suffice to attribute him authorship under comparative and advancing legal norms in numerous international jurisdictions, as well as the state of Arkansas. Denying copyright for such an AI-generated work would diverge from the legal approaches of other advanced economies, and undermine the constitutional and statutory objective of copyright.[91]

To safeguard global competitiveness, the U.S. federally must follow Arkansas' lead and affirm the benefit of copyright protection to AI-generated works. Where other jurisdictions demonstrate that copyright for AI-generated works is feasible through redevelopment of copyright

88. *See id.* at 10–11.

89. *See id.*

90. *See* Thaler v. Perlmutter, 130 F.4th 1039, 1043–44 (D.C. Cir. 2025).

91. *See id.* at 1042.

law, or in spite of human authorship requirements, this Honorable Court has the means to cultivate and advance copyright law to incentivize innovation in and use of AI technology.

XII. Loper Bright and the Future of Copyright: Affirming the Supreme Court's Exclusive Authority to Interpret Ambiguous Statutes

Dr. Thaler's case raises a straightforward yet nationally significant question: does the Copyright Act mandate 'human authorship' as a prerequisite for protection? The Act itself contains no such limitation,[92] yet the Copyright Office has denied registrations for works created with AI, relying on standards of its own making.[93]

Last year, this Court overruled the Chevron Doctrine in *Loper Bright Enterprises v. Raimondo*, ending deference to agency interpretations and reaffirming that the judiciary must interpret the law.[94] Where the Copyright Act is otherwise silent, the Copyright Office's categorical exclusion of AI-generated works is a prime example of agency overreach *Loper Bright* sought to eliminate.

It was this Honorable Court that declared the judicial branch cannot abdicate its interpretive authority

92. *See* 17 U.S.C. §102(a).

93. *See infra* Section IV; *Thaler*, 130 F.4th at 1043; Thaler v. Perlmutter, 687 F. Supp. 3d 140, 142 (D.D.C. 2023).

94. *See* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 412–13 (2024).

to administrative agencies simply because a statute is ambiguous or incomplete, greatly limiting agency deference believing that rule of law requires courts, not bureaucracies.[95] Following *Loper Bright*, this Court must now be willing to apply its own reasoning by hearing Dr. Thaler's case where the Copyright Office used its own interpretation of an ambiguous statutory clause to make binding determinations with far-reaching consequences.

Without clear statutory authorization, the Copyright Office has applied a rigid standard not tested by courts or subjected to democratic scrutiny.[96] There is no language requiring human creativity from "authors" in the Copyright Act, and courts have historically been flexible in extending copyright protection to new technologies.[97] AI is now this new technology at the forefront of creativity, innovation, and global economic competitiveness.

Dr. Thaler submitted a copyright application for a visual work that was entirely generated by an AI he developed and trained. The Copyright Office rejected the application based on its interpretation that nonhuman works cannot be protected under U.S. copyright law. The lower court upheld the agency's decision by deferring the Copyright Office's interpretation of the statute.[98] Since *Loper Bright*, courts must now exercise their own independent judgment in interpreting statutes rather than largely deferring to agency interpretation. The judiciary

95. *Id.* at 398.

96. *See generally* 17 U.S.C. §§408, 701(a), (b)(2).

97. *See infra* Section VIII.

98. *See Thaler*, 130 F.4th at 1045.

is directly responsible for determining what "author" means under the Copyright Act in the AI era, and must engage in judicial scrutiny over the Copyright Office's interpretation.

Despite the Copyright Office issuing a guidance in 2023 stating that their policy "does not mean that technological tools cannot be part of the creative process," the Office in the same guidance unclearly required "human authorship" for copyright protection and broadly detailed how using AI during the creative process will largely prevent copyright.[99] Justifying their reasoning, the Office likened AI prompts to commissioning an artist for a work, which under the Work Made for Hire Doctrine would otherwise grant the commissioner copyright.[100]

CONCLUSION

The uncertainty caused by the lower courts' decision and the U.S. copyright office confuses creators, investors, and companies, simultaneously discourages innovation, and leaves a vital area of economic and technological development in a legal gray zone. This Honorable Court should decide whether the law, as written, permits only human authors, while considering the wide-reaching use of AI and the effects of such an interpretation in creative industries. If this Honorable Court does not intervene, this status quo will remain. This Honorable Court has

99. Copyright Registration Guidance, *supra* note 21, at 16193. The Office reiterated this stance in subsequent reports. *See Copyright and Artificial Intelligence*, *supra* note 4.

100. *See* Copyright Registration Guidance, *supra* note 21, at 16192.

already held centuries ago that interpreting the law is constitutionally its prerogative.[101] This case presents the opportunity to engage with that prerogative, in light of its recent decision in *Loper Bright*, and a restrictive agency interpretation with profound consequences.

Respectfully submitted,

Michael R. Weiner
Counsel of Record
Ryan N. Phelan
Isaku Begert
Marshall, Gerstein & Borun, LLP
233 South Wacker Drive, Suite 6300
Chicago, IL 60606
(312) 474-6300
mweiner@marshallip.com

Counsel for Amici Curiae

101. Marbury v. Madison, 5 U.S. 137, 177 (1803).

APPENDIX

TABLE OF APPENDICES

APPENDIX – AMICI

Professor Shlomit Yanisky-Ravid

Professor Lawrence Lessig

Professor Jonathan Marcelinus D'Silva

Professor Sean O'Brien

Professor Bulelani Jili

Dr. Patricia Vargas León

Dr. Ge Chen

Dr. Eirliani Abdul Rahman

Mr. Jonathan Rosenoer

Mr. Albert Wang

Mr. Panayotis Giorgos Agelarakis

Ms. Vanesa Aguay Guerra

Mr. Ethan Chiu

Mr. David Tannenbaum

Penn State Dickinson Law School IP Clinic