Do Artificial Intelligences Have Rights?

By Paul Engel

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- People have rights, but do computers?
- When you create something, you have the exclusive right over it for a period of time. These are called copyrights and patents.
- Does a computer program have the right to copyright its creations?

With the release of ChatGPT and other artificial intelligence (AI) applications, there has been a lot of speculation and downright assertions about our future. With over 30 years of experience in Information Technology (IT), I have more than a passing understanding of AI's, and have come to the conclusion that much of what I've heard is more science fiction than fact. A recent court case decided in the D.C. District Court revolved around one very important question. Do AIs have rights?

Artificial Intelligence

There's a lot of confusion out there about artificial intelligence. Some claim that AI's have the power of independent thought which will, one day, allow them to take over the world. Others write AI's off as nothing but a novelty. Based on my experience, the truth is somewhere in the middle.

I am not an expert on the current state of artificial

intelligence, but there are certain things I know to be true. Let's start with what an AI currently is. Today's AI's are, in general, sophisticated pattern matching software. What differentiates them from other types of software is their ability to "infer" a conclusion. For example, if you create a standard pattern matching algorithm designed to identify dogs in pictures, it can only match a picture of a dog it has already been programmed with. However, an AI designed to perform the same task will compare the pictures with what it has been trained with, and attempt to "infer" if a dog is present based on how closely it can match the images in its database. The process of adding known dog images to the AI's database is known as training. That's a very important point. AI's don't have an innate understanding of what a dog is. They must be trained, usually with thousands to millions of samples, for it to stand a chance of accurately inferring if there is a dog in a picture. This is how ChatGPT, Siri, and Google Assistance all work, but with words rather than images. It looks at what you have typed or spoken and compares that to its database to infer what you are asking for. Then it searches for what it thinks you want and returns it to you, whether that be the sports scores, playing a song, or compiling data into your latest term paper. With that in mind, let's look at the recent case Thaler v. Perlmutter.

Thaler v. Perlmutter

This case starts with a man, a computer, and a piece of art.

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.

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The important part of Mr Thaler's claim is not that he wants a copyright for the art, but that he wanted the computer to be listed as the "author". I find this a very dubious claim, since he clearly wants the copyright for himself, and I'm not the only one suspicious of Mr. Thaler's copyright application.

The Copyright Office denied the application on the grounds that the work lacked human authorship, a prerequisite for a valid copyright to issue, in the view of the Register of Copyrights.

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Shira Perlmutter is the Register of Copyrights and Director of the United States Copyright Office. She is the one who ultimately denied Mr. Thaler's application for one simple reason. Listing the computer system "Creativity Machine" as the author would mean there was no human authorship, thereby making the application invalid. This, to me, is the crux of the matter. Do computer systems have property rights?

Property Rights

To properly analyze this question, we have to understand what property is.

This term in its particular application means "that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual."

In its larger and juster meaning, it embraces every thing to which a man may attach a value and have a right; and which leaves to every one else the like advantage.

James Madison – Property – For the National Gazette, 27 March 1792

Property is that which someone holds dominion over. Mr. Madison specifically refers to a man here, but I want to discuss that later in the article. So, can a computer system

hold dominion and exercise control over external things? In some cases, yes, but in the case of a piece of art, no. Even if "Creativity Machine" has the ability to interact with external things, it cannot hold dominion over them, since it is owned by Mr. Thaler. Which brings us to the question of "free will".

He has an equal property in the free use of his faculties and free choice of the objects on which to employ them.

James Madison – Property – For the National Gazette, 27 March 1792

"Creativity Machine" did not have the free use of its faculties; it was programmed to make visual art. It did not have a free choice of what to create, it was instructed to create a picture. So by all aspects of Mr. Madison's words, the art in question was not the property of "Creative Machine", rather it was the property of Mr. Thaler. This is confirmed by Mr. Thaler's own application for copyright since he claimed "the copyright should transfer to him as the owner of the machine."

Copyright

Next, we need to look at the question of copyright. In Article I, Section 8, Clause 8, Congress is delegated the power:

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. Constitution, Article I, Section 8, Clause 8

Congress can make laws granting authors exclusive right to their writings. Is "Creative Machine" an author? Copyright law (Title 17, U.S.C.), does not define the word "author", so let us look at a couple of other sources.

***AU'THOR**, noun One who produces, creates, or brings into being;*

Author – Webster's 1828 Dictionary

"Creative Machine" did produce the art. Does that make it the author? If an author is "one who produces", then we need to look at the definition of "one" in this context.

ONE *is used indefinitely for any person;*

One – Webster's 1828 Dictionary

one *used as a third person substitute for a first person pronoun*

One – Merriam-Webster's Online Dictionary

Since "one" in this context is a pronoun used for a person, "Creative Machine" is not an author because it is not a person. The court came to a similar conclusion, although by a much longer method.

The 1976 Act's "authorship" requirement as presumptively being human rests on centuries of settled understanding.

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The blurring of the lines between man and machine made products will most definitely lead to future confusion.

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. …

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However, there does appear to be some questionable aspects in Mr. Thaler's claim.

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," …—implying that he played a controlling role in generating the work—these statements directly contradict the administrative record. … 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."

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Conclusion

It should be obvious to everyone that we are heading into a brave new world. One where machines will act more and more autonomously, thereby decreasing human involvement. While this will be a tremendous boon to productivity, it also raises serious concerns. This case involved the question of authorship and whether a computer system had the right to own and control its creations. Today, in this court and this case, the answer is no. This case, however, does bring to light a potential issue.

What happens if one day a court decides that an author does not need to be human? Could an AI own, as property, the copyright for more than just a work of art? Could a machine hold the patent for a drug or vaccine? Could an AI develop, and therefore own, a DNA sequence? Would it then own whatever the sequence is, be it for virus, cattle, or even a human?

Congress has the power to protect the works of authors and

inventors. As we enter this brave new world, perhaps we should make sure our employees in that body protect We the People by defining what an author is in the law.

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