

Anthropocentricity and Copyright Protection; A Theoretical Emphasis on the Human Authorship Requirement in Copyright after *Thaler v. Perlmutter*

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Abstract

The rapid development of Artificial Intelligence (AI) has created new avenues for creativity across diverse fields. While expanding the horizons of creativity, AI has also introduced a plethora of challenges to the intellectual property law regime. Copyright protection, as a cornerstone of intellectual property law, safeguards the moral rights and economic rights of authors who create original artistic, literary or scientific work utilising independent skill, thought and efforts. Thus, creations generated by utilising AI models via prompting, conflicting notions surrounding the ownership and authorship of the rights attached to such creations have been subjected to extensive debates. The recent decision in *Thaler v. Perlmutter* by the Court of Appeal for the District of Columbia Circuit has decisively addressed the debate pertaining to the ownership of copyright in AI generated works. The judgement cemented the view that copyright for works that are generated by AI platforms cannot be attributed to the AI system itself, depicting the quality of anthropocentricity. Thus, by employing the doctrinal and explorative approaches in qualitative research methodology, this study methodologically evaluates the judgement in *Thaler v. Perlmutter* with the goal of developing a conceptual foundation for the domain of authorship and property rights for AI generated works. The study drew upon the natural rights theory and personhood theory of intellectual property law for the purposes pertaining to the evaluation. The findings depict that *Thaler v. Perlmutter* reinforces the necessity of human authorship for copyright protection portraying conformity with the theoretical underpinnings of intellectual property law. At the same time, the study recognizes emerging calls for legal reforms to accommodate the evolving nature of creativity motivated by AI-related technologies.

Keywords: Artificial Intelligence; Copyright; Authorship; Works; Anthropocentricity

1. Introduction

Artificial Intelligence (AI) has become a pivotal technological tool that significantly influences human life in various dimensions, including creativity. Its widespread application across various

fields, such as medicine and education,¹ clearly demonstrates its rapid development, potential to improve living conditions and utility. Additionally, contributions of AI have attracted significant attention during the past few years due to its profound impact on the *status quo* in the domain of creativity. Traditionally, creativity was largely confined to the human mind and AI appears to have fundamentally changed the established traditional landscape on creativity.² Thus, consequently, a critical question arises inquiring whether the traditional notions pertaining to authorship of creations should be revised in response to the technological developments in the field of creativity. Ownership of creative work is closely intertwined with the intellectual property framework that provides means to create, protect and enforce rights pertaining to creative work. As intellectual property law is the branch of law that systematically seeks to ensure protection for the creations of the human mind through intellectual property rights, it is pivotal to address the issue of authorship of creative work in response to developments such as AI. Thus, this research is conducted to explore the theoretical underpinnings pertaining authorship rights, focusing on the decision in *Thaler v. Perlmutter* decided by the United States Court of Appeals for the District of Columbia Circuit to evaluate whether authorship rights can be vested in AI platforms for works generated, along with an emphasis on future prospects.

2. Materials and Methods

The study utilised the doctrinal legal analysis approach inspired by the qualitative research methodology. The research systematically examined relevant statutory provisions, scholarly literature and case laws for the purposes pertaining to evaluating the theoretical foundations underlying human authorship requirement in the domain of copyright in the context of AI generated works. Through an analytical view, the research employed the theoretical underpinnings depicted in the natural rights theory and personhood theory to identify and explore the core reasons for the decision in *Thaler v. Perlmutter* with the view of evaluating what lies in the future for authorship of AI generated works under the copyright regime of intellectual property law.

3. Discussion

¹ Nazia Rafiq and Maryam Ahmad, 'Impact of Artificial Intelligence on Students' Creativity in ODL: The Mediating Role of Happiness' [2025] AAOU Journal/AAOU Journal
<<https://www.emerald.com/insight/content/doi/10.1108/aaouj-01-2025-0010/full/html>> accessed 8 July 2025.

² Margaret A Boden, 'Creativity and Artificial Intelligence' (1998) 103 *Artificial Intelligence* 347
<http://www.ruskin.tv/maggiieb/downloads/Artificial_Intelligence_and_Creativity__Contradiction_in_Terms__.pdf> accessed 9 July 2025.

Authorship is related to the original creator of the work, irrespective of whether the creation is a literary, dramatic, artistic or musical work.³ Section 5 of the Sri Lankan Intellectual Property Act, No. 36 of 2003 defines 'author' as any physical person who has created the work. Similarly, in the context of the United States of America, 17 U.S.C. § 102(a) defines author/authors as a person or persons who has or have created a work of authorship. Thus, when the said provisions are interpreted literally, it is obvious that the law recognizes a human being as the author of any work. However, under circumstances where AI tools have begun to revolutionize the extent of creativity in the domain of artistic and literary work, it is fair to presume that the traditional understanding pertaining to authorship is challenged.

Signifying such a challenge, the issue in *Thaler v. Perlmutter* revolved around the authorship of a visual art developed by an AI application referred to as the 'Creativity Machine'. Thaler sought to register a work of art generated by 'Creativity Machine', identified as 'A Recent Entrance to Paradise,' designating 'Creativity Machine' as the sole author of the creation and himself as the work's owner. The Intellectual Property Office rejected the said application under the ground that the authorship of the work was attributed to the AI application, which is a non-natural author. In a case filed as an appeal against the said decision, court affirmed the decision of the Intellectual Property Office stating that 'The Creativity Machine' cannot be considered as the author of the copyrighted work since the Copyright Act of 1976 mandates all eligible work to be authored by a human being, cementing the focus on anthropocentricity when developing intellectual property rights over a creation. The court set out several reasons for the conclusion reached regarding authorship in the present case, which will be the focal points of the focus of the current research henceforth.

In *Thaler v. Perlmutter*, the court emphasized that ownership rights are contingent upon the author's legal capacity to hold property. This principle aligns with the legal provisions pertaining to copyright protection and ownership rights, specifically with 17 U.S.C. § 201(a) that establishes that the author immediately obtains the exclusive rights for his/her work after the work was created. Correspondingly, Sections 10(1) and 14(1) of the Intellectual Property Act, No. 36 of 2003 of Sri Lanka also vests moral and economic rights of the work to the author, a physical person who created the work. The said provisions emphasize that copyright ownership presupposes a human author with a personality that enables such person to possess, enjoy and transfer rights pertaining to the creation. Hence, a preliminary argument questioning the competence of AI applications to possess, enjoy and transfer rights regarding various creations can be raised. A similar legal query was considered in *Naruto v. Slater*⁴ where a legal battle for copyright ownership of a selfie taken by a crested black macaque called 'Naruto' emerged. The court reaffirmed the principle of human authorship requirement in the present case by stressing that

³ Joshy Thomas, Ciara Cullen and Sarah Mountain, 'Copyright – Authorship and Ownership | Legal Guidance | LexisNexis' (www.lexisnexis.co.uk, 13 September 2024) <<https://www.lexisnexis.co.uk/legal/guidance/copyright-authorship-ownership>> accessed 9 July 2025.

⁴ *Naruto, by and through His next Friends, People for the Ethical Treatment of Animals, Inc, Et al v David Slater, Et al* (The Ninth Circuit Court of Appeals).

the Copyright Act does not plainly extend the concept of authorship or legal standing before courts to animals.⁵

Thus, it appears appropriate to make a similar argument in the matter of AI and generated works. In the context of the theoretical underpinnings depicted in the natural rights theory introduced by John Locke, creators should have a natural right to the fruits of their labour.⁶ The justification for the said norm stems from the idea that the labour of an author to create something infuses their personality and creativity to the creation.⁷ Thus, an argument in this regard can be made stating that only a human has the capacity to exercise intentional and creative labour that justifies vesting exclusive rights over what has been created. Considering the said argument, AI-generated work generated through an AI application such as 'Creativity Machine' cannot be considered to have exercised the necessary degree of creativity that can be expected to bring about the creation to life. This makes it theoretically accurate to state that AI applications should not have a natural right to authorship of the created work. For instance, an artwork created by an AI application will be dependent on the prompt that is administered by the user when developing the work. Thus, it is questionable as to whether the work so created by AI was created under its own motion or due to a structured set of instructions imparted through the creativity of the user, in this case, a human being. However, it should further be noted that mere words may not constitute original work that can be protected by copyright. For instance, there is a difference between providing specific prompts and vague prompts, where which the AI platform will have to exercise a certain degree of creativity.⁸ Thus, to be the author of an AI driven work, the person claiming to be the author of the same should have also exercised a reasonable degree of creativity.⁹ Further to the same, the prompt alone will not determine the creativity depicted in the end result because AI can generate content based on learned patterns via complex data sets. This appears to be a consideration that the court has not stressed during the judgement yet introduces a different dimension of thought to consider. However, since AI generated work is based on prompts, intrinsic creativity of AI appears to be questionable as well. This could be a limiting factor in considering AI's competency to be considered as authors of any work.

In the context of labour or efforts made to develop rights over a certain creation, there is no specific quantity of labour identified within the theoretical underpinnings of Locke's theory. Any resource in the commons that is available for all, can be subjected to the personal property rights of an individual based on the transformation brought about through mixing the same with the

⁵ Andres Guadamuz, 'Can the Monkey Selfie Case Teach Us Anything about Copyright Law?' (*Wipo.int*, 2018) <<https://www.wipo.int/web/wipo-magazine/articles/can-the-monkey-selfie-case-teach-us-anything-about-copyright-law-40287>> accessed 10 July 2025.

⁶ Mala Chatterjee, 'Lockean Copyright versus Lockean Property' (2020) 12 *Journal of Legal Analysis* 136.

⁷ David A. Simon, 'Copyright's Missing Personality' (2025) 62 *The Houston Law Review* 993 <<https://houstonlawreview.org/article/138618-copyright-s-missing-personality>> accessed 13 July 2025.

⁸ Muskan Lulla, Sahil Rajpurohit and Jignesh Vidani, 'The Impact of AI on Creative Thinking among Gen Z in Ahmedabad' (2024) 1 *Melas Journal of Education* 155.

⁹ Johannes Fritz, 'Understanding Authorship in Artificial Intelligence-Assisted Works' [2025] *Journal of Intellectual Property Law and Practice* <<https://academic.oup.com/jiplp/advance-article/doi/10.1093/jiplp/jpae119/7965768>> accessed 12 July 2025.

independent labour of the creator. Considering the said perspective, a question remains as to whether an AI application can develop rights over an output that is based on the creative insights of a user because there is a difference between a creator, and a tool utilised to create. The court, however, mentioned within the course of the judgement that at any instance where machines are referred to in the context of intellectual property law, they are identified merely as tools or means to reach a certain end, and not as authors or the creator. To justify the said statement, the courts directed attention towards 17 U.S.C. § 101 where a computer programme is defined as a set of instructions or statements that can be used directly or indirectly for the purpose of bringing about a certain 'result'. A similar stance can be observed in Section 5 of the Intellectual Property Act, No. 36 of 2003 where a computer programme is defined as a set of instructions laid down in code, words, schemes or any form that is capable, when incorporated in a form that the computer can read of performing a certain action of achieving a certain task.

If AI applications are vested with authorship rights over works created, would it reflect an instance where the rights pertaining to a creative dish is vested in the equipment utilised to prepare it rather than the chef himself/herself? When Lockean principles pertaining to the natural rights theory are considered, if a certain individual transforms a log into a chair, the property rights over the chair should rightfully vest in the creator as opposed to the equipment used to create the chair. Thus, in the context of creativity, tools used as a means and the source of creativity, due to their inherent differences, appears to favour the reasoning of the court under the natural rights theory.

Additionally, when considering the implications of the personhood theory, that posits the fact that creators have a right to their respective work because the work itself is a portrayal of their personality appears to validate the conclusions of the court regarding authorship. According to the personhood theory, the creation of an author and the personality of the author is intertwined.¹⁰ Creativity is a complex construct that can be considered using various measures. Given that there are structured attempts to inquire into personality and traits in deciding and predicting preferences of persons,¹¹ the personhood theory appears to provide practical perspectives pertaining to creativity, creations, rights regarding the creations. However, in the context of AI, a question remains as to whether AI applications themselves portray their personality through the creations that are generated or whether it is the user's creativity is portrayed, or rather reflected, through the AI application. The answer to the aforesaid question is contingent upon the capability of AI platforms to generate and maintain their own personality and the degree of independence exercised when creating copyright eligible work. Singh and Aarabhi concluded, after subjecting to standardised personality tests, that large language models

¹⁰ Jeb S Puryear, Todd Kettler and Anne N Rinn, 'Relating Personality and Creativity: Considering What and How We Measure' (2017) 53 *The Journal of Creative Behavior* 232.

¹¹ Adrian Furnham and John Walker, 'The Influence of Personality Traits, Previous Experience of Art, and Demographic Variables on Artistic Preference' (2001) 31 *Personality and Individual Differences* 997.

such as ChatGPT and LLAMA showed signs of internal consistent personality.¹² However, it can still be questioned as to whether such personality depicts a personality traits of a creator or whether such characteristics exhibits personality traits by way of mimicry, without possessing a unique personality or the ability to create independently as humans.

With arguments and research findings suggesting the capacity of a legal personality for AI, similar to companies,¹³ what lies in the future pertaining to the argument on personhood and personality will remain volatile and subject to changes and advancements. Yet, the implications pertaining to developing a personality depicting the capacity to engage in independent creativity and thought, considering the current state of AI models appears to incline towards or conform with the reasoning of the court in *Thaler v. Perlmutter*.

Additionally, the court has considered the lifespan of the author in deciding the case. The 17 U.S.C. § 302(a) and Section 13(1) of the Intellectual Property Act, No. 36 of 2003 specifies that the duration of the copyright within which the relevant work will be protected, is the lifespan of the author and for a further period of seventy years. Thus, the Copyright Office maintains records of the authors' death for the purpose of determining when copyright protection expires under 17 U.S.C. § 302(d). However, the length of operability of machines, including AI, cannot be measured in the same way as a human lifespan. This makes AI inherently incompatible with framework of the current section. Furthermore, the court has also referred to the provisions pertaining to work-made-for-hire where a Company may develop rights over certain creations. Referring to 17 U.S.C. § 302(e), the court expressed that for a certain corporation that owns copyright of a work created on the work-made-for-hire basis will expand for 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. Using the aforesaid provisions, an argument can be developed in favour of AI since companies can also be embedded with rights over work under intellectual property law. However, it should be noted that the basis under which a company can enforce rights over a copyright-eligible work is on the work-made-for-hire basis, not as the creator of the work.

4. Conclusion

The current research enumerates that the *Thaler v. Perlmutter* decision falls in line with the foundational principles in intellectual property law pertaining to human authorship. The theoretical framework surrounding the intellectual property continue to center on human authorship. Factors such as personality, legal capacity and creativity which often lays down concrete justifications and meaning in the context of a human creator agrees with the reasoning

¹² Umarpreet Singh and Parham Aarabhi, 'Can AI Have a Personality?', *2023 IEEE Conference on Artificial Intelligence (CAI)* (2023) <<https://ieeexplore.ieee.org/abstract/document/10194987/figures#figures>> accessed 13 July 2025.

¹³ Piotr Staszkiwicz and others, 'Artificial Intelligence Legal Personality and Accountability: Auditors' Accounts of Capabilities and Challenges for Instrument Boundary' (2024) 32 *Meditari Accountancy Research*.

depicted in the judgement. In such context, seeking authorship rights to be vested in AI platforms reflects an act of attempting to fit a square peg on a round hole. However, in an extremely volatile world where technology and societal norms are continuously advancing and changing, depicted by acts such as robots being granted citizenship rights,¹⁴ a change in the status quo of anthropocentric views pertaining to creativity appear to be imminent. However, such shifts lie within the exclusive domain of the legislative branch.

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¹⁴ Emily Reynolds, 'The Agony of Sophia, the World's First Robot Citizen Condemned to a Lifeless Career in Marketing' (*Wired*1 June 2018) <<https://www.wired.com/story/sophia-robot-citizen-womens-rights-detroit-become-human-hanson-robotics/>> accessed 14 September 2025.

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