This was NOT written by an AI.

It is frankly a shame that I must put on such a disclaimer, but Artificial Intelligence, or AI, technology has advanced so rapidly that messages like these can be completely written by AI programs like ChatGPT. There is no doubt in my mind that many of these AI-written messages have been submitted to the U.S. Copyright Office attempting to influence, in bulk, any semblance of regulation of AI technology. For this particular context, the pressing concern is the potential copyright status of any work generated by an AI program. In the interests of the human artistic spirit and its legal protections, I will explain why any AI creation should *not* receive any copyright protection.

It would be prudent to not disturb the legal precedence established both by this very Office and by federal Courts. Recall back in February of this year, the U.S. Copyright Office sent a memorandum letter back to Kristina Kashtanova who sought copyright protection for a comic that used art created by the AI program Midjourney[1]. In this letter penned by Robert Kasunic, the U.S. Copyright Office rejected copyright status for the AI art, stating that "...images generated by Midjourney contained within the Work are not original works of authorship protected by copyright" (RE: Zarya of the Dawn, Page 8). The Office iterated that "[they] 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." Such reasoning is very sensible, that a copyrightable work requires direct application of a human author to be considered a work, and that anything created by an automated process lacks this fundamental requirement. It is worth noting that the *story* of Kashtanova's comic would be subject to

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[1] https://copyright.gov/docs/zarya-of-the-dawn.pdf

copyright protection, for *that* aspect was wholly created by human hands. The D.C. district court had recently affirmed this understanding in a memorandum opinion of *Thaler v. Perlmutter*.[2]

In a background similar to Kashtanova, Steven Thaler attempted to file for copyright protection for an image he claimed was created in an AI image generation program. The U.S. Copyright Office rejected Thaler's application, citing that it "lacked human authorship, a prerequisite for a valid copyright to issue, in the view of the Register of Copyrights", *Thaler* at 1. Thaler filed a lawsuit against the U.S. Copyright Office in hopes of overturning such a determining, and on summary judgment, the D.C. District Court ruled in favor of the U.S. Copyright Office. In its opinion, the Court had a plain reading and understanding of the 1976 U.S. Copyright Act, stating that for copyright protection:

> "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," *Thaler* at 9, citing 17 U.S.C. § 10. "The "fixing" of the work in the tangible medium must be done "by or under the authority of the author. **In order to be eligible for copyright, then, a work must have an "author.""** *Id*, emphasis added.

In its further reading of the 1976 Copyright Act, the Court wrote that for one to claim authorship over a copyrighted work, the author or originator must be someone capable of "intellectual, creative, or artistic labor," *Id*. Succinctly, the Court stated that, "must that originator be a human being to claim copyright protection? The answer is yes." *Id*. Such a basic understanding that a creator of work must be human to receive copyright protection is one that has been rooted in decades of precedent, as the Court pointed out in citing the cases of *Kelley v.*

[2] https://law.justia.com/cases/federal/district-courts/district-of-columbia/dcdce/1:2022cv01564/243956/24/

Chicago Park District and *Naruto v. Slater*. As both the Copyright Office and now federal Courts are in agreement on this understanding of AI lacking copyright capability, I do not see any reason to disturb such precedence.

No doubt naysayers will claim that AI is merely a tool and is no different to the tools that proper artists use in the creation of their works. Such an argument is deeply flawed. To equate using an AI image program to an artist's paintbrush is like saying that using a car to "run" a marathon is the same as using a new pair of shoes to run said marathon. It is a comparison of two fundamentally different things. *Merriam-Webster's* dictionary defines "tool" as:

> "A handheld device that aids in accomplishing a task; something (such as an instrument or apparatus) used in performing an operation or necessary in the practice of a vocation or profession; an element of a computer program (such as a graphics application) that activates and controls a particular function." [3]

In essence, a tool is an item that is used to facilitate a task, often by lessening the effort required for completing a given task. Using larger paintbrushes, for example, alleviate the need to meticulously fill in gaps on an easel. A tool does not completely *remove* the efforts and requirements for human input, yet an AI program does just that. An AI program may act on several prompts that a user may input, but the actual creation of the artwork, from beginning to end, is done entirely without any human input. Outspoken defenders of AI art may claim that AI art generation is no different than the programs and tools afforded to digital artists in their digital art programs. Again, this is a severe case saying an apple is an orange.

When an artist creates a work in the digital medium, they often do so in an art program such as Clip Studio Paint. And there is no denying that such programs offer a multitude of tools and conveniences not afforded to traditional artists, such as the ability to "undo" progress, to fill

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[3] https://www.merriam-webster.com/dictionary/tool

in an area with color, to divide the work into layers rather than a singular canvas, or the ability to straighten or curve lines. Whatever the feature is, the working hands of an artist are still required. For progress of a work to be undone, progress has to be *made;* for an area to be filled in with color, the area has to be created and then the artist selects the area to be filled in; and for lines to be straightened or curved, the lines have to be *drawn* first. These digital tools do not activate with complete autonomy, as they are used at the express command of a human artist, and their usage is done in accordance to the artists' final vision. In contrast, AI art generation is *not* a tool for digital art, because it operates completely independently, doing so without the will or input of a human author, and lacks a final vision or even intention for what it is that it is creating. See the below screenshot of how a digital artist creates a work in one of these art programs:[4]
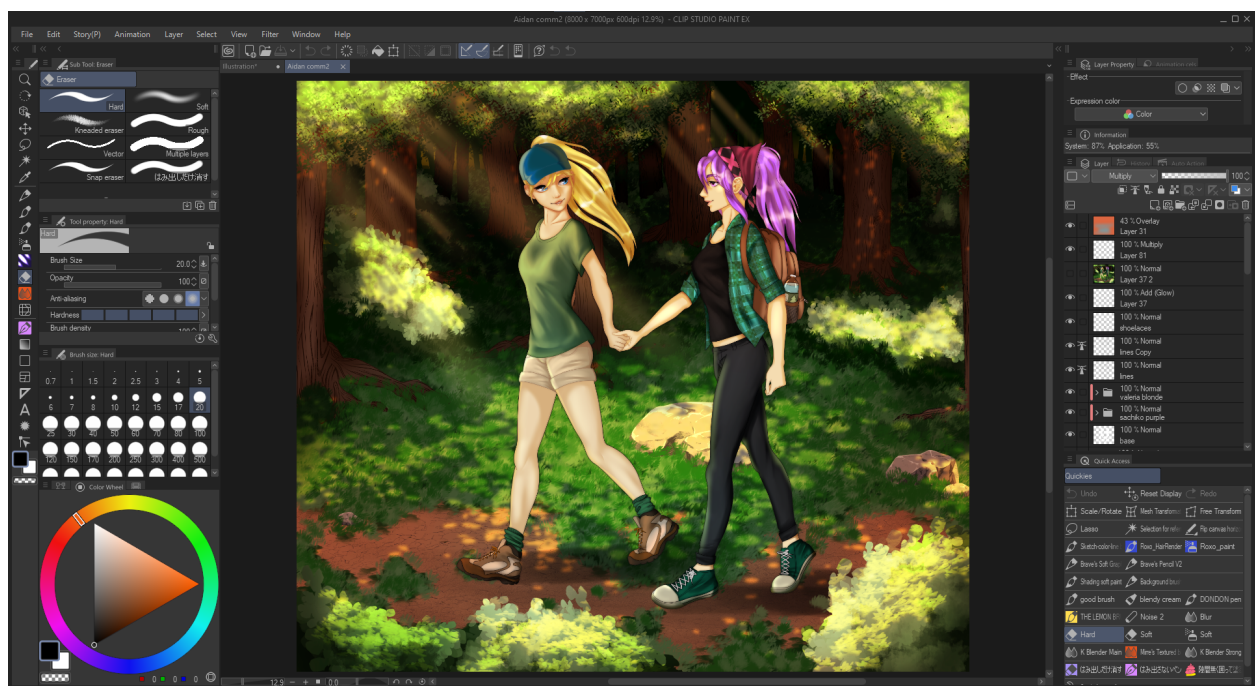
Any regular person may be utterly confused at what they may see, yet a digital artist understands all the tools on display and how they were used. The illustration shown was drawn entirely within Clip Studio Paint using only features available within the program. The linework,

the shading, the colors, the composition and other artistic aspects were created by the artist, intended by the artist, and expressed by the artist. An artist that uses tools utilizes them to create every intended detail in the work's creation as they work towards their end vision for it, while an AI program creates a work without any intention or end vision. And although this art does not exist in our physical world, it is still the novel creation of its artist and thus qualifies for copyright protection. Yet there would be those who claim that because they input prompts for the AI image program to follow, or that they edited the end image, that would then qualify to be sufficient human input for it to be subject to copyright protection. And yet again, an apple is not an orange.

This was actually addressed in the Copyright Office's memorandum letter to Kashtanova. In brief, AI image generation works on "prompts" or text-based criteria that an AI program is told to work from by skimming images associated with the prompts and generating an image resulting from it. As the U.S. Copyright Office pointed out, the AI image-generation is unpredictable and users lack any significant control over its outcome; users would often generate many images until they find the one that is desirable, yet even in this scenario, this would not qualify as an artist creating a work (RE: Zarya of the Dawn, Page 9). The Copyright Office further stated that the user-created prompts work as suggestions rather than orders, and thus there is no guarantee that the resulting image will be as they intended. In fact, the Copyright Office compares using AI image generation to a client commissioning an artist:

> "[P]rompts function closer to suggestions than orders, similar to the situation of a client who hires an artist to create an image with general directions as to its contents. If Ms. Kashtanova had commissioned a visual artist to produce an image containing "a holographic elderly white woman named Raya," where "[R]aya is

having curly hair and she is inside a spaceship," with directions that the image

have a similar mood or style to a "Star Trek spaceship," "a hologram," an "octane

render," "unreal engine," and be "cinematic" and "hyper detailed," Ms.

Kashtanova would not be the author of that image. [] Absent the legal

requirements for the work to qualify as a work made for hire, the author would be

the visual artist who received those instructions and determined how best to

express them. And if Ms. Kashtanova were to enter those terms into an image

search engine, she could not claim the images returned in response to her search

were "authored" by her, no matter how similar they were to her artistic vision."

Id.

In effect, a person trying to claim copyright over an AI image was actually "selecting" an image rather than creating it, further evidence that AI images lack the qualities necessary for copyright protection. One can view AI creations as public domain, owned by none and free to be used by all. And "touching up" or editing one of these AI images would not suffice to be subject for copyright protection either; Kashtanova presented some images that she claimed she edited, thus rendering her as the original author deserving of copyright protection. Such an argument was not accepted by the U.S. Copyright Office.

The images that Kashtanova presented as an example had only minor edits (e.g. slight adjustment of lips). It is humorous to think that such small edits would render such images to be automatically eligible for copyright, for the U.S. Copyright Office's own informational page for "Copyright Basics" mentions that these protections are intended for "original works of authorship".[5]

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[5] https://www.copyright.gov/circs/circ01.pdf

"The Office will register works that contain otherwise unprotectable material that has been edited, modified, or otherwise revised by a human author, but only if the new work contains a "sufficient amount of original authorship" to itself qualify for copyright protection." (RE: Zarya of the Dawn, Page 11). This is the equivalent of taking a public domain novel such as *Alice's Adventures in Wonderland,* changing a few words or paragraphs, then applying for copyright protection. Edits of these types lack the originality or novel element that is needed to demonstrate that a work was *created* by an author. Any form of "edits" would need to be substantial enough to be transformative or distinguishable from its source material. An example of this is how Disney adapts princess fairy tales, taking stories in the public domain, and presenting them in such a way to be so different and unique from its source material. Yet all this also raises another question of how AI generation is accomplished in the first place: by learning.

For an AI image generation program to function, it has to "learn" first. Oftentimes, this is accomplished by skimming off of existing images and creations to optimize its prompt-generation. This "learning" is accomplished en masse, skimming images by the hundreds of thousands, if not millions, almost always without the consent of the creator or owner of said images. As current copyright law goes, unless it falls under fair use, a copyrighted work cannot be used, adopted, or derived from for commercial purposes without the consent of the work's holder. It is my belief that should a copyrighted work be used by an AI generator, and the AI generator is being used for commercial purposes, the end result should not be subject to copyright protection. The short reasons would be that (1) the AI generator is not human and thus lacks the fundamental requirement of being a human author; and (2) since copyrighted work was directly used for a commercial purpose that would not fall under fair use, or have failed to acquire the holder's permission, it further lacks the requirements for copyright protection. The

only works that such AI could be properly trained on are those that are in the public domain, lacking any copyright protection by virtue of statute or a holder's explicit release. An artist that posts their art online does not render it in the public domain in the same way where a painter displays their picture in a gallery does not render it in the public domain.

Based on the legal principles explored, I believe that it would be the most sensible for AI creations to be considered public domain. After all, attempts to claim copyright for such things have been rejected for it fundamentally lacks all the criteria needed under copyright laws. Copyright is meant to nurture the creative human spirit by protecting the creations of artists. AI, on the other hand, is not an artist, but rather is a mimic, a thoughtless machine that produces without any intent or spirit. AI technology needs to be strictly regulated to prevent any long-term harm it may cause. But the dangers of these AI technologies are not strictly limited to humanity's artistic integrity; AI technology also threatens the greater scope of our economy and overall well-being.

On a video posted to YouTube, comedians Chad Kroeger (real name Tom Allen) and J.T. Parr visited the Pasadena City Counsel during a town hall where they are accepting public comments[6]. Chad opened his speech by expressing his concerns over Artificial Intelligence. In a humorous speech, Chad said:

> "A.I. is going to take all of our jobs and render us useless. And I for one am stoked. I hate jobs. [...] But we'll still need money. That is why I am asking the government to step up and make sure we're breaded. We are proposing a small payment plan, or a small PP, of ten 'G' a month for every citizen so we can party and look hot in our free time. Now, we can't afford to just sit back and have A.I.

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[6] https://youtu.be/6WAe0f74Q0s?si=pUGp-aFptShgPQFK

bust through, and not have a plan. We got to make sure people have food and

houses, so we can party and rage in peace."

On its face, it is a funny speech to be delivered in such a serious manner. But once you

peel away the humorous undertones, Chad raises a very legitimate concern: what is our plan for

AI? AI technology has been rapidly advancing to the point that a program is capable of

completing complex tasks normally reserved for a human, such as driving cars, writing

messages, creating images, reviewing letters such as these, and so forth. There is little doubt that

companies will eagerly embrace AI technology even if it means displacing tens of thousands of

workers; Bloomberg recently reported that International Business Machines Corp or IBM will be

halting its hiring in favor of utilizing AI technology, which is expected to displace over 7,000

employees.[7] Both the Screen Actors Guild-American Federation of Television and Radio Artists

(SAG-AFTRA) and the Writer's Guild of America (WGA) have both been on strike for months.

Both the SAG-AFTRA and WGA, who comprise over a hundred thousand people collectively,

demand better treatment and compensation, but both share a unifying concern over AI

technology, and how such technology could potentially displace them. Writers are worried that

AI text-generation would see them be laid off en masse from screenwriting positions, and actors

are worried that their likenesses will be scanned and then implemented through AI technology

without their consent or without any royalties or residuals.[8] Perhaps one of the more significant

industries to be affected by AI is trucking.

According to the American Trucking Industry, over 3.5 million people are employed as

truckers in the United States as of 2022, with an estimated 8 million people employed in manners

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[7]
https://www.reuters.com/technology/ibm-pause-hiring-plans-replace-7800-jobs-with-ai-bloomberg-news-2023-05-01/

[8]
https://gizmodo.com/sag-aftra-contract-demands-negotiations-amptp-response-1850651186

related or pertaining to trucking activities[9]. It is no secret that self-driving cars utilizing AI

technology have been around for years, and the AI technology behind them has been steadily

improving.[10] Soon, there will be a point where AI cars will be capable of making typical

commutes without issue; moreso, there will be a point where such technology will be widely

available to the general public. But it will not stop at cars. Already, AI technology is being

researched to be adapted to trucks so that their long routes can be accomplished without any

human input.[11] And eventually, there will be an apex where AI trucks will exist that have no need

for human operators. And when that point is reached, those 3.5 million truckers will no longer be

needed. As Chad mentioned at that town hall, "what is our plan?"

What is the plan when AI technology, if left without any restrictions or regulations, is

capable of displacing entire workforces? What is the plan when the country is faced with

millions of truck drivers suddenly out of work? What are we going to do when millions more

artists, actors, writers, nurses, teachers, and other blue-collar and some white-collar workers are

being shown the door in favor of a fancy computer? Without any safety nets, plans, or

preventative regulations, I can only foresee an economic downturn of the likes we've never seen

with a sharp increase in unemployment. These are questions best answered by other agencies and

legislative bodies, yet I believe it is crucial to consider these ramifications as the creative

industry is dependent upon copyright protection to thrive, and AI threatens all of that.

In short, while AI may have its uses in fields such as medicine and scientific exploration,

they simply do not have a place in the world of art, copyright, and labor. It threatens to undo

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[9] https://www.trucking.org/economics-and-industry-data

[10] https://venturebeat.com/ai/how-mits-liquid-neural-networks-can-solve-ai-problems-from-robotics-to-self-driving-cars/

[11] https://www.trucknews.com/technology/artificial-intelligence-leading-to-real-world-changes-in-trucking/1003177723/

centuries of creative endeavors and industries built upon the hardiness of workers who are looking to support themselves and their families. To permit AI generated works to gain copyright protection would be the first domino to fall for what we risk to lose. We would lose more than just jobs, but also the simple yet deep elements that only humanity has known. What is art? It is a question that we have grappled with since the dawn of time, and a machine cannot possibly provide an answer to it.