

An old master? No, it's an image AI just knocked up ... and it can't be copyrighted

Publication Date: 2023-09-24

Author: Edward Helmore

Section: Technology

Tags: Artificial intelligence (AI), The Observer, Computing, Art, Colorado, news

Article URL: <https://www.theguardian.com/technology/2023/sep/24/an-old-master-no-its-an-image-ai-just-knocked-up-and-it-cant-be-copyrighted>



The use of AI in art is facing a setback after a ruling that an award-winning image could not be copyrighted because it was not made sufficiently by humans. The decision, delivered by the US copyright office review board, found that Théâtre d'Opéra Spatial, an AI-generated image that won first place at the 2022 Colorado state fair annual art competition, was not eligible because copyright protection "excludes works produced by non-humans". Artist Jason Allen claimed his use of the online AI-platform Midjourney allowed him to claim authorship of the image because he "entered a series of prompts, adjusted the scene, selected portions to focus on, and dictated the tone of the image". But the board ruled that "if all of a work's 'traditional elements of authorship' were produced by a machine, the work lacks human authorship, and the Office will not register it". Allen told the Pueblo Chieftain local newspaper that he "wanted to make a statement using artificial intelligence artwork. I feel like I accomplished that, and I'm not going to apologise for it." The decision comes as writers, actors, musicians and photographers claim AI is threatening their jobs, and follows a similar ruling last month in a US federal court that an image created by an AI computer system owned by Stephen Thaler could not be copyrighted because human beings are an "essential part of a valid copyright claim". US courts are now routinely referring to human authorship requirements under copyright law, noting, in a case called *Urantia Found. v. Kristen Maaherra* that "it is not creations of divine beings that the copyright laws were intended to protect. For example the US Copyright Office rejected Kristina Kashtanova's copyright claim for the images included in *Zarya of the Dawn* which were generated by the Midjourney AI technology because they were not "the product of human authorship". Case law on the issue also now includes the rejection of a copyright lawsuit brought on behalf of a selfie-taking monkey. But in the Thaler case, Judge Beryl Howell did acknowledge that humanity is "approaching new frontiers in copyright" where artists will use AI as a tool to create new work. "Judges don't understand art, or have an old-fashioned idea of a very specific skill that is being able to re-produce a very specific vision of the world by hand," said New York artist-critic Walter Robinson, who has been using Midjourney, he said, "for fun". "Obviously, using any kind of tool, whether it's a brush or a computer program, it's all creative and all directed by a human agent," Robinson added. "When I enter prompts into Midjourney, and re-enter them until I get what I want, it's true I'm not drawing, but I am crafting an image using a tool." AI is not the only innovation troubling the art world. An analysis of a related area – NFTs, or non-fungible tokens – according to the website dappGambl, found that 95% of more than 73,000 studied are now of "no practical use or value", two years after the market peaked at \$22bn (£18bn) in 2021. "This daunting reality should serve as a sobering check on the euphoria," it said. • This article was amended on 28 September 2023 to attribute the "divine beings" quote

to the Urantia court case and to clarify that the US copyright office decided on Kristina Kashtanova's copyright claim and rejected it in relation to AI created images for Zarya of the Dawn.