AI-Generated Works and Copyright: UK vs. US Legal Perspectives

Introduction

Artificial intelligence (AI) systems can now produce creative outputs – from literature and music to visual art – raising questions about copyright protection. In particular, legal systems differ on whether purely AI-generated works (with minimal or no human input) qualify for copyright. This analysis compares the approaches of the United Kingdom and the United States, focusing on recent case law and precedents. We examine how courts and lawmakers in both jurisdictions have addressed AI-created content and whether such works meet the threshold for copyright under existing frameworks. A critical assessment highlights the challenges and implications of AI-generated works in copyright law, without venturing into policy proposals or solutions.

Copyright Basics: Originality and Authorship

Copyright law traditionally protects **"original works of authorship"**, which implies two key requirements: a minimal level of creativity (originality) and an identifiable author. Under both UK and US law, originality generally means the work must owe its origin to the author's creative choices rather than mere copying. Authorship has historically been tied to human creators – an assumption now tested by AI-generated works. As the U.S. Supreme Court noted long ago, copyright covers only the "fruits of intellectual labor" that are "founded in the creative powers of the mind" ([PDF] Legal Implication of Copyright Protection to Artificial ... - Zenodo). The question is whether AI outputs can satisfy these criteria. In practice, the US and UK have taken divergent stances on **whether a non-human (AI) can produce a protectable work** and who, if anyone, is deemed the legal author.

United States: Requiring a Human Author

US copyright law insists on human authorship. The U.S. Copyright Act provides protection for "original works of authorship" fixed in a tangible medium (17 U.S.C. §102(a)), but it does not explicitly define "authorship." Courts and the Copyright Office have consistently interpreted "author" to mean a human being (THALER v. PERLMUTTER (2023) | FindLaw) (THALER v. PERLMUTTER (2023) | FindLaw). The recent case *Thaler v. Perlmutter* (D.D.C. 2023) squarely addressed AI-created art and confirmed this principle. In *Thaler*, a scientist attempted to register an AI-generated image (produced by his "Creativity Machine") with the AI listed as the author and himself as the owner (THALER v. PERLMUTTER (2023) | FindLaw) (THALER v. PERLMUTTER (2023) | FindLaw). The court upheld the Copyright Office's refusal, emphasizing that **"human authorship is a bedrock requirement of copyright"** (THALER v. PERLMUTTER (2023) | FindLaw). According to the court, the term "author" in the statute inherently assumes an originator with human creative

capacity, and a work autonomously generated by an AI lacks this essential element (THALER v. PERLMUTTER (2023) | FindLaw) (THALER v. PERLMUTTER (2023) | FindLaw). In short, a work produced **entirely by a machine without human creative input is not eligible for copyright** in the US (THALER v. PERLMUTTER (2023) | FindLaw).

Recent precedents illustrate this stance:

- **Monkey Selfie Case (Naruto v. Slater, 9th Cir. 2018):** A famous example involved photographs taken by a monkey. The Ninth Circuit held that the animal (Naruto the macaque) could not sue for copyright infringement because the Copyright Act does not authorize animals to hold or enforce copyrights (Naruto v. Slater, No. 16-15469 (9th Cir. 2018) :: Justia). While the case was dismissed on procedural grounds (lack of statutory standing for a non-human), it underscored the understanding that only humans can be "authors" under US law. The court noted that copyright protections are intended for human creators, and an animal (or by extension, an AI) cannot own a copyright under the Act (Analyses of NARUTO v. Slater, 888 F.3d 418 | Casetext) (Naruto v. Slater, No. 16-15469 (9th Cir. 2018) :: Justia).

- **Urantia Book Case (9th Cir. 1997):** In an earlier case, a book purportedly written via divine or celestial beings was contested. The Ninth Circuit in *Urantia Foundation v. Maaherra* suggested that works **"authored by non-human spiritual beings"** do not qualify for copyright; ultimately, the court looked to human contributions (the mortal **transcribers/compilers**) to determine if a valid copyright existed (Analyses of NARUTO v. Slater, 888 F.3d 418 | Casetext). This again implies that a **non-human source of creativity falls outside copyright** – a principle now applied to AI.

- **Copyright Office Guidance:** The U.S. Copyright Office has consistently refused registration for works lacking human authorship. Its internal Compendium of Practices explicitly states the Office "will refuse to register a claim if it determines that a human being did not create the work" (THALER v. PERLMUTTER (2023) | FindLaw). In one high-profile instance, an artist's comic book *Zarya of the Dawn* was partially deregistered when the Office discovered the images were generated by an AI (Midjourney). The Office concluded that while the human-authored text was copyrightable, the AI-produced illustrations lacked the required human authorship (Copyright Protection for AI Works: UK vs US | Privacy World). It explained that a **text prompt given to an AI is not enough** – there is a "significant distance between what a user may direct [the AI] to create and the visual material [the AI] actually produces" (Copyright Protection for AI Works: UK vs US | Privacy World). In other words, the machine's autonomous choices break the chain of human creative control.

Under US law, the **threshold for protection is not met by AI-alone creations**. Various types of AI outputs – a poem written entirely by a chatbot, a musical composition generated by an algorithm, or a digital artwork created by a neural network without human modifications – would each be denied copyright if no human contributed original expression. However, if a human meaningfully guides or edits the AI's output, the human may claim authorship of the elements they contributed. Exactly how much human input is needed remains an open question. No court ruling has definitively drawn the line between

permissible **AI assistance** and impermissible **AI dominance** in the creative process (District Court Rules that AI-Generated Works Cannot Be Copyrighted). The Copyright Office's recent guidance (2023) advises that applicants disclose any AI-generated portions and claim copyright only in the human-authored elements (Analyses of NARUTO v. Slater, 888 F.3d 418 | Casetext). This means, for example, if an AI tool helps generate music but a human composer selects, arranges, or significantly modifies the result, the human's contributions might be protected, while the purely AI-produced portions are not. In practice, US courts have not yet had to decide a case of a partially AI-assisted work; but defendants in future infringement suits will likely argue that heavily AI-derived works lack protection at all (District Court Rules that AI-Generated Works Cannot Be Copyrighted). For now, the clear rule in the US is that **a work must embody a human mind's creativity to be copyrighted** (THALER v. PERLMUTTER (2023) | FindLaw) (THALER v. PERLMUTTER (2023) | FindLaw).

United Kingdom: Protecting Computer-Generated Works

In contrast to the US, the United Kingdom's law **explicitly allows copyright for AI-generated works** (termed "computer-generated" works), albeit with some unique provisions. The UK Copyright, Designs and Patents Act 1988 (CDPA) contains a forward-looking section addressing works produced by computers with no human author. **Section 9(3) of the CDPA 1988** states: *"In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken."* (Who Owns AI-Generated Works? | Potter Clarkson) Similarly, **Section 178** defines a "computer-generated" work as one generated by computer in circumstances such that **"there is no human author of the work."** (Who Owns AI-Generated Works? | Potter Clarkson) In simple terms, if an AI program autonomously creates a literary, musical, or artistic work, UK law does not deny copyright protection – instead, it assigns authorship to a human (the person who made the necessary arrangements for the AI's creation of the work). This could be, for instance, the programmer who set up the generative system or the user who directed the AI, depending on the circumstances. Notably, UK law **separates the concept of authorship from actual creativity** in these cases (Copyright Protection for AI Works: UK vs US | Privacy World). Even though the work's creative content originates from the AI, the law deems a human as the "author" by legal fiction, ensuring the work has an owner for copyright purposes.

Several key points about the UK approach:

- **Scope of Works:** The CDPA provision covers literary, dramatic, musical, and artistic works. These categories would include AI-written text (literature), AI-composed music, or AI-generated imagery and art. (Computer-generated films or sound recordings are less directly addressed in this section, as those have specific authorship rules in the Act, but in principle a similar approach applies to their authorship – usually the producer is deemed the author of a sound recording or film.) The intent was to encompass **creative content produced by computers** that otherwise has no traditional author. For example, an AI-generated painting or poem can be protected under UK law, whereas it would have no human author under US

law.

- **Authorship and Ownership:** By default, the person who undertook the arrangements for creation is the legal author. This might be the person running the AI software or the entity that programmed and deployed the AI, depending on facts. UK law has not yet definitively clarified *who* qualifies as making the "necessary arrangements" in complex AI scenarios (Who Owns AI-Generated Works? | Potter Clarkson). It could be the end-user who inputs prompts or the developer of the AI model, or possibly a company on whose behalf the AI operates. **No UK court case has squarely decided this issue to date** (Who Owns AI-Generated Works? | Potter Clarkson), meaning there is some uncertainty. In practice, it is often assumed that the user or commissioner who causes the AI to create a work would be treated as the author for copyright, but this remains an open question for future disputes (Who Owns AI-Generated Works? | Potter Clarkson). What is clear is that UK law does *not* require the named author to have personally originated the content – it is enough that they set up the process. This is a **legal fiction to confer ownership**, aiming to avoid a situation where an AI-produced work is ownerless and thus unprotectable.

- **Originality Standard:** The UK, like most jurisdictions, requires works to be "original" to qualify for copyright (CDPA §1). Historically, UK courts (and EU law when the UK was part of it) interpreted originality to mean the author's own intellectual creation or at least the result of the author's skill, labor, and judgment. At first glance, this seems contradictory for AI-generated works: if no human actually created the content, can it be original? The CDPA effectively sidesteps this by *deeming* a human to be the author, but commentators have pointed out a tension (Contradictions of Computer-Generated Works' Protection - Kluwer Copyright Blog). Some scholars argue that **granting copyright to "authorless" AI creations strains the doctrinal notion of originality**, since without a human author's intellectual input, the work might not fulfill the traditional originality test (Contradictions of Computer-Generated Works' Protection - Kluwer Copyright Blog). Despite this theoretical concern, UK law presumes that if a computer-generated work is produced (not copied from prior material), it can be treated as original and protected, with the human arranger as the author. There has yet to be a court case in the UK challenging a computer-generated work's originality or testing the limits of this concept. Until such a case arises, the **statutory framework stands: AI-generated works are protectable** as long as they are not copied from existing works.

- **Duration of Protection:** One notable difference is the term of copyright. Human-authored works in the UK generally last for the author's life plus 70 years. However, **computer-generated works have a shorter term – 50 years from the end of the year in which the work was made** (Copyright Protection for AI Works: UK vs US | Privacy World). This reduced term reflects the fact that there is no human life to measure against and possibly a legislative judgment that such works deserve a shorter monopoly. For example, an AI-created song generated in 2025 would be protected until the end of 2075 under UK law, rather than life+70. This is an interesting compromise: the UK grants protection but not as long as for human-created works.

- **Legislative Confidence (and Reassessment):** The UK's inclusion of computer-generated works since 1988 was relatively pioneering. For over 30 years, this provision lay somewhat dormant due to less advanced AI; now it has come to the forefront. In a 2021 consultation, the UK Intellectual Property Office examined whether changes were needed to copyright law in light of AI. The **UKIPO ultimately concluded that the existing law – including the protection for computer-generated works – was adequate and no immediate changes were required** (Copyright Protection for AI Works: UK vs US | Privacy World). This suggests lawmakers were content, at least as of that date, that AI-created works could continue to be handled under Section 9(3). The rationale included the desire to keep the UK a leader in AI innovation and a sense that there was not yet evidence of harm from protecting such works (Copyright Protection for AI Works: UK vs US | Privacy World). However, debate is ongoing. In May 2023, a House of Commons committee heard expert testimony questioning whether the Section 9(3) approach remains appropriate in the age of advanced generative AI (Copyright Protection for AI Works: UK vs US | Privacy World). Critics argue that modern AI is **"less of a tool... but rather is what creates the works"**, making it problematic to attribute authorship fictionally to a person (Copyright Protection for AI Works: UK vs US | Privacy World). As of now, though, no amendment has been made – **UK law still expressly permits copyright in AI-generated content**, distinguishing it from the U.S. position.

Comparative Analysis of AI-Generated Copyright

The UK and US regimes diverge sharply on the fundamental question of non-human creators. This leads to different outcomes for AI-generated literature, music, and art in each jurisdiction:

- **Legal Status of AI-Only Works:** In the US, a work produced solely by AI **fails to qualify as a protected "authored" work** (THALER v. PERLMUTTER (2023) | FindLaw). It would effectively fall into the public domain upon creation, free for anyone to use, unless a human's creative input can be identified. In the UK, that same work **can receive copyright protection**; the law will simply designate a human author (e.g. the programmer or user) to fill the role of "author" (Who Owns AI-Generated Works? | Potter Clarkson). Thus, an AI-written short story or an image generated by a neural network could be owned and controlled by a person in the UK, but would have no owner (and no copyright) in the US absent human creative involvement.

- **Case Law and Precedents:** U.S. courts have directly addressed the issue and reinforced the human-authorship requirement. *Thaler v. Perlmutter* (2023) is a recent landmark, unequivocally holding that an artwork autonomously generated by AI is not copyrightable in the US (THALER v. PERLMUTTER (2023) | FindLaw). The decision leaned on "centuries of settled understanding" that "authorship" implies human creation (THALER v. PERLMUTTER (2023) | FindLaw). By contrast, UK courts have not yet produced a similar high-profile ruling specifically on AI-generated works –

likely because the statute already provides the answer. Instead, the UK position comes from the statute itself (a form of legislative precedent). The absence of UK case law leaves some practical details (like identifying the exact author in a complex AI workflow) to be worked out, but the **general principle is settled in UK legislation**.

- **Examples across Art Forms:** Consider a few scenarios: if an AI system writes a novel with minimal human editing, US law would treat the novel as unprotected by copyright (the human editor's minor tweaks aside, if not substantive, won't earn authorship). UK law would recognize the novel's copyright, likely vesting it in the person who deployed or configured the AI to produce the text. For music, if an AI algorithm composes a melody entirely on its own, a music publisher in the US could not claim copyright in that composition; anyone else could copy or perform it without infringement, because no human composer exists in the eyes of US law. In the UK, however, that AI-composed melody could be copyrighted, with the AI's operator (for instance, the person who initiated the composition process or who owns the AI system) as the deemed author. Similarly, for visual arts: an AI-generated painting or design is **uncopyrightable in the US unless a human artist's creative decisions shaped it**, whereas in the UK it would receive copyright with an attributed human author. These differences mean the **same AI-created piece might be protected in one country and not in another**, reflecting a significant transatlantic legal discrepancy (Contradictions of Computer-Generated Works' Protection - Kluwer Copyright Blog) (Contradictions of Computer-Generated Works' Protection - Kluwer Copyright Blog).

- **International Implications:** Because of these divergent approaches, questions arise under international copyright principles. The Berne Convention (to which both the UK and US adhere) requires protection of works of authorship, but it assumes human authors. The UK's approach of assigning authorship to the person making the arrangements may satisfy Berne formally (since an "author" is named), but other countries might not recognize a work as protectable if they view it as lacking human creativity. For instance, a UK-origin AI-generated artwork might be protected in the UK but when circulated in the US or EU, it could be denied protection as not meeting those jurisdictions' criteria of human intellectual creation (Contradictions of Computer-Generated Works' Protection - Kluwer Copyright Blog) (Contradictions of Computer-Generated Works' Protection - Kluwer Copyright Blog). This conflict hasn't been fully tested yet, but it foreshadows potential legal battles or the need for contractual solutions when exploiting AI content globally.

Challenges and Implications for Copyright Law

The emergence of AI-generated works poses several **challenges and implications** under current legal frameworks:

- **Defining Authorship and Ownership:** Identifying the "author" of an AI-created work is inherently problematic. In the US, because the law doesn't recognize the AI as an

author, the focus shifts to whether any human's contributions are sufficient to qualify for authorship. This can be subjective – e.g., is a person who only enters a prompt or selects one image out of many AI outputs an author, or merely a facilitator? The law offers little guidance so far, leaving a gray area. In the UK, while the law provides a default answer (the person making the arrangements), it can still be unclear who that is in practice (Who Owns AI-Generated Works? | Potter Clarkson). In complex AI projects, there may be multiple human actors: those who designed the AI model, those who trained it with data, and those who prompted or used it for a specific creation. Deciding which of these made the "necessary arrangements" could be contentious. No court has definitively resolved such questions, meaning potential disputes in the future. This uncertainty challenges the traditional notion of a single identifiable author and complicates how rights are assigned or licensed.

- **Originality and Creative Control:** Another issue is whether AI-generated outputs truly meet the *creativity threshold* for copyright. US and EU law embody the principle that a work must be the product of a human intellect exercising creative choices (Contradictions of Computer-Generated Works' Protection - Kluwer Copyright Blog). AI systems, especially generative models, produce results by algorithmic processes (often drawing on vast datasets of existing works). If no human shaped the specific expression, some argue these AI outputs **lack the "spark" of human creativity that copyright is meant to reward** (Contradictions of Computer-Generated Works' Protection - Kluwer Copyright Blog) (Contradictions of Computer-Generated Works' Protection - Kluwer Copyright Blog). In the UK, the law currently sidesteps this by fiat, but critics say this approach is conceptually incoherent (Contradictions of Computer-Generated Works' Protection - Kluwer Copyright Blog). A leading commentary points out that *"without a human author, there is no expression of ideas that can be original, and thus no copyrightable work"*, calling the concept of protecting computer-generated works "logically inconsistent" with copyright's foundations (Contradictions of Computer-Generated Works' Protection - Kluwer Copyright Blog). This critique highlights a philosophical challenge: copyright law has always been grounded in human creativity, so protecting AI creations may stretch traditional doctrines to a breaking point. On the other hand, proponents note that many AI outputs are indistinguishable from human works in quality and creativity, and denying them protection could undermine the incentive for investment in creative AI systems.

- **Practical Impact on Creators and Industries:** The differing legal treatment of AI-generated content has real-world implications. In the US, creators or companies using AI extensively might find parts of their output unprotectable. For example, software developers now use AI coding assistants (like GitHub Copilot) that generate substantial portions of code (District Court Rules that AI-Generated Works Cannot Be Copyrighted). If that code is considered produced by the AI rather than the human programmer, it might **lack copyright protection**. As one analysis noted, companies could end up with "no copyright protection for a significant portion of what they consider to be proprietary code" if AI-generated code is deemed outside copyright (District Court Rules that AI-Generated Works Cannot Be Copyrighted). Similarly, a publisher releasing a story or artwork heavily generated by AI might have no legal recourse against wholesale copying of those materials in the US, since the

underlying works might not be protected at all. This scenario could disincentivize creators from using AI for core creative elements, or push them to substantially modify AI outputs to claim human authorship. In the UK, creators have more assurance that AI-assisted or AI-produced works will be protected, which may encourage use of AI in content creation. However, it also means **the rights holders might not be the actual "creators" in the colloquial sense**, which could affect how we value and attribute creative works. There's also a risk of overreach – e.g. a company could claim copyright on masses of AI-generated content (like thousands of AI-created images or articles), potentially flooding the market with protected works that no human genuinely crafted. This could raise policy concerns about the volume of new copyrights and the balance of the public domain.

- **Enforcement and Infringement Concerns:** If an AI-generated work is not protected (as in the US), theoretically anyone can copy or use it freely – but how to determine that a given work has no human author? This might invite litigation over whether a work is sufficiently human-made. An alleged infringer could defend themselves by arguing "the plaintiff's work is AI-made and thus not a valid copyright." We may see courts tasked with analyzing the creation process of a work to decide if it had adequate human creativity. Conversely, in the UK where AI outputs are protected, enforcement could run into other problems: proving who made the "necessary arrangements" could be crucial if two parties claim ownership of the same AI output. Moreover, UK rightsholders of AI works might face challenges enforcing those rights abroad if foreign courts deem the works uncopyrightable for lack of human authorship. This patchwork of protection complicates the exploitation of AI creations across jurisdictions – content creators and distributors will need to navigate carefully where their AI-generated works are protected and where they are effectively free for others to use.

- **Incentive and Policy Reflections:** One traditional justification for copyright is to incentivize creation by rewarding authors with exclusive rights (THALER v. PERLMUTTER (2023) | FindLaw) (THALER v. PERLMUTTER (2023) | FindLaw). In the context of AI, this rationale becomes tangled. An AI has no need for incentives, as the *Thaler* court wryly noted (non-human actors "need no incentivization with the promise of exclusive rights" under law) (THALER v. PERLMUTTER (2023) | FindLaw). The incentive, instead, is for the people who develop or use AI. The UK model aims to incentivize those people by granting them rights in the output. The US model might be seen as incentivizing only the human aspects – it encourages creators to remain involved in the creative process (since only then will their works get protection). The implications of these approaches are significant: the UK's regime could encourage investment in fully automated creativity (since one can own the results), whereas the US approach might encourage using AI as a tool but ensuring human creative oversight. Neither approach perfectly fits the unprecedented scenario of creative machines. Lawmakers and courts are grappling with maintaining the integrity of copyright principles while not stifling technological progress. For now, they tread cautiously, largely applying existing principles rather than creating new ones for AI.

Conclusion

AI-generated works sit at the cutting edge of copyright law, testing the limits of concepts like "authorship" and "originality." Recent case law and decisions show a clear **split between the US and UK**. The United States, through court rulings and the Copyright Office's practice, has reaffirmed that **copyright protects only human creativity**, excluding works created solely by AI from protection (THALER v. PERLMUTTER (2023) | FindLaw) (THALER v. PERLMUTTER (2023) | FindLaw). The UK, by contrast, relies on a statutory solution that **confers copyright on AI outputs by assigning authorship to a human** who initiates or enables the creation (Who Owns AI-Generated Works? | Potter Clarkson). This means AI-composed music, AI-written text, and AI-crafted art can be copyrighted in the UK (for a limited term) but not in the US unless a human's hand is evident in the work. Each approach carries its own challenges. The US must confront scenarios of blended human/AI creativity and determine where to draw the line for protection. The UK faces questions about the theoretical coherence and practical application of its computer-generated works provision, especially as AI grows more autonomous.

Crucially, both jurisdictions are attempting to fit AI-created content into **existing legal frameworks** rather than inventing entirely new doctrines. Courts have analogized AI to non-human actors of the past (like animals or divine inspirations) to reason by analogy (Analyses of NARUTO v. Slater, 888 F.3d 418 | Casetext) (Analyses of NARUTO v. Slater, 888 F.3d 418 | Casetext), while lawmakers have so far refrained from sweeping new legislation on AI authorship. The result is a cautious, precedent-based development of the law. As AI technology evolves, we can expect more cases that will refine these principles – perhaps a lawsuit over an AI-written novel or a dispute over ownership of an AI-designed visual artwork. Such cases will force courts to confront the nuances: how much human creativity is enough, and can we continue to extend traditional copyright notions to works essentially generated by algorithms? The answers will shape the balance between encouraging innovation and preserving the human-centric core of copyright. For now, anyone dealing with AI-generated literature, music, or art must navigate a complex legal landscape: embracing human co-creatorship to secure rights in the US, or relying on the UK's unique provisions (and their limitations) to protect purely machine-made works.

In summary, **AI-generated works challenge the fundamental premise of copyright law that creative works spring from human intellect.** The US response has been to hold the line – no human author, no copyright (THALER v. PERLMUTTER (2023) | FindLaw). The UK has chosen to adapt the law to accommodate AI outputs, extending copyright's reach (albeit in a limited way) to works with no human creator (Copyright Protection for AI Works: UK vs US | Privacy World). Each approach has significant implications for creators, rights holders, and the public. As judicial decisions accumulate and technology advances, the debate continues over how to strike the right balance in protecting – or not protecting – the creations of artificial intelligence under copyright law.

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