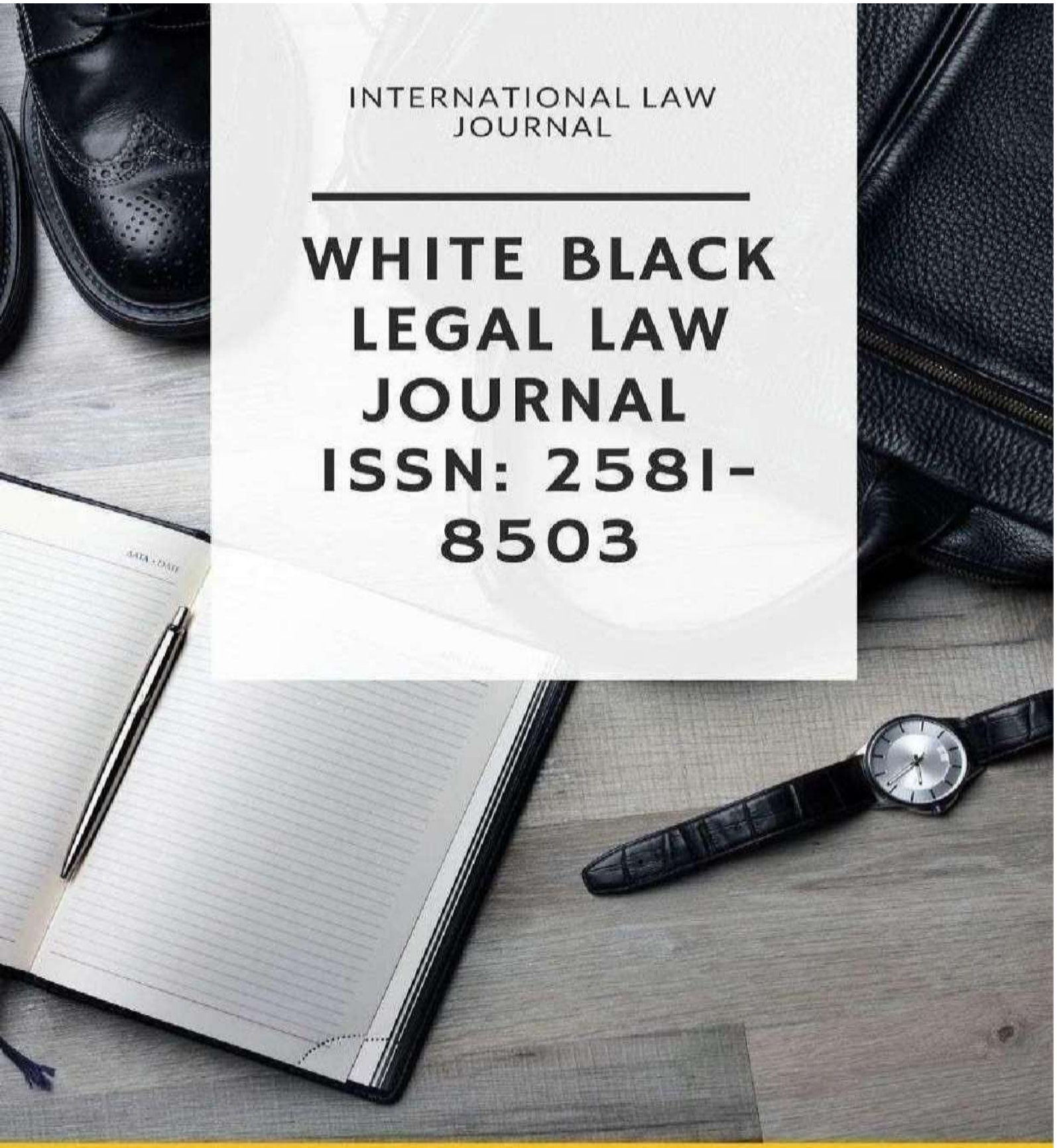

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OWNERSHIP OF AI CREATIVE WORK: LEGAL FRAMEWORK

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Abstract

The rapid advancement of artificial intelligence has fundamentally disrupted how creative works are generated, raising urgent and unresolved questions about who — or what — holds legal ownership over AI-produced content. This paper examines the evolving legal landscape surrounding AI creative authorship, exploring copyright doctrine, international legal frameworks, and the philosophical tensions between human creativity and machine output. Drawing on case law, legislative developments, and comparative legal analysis, it argues that existing intellectual property regimes are structurally ill-equipped to handle AI authorship and that meaningful reform is not only desirable but necessary. The paper further considers practical proposals for a sui generis legal regime tailored to AI-generated works, while acknowledging the ethical stakes involved in attributing creative rights in an age of algorithmic production.

Keywords: *artificial intelligence, copyright law, authorship, intellectual property, AI-generated works, legal framework, creative ownership*

1. Introduction

Creativity has long been considered one of the most distinctly human endeavors — a capacity rooted in lived experience, emotion, cultural memory, and intentional expression. For centuries, intellectual property law has been built on this assumption: that the author of a work is a human being whose creative labor deserves legal recognition and reward. Yet as artificial intelligence systems grow more sophisticated, this foundational premise is being challenged in ways that legislators and courts were not prepared for.

Today, AI systems compose symphonies, paint portraits, write novels, generate legal briefs, and produce journalistic content — often at a quality indistinguishable from that of human creators. These are not marginal curiosities; they represent a shift in the very infrastructure of

creative production. In 2023 alone, millions of images were generated by systems like DALL-E and Midjourney, and large language models produced text that was widely published, monetized, and consumed. The economic stakes are enormous, and the legal questions have become unavoidable.

Who owns these works? Can an AI be an author in any legally meaningful sense? If not, who — the developer, the user, the company — inherits any claim to the creative output? What happens when AI-generated work closely resembles a human artist's style or draws heavily on copyrighted training data? These are not merely academic puzzles. They carry real consequences for artists, corporations, policymakers, and the broader trajectory of creative industries.

This paper approaches these questions systematically. It begins by revisiting the traditional legal understanding of authorship and its conceptual limits, then examines how major legal systems — particularly those of the United States, European Union, and United Kingdom — are grappling with AI authorship. It explores landmark cases, legislative proposals, and the growing body of scholarly debate. Finally, it proposes a path forward that acknowledges both the realities of AI capabilities and the human interests that IP law has always been designed to protect.

2. Authorship and Copyright: Historical Foundations

To understand why AI authorship is legally contentious, one must first appreciate what copyright law was designed to do and what assumptions it has always carried. The modern copyright system traces its origins to the Statute of Anne in 1710, which for the first time vested rights in authors rather than in printers or the Crown. The underlying logic was straightforwardly humanistic: creators invest time, skill, and imagination in their work, and society benefits from incentivizing this investment through temporary exclusive rights.

This human-centric rationale deepened over the following centuries. By the time of the Berne Convention of 1886 — which remains the cornerstone of international copyright law — authorship was so thoroughly tied to personhood that the concept of a non-human author would have seemed incoherent. The Convention's protections were designed for human beings who were nationals of member states, and its moral rights provisions further underscored the personal, biographical connection between author and work.

In the United States, the constitutional basis for copyright law (Article I, Section 8, Clause 8) speaks of promoting "the progress of science and useful arts" by securing rights to "authors and

inventors." Courts have interpreted this language as inherently requiring human authorship. The landmark case Burrow-Giles Lithographic Co. v. Sarony (1884) established that a photograph could be copyrighted because it reflected the author's "original mental conception," — language that implicitly forecloses non-human authorship.

The requirement of originality — that a work must reflect some minimal degree of independent creative expression — has similarly been understood in human terms. In Feist Publications, Inc. v. Rural Telephone Service Co. (1991), the Supreme Court clarified that originality requires both independent creation and a modicum of creativity, concepts that presuppose a conscious, experiencing subject. The more difficult question is whether these requirements are conceptually tied to human consciousness or are merely practically associated with it.

3. AI as Creative Agent: What the Technology Actually Does

Any serious legal analysis of AI authorship must be grounded in an accurate understanding of what AI systems actually do when they "create." Modern generative AI does not operate through randomness or by mechanically recombining stored fragments. It learns statistical patterns from vast datasets of human-created works — text, images, music, code — and generates new outputs by predicting what kinds of content are consistent with those patterns, shaped by user prompts and fine-tuning objectives.

This process is genuinely impressive and genuinely novel. But it is also, in certain respects, analogous to human creativity. Human artists do not create ex nihilo; they, too, absorb influences, learn from predecessors, internalize genre conventions, and respond to prompts from clients or commissioners. The difference, AI skeptics argue, is that human creators bring intentionality, subjective experience, and a genuine stake in the outcome — dimensions that AI systems lack.

On the other hand, AI proponents note that many human creative acts are similarly automatic, habitual, or commercially driven, and that the law has never required authors to be emotionally invested in their work. Ghostwriters, work-for-hire arrangements, and corporate authorship all sever the connection between personal investment and legal authorship. The question is whether the absence of consciousness or intentionality is a legally meaningful difference or simply a philosophical one.

Recent systems complicate this picture further. Multimodal models capable of reasoning about their own outputs, adapting to feedback, and pursuing defined aesthetic goals represent a qualitatively different creative agent than early generative tools. Whether these systems cross

any legally meaningful threshold remains to be determined, but courts and legislators will increasingly have to grapple with the technological specifics rather than working from outdated assumptions about what AI can do.

4. The Current Legal Landscape

4.1 United States

The United States Copyright Office has taken the clearest institutional position on AI authorship, and it is firmly restrictive. In its March 2023 guidance — issued in response to a wave of applications for AI-generated works — the Office stated that copyright protection requires human authorship and that it would not register works produced entirely by machines without creative input from a human author. The Office has since applied this standard inconsistently, registering some hybrid works where humans exercised creative selection or arrangement while refusing registration for purely AI-generated content.

This position was tested in Thaler v. Perlmutter (2023), in which AI researcher Stephen Thaler sought copyright registration for an image created by his DABUS AI system, listing the AI as the author and himself as the copyright claimant by assignment. The D.C. District Court upheld the Copyright Office's refusal, finding that human authorship is a bedrock requirement of copyright and that neither statute nor precedent supported extending authorship to a machine. The court explicitly declined to resolve the broader philosophical questions about AI consciousness or creativity, anchoring its ruling narrowly in statutory interpretation and longstanding administrative practice.

Courts have also begun addressing the related but distinct issue of AI training and copyright infringement. Class action suits against OpenAI, Stability AI, and other developers have alleged that training generative models on copyrighted works without authorization constitutes infringement. These cases raise foundational questions about fair use, the nature of reproduction, and whether model weights constitute infringing copies. As of 2025, no appellate court has resolved these questions definitively, though the legal and commercial stakes have prompted intense litigation activity.

4.2 European Union

The European Union's approach to AI authorship is shaped by the 2019 Copyright in the Digital Single Market Directive and, more recently, the EU AI Act (formally adopted in 2024). The Directive does not directly address AI authorship but does address text and data mining — a

key mechanism by which AI systems are trained on copyrighted content. It permits TDM for research purposes under certain conditions, but leaves commercial TDM subject to rightholder opt-outs, a provision that has generated significant controversy.

The EU's position on AI authorship proper remains unsettled. The existing framework assumes human authorship, and EU copyright law generally requires that a work reflect the author's own intellectual creation — language derived from the European Court of Justice's Infopaq decision. This standard is not obviously compatible with AI authorship, though some member states have begun exploring legislative solutions. Germany and France, in particular, have commissioned studies on the adequacy of existing frameworks, and the European Parliament has called for a dedicated legislative approach.

The EU AI Act, while primarily a risk-based regulatory framework for AI systems rather than a copyright instrument, has significant indirect implications for creative AI. Its transparency and documentation requirements for high-risk AI systems, and its labeling requirements for AI-generated content, will affect how creative works produced by AI are identified and attributed — a prerequisite for any sensible ownership framework.

4.3 United Kingdom

The United Kingdom is a notable outlier in international copyright law. Under Section 9(3) of the Copyright, Designs and Patents Act 1988 (CDPA), copyright in a computer-generated work vests in "the person by whom the arrangements necessary for the creation of the work are undertaken." This provision, enacted decades before modern generative AI existed, was intended to address works produced by traditional software — but it has been invoked in debates about AI authorship as the closest thing to a statutory solution any major jurisdiction has offered.

Whether Section 9(3) is adequate or appropriate for contemporary AI systems is contested. Critics argue that the provision was not designed with the kind of autonomous, learning-based systems now in use, and that applying it to generative AI either stretches its original meaning or yields counterintuitive results. Others argue it provides a pragmatic framework that avoids the philosophical impasse of AI consciousness while still enabling creative investment to be rewarded. The UK Intellectual Property Office launched a consultation in 2021 and again in 2023, considering options ranging from abolishing protection for computer-generated works to expanding it, and the debate remains open.

5. Key Legal and Philosophical Tensions

5.1 The Originality Problem

One of the deepest tensions in AI copyright law concerns the concept of originality. If copyright protects the expression of human creative choices, then AI-generated works — which reflect the statistical patterns of training data and the parameters set by developers — may simply not qualify, regardless of how they look or how much humans value them. But this argument proves too much: many human creative acts are similarly constrained by convention, market demand, or prior art, and copyright law does not generally require that authors transcend these constraints.

A more nuanced view asks whether the relevant creative choices were made by a human at some point in the process. When a photographer chooses a subject, angle, lighting, and moment — even when the camera does the technical work — copyright recognizes the human creative decisions. Analogously, one might argue that the user who selects a prompt, refines outputs, and curates the results exercises sufficient creative judgment to satisfy originality requirements. Courts and legislators have not yet settled on how much human involvement is enough, and the answer will likely vary by context.

5.2 Incentive Theory and Its Limits

Copyright law is often justified on incentive grounds: exclusive rights encourage creators to invest in producing works that the public will eventually enjoy. Does this justification apply to AI-generated works? Proponents argue yes: if developers and users cannot protect AI-generated content, they have less incentive to invest in creating the systems and prompts that produce it. Opponents respond that AI systems do not need the incentive of copyright protection to generate content — they produce output as a function of their design, regardless of whether that output is protected.

This debate turns partly on whether copyright should protect investment as such or specifically the investment of human creative labor. The current consensus, reflected in U.S. and EU law, is that copyright protects the latter, with investment of other kinds addressed by other legal instruments — trade secrets, patents, contracts. If that consensus holds, the case for AI copyright is weakened, though the case for some other form of protection may be strengthened.

5.3 Training Data and the Rights of Human Authors

Perhaps the most practically urgent issue in AI copyright law is not who owns AI outputs but what rights human authors have when their works are used to train AI systems. This question

sits at the intersection of fair use doctrine, database rights, and the economics of creative labor. If AI systems can be trained on any publicly accessible content without compensation or attribution, the effect may be to gradually displace the human creators whose work made the training data possible — a kind of structural free-riding on human creativity.

The legal status of training data use is genuinely uncertain. In the United States, fair use analysis requires weighing factors including the purpose of the use, the nature of the copyrighted work, the amount used, and the effect on the market for the original. Courts are currently working through these factors in live litigation, and reasonable judges disagree about the outcome. The stakes are high on both sides: an overly expansive fair use ruling could effectively eliminate compensation for creators whose work trains commercial AI; an overly restrictive ruling could hamper legitimate research and development.

6. Comparative Analysis and Reform Proposals

Given the inadequacy of existing frameworks, a number of reform proposals have been advanced. These can be grouped into three broad approaches: denial, assimilation, and sui generis protection.

The denial approach holds that AI-generated works should receive no copyright protection. This is arguably the default outcome under current U.S. and EU law, and it has the virtue of simplicity. Works in the public domain from the moment of creation are freely available to all, avoiding the problem of allocating rights among competing claimants. Critics worry, however, that this approach creates perverse incentives: developers may be motivated to obscure the role of AI in production in order to claim human authorship, and the absence of clear ownership may deter investment in legitimate AI-assisted creative projects.

The assimilation approach — exemplified by the UK's Section 9(3) — would extend existing copyright frameworks to AI-generated works by identifying the relevant human contributor as the legal author. This approach is pragmatic and avoids the need for entirely new legislation, but it struggles with cases where no single human contribution is sufficient to support authorship claims, and it may attribute rights to parties (developers, platform operators) who are not the most appropriate or equitable recipients.

The sui generis approach would create a new category of legal protection specifically designed for AI-generated works — analogous to the EU's sui generis database right, which protects substantial investment in database creation without requiring originality in the copyright sense. A sui generis AI right could set its own originality threshold, duration, and scope of protection,

tailored to the realities of AI production rather than forcing those realities into a framework designed for human authors. This approach is the most ambitious and the most legally complex, requiring careful design to avoid both over- and under-protection.

Several scholars have proposed hybrid models that combine elements of these approaches. One proposal would allow copyright registration for AI-generated works subject to disclosure of the AI's role, with a shortened protection term and mandatory licensing for transformative uses. Another would create a collective licensing system in which developers contribute to a pool that compensates human creators whose works were used in training. These proposals share a recognition that the challenge is not merely doctrinal but structural, requiring mechanisms that distribute the benefits of AI creativity across the ecosystem of human creative labor that makes it possible.

7. Ethical Dimensions of AI Creative Ownership

The legal questions surrounding AI authorship cannot be fully separated from their ethical dimensions. At stake is not merely the allocation of property rights but the shape of the creative economy and the value we place on human creativity as such. If AI-generated works are legally equivalent to human-created ones, and if they can be produced at vastly greater speed and lower cost, what happens to the livelihoods of writers, artists, musicians, and other creative professionals? This concern is not hypothetical; it is already being felt across industries.

Proponents of expansive AI rights argue that creative disruption has always been a feature of technological progress, from the printing press to the recording industry, and that new opportunities emerge even as old ones close. They point to the ways in which AI tools can augment rather than replace human creativity, enabling artists to realize visions that would otherwise be beyond their technical means. On this view, excessive legal restrictions on AI creativity may ultimately harm rather than help human creators.

Skeptics counter that the scale and speed of AI disruption are qualitatively different from prior technological shifts, and that the displacement of human creative labor may occur faster than adaptation is possible. They also raise concerns about attribution, dignity, and the intrinsic value of human creative effort — values that utilitarian arguments about economic efficiency may obscure. Moral rights traditions, particularly strong in France and Germany, reflect a view of authorship as bound up with personal identity in ways that resist purely economic analysis.

There is also the question of transparency and accountability. If AI-generated works are legally owned by corporations with no obligation to disclose the role of AI in their creation, consumers,

collaborators, and the public may be systematically misled about the nature of the creative products they encounter. This concern has driven legislative proposals requiring labeling of AI-generated content — a modest but meaningful step toward accountability that most legal systems have not yet taken.

8. Conclusion

The ownership of AI creative work is one of the defining legal challenges of our technological moment. Existing intellectual property frameworks, built on centuries of assumptions about human authorship and creative labor, are straining under the weight of AI capabilities that their architects could not have anticipated. Courts are issuing rulings that reflect genuine legal uncertainty, legislators are debating proposals that may quickly be overtaken by technological change, and creative professionals are navigating a landscape in which the rules have not yet been written.

This paper has argued that the path forward requires more than applying existing doctrine to new facts. It requires a rethinking of the foundational purposes of copyright law — what we want it to protect, whom we want it to benefit, and what kind of creative ecosystem we want to sustain. The stakes of getting this wrong are high: an excessively permissive framework could accelerate the displacement of human creative labor and concentrate economic power in the hands of a few AI developers; an excessively restrictive one could impede legitimate innovation and drive underground the AI-assisted creative practices that are already widespread.

A well-designed sui generis framework, complemented by transparency requirements, robust training data rights for human creators, and ongoing legislative review, offers the most promising path through this thicket. Such a framework would acknowledge what AI systems genuinely do — produce works of real value, shaped by the creative decisions of developers and users — while preserving the primacy of human authorship in the broader creative ecosystem. It would not resolve every tension or answer every philosophical question, but it would provide the kind of workable, adaptive legal infrastructure that the current moment demands.

The conversation has begun. Its conclusion will shape not just the law of intellectual property but the future of creativity itself.

References

Andersen v. Stability AI Ltd., No. 23-cv-00201 (N.D. Cal. filed Jan. 13, 2023).

Berne Convention for the Protection of Literary and Artistic Works (1886, as revised).

Burrow-Giles Lithographic Co. v. Sarony, 111 U.S. 53 (1884).

Copyright, Designs and Patents Act 1988, § 9(3) (UK).

Derclaye, E. (2014). Assessing the impact and reception of the Court of Justice of the European Union case law on UK copyright law: what does the future hold? Intellectual Property Quarterly, 2014(3).

European Parliament. (2020). Report on intellectual property rights for the development of artificial intelligence technologies.

Feist Publications, Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991).

Franceschelli, V. (2022). The legal nature of AI-created works. Computer Law & Security Review, 44.

Guadamuz, A. (2017). Do androids dream of electric copyright? Comparative analysis of originality in artificial intelligence generated works. Intellectual Property Quarterly, 2017(2), 169–186.

Infopaq International A/S v. Danske Dagblades Forening, Case C-5/08 (CJEU 2009).

Regulation (EU) 2024/1689 of the European Parliament and of the Council (Artificial Intelligence Act).

Ryan, M. D., & Lisson, N. A. (2023). Generative AI and copyright law: new challenges for an old framework. Journal of Internet Law, 26(9).

Thaler v. Perlmutter, No. 22-1564 (D.D.C. Aug. 18, 2023).

U.S. Copyright Office. (2023). Copyright and Artificial Intelligence: Part 1 — Digital Replicas. Washington, D.C.: U.S. Copyright Office.

Yanisky-Ravid, S. (2017). Generating rembrandt: artificial intelligence, copyright, and accountability in the 3A era — the human-like authors are already here. Michigan State Law Review, 2017.