Copyright + Technology Conference 2025

Panel 4

MY OWN THREE HANDS: AI CONTENT CREATION TOOLS AND COPYRIGHT REGISTRATION

With Charity Gates,[1] Maria Backman,[2] Zachary Cooper,[3] Gili Karev,[4] and Dori Hanswirth[5]

U.S. Copyright Office guidelines dictate that authors must disclaim AI-generated portions of their works when they register them. How will this work in practice as AI-powered tools pervade more and more aspects of content creation processes? What will creators be able to claim as their own, and what evidence will they need to show that they created it themselves? How will these standards evolve as AI technology progresses, and how will litigators use the standards to challenge copyright registrations in court? The session discusses this emerging conundrum of copyright in the AI age.

Charity Gates: My name is Charity Gates and I'm an associate attorney at Cowan, DeBaets, Abrahams & Sheppard, where I'm an IP transactional attorney focused in publishing, visual arts, and advising on branding strategies. I'm excited to introduce this panel today and I cannot claim ownership over the creation of this title. Kudos for Bill [Rosenblatt[6]] for the thought behind the foundation of this panel. I want to go ahead and jump in since we only have, really, 45 minutes, so I can leave room for questions at the end. I'll kick it off to my panelists to give a quick overview of their practice and their background. Then, we'll jump into the Q&A.

Dori Hanswirth: Thanks, Charity. Hi, everyone. My name is Dori Hanswirth. I am a partner at Arnold & Porter here in New York, and I've been practicing copyright law since at least the dot-com era. So, I'm very happy to be talking with you today.

Zachary Cooper: Hey, Zac Cooper. I'm from the Amsterdam Law & Technology Institute, which is part of the Vrije Universiteit Amsterdam and also working out of the Weizenbaum Institute in Berlin, between the two. I'm a legal scholar, writing a lot about AI and creativity, but I'm also a professional musician. So, using a lot of AI when I create things. I've got both sides of the perspective, partially.

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[2] Counsel, Benchmark Education Company. *See Maria Backman*, THE COPYRIGHT SOCIETY, https://copyrightsociety.org/bio/maria-backman/ (last visited Nov. 24, 2025).

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[4] Associate, Klaris Law. *See Gili Karev,* KLARIS LAW, https://www.klarislaw.com/team/gili-karev (last visited Nov. 25, 2024).

[5] Partner, Arnold & Porter. *See Dori Hanswirth*, ARNOLD PORTER, https://www.arnoldporter.com/en/people/h/hanswirth-dori (last visited Nov. 24, 2025).

[6] Program chair, Copyright + Technology conference. *See Bill Rosenblatt*, THE COPYRIGHT SOCIETY, https://copyrightsociety.org/bio/bill-rosenblatt/ (last visited Nov. 24, 2025).

Gili Karev: Hi, I'm Gili Karev from Klaris Law. I'm a litigator and also sort of a media law transactional attorney/advisor. My practice is broad. I focus a lot on copyright, primarily advising on the use of copyright in AI. My past life before I became a lawyer, I was an art curator and I worked as an art liaison. I worked with a lot of artists in the creation of their work. There's been a nice segue from that into this practice area.

Maria Backman: Hello, everybody. My name is Maria Backman. I am a sports and entertainment attorney. I currently work at Benchmark Education Company as in-house counsel and also an NIL[7] consultant in currently developing different forms to implement AI in literacy materials in children's books.

Charity Gates: All right. So, I'm really excited to delve into this topic because we're in a world where there's so many different creator tools that are incorporating AI assistants and generative AI tools into their platforms, such as Canva, Adobe. I want to get started with Dori and talk about the current limitations that the U.S. Copyright Office has put out related to copyright registrations for AI-generated content or content that incorporates AI-generated [material].

Dori Hanswirth: Sure. A lot of people in this room probably know that the Copyright Office here in the U.S. has taken a fairly hardline position that works that are created by making prompts into generative AI platforms are unlikely to qualify for copyright protection. I will give a little recent history of that, and then towards the end we can talk about a couple of cases that have actually been decided and one pending about it. So, in March of 2023, the Copyright Office issued guidance for works containing material generated by artificial intelligence.[8]

They started off by saying that the Copyright Office has overseen copyright registrations since 1870 and therefore they know what they're doing.[9] They receive roughly half a million applications for registration each year.[10] What they have decided is that technologies that train on vast quantities of pre-existing human authored works and use inferences from that training to generate new content don't in and of themselves produce copyrighted material.[11] A month before this guidance was issued, in February of 2023, the Copyright Office concluded that a graphic novel that was comprised of human authored text combined with images generated by the AI platform Midjourney[12] constituted a copyrightable work, but that the individual images themselves could not be protected as copyright.[13]

What they are requiring is some level of human creation and that works with traditional elements of authorship have to be produced by human means.[14] A human can

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[7] NIL refers to "Name, image, and likeness," and is used in reference, in particular, to college sports at the moment.

[8] *Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence*, U.S. COPYRIGHT OFFICE, https://www.copyright.gov/ai/ai_policy_guidance.pdf (last visited Nov. 24, 2025) (Hereafter "Copyright Registration Guidance."

[9] *Id.* at 1.

[10] *Id.*

[11] *Id.* at 2-3.

[12] MIDJOURNEY, https://www.midjourney.com/ (last visited Nov. 24, 2025).

[13] *Letters Regarding Zarya of the Dawn*, U.S. COPYRIGHT OFFICE, https://www.copyright.gov/docs/zarya-of-the-dawn.pdf (last visited Nov. 24, 2025).

[14] Copyright Office AI Guidance, *supra* note 2 at 2.

select and arrange various AI-generated materials in a creative enough way to warrant protection, but essentially having a lot of creativity in your prompts is not going to do it. So, this guidance came out in 2023.[15] In January of 2025, the Copyright Office issued a report that confirmed that text prompts alone won't qualify.[16] I'm going to stop talking there and I'll come back later and talk about at least one person who is fighting that.

Charity Gates: All right. Yeah. So, one thing that we were discussing in our pre-panel call was about the practical implications put on by the recent guidance this year and what it means for creators to actually go about disclaiming or disclosing AI-generated content within the copyrightable content that they're seeking to register. And so, Zac, you are a scholar and often debate these topics in a more abstract way, but can you talk about those dichotomies of what it means to actually have these disclosure requirements?

Zachary Cooper: Yeah. Yeah, for sure. Yeah, so, I'm a bit lucky because I'm here as a scholar, so I don't have to say, "Hey,My opinions don't represent the company I work for." I can just come out and be hyper-opinionated. I have spent most of the last year being very opinionated about this exact issue, I think, with what many considered a very controversial take twelve months ago when I first wrote this paper arguing it.[17] Maybe people still find it provocative and controversial or maybe now it feels like it makes more sense.

I've basically been arguing that the whole notion of dichotomizing copyright based on machine-made versus human-made, when did the machine make it, when did the human make it, what's the right threshold, that this entire conversation is a waste of time.[18] If that sounds shocking, let me argue it. I think the problem is, first of all, "AI", it's meaningless as a qualitative signifier because it can be used to do so many different things. If we want to talk about music, for example, you could theoretically use an AI tool just to mix the record, or just to master it. None of that's copyrightable. Or, you could use voice-cloning AI – now they've got these great tools where you can sing a guitar solo like, "Bam, womp, womp, wah" and turn it into a guitar, or you could sing the bass like, "Dum, duh, dum, dum" and turn it into a bassline. Right? By the same token, you could sit there and record a whole song on the acoustic guitar and go, "Oh, I don't have any drums," and go, "Generate me the drums." All right. So then, theoretically by the U.S. Copyright Office's way of looking at that, the drums would not be copyrightable but the bit that you played on the guitar would be copyrightable.

But the reality of creative production now is you've got a whole bunch of little buttons there. If hypothetically 80 of them don't have AI in them and then maybe 20 have generative AI - the way we're trying to divvy this up now is like, "Oh, if you click the 80 ones that don't have AI, you get copyright to all that. But the 20 that have AI, you don't get to copyright to that bit, unless you click it in a certain way, which we would have to

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[15] *Id*.
[16] *Copyright and Artificial Intelligence Part 2: Copyrightability*, U.S. COPYRIGHT OFFICE, https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf (last visited Nov. 24, 2025).
[17] Zachary Cooper, *The AI Authorship Distraction: Why Copyright Should Not Be Dichotomised Based on Generative AI Use*, SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4932612 (last visited Nov. 24, 2025).
[18] *Id.*

assess later down the line, which we wouldn't even know unless you told us, then maybe you could get it. We would have to evaluate it." This, to me, is nonsense.

Even if you want to talk about the AI tool that seems like the most extreme, text-to-music or text-to-art generators, even then there's a huge difference between going, "Give me a song," and "Give me a song that goes F-sharp, G-sharp, D6, and I want the bass to come in here, and I want the melody to look like this." Right? So, you have an infinite spectrum of ways you can use any tool and an infinite number of potential tools in the first place. This notion of independently auditing all of those for some sort of threshold by which we're then gonna have to look into it seems – first, we have to agree on what that threshold is. Then, you'd have to harmonize that threshold all over the world, 'cause otherwise we're getting back into the 18th century, where it's like you can own the melody in China but you don't own the melody in Belgium, then the drums are okay in Amsterdam. That's all a pain as well. But theoretically, even if you could get that whole threshold set worldwide, which is a hell of a huge "if," then we gotta work out then, well, how do we know when people meet that threshold?

The only way you can do that is, I call it, track them or trust them. Currently, we're on the trust method, which is essentially AI disclosure where we're asking people, "All right. When did you use AI?" I mean, what's the plan here? Every time I click one of the buttons, am I supposed to go over to my little Excel spreadsheet and write in, "Oh, I clicked one of the generative AI buttons while I was working on the thing." That's nonsense. I call that the old hard drive debacle. You find an old hard drive. You've got 300 pictures on it or 100 songs on it. You don't remember step-by-step exactly how you made any of these things.You have to lie, even if you're not a bad agent, even if you don't want to lie. You've either got to make it up and go, "I think I used AI for this bit. Maybe for that bit. I don't really remember when I used it." So - you can't really have disclosure as a means of working it out, which means you've gotta track them. But to track them, you've got to get all this watermarking software.[19] You've got to put them in every single creative software the whole way through. I don't have time to go into watermarking here, but there's all kinds of problems about the viability of watermarking all that.

Even if you somehow got all the watermarking to work, still it's just telling you AI, which, again, doesn't tell you anything 'cause AI doesn't tell you any more than "software use here". For all those reasons, it's just like, well, is this actually a workable approach in any meaningful way? Or do we have to bite the bullet and go, "We're never gonna be able to audit how everyone is creating all that content all the time." Is that actually an authorship problem? Because I don't think we have an authorship problem 'cause you can use generative AI to make really interesting things, and people are.

If you go to any big art show – I was just at the MoMA yesterday, being a tourist, and they've got the big Refik Anadol [installation], which is an infinitely generating AI work.[20] The question is, do we have an authorship problem or do we have a scale

[19] For example, software based on the C2PA standard for tracking provenance of content authorship and editing. *See* COALITION FOR CONTENT PROVENANCE AND AUTHENTICITY, https://c2pa.org/ (last visited Nov. 24, 2025).

[20] Refik Anadol, Unsupervised, Modern Museum of Art, New York, NY, Nov 19, 2022–Oct 29, 2023, https://www.moma.org/calendar/exhibitions/5535.

problem? If we have a scale problem, it's a very different question to an authorship problem.[21] That's where I think we're actually at.

Charity Gates: Does anyone else want to comment or add a counter opinion? Whichever.

Gili Karev: Exactly what Zachary said. This is a big part of what we were discussing prior to this panel,[22] which was when we talk about AIare we talking about Microsoft Word? Are we talking about PowerPoint? Are we talking about Photoshop? Are we talking about Illustrator? I mean, there are so many different types of products or tools that a person can use when they're creating anything. I know we were talking about music predominantly on these panels, but visual arts and technology art which is its own genre of art and a really fascinating one as its own thing.

Where is the line drawn between what is or is not human generated? Are we now saying that the only thing that we can consider fully purist art is art that we create with a paintbrush? And even that, does it have to be figurative because oftentimes you don't control the abstract creation of art. So, if we don't know what's going to happen on the output, does that mean that we can't take ownership and authorship over the input?

I mean, it's these questions, I think, become philosophical quickly and prevent us from being able to actually do what matters here, which is to ensure that a) we are still working towards what copyright is supposed to protect and encouraging people to continue to create artwork, and b) ensuring that when we are using enforcement mechanisms like copyright registration, we're not abusing those mechanisms to take ownership over something that we don't have or to try and usurp somebody else's rights.

I think fundamentally, it's not a question of where – I mean, yes, in order for us to understand the Copyright Office or the copyright registration guidelines, we do have to ask ourselves, "What are these disclaimers and what are these disclosure recommendations actually aiming to achieve?" But I think we have to take a step back and say, "What is the primary objective here? Is the primary objective to ensure that we are continuing to encourage innovation and creativity and the making of works of art?" Or is the primary objective making sure that we have a hand in this new technology and saying that we did something about it or have thoughts about it so that we can write it down and show the world that we're part of this conversation, which I think the latter oftentimes becomes – we forget that there is an ultimate objective here, that you don't necessarily need to be a part of the conversation to benefit from whatever is being said ultimately.

Charity Gates: Yeah. Anyone else?

Maria Backman: I always love how fervent and passionate Zac's arguments are regarding the controlling or monitoring of AI. I think in different areas, although tracking and integrity and being honest, it does call into question I think when you are using different data, it begs the question of do you need to track those things. I see it often in practice dealing with children's data. We need to understand that AI is a tool and not a

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[21] By a "scale" problem, I am referring to the issue that if you allow copyright protection for AI-generated work, then authors can easily receive protection for enormous amounts of works with very low investment / effort. I speak to this in more detail later in the panel.

[22] Bill Rosenblatt, Annemarie Bridy, Gary Greenstein, Bobby Rosenbloum, and Howie Singer, "What's Past Is Prologue: Lessons For Ai From The File-Sharing Era," 73 J. Copyright Society 1059 (2025).

replacement for certain things. Whether we operate and use a child reading a transcript or manuscript, oftentimes different companies, whether they are honest or ethical, they will use that to enhance the AI tools or systems that school districts use. Whether that is systemizing or synthesizing quizzes or assessments based off of that child's data, that is one way. But I think depending on the information in the industry that you are using, there has to be a system of tracking inputs and being honest. But to everything else, I definitely agree.

Zachary Cooper: Can I respond to that?

Charity Gates: Yes.

Zachary Cooper: I mean, it's one thing to want to track children's data to protect children. But to me, it seems very radical the notion that we are gonna track the entirety of the creative process of an artist, which I think is a very personal thing. And so, to me, that's a very radical policy suggestion regardless of what the objective would be. I would think that there would need to be a really decidedly serious issue to decide that every single time that anyone is using Logic [Pro][23] or Photoshop, we're gonna track literally everything that they do. The question is, what's the big serious societal reason for it?

To know if a tool, which is fast becoming a ubiquitous tool essentially, a tool that's in everything, has been used. Is that really a level of creative surveillance that we're willing to sign up to, to know something like, "Oh, they've used something that's in everything?" That seems like a really radical policy suggestion, especially if we're gonna go, "Oh, it's for the copyright." Again, I think you can use generative AI to do all kinds of super, wild, interesting, crazy stuff. I'm flying to Brussels tomorrow for the AI music conference. It's gonna be three days of me looking at people doing crazy stuff with generative AI. It's like, "Oh, that's awesome! We found out that they used AI." That's told me absolutely nothing about their relationship to the work. But now, I'm being tracked in every single thing that I do while I create those things. So it either tells you "AI", which tells you nothing, or it tells you exactly how I used AI, which is surveillant.

Dori Hanswirth: I don't think the U.S. Copyright Office is going to say you have to track your use of Photoshop or GarageBand[24] or whatever tools. I mean, there are computerized tools that artists and musicians or creators use to make things. That's not what this is about. This is really about using a generative AI platform, which itself is comprised of gazillions of other people's pre-existing works to tell the platform I want to make this picture that has a moon and it's light blue and there's a glow in the upper right hand corner.[25] That prompting and this case, the *Allen* case, that is pending in the district of Colorado right now,[26] the artist Allen used Midjourney, I believe. He iterated 624 different prompts to create the image that he had created with – but the platform created the image. He told the image what he wanted and he refined it. He was very deliberate. He spent a lot of time and effort trying to get his creative vision to exist. But the

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[23] Digital audio workstation (DAW) software from Apple. *See* LOGIC PRO, https://www.apple.com/logic-pro/ (last visited Nov. 24, 2025).

[24] Another DAW software package from Apple. *See* GARAGEBAND, https://www.apple.com/mac/garageband/ (last visited Nov. 24, 2025).

[25] *See for example* MIDJOURNEY, https://www.midjourney.com/ (last visited Nov. 24, 2025); STABILITY, https://stability.ai/stable-image (last visited Nov. 24, 2025).

[26] *Allen v. Perlmutter*, 1:24-cv-02665, (D. Colo.), involving the AI-generated work "Théâtre D'opéra Spatial."

Copyright Office wouldn't give him the registration, but he did also use Photoshop and other tools to refine the image afterwards.[27] That wasn't their problem with it. Their problem with it was that the means of creation were not done by a human.[28] I'm thinking he created all these prompts. He could get a registration in his prompts if he wanted to, I suppose. But he doesn't want to show the prompts. People don't want to show their work that way.

The Copyright Office is still having a problem with this idea that the computer system or the platform is really the author. That's what they're focused on. The author is not human. They cite history of the Copyright Act in the Constitution that supports their notion that a human has to be the author.[29] So, a human is the only one that can leave their intellectual property to heirs.[30] That kind of thing and they list some textual support for this. That's where they are. Then, the question is, someone's gonna create this. Mr. Allen has sold copies of this work, but he can't protect it. Is that good or bad?

Gili Karev: I want to address the "has sold copies of the work but cannot protect it" concept because registrability does not necessarily provide protection. I mean, it definitely allows you, obviously, to enforce your copyright by bringing a lawsuit, but you don't necessarily even have to have a registration. You have to have a decision on your application in order to bring a lawsuit. That decision can be a denial.[31] You still have authorship rights in your copyright. Registrability is not a pre-requisite to having those rights.

I do wonder what impact the Copyright Office, given that it's oftentimes delayed in its policies, is this something we're going to look back on in a few years and say, "Oh, the Copyright Office was a little bit behind and now they're caught up," as is typically the case when it comes to technology and government. Or, is this actually going to impact how we view and understand authorship and creativity? And I think it will be probably more of the former as opposed to the latter.

Charity Gates: All right. I want to piggyback off of that documentation question and the auditing. What it may mean, particularly maybe bringing in a little bit of a practical hint to this of how contractual obligations will go for, let's say, companies for instance that are hiring independent contractors or freelancers that are using AI generative tools to create the works that they've been hired to do. Do you have an idea of, based on the guidelines that the Copyright Office is putting out and where you see these regulations continuing to evolve, how that may impact agreements?

Maria Backman: In practice, I think being one of the smaller publishing companies, I think we're borrowing from a lot of our peers who have more resources. I think one way that we safeguard it is we start to insert or implement affirmative clauses within our contracts. All those boil down to saying that an actual person created the content free of intervention of tools, systemized systems involved. And then, although it's a question of

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[27] Second Request for Reconsideration for Refusal to Register Théâtre D'opéra Spatial (SR # 1-11743923581; Correspondence ID: 1-5T5320R), U.S. COPYRIGHT OFFICE, https://www.copyright.gov/rulings-filings/review-board/docs/Theatre-Dopera-Spatial.pdf (last visited Nov. 24, 2025).

[28] *Id.*

[29] Copyright Office AI Guidance at 2-3.

[30] 17 U.S.C. § 201(d).

[31] 17 U.S.C. § 411(c).

ownership of the IP, we put it in there that any output that is created from the content, whether it was the AI tool, something minor like grammar, or something to enhance illustrations like Photoshop, that we put in there.

It's almost like a work product provision that we own all output to the creation. This is also coupled with different integrity clauses that we have with different authors. One, I think, it helps with having a book of business and having to discern it with the people that we do affiliate ourselves with, but having that in the clause or in the contracts and making it a material breach for them not being transparent. Also, disclaiming and disclosing any AI use or enhancement within any content that we create. It's something that the company is doing to safeguard.

I know copyright, it's evolving. I know we were joking about it up here before. It's like what works today, necessarily won't work tomorrow because of the delay in the Copyright Office, but those are some of the actions or practices that we're implementing in our contracts with different content creators.

Charity Gates: And Gili, from a litigation perspective, how do you see these policies breaking down in terms of possibly challenging a copyright registration on the basis of authorship or validity of the authorship?

Gili Karev: It's a really good question. I think it comes down to how many steps a person would have to go through to actually get through the discovery process to determine whether – you have to start. You have to have registration, let's say, to bring a lawsuit.[32] That's your first support or showing that you are the author. Then, the opposing party would have to then, somehow, rebut or challenge that registrability. And how would they be able to challenge that registrability? Well, they would have to then show that you, in fact, received a registration even though you used AI tools and you didn't disclaim those AI tools.

How do they know that you didn't disclaim those AI tools or that you used those AI tools to begin with? Are they using a separate tool that they are somehow using on top of your artwork or your work to determine that you used AI tools and then backtracking into somehow seeing that you didn't disclaim? I mean, there are so many steps that need to happen in order to even do that. I think if you are challenging authorship on registrability grounds, or I guess authorship and registrability grounds, there's so many hurdles that a person would have to go through and some of them would be impossible to determine.

For instance, ChatGPT has a policy if you delete your private prompts, then it's only retained in the system for 30 days and then it's deleted forever.[33] Now, of course, there's a lot of TBD on that currently and how to obtain access to that, but I think it's extremely difficult to be able to prove that someone should not have obtained a registration because they neglected to disclaim something and have to prove that they did, in fact, use AI tools, and so only portions of their work are copyrightable and that those portions are not the ones that were copied. I'm not really sure how yet it's going to play out in the litigation sense. I wonder, Dori, if you have any other thoughts on that?

Dori Hanswirth: Well, I think it'd be interesting if you're representing someone who has been sued for copyright infringement, and your defense is the plaintiff is not the

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[32] Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC, 586 U.S. 296 (2019).

[33] *Chat and File Retention Policies in ChatGPT*, OpenAI, https://help.openai.com/en/articles/8983778-chat-and-file-retention-policies-in-chatgpt (last visited Nov. 24, 2025).

author of this work. Then, do you get to take discovery on all of that stuff? That sounds amazing to me, for good or bad. But maybe if you're defending that, then you have a good faith basis to believe that that could be a defense, and the Copyright Office is saying you can't get a registration. Then, maybe, you look back. We've done in the past sometimes in a copyright case, not an AI case, but before AI sometimes you look at someone's copyright registration, and you think there's something a little fishy about it and you do take discovery on it. So, you might be able to do that and that would mean that the author would have to keep very good records of how they made their work.

Zachary Cooper: All the records are entirely in service of them losing rights to their work. It's like - I'm gonna sit there all night and make sure that everybody knows that I'm not gonna get to own this. I really want to make sure that I get a really nice, detailed log of all of that. There's this bizarre innovation paradox to the whole thing where you have all these artists that are really excited to do all this cool stuff with generative AI. Again, you can go to any art show, any music show. There's loads of people doing it. It's only the people that want to use generative AI to do things with it that you cannot do any other way who theoretically are now in trouble of losing the rights to their works.

All the people who want to use generative AI to make junk that they could have done without generative AI but they're lazy and they don't want to go to the effort. They just go, "Give me a picture." They're the people who can then go, "Hey, I drew that, for sure. I spent the whole week drawing it." Or "Oh, yeah. I recorded that last week." It's exactly the same as something you could have done without generative AI. They get all the rights to their work unless you can prove it. Whereas suddenly, all of the innovative people that are like, "Whoa, a new technology! I can do all this stuff I couldn't do before."

They're the only people that, for sure, everyone's gonna go, "You used AI to make that 'cause there's no other way to have made that other than with AI." So, it's this inherent innovation paradox within the copyright system where the whole point of the copyright system is theoretically to promote innovative arts. But actually here, it's like we only want to protect the old forms of art and anything that anyone does that's innovative, you can't protect it. And the problem is, that's not really the issue. The issue with protecting it is not, "Oh, damn. Now we're giving the people that use AI copyright over their work."

The issue which no one's talking about because we're all so excited about the authorship thresholds, which I think is a waste of time, is that now people can create obscene amounts of stuff. If we can't enforce authorship thresholds for all the reasons I've mentioned, then that is so challenging to so many ways we think about the copyright systems. Because then I can go, "Oh, here's a million hours of songs about birds by Zachary Cooper. Hey, Taylor Swift, your new song sounds an awful lot like hour No. 255 of my bird opus. Pay up." Right? That's the problem, right? And the problem is now Taylor Swift's going, "Hey, I can get out a whole album every single week if I want. I just gotta get 20 interns in downtown Brooklyn. Sit there. I'll come in every Friday, bang out my vocals on it, and I can just keep banging them out." That's the reality of what AI changes. It's not the notion that, "Oh, no. Suddenly we can't tell what's manmade and what isn't." It's all people making stuff, but now it's people making huge amounts of stuff with very low investment. It's a huge problem but we're not even talking about it 'cause we're trying to work out what's enough human interaction with the thing.

Charity Gates: Can you all tell that we have a scholar on the panel? I do want to pull that thread of the – because it's going to become even more challenging as these

tools become even more integrated into our daily lives. But where the line will be drawn between human authorship and machine-assisted output and all these different nuances that determine whether you would have to disclose the use of AI in the first place. Dori, do you want to start with that opinion?

Dori Hanswirth: Yeah. I'll talk about Mr. Allen again.

Charity Gates: Sure.

Dori Hanswirth: Well, first I'll tell – I don't know if you're all familiar with the DC Circuit's opinion from March in *Thaler v. Perlmutter.*[34] In that case, Mr. Thaler tried to get a copyright registration by listing an AI platform as an author.[35] That fell flat because of the reasons that I discussed earlier that AI platforms are not human. A work-for-hire theory didn't work because it was not employing a human to do it, so that was that. And the DC Circuit affirmed that, so that's really the law now. Meanwhile, in Colorado, Mr. Allen has sued the Copyright Office,[36] and he has moved for summary judgement over their denial of his copyright or his registration.

The Copyright Office, I don't believe, has filed their response to this summary judgment motion but he is arguing ardently that he has sufficiently contributed enough human elements into his work by having a very robust interaction with this serious of 600 plus prompts with the AI, that he has created this vision that it's his creation. He listed himself as the author on the registration. The Copyright Office gave him a huge back and forth, multiple emails. What did you do? What did you do with Midjourney? A lot of back and forth and then said no. Basically, since at the end of the day, you press buttons on your computer and it was Midjourney who gave the output, we're not going to give you the registration.

One of the things he's arguing is this like a photograph. I'm basically telling the machine what I want made. It's like I'm a photographer and I'll cause that to happen. The Copyright Office seems to be implying that you didn't press the button, so – you didn't press the shutter on the camera, so it can't be you. That just seems a little – I don't know. There has to be something better than this. That can't be the beginning and end of it. This case is going to be decided by a district judge in Colorado eventually, and I'm sure it will go up on appeal to the 10th Circuit. Maybe, when they're done deciding the *Whyte Monkee* case,[37] they'll decide that case. But we might be waiting a long time.

Charity Gates: Anyone else have an opinion on that?

Gili Karev: I think it's interesting that – I share your views on this case. I think it's perplexing. But if you think about the incidental capture of a photograph by somebody walking down the street, that merits copyright protection even though you haven't actually selected the subject matter necessarily. Maybe you've been holding your camera as you pass by it. Maybe you just accidentally happened to capture something very cool because it happened in reality and you clicked the shutter in that moment. That could merit copyright protection and registrability and putting in 600-some prompts that specifically identify – that you are taking the idea out of your head and explaining to a machine, essentially, exactly how you want it to print your idea effectively. It is baffling to me that it's so hard to see the authorship in that.

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[34] Thaler v. Perlmutter, No. 23-5233 (D.C. Cir. 2025).
[35] *Id.*
[36] Allen v. Perlmutter, 1:24-cv-02665, (D. Colo.).
[37] Naruto v. Slater, 888 F.3d 418 (9th Cir. 2018).

Dori Hanswirth: Yeah. The Copyright Office's answer to that is that we've never rewarded sweat of the brow.[38] Right?

Gili Karev: Right.

Charity Gates: I know Zac has something to say. Go ahead.

Zachary Cooper: Okay. Where do I even begin? First of all, you gotta think how foundational a shift this technology truly is in the way that we're gonna be able to relate to all creative consumption and production coming into the next century. Because once you can tell something that you're listening to or looking at or watching to change, and it just changes by you telling it to change, then we're not talking about a difference in art or artistic creation. We're fast reaching a point where even just the notion of communication fundamentally shifts because instead of texting Bill, "Hey, I'll meet you at midday to go get coffee." You'll be able to go, "Hey, can you send Bill a little black metal track saying that we're gonna go meet for coffee and can you throw in a little video of a squirrel on a skateboard singing it to him?" And then pop - , there you go. We're reaching a whole level of aesthetic communication whereby everyone is gonna be creating huge amounts of both visual and audio content, some of it for artistic purposes, but a lot of it just as window dressing to our lives.

That's the real shift once you can immediately generate things. To me, this notion of trying to build up a framework that's gonna try to audit the independent details of all the creation of all of those pieces seems so foundationally impossible unless we stop right now and the technology stops exactly as it stops now and we massively limit everyone's interaction with it. That may happen. There are people who think the AI bubble is gonna blow up and this will all be gone. "It's a waste of time. It's never gonna get anywhere." But if we get to that world where everyone is creating stuff all the time…

Okay, if Allen loses the case and they go, "Hey, those 650 prompts weren't enough to get it." Well, that's the last you'll hear of an Allen-like figure ever saying that they had 650 prompts. To me, that's such an absurd world to have a technology that everybody has access to, where you can immediately create art with what's right there in your pocket, but the legal framework is saying, "But you better not use the little toy that every single one of you have access to." What kind of weird prohibition era wink, wink, nudge, nudge culture are we choosing there and in service of what? Isn't that bizarre? Am I off here? Or is that bizarre?

Dori Hanswirth: I think we all agree with you.

Gili Karev: Yeah.

Maria Backman: Yeah.

Charity Gates: I guess the question is – and I want to leave room for the audience because I know you all probably have some really pressing questions as well. But maybe what are your ideas for best practices in advising artists or creators or people using these tools? To your point, Zac, it's just gonna be a fact of life at some point, possibly. Who knows? I wonder how we advise creators? Maybe Maria, do you want to start?

Maria Backman: It's super hard. Zac brings a really good point and that case that Dori brought up of being transparent and saying they used 600 plus prompts and that getting kicked to the side. A person is not gonna be as transparent. I think in practice, it's great to theorize all these questions. I think in practice, what we do is we have a really good relationship with our content creation team and our publishing team with different

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

trade books. We are very interactive in the illustration process, whether that is submitting sketches along the way, detailing every page of a manuscript.

Now it comes to a question of, are you gonna use an AI tool to monitor how many grammatical errors were corrected or detected by Grammarly or whatever Microsoft Word tool that you use? It bodes a question of, are we not going to use AI that we've been using already? Or are we going to use honesty is the best policy? I think in practice, we've tried to mitigate and safeguard it by using watermarks and producing steps. Not to de minimis, you know, "Hey, I changed the hair color of this particular character in this one trade book."

But engaging with our authors and our illustrators along the way, I think, has helped us because at the end of the day, we want copyright ownership of the books that we produce. So, understanding that every input of AI can either bolster or rebut our claim to it, is going to, at the end of the day, be more detrimental to us and then beneficial. So, in practice, I think handholding our authors and being a part of their interactive and creative journey is something that we have taken on. But realistically, do I see that on a larger scale being something of productivity? I don't see it.

Charity Gates: Anyone else want to share?

Dori Hanswirth: I think for now. I mean, for now you've got to focus on the non-generative AI parts of what you make and really focus on the human when you're making your application. You may have to say, "Well, I also used generative AI." But hopefully, the office is going to start allowing some registrations for people who have used the AI platform and other things to make something. I don't understand. Maybe these applications, they were tests? Like, *Thaler* was clearly a test case. I don't really know anything about the history of it. *Allen* seems to be a test case, too. But I would try just not to be a test case and to really explain how a person actually was involved and did create this.

Charity Gates: Okay, I think I'm gonna open it up to the audience so that we have time to still debate this topic but with input from the audience. If you have questions, please feel free.

Participant 1: I have a question. So, 30 years ago, it was probably pretty innovative or at least novel to see CGI used in films. Now, you can't go into any movie and not see a movie that has CGI in it. In five years from now, when most artwork, most music, and most movies use generative AI in some capacity, what's the Copyright Office going to do? Are we not going to register any new works? Are the works that are generated using this technology not going to be protected to the same extent? Is that going to make them cheaper than human generated works because anyone can copy them freely and put all who like to create things out of a job because now we can't compete against the free things that the computers generated that the law doesn't protect? Who benefits from this, from excluding authorship from people who use this technology and authorship rights? It seems untenable to me. Is this the Copyright Office going to come back to this at any point and reconsider?

Dori Hanswirth: Yeah, to answer your last question, yes, they are going to. I think they have different people there now or they'll be getting some different people, or who knows. But yes, I think they will be revisiting it. In a way, I think the requirement for human authorship is designed to protect humans, so we have to balance that, too. We'll see.

Gili Karev: I want to add to that. I think what we might see in the interim until the Copyright Office inevitably, I think, rethinks this position, is stronger contractual guardrails around ownership and enforceability. If something like CGI is created or whatever the technology is, that generative AI is used to create images for a studio, for instance, or for a movie, there's gonna be a lot of "as between the parties" language. This person is the person who is able to enforce this copyright. And then there's going to be registrations on the material that is capable of being registered. And then, it'll be a contractual enforcement instead of a direct copyright enforcement, I think, for a while until there's more clarity on what authorship would constitute.

Participant 2 [Lewis Sorokin]:[39] Hi, Lewis Sorokin, technology attorney with Wilftek out of Philadelphia. I want to pull on a couple of threads of what you guys have said and see if we can tie a couple concepts back together. I noticed the arts focus is a big part of what we're talking about right here. This issue goes far beyond the arts. For example, big tech companies including Meta, Google, and Microsoft have all said that anywhere between one and two-thirds of all software code written in their companies is generated by AI. Not only that, but Fortune 500 enterprises are pulling in tools like Cursor,[40] Cognition,[41] and Windsurf[42] in order to generate code for their enterprises at scale. It's not just a creative tool issue, it's also now a software issue and an enterprise issue. At the same time, the rule still applies that the AI-generated works are probably not protectable except for when they are in cases like A Single Piece of American Cheese[43] and any other examples that the Copyright Office has granted for thin copyrights of compilation. What are your thoughts on where those tea leaves are moving and where we see this all going given the current state of affairs that it's not just creative but it's also what we call vibe coding in the software space?

Gili Karev: Yeah. I mean I think that's a great, great question. I think it's really tricky because we already have pretty thin copyright. Obviously, we have literary copyright for software and that's something that people have been utilizing, but I think we're probably gonna have to see more of a database compilation copyright system, which is much thinner and much more difficult to enforce unless there's direct copying.

I think there's probably going to be a lot of works that are potentially unprotected or to some degree unprotected between now and then and that might create a new ecosystem of a more open-source coding structure, which I think is largely beneficial to some extent depending on the parameters of it. We might see a whole shift in industry if this is something that continues.

Dori Hanswirth: Yeah. I think the question of the level of protection and copyright for code is already a question. *Google v. Oracle*[44] and the types – I forget what they call

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[39] Associate Attorney, Wilftek LLC. *See Lewis D. Sorokin*, WILFTEK, https://www.wilftek.com/lewissorokin (last visited Nov. 24, 2025).
[40] CURSOR, https://cursor.com/ (last visited Nov. 24, 2025).
[41] COGNITION, https://cognition.ai/ (last visited Nov. 24, 2025).
[42] WINDSURF, https://windsurf.com/ (last visited Nov. 24, 2025).
[43] Title of a visual work, generated by the Invoke AI image generator, for which the Copyright Office granted registration in March 2025. *See How We Received The First Copyright for a Single Image Created Entirely with AI-Generated Material*, INVOKE, https://44037860.fs1.hubspotusercontent-na1.net/hubfs/44037860/Invoke-First-Copyright-Image-AI-Generated-Material-Report.pdf (last visited Nov. 24, 2025).
[44] Google LLC v. Oracle America, Inc., 593 U.S. 1 (2021).

them. The two buckets of code that they describe, but one of them seemed to be something that people could freely use anyway.[45] I think I agree. I think it's gonna be untenable. I think a lot of these ownership issues for everything are gonna start to be a little less solid, and code could be one of the first areas where we see that because the protections are already in copyright a little iffy.

Participant 2: Thank you.

Gates: I was going to say, I'm not sure if this case made it into the CLE materials, but there's a case called *Laatz v. Zazzle*,[46] and the court reviewed the question of copyrightability of a typeface software. That's worth looking into.

Participant 2: It's a typeface software?

Gili Karev: Yeah.

Gates: The software for the base of the typeface. Okay, next question.

Participant 3: Yeah, no, super interesting. These are all my personal thoughts. I think my organization has said so far, the Copyright Office had been getting it right and drawing the lines. But as I hear more about this, it is – yeah. The authorship requirement, going back to some of the cases that they cite in the compendium around – I mean, there's 1800s and cameras as we mentioned,[47] and the monkey selfie case.[48] Everyone's favorite that's not a human, or a celestial being – anyway. I guess it's like, you don't have to register something with the Copyright Office for it to be protected by copyright. So, that is kind of an interesting part where it's like, why even register it? Yeah, I understand that some people are maybe having a test case… I know we're at the Copyright Society, but I guess especially for some of the examples that Zachary was mentioning, if you're making a squirrel meme, do you care if it's copyright protected or not? I guess both it is copyrighted but also it's not registered, so, what? I understand that's not how a large-scale commercial rights holder commercializes some of that stuff. I'm not sure it's always – we're talking about protection. Protected means a lot of things. It could mean protected by the First Amendment or it could be protected by a fairy. I guess, I'm wondering why it matters to a room of fellow copyright lawyers. Anyway, that's my question.

Dori Hanswirth: In the United States, if you want to enforce a U.S. copyright in court, you do need a registration by and large.[49]

Participant 3: Right, but if you don't want to do that, then…

Dori Hanswirth: Well, if you're gonna do a fun way to invite your friend out for coffee, you're probably not gonna go to the trouble for that. That's true, but then you've got people who are making art, or other things, or code, or whatever it will be with the assistance of a generative AI platform, there's going to be more and more of those people. They probably need a way to protect at least some of what they do.

Participant 3: Yeah, I guess, I'm just like is copyright always the answer?

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[45] "Declaring code" and "implementing code." The Supreme Court held that Google's copying of the former was fair use. *Id.*

[46] Laatz et al v. Zazzle, Inc. et al, No. 5:2022cv04844 (N.D. Cal. 2025).

[47] Burrow-Giles Lithographic Company v. Sarony, 111 U.S. 53 (1884).

[48] Jason Slotkin, *'Monkey Selfie' Lawsuit Ends With Settlement Between PETA, Photographer*, NPR, https://www.npr.org/sections/thetwo-way/2017/09/12/550417823/-animal-rights-advocates-photographer-compromise-over-ownership-of-monkey-selfie (last visited Nov. 24, 2025).

[49] *Fourth Estate*, 586 U.S. at 299.

Dori Hanswirth: Well, I don't know. I mean, it's hard. The contractual, that's a good solution but then what if something – maybe some of this would be preempted.

Maria Backman: Right. Well, then you could only bring a contract thing.

Dori Hanswirth: Right.

Maria Backman: You would have to be very strategic about what kind of claim you're bringing –

Dori Hanswirth: Exactly!

Maria Backman: If you're trying to enforce something on the basis of contract –

Dori Hanswirth: Exactly.

Maria Backman: As opposed to copyright. Yeah.

Dori Hanswirth: Yeah.

Participant 4: Hi, all. I'm wondering, could you argue if the question is more about the human creativity affected to an AI-generated output would set this apart? For example, the example of creating a meme inviting someone to coffee maybe is not creative arguably because the actual work – I did not create the meme. But if I take the meme and then I affect it somehow, it has my human effect on the authorship. Does that not delineate from what the output is? Similarly, if I walked down the street holding my phone taking thousands of photos blindly, that's not really a creative work.

That's me just doing something and those individual photos may not be creative. I guess the question is, in this minor setting of how the Copyright Office delineates between human authorship, or a work that has been created with generative AI that has been affected by a human author, how that will be available? So, with the *Thaler* case, does creating a piece or painting with thousands of prompts, that and doing nothing to it, that is not human authorship because trying to name it as the platform as the author is different than if it were if I create a painting through AI prompts and then I affect it somehow. I take that output and I apply it to a different setting. Is that not the solution here to get pro-creatives to use AI as a tool and then don't submit that as a final product. Work on the output?

Dori Hanswirth: I think that helps, but even in the case of Mr. Allen, he did do that. He had his 624 prompts. He got finally a usable image from Midjourney and then applied Photoshop and other enhancements himself to that image. He explained that to the Copyright Office and they still would not give him the registration.[50]

Participant 4: I was curious because it seems to be that the more the creative does to the output. It may be that Mr. Allen's case is a sign that it's not sufficient or that there is something that would make it more sufficient. But it seems like that would be the solution.

Dori Hanswirth: Yeah, I agree with you. It should be the solution.

Participant 4: Well, thank you.

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[50] Second Request for Reconsideration for Refusal to Register Théâtre D'opéra Spatial (SR # 1-11743923581; Correspondence ID: 1-5T5320R), U.S. COPYRIGHT OFFICE, https://www.copyright.gov/rulings-filings/review-board/docs/Theatre-Dopera-Spatial.pdf (last visited Nov. 24, 2025).

Bill Rosenblatt:[51] I have a question. Something I've always wanted to know from people who are experts in this like you folks. But first, I have a news bulletin. The *Anthropic* settlement[52] was rejected by the judge.[53]

Dori Hanswirth: Whoa!

Bill Rosenblatt: Without prejudice.

Dori Hanswirth: On what basis?

Bill Rosenblatt: Thank you, Bloomberg Law, for reporting that.[54] Not Aruni [Soni][55] but one of her colleagues, so there you go.

But my question is, this may seem tongue-in-cheek, but it's a serious question. Everyone assumes that the concept of an AI tool means the same thing over time. My question is how do you suppose that's going to play out that something that was considered AI last year is no longer considered AI or vice versa? Or, to something that Dori was talking about, there's a lawsuit: there's a defendant who wants to dredge up discovery about how the plaintiff nefariously used AI and failed to disclaim. They found that some plugin to Photoshop was advertised as an AI-powered plugin. I mean, how is that all going to work in terms of the Copyright Office guidelines or any other criteria for judging this kind of thing?

Dori Hanswirth: Thanks. It's a big mess. I do believe that, if we have this conversation next year, or the year after, there will be a little more relaxation on what's registrable. I mean, I can't imagine that this is gonna hold, because it just doesn't make a lot of sense. I don't know where the lines are going to be drawn. I still think if you're defending a case, you use any available means and if one of the means you weren't really entitled to a registration, you have to go for it. That's the best I can do to answer your question today at 5:14 p.m. on September 8, 2025.

Gili Karev: Let the record show.

Participant 6: For change, nothing to do with fair use. Monkeys! It seems to me as a recovering lawyer and not an active, practicing copyright lawyer that the monkey case[56] and the *Spatial D'Opéra* case, Mr. Allen's, that one is distinguishable because one is about what type of sentient beings should get legal protection under copyright and the other is what degree of tool usage by a human would get you copyright protection. Am I looking at that the right way?

Dori Hanswirth: Yeah, I don't think it's a good analogy. I mean, they do cite to the refusal – maybe people shouldn't try to register copyright in all this stuff. If Thaler didn't try to register to copyright with an AI platform as an author and if whoever didn't try to register a copyright with the monkey as an author, the Copyright Office would have

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[51] Organizer, Copyright + Technology conference. *See Bill Rosenblatt*, THE COPYRIGHT SOCIETY, https://copyrightsociety.org/bio/bill-rosenblatt/ (last visited Nov. 24, 2025).

[52] The initial proposed settlement in Bartz v. Anthropic PBC, 3:24-cv-05417 (N.D. Cal.).

[53] *The entire room gasps.*

[54] Annelise Levy, *Anthropic Judge Blasts $1.5 Billion AI Copyright Settlement (2)*, BLOOMBERG LAW, https://news.bloomberglaw.com/ip-law/anthropic-judge-blasts-copyright-pact-as-nowhere-close-to-done (last visited Nov. 24, 2025).

[55] Aruni Soni,Patra Sinner, Jon Glass, and Katherine Reilly, This Masquerade: Streaming Fraud And Copyright, 72 J. COPYRIGHT SOC'Y 1005.

[56] Naruto v. Slater, 888 F.3d 418 (9th Cir. 2018).

fewer precedents to rely on to do what it was doing. It's not a perfect analogy to the – I guess, in the case with the monkey, a human set it up or set up the camera and the monkey – I don't know what happened in that case. But I agree with you. It's not a good analogy.

Zachary Cooper: It's a perfect point. Incredibly, the linguistics around the issue have shaped the thinking into the most obscene space purely through anthropomorphization of something that is a tool. If you immediately stop personifying something that is a tool, the whole thing disappears but just because we've been watching movies about old robots through the whole 20th century, we have all this thinking - "it wasn't made by a man, it was made *by* the AI… except an AI doesn't have personhood, therefore because it's not made by a human it can't be protected" - it's this completely circular thing.

– Yeah, it wasn't made *by* a machine because the machine doesn't have personhood. It was made *with* a machine by the human standing there. Instead we're saying , "Well, you can't have authorship, human author, because authorship is for humans." It's so bizarre, the linguistics of it.

Gates: Well, on that note. Thank you.

Bill Rosenblatt: And with that. Thank you. Thank you, this was a great way to end the day. Wonderful panel. Thank you to Charity and Dori and Zach and Gili and Maria, our last panel. Thank you for attending Copyright + Technology 2025. I hope to see you next year and have a great evening.