

What We're Watching: Winter 2026

By ERIC DOLENTE¹

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INTRODUCTION

In a digital landscape where creativity evolves faster than the laws designed to protect it, copyright law is constantly being tested, reshaped, and reimagined. From the rise of generative AI to the complexities of global content sharing, today's most pressing legal questions sit at the intersection of technology, culture, and ownership.

This listicle highlights a curated selection of currently emerging topics in copyright law that are capturing the attention of courts, scholars, and practitioners alike. Whether you're a student, attorney, or simply interested in how creative rights are adapting to modern challenges, these developments offer a snapshot of where the field is headed—and the debates that are defining its future.

I. VETTER V. RESNIK MUSIC GROUP

In a case that may reshape how copyright termination rights are understood, the U.S. Court of Appeals for the Fifth Circuit upheld a groundbreaking federal district court ruling in *Vetter v. Resnik Music Group*.² At issue was whether a songwriter's statutory termination and renewal rights under the U.S. Copyright Act could extend beyond the United States and apply worldwide — a theory long considered novel and controversial in copyright law.

A. *The District and Appellate Court Decisions*

¹Eric Dolente is a Copyright Society fellow and 2L at Drexel University Thomas R. Kline School of Law (JD expected May 2027). Thank you to Joshua Grobert, who suggested student involvement in the news.

²*Vetter Commc'ns. Corp. v. Resnik Music Grp.*, 163 F.4th 951 (5th Cir. 2026).

In 1962, songwriters Cyril E. Vetter and Don Smith co-authored the hit song “Double Shot (Of My Baby’s Love).” The following year, they assigned all of their copyright interests — including rights in both the initial and renewal terms under the Copyright Act of 1909 — to Windsong Music Publishers, Inc. for one dollar.³ After Smith’s death in 1972, Vetter’s share reverted to Windsong (because he survived until renewal), while Smith’s heirs took his share pursuant to Supreme Court precedent established in *Stewart v. Abend*.⁴ Vetter Communications Corporation later purchased Smith’s heirs’ renewal interest. Windsong’s rights, including half of the renewal interest, trail to Resnik Music Group through a series of assignments and asset transfers.⁵

In 2019, Vetter exercised his statutory termination right under 17 U.S.C. § 304(c), giving notice that he was terminating his prior grant of rights to Windsong effective May 3, 2022. The core dispute arose when ABC sought to license the song for worldwide use. Resnik continued to assert a 25% ownership interest outside the U.S., claiming that Vetter’s termination was strictly domestic. (This had been the well-acknowledged standard, that termination only applied to US, and not worldwide rights). The district court denied Resnik’s motion to dismiss and granted Vetter’s declaratory judgment action seeking sole ownership of the song’s copyright worldwide for him and his company.

The district court’s ruling was both bold and significant. The court held that (1) Vetter’s termination under Section 304(c) did not just recapture U.S. rights but restored his rights “throughout the world,” and (2) Vetter Communications Corp. held exclusive worldwide ownership of the renewal copyright interest under the 1909 Act.⁶

The district court rejected Resnik’s argument that foreign rights are inherently separate and unaffected by U.S. termination, which was based on the widely-understood notion that there are “multiple and separate copyright interests” in each country. Instead, the court embraced what it described as a “single globally recognized copyright” under the Berne Convention.⁷ The court reasoned that because the original grant was worldwide, and because the renewal and termination rights vested under U.S. law, termination should likewise apply globally.

With respect to the renewal interest acquired from Smith’s heirs, the court held that although most countries do not have a two-term copyright system like the U.S. 1909 Act, those rights nevertheless encompass worldwide interests because the original grant was worldwide and recognized across jurisdictions under international treaties.⁸

The Fifth Circuit’s opinion affirmed the district court’s decision in full, reinforcing the core conclusions that Vetter and his corporation are the sole owners of Double Shot’s copyright worldwide—both in his recaptured rights and in the renewal rights he obtained from Smith’s heirs. The Court focused on the key statutory language in Section 304(c)(6)(E), which states that termination “affects only those rights covered by the grant

³ *Vetter Commc’ns. Corp. v. Resnik Music Grp.*, 2025 WL 338295, *1 (M.D. La. 2025).

⁴ *See Stewart v. Abend*, 495 U.S. 207, 219 (1990) (citing *Miller Music Corp. v. Charles N. Daniels, Inc.*, 362 U.S. 373 (1960) (“[W]hen an author dies before the removal period arrives, his executor is entitled to the renewal rights, even though the author previously assigned his renewal rights to another party.”)).

⁵ *Vetter*, *supra* note 2.

⁶ *Id.* at 4.

⁷ *Vetter v. Resnik*, 2024 WL 3405556, *17 (M.D. La. 2024).

⁸ *Id.* at *18.

that arise under this title, and in no way affects rights arising under any other Federal, State, or foreign laws.”⁹ Resnik had contended that the statute thus limited termination to domestic rights alone.

The Fifth Circuit rejected that reading. The panel held that “arise under this title” means that termination applies to rights created under the U.S. Copyright Act — not that those rights are territorially limited to the U.S. Because Vetter’s original assignment and renewal rights arose under U.S. law, termination under Section 304(c) necessarily affected all of the rights conveyed, including those recognized abroad under international treaties. The court also found that recognizing termination worldwide does not conflict with international treaty obligations or copyright territoriality principles because national treatment under the Berne Convention requires member countries to protect rights granted under another member’s law.¹⁰

Regarding the 1909 Act’s renewal provisions, the court agreed with the district court that the text and purpose of the law suggested no geographical limitation on renewal rights, and that limiting such rights to U.S. territory would contravene the Act’s author-protective intent.

B. Reception

The *Vetter v. Resnik* decision has drawn significant attention and debate among legal experts, music industry stakeholders, and rights advocacy organizations.

Many copyright and creator advocacy groups have celebrated the ruling as a historic victory for authors and songwriters. In media coverage, organizations like the Music Artists Coalition,¹¹ Artist Rights Alliance,¹² and others argued that limiting termination to domestic rights would leave creators with only “half of the apple,” especially in an era where global digital distribution is the norm. These groups filed amicus briefs urging courts to uphold broad termination rights, emphasizing that Congress intended statutory termination to give authors a meaningful second chance at ownership, including valuable international exploitation rights.¹³

⁹ 17 U.S.C. § 304(c)(6)(E).

¹⁰ Vetter, *supra* note 1 at 963.

¹¹ The Music Artists Coalition is a nonprofit organization representing the interests of musicians, songwriters, and performers in policy, industry, and technological debates affecting music businesses. <https://www.musicartistscoalition.com/about>. See *Mac Files Copyright Amicus Brief* (Jul. 12, 2025)

[https://www.musicartistscoalition.com/news/mac-files-copyright-amicus-brief#:~:text=The%20Music%20Artists%20Coalition%20\(MAC\)%20and%20other%20Guild%2DAmerican%20Federation%20Of%20Television%20And%20Radio%20Artists](https://www.musicartistscoalition.com/news/mac-files-copyright-amicus-brief#:~:text=The%20Music%20Artists%20Coalition%20(MAC)%20and%20other%20Guild%2DAmerican%20Federation%20Of%20Television%20And%20Radio%20Artists).

¹² The Artist Rights Alliance is a non-profit, artist-run advocacy organization that seeks to promote fair compensation, transparency, and stronger rights protections for creators in the music industry.

¹³ 17 U.S.C. § 304(c)(6)(E).

Tim Kappel,¹⁴ Vetter's counsel and a professor of music industry studies, has been widely quoted saying that the decision corrects a long-held misunderstanding about the scope of termination rights and restores the full value of works that creators had previously signed away early in their careers.

However, not all reactions have been positive. Some legal commentators have criticized the Fifth Circuit's reasoning as a disruptive expansion of U.S. law that blurs long-established principles of copyright territoriality — the idea that copyright ownership and enforcement are governed by each nation's domestic law.¹⁵ Critics argue that the court's view of copyright as a single, unitary global interest arising under U.S. law conflicts with international norms and may create uncertainty for rights holders and licensees operating across borders.¹⁶ These commentators caution that the decision might be at odds with international treaties that treat copyright protection as territorially anchored, and they warn of potential diplomatic and legal frictions if U.S. courts treat foreign rights as subject to U.S. statutory termination.¹⁷

Legal analysts have also noted that the Fifth Circuit's ruling is binding only within its jurisdiction and remains persuasive rather than controlling elsewhere.¹⁸ This could lead to forum-shopping or a circuit split if litigants bring similar cases in other federal circuits. Additionally, commentators suggest that contracts, choice-of-law provisions, and exclusive forum clauses may gain more importance as rights holders seek to manage termination-related exposure effectively.

If *Vetter v. Resnik* stands, its implications for royalty rights and music ownership could be profound, especially for older catalogs, songwriters, and heirs who may now be positioned to recapture not just U.S. rights but global exploitation rights previously assumed to be outside the reach of U.S. law. That could affect how future and existing royalty streams are allocated and valued — particularly in the streaming era, where digital distribution frequently bypasses territorial boundaries. Music publishers and rights holders will likely reassess how contracts allocate foreign rights and how termination

¹⁴ Tim Kappel is a founding partner of the law firm Wells & Kappel, LLP and assistant professor at Loyola University New Orleans. He is the current President of the Board of Governors for the Memphis Chapter of the Recording Academy and serves on the boards of several other nonprofit organizations, including Louisiana Music Partners, Wolf Moon Entertainment, and the Partnership for Creative Louisiana. <https://cmm.loyno.edu/academics/faculty-and-staff-directory/tim-kappel>.

¹⁵ Berne Convention for the Protection of Literary and Artistic Works, art. 5(1)–(2), Sept. 9, 1886, as revised at Paris July 24, 1971, 828 U.N.T.S. 221.

¹⁶ See Aaron Moss, *Vetter v. Resnik: Second Shot, Same Mistake*, COPYRIGHT LATELY (Feb. 4, 2025) (last updated Jan. 12, 2026) <https://copyrightlately.com/vetter-v-resnik-second-shot-same-mistake/>; Eric Goldman, Tyler Ochoa, *A Volcanic Opinion in the Fifth Circuit Destabilizes International Copyright Law—Vetter v. Resnik (Guest Blog Post)*, TECHNOLOGY & MARKETING LAW BLOG (Jan. 29, 2026)

<https://blog.ericgoldman.org/archives/2026/01/a-volcanic-opinion-in-the-fifth-circuit-destabilizes-international-copyright-law-vetter-v-resnik-guest-blog-post.htm>; BakerHostetler, *Copyright Termination Without Borders: Worldwide Recapture Rights Affirmed in Vetter v. Resnik (5th Cir. 2026)* (Feb. 12, 2026)

<https://www.bakerlaw.com/insights/copyright-termination-without-borders-worldwide-recapture-rights-affirmed-in-vetter-v-resnik-5th-cir-2026/>.

¹⁷ *Id.*

¹⁸ *Id.*

clauses are drafted. Traditional assumptions that termination affects only U.S. territories may no longer hold, which could affect catalog valuations and forecasting models used by labels, publishers, and investors.

The decision may catalyze increased litigation as authors seek to apply *Vetter* to other works, and as rights holders challenge the decision or pursue review in other circuits or the U.S. Supreme Court. The possibility of a circuit split could keep this area of law unsettled for years. If owners can recapture worldwide rights through termination, royalties previously accruing to publishers or assignees outside the U.S. could revert to authors or their heirs. This redistribution may be welcomed by creators but is likely to be resisted by publishers who have historically relied on exclusive worldwide rights to monetize catalogs.

Vetter v. Resnik represents a watershed moment in copyright termination law. Whether this expansive interpretation will endure beyond the Fifth Circuit or be adopted by other courts, or even reviewed by the Supreme Court, remains to be seen. What is clear, however, is that creators, publishers, and rights professionals will be watching closely: the case may well shape the future of music publishing, royalty rights, and the global exploitation of creative works for years to come.

II. COX COMMUNICATIONS V. SONY

On March 25, 2026, the Supreme Court put to bed (for now) the question of whether internet service providers (“ISPs”) would be liable for copyright infringement and contributory toward secondary liability.¹⁹

A. District and Appellate Court Decisions

Sony Music Entertainment and a consortium of major record companies and music publishers initiated a suit against Cox Communications, Inc. and CoxCom, LLC in the United States District Court for the Eastern District of Virginia.²⁰ The Plaintiffs alleged that Cox, in its capacity as a large-scale internet service provider, was secondarily liable for copyright infringement in musical works committed by its subscribers on peer-to-peer file-sharing networks. The Plaintiffs were members of the Recording Industry Association of America (RIAA), which had retained the anti-piracy firm MarkMonitor to detect infringing activity on such networks. When MarkMonitor identified an internet user downloading or distributing a copyrighted musical file, it transmitted notices to the relevant internet service provider, including Cox, alerting it to the infringing subscriber account.

Upon receipt of these notices, Cox’s automated systems forwarded warnings to the identified subscribers. However, evidence introduced at trial demonstrated that Cox had internally developed measures to limit the operational effect of MarkMonitor’s notices. Notably, Cox capped the volume of notices it would accept from the RIAA and placed restrictions on how frequently subscriber accounts could be suspended. The district court, on summary judgment, held that the infringement notices transmitted by MarkMonitor

¹⁹ Cox Commc'ns, Inc. v. Sony Music Entm't, No. 24-171 (U.S. Mar. 25, 2026).

²⁰ Sony Music Entm't v. Cox Commc'ns, Inc., No. 1:18-cv-00950-LO-JFA (E.D. Va. Nov. 27, 2019).

established Cox's actual knowledge of infringement as a matter of law, thereby satisfying one of the essential elements of contributory copyright liability.

The case proceeded to trial on two theories of secondary copyright liability: contributory infringement and vicarious infringement. Following trial, the jury returned a verdict in favor of the Plaintiffs on both theories, finding that Cox had willfully and contributorily infringed, and was vicariously liable for infringement of 10,017 copyrighted works. The jury awarded statutory damages totaling one billion dollars. The district court subsequently denied Cox's post-trial motions for judgment as a matter of law, remittitur, and a new trial, and Cox timely appealed.

On appeal, the United States Court of Appeals for the Fourth Circuit affirmed the jury's finding of willful contributory copyright infringement.²¹ The court concluded that sufficient evidence supported the finding that Cox had materially contributed to its subscribers' direct infringement of the Plaintiffs' copyrighted works. Central to the court's reasoning was that Cox's internet service was indispensable to each instance of peer-to-peer infringement occurring on its network, and that Cox had provided such service with actual knowledge of infringement on specific subscriber accounts.

The Fourth Circuit, however, reversed the jury's verdict on vicarious liability. The court held that vicarious infringement requires a direct financial benefit flowing from the infringing activity, and that Cox's general financial interest in retaining paying subscribers did not satisfy that requirement. Because Cox's revenue derived from subscription fees rather than from the volume or nature of its subscribers' infringing activities, the court concluded that the necessary causal nexus between Cox's financial benefit and the infringement itself was absent.

Although the court declined to disturb the contributory infringement verdict, it vacated the \$1 billion damages award and remanded for a new trial on damages. The court reasoned that the jury's vicarious liability finding may have materially influenced its statutory damages calculation, and that the damages award therefore could not stand in its entirety. The Fourth Circuit thus affirmed in part, reversed in part, vacated in part, and remanded the case for further proceedings.

The court also addressed Cox's challenge to the number of copyrighted works in suit, specifically the treatment of derivative works and compilations under the Copyright Act's statutory damages framework. The Fourth Circuit affirmed the district court's denial of Cox's motion for judgment as a matter of law on that issue, finding that Cox had failed to present sufficient evidentiary basis from which the jury could determine which works were derivative works or formed part of a compilation. The question of what mental state and degree of participation is required to hold an internet service provider secondarily liable for its subscribers' infringement—and whether the Fourth Circuit's contributory liability standard comports with controlling Supreme Court precedent—formed the central issue before the Supreme Court.

C. Holding

Upon review, the Supreme Court vacated and remanded the case, holding Cox was not liable for secondary liability or copyright infringement. Justice Thomas highlighted

²¹ *Sony Music Entm't v. Cox Commc'ns, Inc.*, 93 F. 4th 222 (4th Cir. 2024).

how there are very limited circumstances in which a party may be held liable for secondary liability because the Copyright Act fails to include a section on this issue, and “ordinarily, when Congress intends to impose secondary liability, it does so expressly.”²²

Justice Thomas recalled *Grokster* to assert that in order for a party to be contributorily liable for copyright infringement, a service provider must either induce infringement or provide a service tailored to infringement.²³ Further, his opinion referred to the Digital Millennium Copyright Act’s “safe harbor” defense, which states “service providers cannot be secondarily liable for certain forms of copyright infringement if they have implemented ‘a policy that provides for the termination in appropriate circumstances of subscribers and account holders,’” particularly repeat offenders.²⁴

Cox, the Court reasoned, neither induced its customers nor provided a service specifically tailored to facilitate infringement. Simply because Cox was aware its customers infringed on Sony’s copyright rights did not rise to a level of secondary liability. In fact, Cox discouraged copyright infringement through warnings to its subscribers who committed infringement, and in some cases terminated accounts that were persistently warned of their infringement, though only a handful of accounts fell into this category. As an internet service provider, Cox merely provided internet services which contain other uses than copyright infringement.

Justice Sotomayor’s concurrence, joined by Justice Jackson, highlighted the possibility that ISPs may be liable for copyright infringement in situations where the provider encouraged infringing activity. Sotomayor goes on to dispute the majority’s claim that the two prior theories of secondary liability should be the only forms of secondary liability for infringement, and this “artificially limiting” claim holds no weight in statutory or precedential evidence.

What the majority misses, Sotomayor goes on, is the preservation of common law forms of secondary liability set out by *Grokster* and *Sony*.²⁵ *Grokster* opened the door to other applications of common law liability rules. As the majority suggests, while the Copyright Act does not explicitly state any reference to secondary liability in copyright disputes, *Sony* effectively resolved that ambiguity 40 years earlier when the Court held Sony’s ruling merely “‘limit[ed] imputing culpable intent as a matter of law from the characteristics or uses of a distributed product.’”²⁶ Sotomayor highlights how the majority’s reasoning limits liability for ISPs like Cox, and establishes precedent that future ISPs will act “without fear of liability and without lifting a finger to prevent infringement.”²⁷

If a case like this one arrives again before the Supreme Court, the Court may face challenges navigating murky waters. Sotomayor cautions whether ISPs will “face any realistic probability of secondary liability infringement, regardless of whether they take

²² Cox Communications, Inc. v. Sony Music Entertainment, No. 24-171, 2026 WL 815823, at *5 (2026).

²³ Metro-Goldwyn-Meyer Studios Inc. v. Grokster, Ltd., 545 U.S. 913 (2005).

²⁴ Cox Communications, Inc. v. Sony Music Entertainment, No. 24-171, 2026 WL 815823, at *3 (2026); 17 U.S.C. § 512(i)(1)(A).

²⁵ Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417 (1984).

²⁶ Cox Communications, Inc. v. Sony Music Entertainment, No. 24-171, 2026 WL 815823, at *9 (2026) (citing *Id* at 434-435).

²⁷ *Id.* at *10.

steps to address infringement on their networks and regardless of what they know about their users' activity."²⁸

III. THE COPYRIGHT CLAIMS BOARD 3-YEAR REPORT²⁹

The U.S. Copyright Office released a report in February 2026 evaluating the implementation and early operation of the Copyright Alternative in Small-Claims Enforcement Act of 2020 (CASE Act), which established the Copyright Claims Board (CCB) as a voluntary small-claims tribunal for resolving copyright disputes.³⁰ At its outset, the CCB was designed to provide a more accessible and cost-effective alternative to federal copyright litigation, particularly for *pro se* individual creators and small businesses whose claims are often too small to justify the expense of federal court proceedings. Through streamlined procedures, remote participation, and simplified pleadings, the tribunal aims to expand access to copyright enforcement while maintaining procedural fairness for both claimants and respondents.

Congress set out five specific categories for analyzing the CCB: “[T]he CCB’s use and efficacy, whether the CCB’s authority should be adjusted, whether prevailing parties should receive awards of attorneys’ fees and costs, the possibility of additional mechanisms to assist with identifying and locating unknown online infringers, and whether the CCB should be expanded to offer mediation or other nonbinding alternative dispute resolution (‘ADR’) services.”³¹

Since CCB’s launch in June 2022, the report finds that the tribunal has largely fulfilled Congress’s objective of providing an accessible forum for resolving smaller copyright disputes. Some statistics include, for instance, that of the 1,771 claimant filings in the past three and a half years, 66.6% of the claimants were *pro se*, while 37.2% of the respondents were *pro se*.³² Most of the filings concerned copyright infringement (1,503), but they also included noninfringement claims (67) and misrepresentation claims (301).³³

In short, the CCB benefits many *pro se* parties. Yet, *pro se* parties that are unfamiliar with the CCB process—never mind the legal process—still face challenges seeking help. Some commentators, like the Copyright Alliance and AIPLA, note the CCB could provide additional resources and services for *pro se* parties such as a small claims advisor, language services, step-by-step guides and templates, among others.³⁴ Further, some commentators mentioned how arduous and long the process becomes for parties—noting the average length of a proceeding to be roughly one year and five months.³⁵ While the report explains the reasoning for the lengthy process is “a function of

²⁸ *Id.*

²⁹ CASE ACT REPORT: A REPORT OF THE REGISTER OF COPYRIGHTS, U.S. COPYRIGHT OFFICE (Feb. 2026) <https://www.copyright.gov/policy/CASE-study/CASE-Act-Report.pdf>.

³⁰ *Id.* at iii.

³¹ *Id.* at 18.

³² *Id.* at 19.

³³ *Id.*

³⁴ *Id.* at 27-28.

³⁵ *Id.* at 32.

procedural requirements,” the Copyright Office admits some steps could be further streamlined.³⁶

To address these challenges, the Copyright Office presents six main areas for improvement moving forward: compliance review, service requirements, the conduct of the active phase, default procedures, determination enforcement, and the opt-out system.³⁷ The report attempts to address these areas of improvement in various ways through the suggestions from commentators, but the report ultimately concludes that “other [issues] would require statutory amendment relating to speeding the process, enhancing the use of CCB resources, and improving remedies and enforcement.”³⁸

IV. 2-D GROUP ART REGISTRATIONS

As of February 17, 2026, the U.S. Copyright Office has implemented a new way for copyright authors and owners to copyright two-dimensional artwork known as the Group Registration of Two-Dimensional Artwork (GR2D).³⁹ The Office provides this specially-formatted application through the electronic Copyright Office (eCO) registration portal for simultaneous registration of between 2 and 20 two-dimensional works.

Some of those artworks include paintings, illustrations, sketches, logos, fabric designs, collages, and character artwork. Artworks not eligible under the GR2D application include three-dimensional works or sculptures, architectural works, technical drawings, photographs (with some limitations), and works composed of multiple pictorial or graphic images.

The application requires each artwork must be created by one author—joint authors are prohibited from submitting GR2D applications—who becomes the sole claimant. Additionally, the application allows registration of published works, but not of unpublished works, published within the same calendar year.

Both a group title and an individual title are required for each artwork included in the registration. Each work must be submitted as a separate digital file, and the file name must correspond exactly to the title listed in the application. Deposits must be uploaded electronically through the Copyright Office’s registration system—physical copies are not accepted. Applicants must also identify publication details, including the earliest and latest publication dates in the group and the month each individual work was first published.

The Copyright Office created the GR2D application to protect new copyrightable works specific to this format and does not protect current or preexisting artworks. Other requirements include earliest and latest publication dates, nation of first publication, whether the proposed artwork is work made for hire, the citizenship or domicile of the claimant, if an artwork has an anonymous or pseudonymous author, and any limitations to the claim. For further information on specific requirements such as whether an

³⁶ *Id.* at 33-34.

³⁷ *Id.* at 34.

³⁸ *Id.* at 73.

³⁹ Group Registration of Two Dimensional Artwork, 60 Fed. Reg. 59383 (proposed Feb. 15, 2024) (to be codified at 37 C.F.R. pts. 201, 202)

<https://www.govinfo.gov/content/pkg/FR-2025-12-19/pdf/2025-23402.pdf>.

anonymous or pseudonymous owner can register work for hire artwork (in short, they cannot), see <https://www.copyright.gov/registration/gr2d/help/>.

V. THALER V. PERLMUTTER

The Supreme Court denied an AI creator's petition for writ of certiorari in his battle against the U.S. Copyright Office.⁴⁰ The D.C. Circuit previously addressed the issue of whether artificial intelligence-generated artwork qualifies for copyright protection under The Copyright Act of 1976.⁴¹ Computer scientist Stephen Thaler applied to register a copyright for "A Recent Entrance to Paradise," a visual artwork that was created by his AI system Creative Machine. On his application, Thaler listed the machine as the sole author of the artwork while he would be the sole copyright owner.⁴²

The Copyright Office rejected the application because the work lacked human authorship, which the Office's long-held regulations assert.⁴³ Upon administrative review, the Office reaffirmed the denial based on a lack of human authorship, even though the Copyright Act does not define the word "author."⁴⁴ Thaler appealed the decision to the federal court, but ultimately the D.C. Circuit affirmed the Office's denial.⁴⁵ The D.C. Circuit noted the Copyright Act presupposes human authorship due to copyright longevity tied to the author's life, the nationality or domicile requirement, and inheritance.⁴⁶

The D.C. Circuit refused to accept Thaler's argument that his AI "Creative Machine" as a work made for hire because an existing author whose rights can be assigned was not present.⁴⁷ The Circuit court concluded copyright protection is unavailable for works generated entirely by AI systems without human creative input. Thaler appealed for a writ of certiorari to the Supreme Court, which the Court denied on March 2, 2026.

In short, the Supreme Court affirmed the lower courts' decisions that only works created by human beings are copyrightable, while works created solely by artificial intelligence without human input cannot be copyrightable.

⁴⁰ Thaler v. Perlmutter, 130 F.4th 1039 (D.C. Cir. 2025), cert. denied, No. 25-449, 2026 WL 568327 (2026).

⁴¹ *Id.*

⁴² *Id.* at 1041.

⁴³ See Report on Copyright and Artificial Intelligence, U.S. COPYRIGHT OFFICE (July 2024) <https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf>; see also Artificial Intelligence and Copyright, 88 Fed. Reg. 59942 (proposed Aug. 30, 2023); *Circular 1: Copyright Basics*, U.S. COPYRIGHT OFFICE ("An original work of authorship is a work that is independently created by a human author and possesses at least some minimal degree of creativity.") <https://www.copyright.gov/circs/circ01.pdf>; *Circular 33: Works Not Protected By Copyright*, U.S. COPYRIGHT OFFICE ("Copyright law expressly excludes copyright protection for 'any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied.'") <https://www.copyright.gov/circs/circ33.pdf>.

⁴⁴ Thaler, *supra* note 40 at 1041, 1045.

⁴⁵ *Id.* at 1052.

⁴⁶ *Id.* at 1044.

⁴⁷ *Id.* at 1051.

Critics of AI-generated works, like the Author's Alliance, consider the decision one that is "a sensible result and consistent with sound public policy."⁴⁸ Meanwhile, other voices mention how this decision leaves open a critical question the Court failed to address: to what extent is human involvement sufficient to support a copyright claim for artificial intelligence-assisted works?⁴⁹

⁴⁸ Justin Bonfiglio, *Thaler v. Perlmutter: D.C. Court of Appeals confirms that a non-human machine cannot be an author under the U.S. Copyright Act*, AUTHOR'S ALLIANCE (Mar. 19, 2025) <https://www.authorsalliance.org/2025/03/19/thaler-v-perlmutter-d-c-court-of-appeals-confirms-that-a-non-human-machine-cannot-be-an-author-under-the-u-s-copyright-act/>.

⁴⁹ Edward D. Lanquist, Benjamin W. Lanke, Dominic Rota & Lesli Harris, *Supreme Court Denies Certiorari in Thaler v. Perlmutter: AI Cannot Be an Author Under the Copyright Act*, Baker Donelson (Mar. 5, 2026) <https://www.bakerdonelson.com/supreme-court-denies-certiorari-in-thaler-v-perlmutter-ai-cannot-be-an-author-under-the-copyright-act>.

