No. 25-449

IN THE

Supreme Court of the United States

STEPHEN THALER,

Petitioner,

v.

SHIRA PERLMUTTER, REGISTER OF COPYRIGHTS AND DIRECTOR OF THE UNITED STATES COPYRIGHT OFFICE, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE D.C. CIRCUIT

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF CITED AUTHORITIES ii

INTRODUCTION 1

ARGUMENT 2

I. The Copyright Office Erroneously Imported a Non-statutory Requirement to Create a Rule Against Granting Copyright for Works Created Using Computer Software 2

A. The Copyright Act Directly Contravenes the Human Authorship Requirement 4

B. This Court's Precedent Allows for Protection of AI-Generated Works 6

C. Congress Has Not Acquiesced to the Human Authorship Requirement 7

II. This Case Presents an Ideal Vehicle to Resolve an Issue of Paramount Importance 8

III. CONCLUSION 13

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TABLE OF CITED AUTHORITIES

Page

Cases

Burrow-Giles Lithographic Co. v. Sarony,
111 U.S. 53 (1884) 6

Community for Creative Non-Violence v. Reid,
490 U.S. 730 (1989) 7

Feist Publications, Inc. v.
Rural Telephone Service Co., Inc.,
499 U.S. 340 (1991) 6

Loper Bright Enterprises v. Raimondo,
603 U.S. 369 (2024) 8

Star Athletica, L.L.C. v. Varsity Brands, Inc.,
580 U.S. 405 (2017) 6, 7

Statutes

17 U.S.C. § 101 . . . . . .5, 7

17 U.S.C. § 201(b) 4

17 U.S.C. § 203(a)(2)(A) 4

17 U.S.C. § 302(a) 4

17 U.S.C. § 302(c) 5

Copyright, Designs and Patent Act 1988, c. 48 (UK) 12

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Page

Other Authorities

Aaron Wininger, *Chinese Court Again Rules AI-Generated Images Are Eligible for Copyright Protection*, China IP Law Update (Mar. 14, 2025), https://www.chinaiplawupdate.com/2025/03/chinese-court-again-rules-there-is-copyright-in-ai-generated-images/ 12

Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence, 88 Fed. Reg. 16190-01 (March 16, 2023). 3

Théâtre D'opéra Spatial (SR # 1-11743923581) (September 5, 2023), https://perma.cc/F97M-QFTJ . . .9

Zarya of the Dawn (Registration # VAu001480196) (Feb. 21, 2023), https://perma.cc/AD86-WGPM. 9

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INTRODUCTION

This case presents an ideal vehicle for this Court to prevent a single executive agency from incorrectly deciding a legal question of paramount importance in a manner inconsistent with the text of the governing statute and applicable Court precedent.

The Copyright Office has imposed a non-statutory Human Authorship Requirement for copyright registration. It derived this rule not from the Constitution or the Copyright Act but from its own nonbinding agency materials, including its Compendium, guidance publications, and agency reports. This requirement, in effect, denies copyright protection to works created through certain, unclear uses of computer software.

Dr. Thaler transparently disclosed that an AI system that he designed and used generated the image for which he sought copyright protection. The Copyright Office denied registration based on its Human Authorship Requirement. In the time since Dr. Thaler's registration was denied, the Copyright Office has either rejected numerous applications disclosing the use of AI or required applicants to disclaim content made using AI and thus prevented registration of that content.

Other countries, like China and the United Kingdom, already permit copyright protection for AI-generated works. But the Copyright Office's reliance on its own non-statutory requirements have led to an improper cabining of United States copyright law in contradiction of this Court's precedent that copyright law should accommodate technological progress.

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