

Testing the Limits of Copyright Protection for A.I.-Generated Art – Colorado Artist Challenges Registration Refusal in Court

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by Alex Hake and Sarah Robertson

Two years ago, the Colorado State Fair's annual art competition sparked controversy after awarding a blue ribbon to a work generated in part by A.I. Jason Allen, the artist responsible for the work, said at the time, "I won, and I didn't break any rules." The judges agreed, despite outrage from some that the work lacked artistic merit. While the fairground judges saw fit to credit Allen as author of the work, it remains to be seen whether the federal judiciary will do the same. The U.S. Copyright Office refused to register Allen's work for copyright based on lack of human authorship, and Allen has recently filed suit in Colorado federal district court to reverse the Copyright Office's decision.

Allen's case centers on the question of whether human authorship is present in A.I.-generated images where human input is limited to the textual prompts given to guide the A.I.'s work. Allen's work, entitled "Théâtre D'opéra Spatial," depicts Victorian performers looking out from a stage towards an otherworldly portal in a surreal synthesis of past and future. To create the work, Allen used Midjourney (an A.I.-driven text-to-image software) to generate an iterative series of images refined over the course of 624 prompting sessions undertaken by Allen. Allen then upscaled the resolution of the final image using Gigapixel AI and added additional elements using Adobe Photoshop.

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- Alex Hake
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