UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STEPHEN THALER, Plaintiff, v. SHIRA PERLMUTTER, *Register of Copyrights and Director of the United States Copyright Office, et al.* Defendants.	Civil Action No. 22-1564 (BAH) Judge Beryl A. Howell

MEMORANDUM OPINION

Plaintiff Stephen Thaler owns a computer system he calls the "Creativity Machine," which he claims generated a piece of visual art of its own accord. He sought to register the work for a copyright, listing the computer system as the author and explaining that the copyright should transfer to him as the owner of the machine. The Copyright Office denied the application on the grounds that the work lacked human authorship, a prerequisite for a valid copyright to issue, in the view of the Register of Copyrights. Plaintiff challenged that denial, culminating in this lawsuit against the United States Copyright Office and Shira Perlmutter, in her official capacity as the Register of Copyrights and the Director of the United States Copyright Office ("defendants"). Both parties have now moved for summary judgment, which motions present the sole issue of whether a work generated entirely by an artificial system absent human involvement should be eligible for copyright. *See* Pl.'s Mot. Summ. J. (Pl.'s Mot."), ECF No. 16; Defs.' Cross-Mot. Summ. J. ("Defs.' Mot."), ECF No. 17. For the reasons explained below, defendants are correct that human authorship is an essential part of a valid copyright claim, and

therefore plaintiff's pending motion for summary judgment is denied and defendants' pending cross-motion for summary judgment is granted.

I. BACKGROUND

Plaintiff develops and owns computer programs he describes as having "artificial intelligence" ("AI") capable of generating original pieces of visual art, akin to the output of a human artist. *See* Pl.'s Mem. Supp. Mot. Summ. J. ("Pl.'s Mem.") at 13, ECF No. 16. One such AI system—the so-called "Creativity Machine"—produced the work at issue here, titled "A Recent Entrance to Paradise:"

Admin. Record ("AR"), Ex. H, Copyright Review Board Refusal Letter Dated February 14, 2022 "(Final Refusal Letter") at 1, ECF No. 13-8.

After its creation, plaintiff attempted to register this work with the Copyright Office. In his application, he identified the author as the Creativity Machine, and explained the work had been "autonomously created by a computer algorithm running on a machine," but that plaintiff sought to claim the copyright of the "computer-generated work" himself "as a work-for-hire to the owner of the Creativity Machine." *Id.*, Ex. B, Copyright Application ("Application") at 1, ECF No. 13-2; *see also id.* at 2 (listing "Author" as "Creativity Machine," the work as "[c]reated autonomously by machine," and the "Copyright Claimant" as "Steven [*sic*] Thaler" with the transfer statement, "Ownership of the machine"). The Copyright Office denied the application on the basis that the work "lack[ed] the human authorship necessary to support a copyright claim," noting that copyright law only extends to works created by human beings. *Id.*, Ex. D, Copyright Office Refusal Letter Dated August 12, 2019 ("First Refusal Letter") at 1, ECF No. 13-4.

Plaintiff requested reconsideration of his application, confirming that the work "was autonomously generated by an AI" and "lack[ed] traditional human authorship," but contesting the Copyright Office's human authorship requirement and urging that AI should be "acknowledge[d] . . . as an author where it otherwise meets authorship criteria, with any copyright ownership vesting in the AI's owner." *Id.*, Ex. E, First Request for Reconsideration at 2, ECF No. 13-5. Again, the Copyright Office refused to register the work, reiterating its original rationale that "[b]ecause copyright law is limited to 'original intellectual conceptions of the author,' the Office will refuse to register a claim if it determines that a human being did not create the work." *Id.*, Ex. F, Copyright Office Refusal Letter Dated March 30, 2020 ("Second Refusal Letter") at 1, ECF No. 13-6 (quoting *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 58 (1884) and citing 17 U.S.C. § 102(a); *U.S. Copyright Office, Compendium of U.S.*

Copyright Office Practices § 306 (3d ed. 2017)). Plaintiff made a second request for reconsideration along the same lines as his first, *see id.*, Ex. G, Second Request for Reconsideration at 2, ECF No. 13-7, and the Copyright Office Review Board affirmed the denial of registration, agreeing that copyright protection does not extend to the creations of non-human entities, Final Refusal Letter at 4, 7.

Plaintiff timely challenged that decision in this Court, claiming that defendants' denial of copyright registration to the work titled "A Recent Entrance to Paradise," was "arbitrary, capricious, an abuse of discretion and not in accordance with the law, unsupported by substantial evidence, and in excess of Defendants' statutory authority," in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2). *See* Compl. ¶¶ 62–66, ECF No. 1. The parties agree upon the key facts narrated above to focus, in the pending cross-motions for summary judgment, on the sole legal issue of whether a work autonomously generated by an AI system is copyrightable. *See* Pl.'s Mem. at 13; Defs.' Mem. Supp. Cross-Mot. Summ. J. & Opp'n Pl.'s Mot. Summ. J. ("Defs.' Opp'n") at 7, ECF No. 17. Those motions are now ripe for resolution. *See* Defs.' Reply Supp. Cross-Mot. Summ. J. ("Defs.' Reply"), ECF No. 21.

II. LEGAL STANDARD

A. Administrative Procedure Act

The APA provides for judicial review of any "final agency action for which there is no other adequate remedy in a court," 5 U.S.C. § 704, and "instructs a reviewing court to set aside agency action found to be 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,'" *Cigar Ass'n of Am. v. FDA*, 964 F.3d 56, 61 (D.C. Cir. 2020) (quoting 5 U.S.C. § 706(2)(A)). This standard "'requires agencies to engage in reasoned decisionmaking,' and . . . to reasonably explain to reviewing courts the bases for the actions they take and the conclusions they reach." *Brotherhood of Locomotive Eng'rs & Trainmen v. Fed. R.R. Admin.*,

972 F.3d 83, 115 (D.C. Cir. 2020) (quoting *Dep't of Homeland Sec. v. Regents of Univ. of Cal.* ("*Regents*"), 140 S. Ct. 1891, 1905 (2020)). Judicial review of agency action is limited to "the grounds that the agency invoked when it took the action," *Regents*, 140 S. Ct. at 1907 (quoting *Michigan v. EPA*, 576 U.S. 743, 758 (2015)), and the agency, too, "must defend its actions based on the reasons it gave when it acted," *id.* at 1909.

B. Summary Judgment

Pursuant to Federal Rule of Civil Procedure 56, "[a] party is entitled to summary judgment only if there is no genuine issue of material fact and judgment in the movant's favor is proper as a matter of law." *Soundboard Ass'n v. FTC*, 888 F.3d 1261, 1267 (D.C. Cir. 2018) (quoting *Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin.*, 452 F.3d 798, 805 (D.C. Cir. 2006)); *see also* Fed. R. Civ. P. 56(a). In APA cases such as this one, involving cross-motions for summary judgment, "the district judge sits as an appellate tribunal. The 'entire case' on review is a question of law." *Am. Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1083–84 (D.C. Cir. 2001) (footnote omitted) (collecting cases). Thus, a court need not and ought not engage in fact finding, since "[g]enerally speaking, district courts reviewing agency action under the APA's arbitrary and capricious standard do not resolve factual issues, but operate instead as appellate courts resolving legal questions." *James Madison Ltd. by Hecht v. Ludwig*, 82 F.3d 1085, 1096 (D.C. Cir. 1996); *see also Lacson v. U.S. Dep't of Homeland Sec.*, 726 F.3d 170, 171 (D.C. Cir. 2013) (noting, in an APA case, that "determining the facts is generally the agency's responsibility, not [the court's]"). Judicial review, when available, is typically limited to the administrative record, since "[i]t is black-letter administrative law that in an [APA] case, a reviewing court should have before it neither more nor less information than did the agency when it made its decision." *CTS Corp. v. EPA*, 759 F.3d 52, 64 (D.C. Cir. 2014) (internal quotation marks and citation omitted).

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