The Ethical Paradigm of Using Artificial Intelligence

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Abstract: *This article analyses the ethical paradigm of using artificial intelligence (AI) in the visual arts, examining the moral, legal and aesthetic implications of algorithmically generated creation. As visual-generation technologies develop rapidly, the notions of originality, authenticity and artistic intention become central concerns. The study asks whether a work produced with AI can be considered truly original and who holds the copyright over it: the human, the algorithm or the entity that trained the system. It examines the fundamental principles of applied AI ethics in relation to the creative dimension and the social impact of digital art. The paper also considers the usefulness and the limits of AI in the artistic process, as well as the changing status of the physical image in an environment increasingly dominated by digital production.*

Key words: *artificial intelligence; ethics; authenticity; copyright; fair use.*

Introduction

A critical analysis of the advantages and the limitations of the ethical debate surrounding artificial intelligence must begin by clarifying the concept itself, which encompasses an abstract dimension extending beyond its basic mathematical character. The term "artificial intelligence" denotes, first and foremost, a vast technical framework comprising multiple computational technologies that are able, on the basis of large volumes of data, to identify patterns, classify information, make decisions and predictions, and carry out specific tasks (Russell and Norvig 2021). These capabilities allow AI systems to perform, across a wide range of domains, tasks that would traditionally require human intelligence.

Since 2022, the public release of text-to-image generators such as DALL·E, Midjourney and Stable Diffusion has moved this abstract framework to the very centre of artistic practice. Within a few keystrokes, anyone can obtain a finished image that imitates the style, technique or signature of a living artist, with no studio, no training and no material support beyond a server. This sudden accessibility has compressed a debate that long remained theoretical into a series of concrete conflicts over authorship, consent and remuneration. The question is no longer whether a machine might one day

make art, but who owns the images it already produces, on whose work it was trained, and what becomes of the human artist within this new economy of the image. The present article approaches these issues as an interconnected ethical, legal and aesthetic problem, moving from the concepts of originality and authenticity, through the emerging case law and the question of training data, to the principles of an applied ethics of AI and the legislative responses now taking shape in Romania and the European Union.

In order to strengthen the ethics of using artificial intelligence in the visual arts and to avoid the misinterpretations arising from conceptual ambiguities, a concise definition of the object of AI ethics in the artistic context is required. Although specialists in the field are aware of the technological and conceptual challenges, public debate and the broad interest of the artistic community call for further clarification.

It is important to pay attention to the real capabilities and limitations of generative algorithms, and to maintain realistic expectations regarding future developments, including possible periods of stagnation or recalibration of the technology. At the same time, we should not focus exclusively on the technology itself, but should instead acknowledge that AI is increasingly becoming an infrastructural component of the contemporary artistic environment, shaping both the creative process and the way the public perceives art. This perspective entails two complementary directions: clarifying concepts in order to avoid exaggerated fears about the singularity and, at the same time, a pragmatic assessment of the role of AI in facilitating, but also in potentially diminishing, human originality in art. Far from being merely artificial, these systems of intelligence are at the same time interdependent: they rely on numerous natural resources, on raw materials and energy, as well as on countless hours of human labour to develop the programs, to collect and clean the data, and to train the algorithms (Crawford 2021).

This material genealogy matters ethically, because it displaces the romantic image of an autonomous, immaterial intelligence. What is presented to the user as an effortless act of creation is in fact the visible end of a long chain of extraction: the mining of minerals for hardware, the consumption of energy and water, the low-paid labour of data annotation and, crucially for the visual arts, the appropriation of millions of images made by human artists. An ethics of AI in art that ignores this chain risks treating the symptom while leaving the cause untouched.

Originality, authenticity and the aura of the image

If the ethical debate begins with a definition of the technology, it deepens with a question about the nature of the work. Almost a century ago, Walter Benjamin argued that mechanical reproduction strips the work of art of its "aura": the unique presence in time and space, the trace of its history and ritual origin, that distinguishes the original from any copy (Benjamin 2008). For Benjamin, photography and film did not merely reproduce existing works; they reconfigured the very category of the original. Generative AI radicalises this process. A model such as Stable Diffusion does not copy a particular painting; it distils statistical regularities from millions of images and recombines

them into outputs that have no single referent and, strictly speaking, no original at all. The aura is not lost in transmission, as in photographic reproduction; it is absent from the outset, because there is no first instance to which the image could appeal.

This has direct consequences for the notions of originality and authenticity, and it opens an ethical discussion that bears on a series of complex questions: what does "originality" mean in the context of algorithmic generation? Who holds the copyright when a work is produced with the help of AI? What is the role of human intervention? And what becomes of the physical image in the era of automatically generated digital art? These questions are not merely legal; they touch the very criteria by which we have long recognised a work as art.

Originality, in the case of generative models, is best understood as recombinational rather than created *ex nihilo*. The system rearranges elements already present in its training data, producing novelty of configuration without novelty of source. Margaret Boden's distinction between combinational, exploratory and transformational creativity is illuminating here: AI excels at combinational and exploratory novelty: recombining familiar ideas and searching a defined conceptual space, but it does not, on its own, transform the space of possibilities in the way a human avant-garde does (Boden 2010). Authenticity, in turn, has historically been anchored in provenance, in the verifiable link between a work and the hand that made it. When that link is replaced by a prompt and a probability distribution, authenticity migrates from the object to the gesture: to the human decisions of selection, framing, curation and intention that surround the algorithmic output. The status of the physical image is correspondingly transformed: it is no longer the privileged carrier of artistic value, but one possible materialisation among many, while value increasingly attaches to authorship, provenance and the narrative of making.

Authorship and copyright: lessons from the case law

A relevant starting point is the case of the visual artists Sarah Andersen, Kelly McKernan and Karla Ortiz, who, on 13 January 2023, filed a class action before the United States District Court for the Northern District of California against the companies Stability AI, Midjourney Inc. and DeviantArt Inc. (later joined by Runway AI), alleging the unauthorised use of their works as training data for AI visual generators. The artists claimed that their works had been taken, without consent, from the online environment and incorporated into the training datasets of visual-generation models such as Stable Diffusion and Midjourney, thereby being transformed into algorithmic data subsequently used to produce images "in their style". Although the defendant companies invoked the principle of "fair use"[1] to justify training their systems on pre-existing datasets, critics argue that transforming artistic works into "numerical vectors",

[1]The concept of "fair use" is a doctrine of U.S. copyright law that permits the limited use of protected material without the rights holder's consent, particularly for transformative, educational or critical purposes.

without the authors' consent, contravenes both copyright norms and the fundamental principles of the ethics of creation. As the Copyright Alliance report notes, "these cases have set a precedent for how the law and society define human contribution in the algorithmic era" (Copyright Alliance n.d.).

The litigation has since become a bellwether for the field. In October 2023, Judge William Orrick largely dismissed the first complaint, requiring the plaintiffs to register their works and rejecting, as preempted by federal copyright law, their claims under the California Unfair Competition Law. In an amended order of 12 August 2024, however, the court allowed the central claims of direct and induced copyright infringement to proceed, holding that the fact that the artists' works may be present within the model in a different medium, encoded as algorithmic parameters rather than stored as images, is not, in itself, an impediment to an infringement claim. The case is set for trial in 2026 and may yield one of the first substantive rulings on whether training generative models on copyrighted images is lawful.

One revealing aspect of the dispute is the treatment of the claims brought under the *California Unfair Competition Law* (UCL, Cal. Bus. & Prof. Code, § 17200 *et seq.*), which requires the plaintiff to demonstrate an "injury in fact" and the loss of money or property.[2] The court found that the complaint had not provided sufficient evidence of specific economic loss or of disrupted contractual relationships, and the UCL claims were dismissed as preempted. From an ethical standpoint, this underscores the need for a clear distinction between the technical impact of AI on artistic works and the moral and legal responsibility of developers: not every use of a work by an AI is automatically an infringement or an injustice, and an applied ethics of AI must reckon with concrete evidence of harm while respecting the existing legal framework. The ethical paradigm of AI in the visual arts cannot be separated from the legal context; it is constructed in dialogue with it, safeguarding both the protection of authors and the responsible use of emerging technologies.

Another important case is that of *Getty Images v. Stability AI*, which highlights the ethical and legal dilemmas raised by the use of artificial intelligence in the visual arts. Getty claims that Stability AI used millions of protected images to train its Stable Diffusion model, without the creators' permission, raising issues of copyright and unfair competition. Stability AI, for its part, argues that content generation is transformative and falls within the "fair use" doctrine. Following a trial held in June 2025, the High Court of Justice of England and Wales delivered its judgment on 4 November 2025, largely rejecting Getty's copyright infringement claims and finding only limited liability

[2]In *Kwikset Corp. v. Superior Court*, the Supreme Court of California interpreted the amendments introduced by Proposition 64 to section 17204 of the California Business & Professions Code, holding that, for claims brought under the UCL (Unfair Competition Law), a private plaintiff must demonstrate "injury in fact" and the loss of "money or property" as a result of the unfair business practice.

with respect to trade marks. The case illustrates both the need for a robust ethical paradigm for integrating AI into the creative process and for protecting creators, and the absence of coherent, dedicated regulation (Digital Market Reports n.d.).

If the Andersen and Getty cases concern the input side, the works ingested in order to train a model: a parallel line of decisions addresses the output side: whether, and to what extent, AI-generated images can themselves be owned. In *Thaler v. Perlmutter*, the United States Court of Appeals for the District of Columbia Circuit affirmed, on 18 March 2025, that human authorship is a foundational requirement of copyright and that a work generated autonomously by a machine: in this instance the image *A Recent Entrance to Paradise*, produced by Stephen Thaler's "Creativity Machine", cannot be registered; the Supreme Court declined to review the decision in March 2026, leaving it intact. The United States Copyright Office has taken a consistent position: its 2023 registration guidance and its 2025 report on copyrightability hold that prompts alone are insufficient for protection, since they function as instructions conveying unprotectable ideas and leave the decisive expressive choices to the machine.

Between these poles lies the more nuanced case of *Zarya of the Dawn*. Kris Kashtanova used the generative platform Midjourney to produce a series of images integrated into a graphic novel alongside an original text. The U.S. Copyright Office granted protection to the text and to the selection and arrangement of the images, but refused it to the individual AI-generated images, because the human interaction with the algorithm was not sufficiently direct to qualify as independent creation. A similar logic governed the refusal, in *Allen v. Perlmutter*, to register an award-winning AI-generated image despite the artist's extensive prompting and iteration. Taken together, these decisions sketch a spectrum: pure machine output is unprotectable, the human selection and arrangement of such output may be, and the threshold lies in the degree of demonstrable human creative control. The ethical questions follow directly: how much human contribution is necessary to justify the attribution of authorship and to respect the creator's moral rights? In a world where AI tools can instantly produce predetermined works, morality in art entails the recognition of human merit, transparency regarding the sources used, and the responsibility not to claim authorship over works generated entirely by an algorithm.

Fair use, consent and the political economy of data

Applying the "fair use" doctrine to AI raises numerous uncertainties: there are no clear standards regarding the quantity and type of material that may be used, or the degree of transformativeness required. Moreover, AI operates on a massive scale, processing millions of works simultaneously, which complicates the legal determination of the boundary between fair use and copyright infringement. While the technology evolves rapidly, legislation and ethical frameworks lag far behind, leaving artists and creators exposed to significant risks. In the absence of clear norms, fundamental ques-

tions arise: how original is a work generated by AI? Who holds the rights to it? And to what extent can AI be held responsible for reproducing the style of a human artist?

Beneath the doctrinal uncertainty lies a more fundamental ethical problem: that of consent. The vast datasets on which image generators are trained, most prominently the openly published LAION collections of billions of image–text pairs scraped from the web, were assembled without the knowledge, let alone the agreement, of the artists whose works they contain. The prevailing industry model is one of implicit opt-out: a work is used unless its author actively withdraws it, often through mechanisms that did not exist when the work was first published. Critics argue that the ethically appropriate default is the reverse: opt-I, whereby works may be used for training only with explicit permission and, where appropriate, remuneration. This is not merely a legal preference but a question of recognition: as Crawford insists, the data that fuels these systems is not a natural resource freely available for extraction but the product of human labour and creativity, and treating it otherwise reproduces an old asymmetry between those who supply the raw material and those who capture its value (Crawford 2021).

Legislators have begun to respond on precisely this point. In September 2024, California enacted a generative-AI training-data transparency statute requiring developers to publish a summary of the datasets used to train their systems. At the level of the European Union, the AI Act obliges providers of general-purpose AI models to make publicly available a sufficiently detailed summary of the content used for training and to adopt a policy for complying with Union copyright law. Such disclosure obligations do not by themselves resolve the question of consent, but they render the previously invisible chain of appropriation legible — a necessary precondition for any meaningful ethics of attribution and fair participation.

Principles of an applied ethics of AI in visual creation

If the case law marks the boundaries of the permissible, the principles of applied ethics indicate what responsible practice should positively look like. A widely cited synthesis by Floridi and Cowls distils the AI-ethics literature into five principles: beneficence, non-maleficence, autonomy, justice and, added specifically for AI, explicability (Floridi and Cowls 2019). Transposed to the visual arts, beneficence and non-maleficence require that generative tools enlarge rather than erode the conditions of human creativity; autonomy demands that artists retain meaningful control over whether and how their work is used; justice concerns the fair distribution of the benefits and burdens of the technology, including remuneration for those whose work trains it; and explicability: the demand that systems be intelligible and their provenance traceable, underwrites the transparency without which none of the other principles can be verified.

These principles are not self-executing, and their invocation can itself become a form of ethical theatre. Adorno's reflections on morality remind us that traditional ethical norms, once bound up with material scarcity and restriction, risk losing their substance in the face of abundance and technical progress; critical theory exposes the apparent

amorality of imposed values, showing that what was once regarded as "virtue" or "justice" has often served to justify the interests of the powerful (Adorno 1951, 60). Applied to art generated by artificial intelligence, this reminds us that morality is not reducible to what is technologically possible: it entails responsibility, respect for human effort and creativity, and the recognition of the author's merit. In an era in which AI can generate images that may at times surpass human ability, we are compelled to redefine artistic virtue, so that creating and using technology does not infringe the moral rights of creators but instead promotes fairness, transparency and respect in the artistic process.

A particular danger lies in the rhetoric of trust. Ethical guidelines often label an AI system as "trustworthy"; yet, as Bryson argues, for reasons of principle a system cannot and should not be considered trustworthy in the way a person can, since it has no accountability, no stake and no capacity to answer for its outputs (Bryson 2018). Responsibility cannot be delegated to the model; it remains with the human and institutional actors who design, deploy and profit from it. An applied ethics of AI in art therefore translates abstract principles into concrete obligations: to obtain consent for training data, to attribute and, where due, to remunerate the artists on whose work a model depends, to label AI-generated content as such, and to refrain from claiming authorship over what a human did not substantially make.

The Romanian and European legal framework

In Romania, copyright is governed by Law no. 8/1996 on Copyright and Related Rights, which protects literary, artistic and scientific works, including visual creations. The law recognises both moral rights, such as the right to be identified as the author and the right to the integrity of the work and economic rights, which allow the author to exploit their creation commercially. Protection lasts for the entire life of the author plus seventy years, and the infringement of these rights may give rise to civil and criminal penalties. Unlike the American "fair use" doctrine, Romanian law provides for much narrower exceptions, such as quotation for teaching or research purposes, which poses additional challenges in the context of training AI algorithms on existing works without the creators' consent (Law no. 8/1996).

Against the backdrop of the accelerated development of AI, clear regulation has become a necessity for protecting creators and their rights. The European Union has recently adopted the AI Act, the first binding legislation to regulate AI systems, combining a risk-based approach with the protection of fundamental rights.[3] The Act is structured around tiers of risk, from prohibited practices, through high-risk systems

[3]The AI Act was adopted on 13 June 2024 through Regulation (EU) 2024/1689 (published on 12 July 2024), which regulates the use of artificial intelligence with a view to ensuring its safe, transparent and ethical deployment. The Regulation guarantees that AI systems placed on the European market respect fundamental rights and the values of the Union, and it encourages investment and innovation in the field.

subject to strict obligations, to limited-risk systems bound chiefly by transparency duties. For the visual arts, two provisions are especially pertinent. First, the transparency obligations require that AI-generated or manipulated image, audio and video content be marked as artificially produced, so that audiences are not misled about the origin of what they see. Second, as noted above, providers of general-purpose models must publish a summary of their training content and adopt a copyright-compliance policy. This framework offers a benchmark for the responsible use of AI, seeking a balance between technological innovation and the rights of artists, and it suggests that any application of AI in artistic creation should be accompanied by a careful assessment of its impact on the originality and the intellectual property of visual works. It remains, however, a framework of disclosure and risk management rather than of consent: it renders appropriation visible without prohibiting it, leaving the harder questions of permission and remuneration to copyright law and to future litigation such as the Andersen trial.

Can a machine be creative? Historical and conceptual perspectives

Although discussions about art and artificial intelligence have grown exponentially only in recent years, the idea of non-human artistic creation has deep historical roots. The notion of artificial life, or of robots that create art, can be traced back to Greek mythology. In Antiquity, there were mechanisms that produced forms of art: Apollonius of Perga (c. 240–190 BC) invented an automatic musical instrument, while Leo the Philosopher (c. 790–869) built self-operating automata, including singing birds. These devices, however, functioned according to predetermined schemes, lacking genuine spontaneity and creativity (Mayor 2018).

The continuity is instructive. From the automata of Antiquity to contemporary neural networks, the recurring fascination is with a making that proceeds without a maker. What has changed is the degree of autonomy and the scale, not the underlying question, which remains whether mechanism can give rise to genuine creativity or only to its convincing simulation.

This raises the question of AI's capacity to be creative. In the field of computational creativity in particular, studies have examined whether machines can reproduce not only rationality but also the intuition required by the artistic process (Boden 2010). As noted earlier, Boden's typology suggests that current systems achieve combinational and exploratory creativity while falling short of the transformational creativity that redraws the boundaries of a field. According to Rust and Huang, AI creativity is largely confined to analytical intelligence capable of identifying patterns and solving problems, but cannot replace intuitive intelligence, which involves reflective thinking, artistic sensibility and feeling (Rust and Huang 2021). On this view, the decisive human contribution is not technical skill, which machines increasingly match, but the intentionality, lived experience and judgement that endow a work with meaning. Thus, although current technologies can powerfully support creative processes, AI's potential to create in a truly original and

emotionally resonant way remains limited and, crucially, dependent on the human framing that gives its outputs significance.

Conclusion

The ethical paradigm of artificial intelligence in the visual arts cannot be reduced either to technophobic refusal or to uncritical celebration. It is best understood as an ongoing negotiation between what the technology makes possible and the normative and aesthetic values a society wishes to preserve. The preceding analysis suggests several provisional conclusions. Originality, in the age of generative models, shifts from an attribute of the isolated object to a quality of human gesture, selection and intention, while authenticity migrates from the provenance of the hand to the transparency of the process. Authorship, as the case law from Thaler to Zarya makes clear, remains stubbornly human: the law protects the human contribution to a work, not the autonomous output of a machine. Consent and remuneration emerge as the central unresolved questions, which disclosure regimes such as the AI Act and the California transparency statute render visible but do not settle. And the physical image, far from being abolished, is repositioned: no longer the sole repository of value, but a deliberate choice within an expanded field of possibilities.

What an applied ethics of AI in art ultimately demands is neither the prohibition of the new tools nor their unconditional acceptance, but their integration under conditions of recognition — recognition of the artists whose work makes these systems possible, of the human judgement that turns algorithmic output into art, and of the responsibility that no model can assume on our behalf. In this sense, the task is less to ask whether machines can make art than to ensure that, as they increasingly participate in its making, the human values of fairness, transparency and respect are not quietly recombined out of the picture.

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