

# CREATIVITY, AUTHENTICITY, AND COPYRIGHT IN THE AGE OF GENERATIVE AI

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# OBJECTIVES

- How GenAI is challenging traditional frameworks of intellectual property (copyright) and creativity.
- Critically evaluate how we think of creativity, originality, and authorship in the context of human-machine collaboration.
- Examine some of the ethical and legal implications of GenAI creation.

## **THE OED (2023) DEFINES GEN AI AS:**

“Artificial intelligence designed to produce output, esp. text or images, previously thought to require human intelligence, typically by using machine learning to extrapolate from large collections of data; (also) a system, piece of software, etc., used to create content in this way;

# WHAT ARE THE ISSUES/CONCERNS WITH GEN AI?

- Devaluing of human creativity and its products
- Bias in output and AI-training datasets
- Use of copyrighted materials in GenAI training without permission or payment
- Loss of income (artists, writers, musicians)
- Hallucinations
- AI-generated “slop” and DeepFakes
- Use of our personal data in GenAI training
- Too many more to list here

# **COPYRIGHT MADE UP OF**

- Authorship
- Originality
- Creativity

# WHO OR WHAT CAN BE A CREATOR OR AUTHOR?

- Copyright is built upon the idea of a **delimited “creator” or agent** (Bateson, 1987, p. 324).
- Must be a human (**NOT** animal, machine or tool, AI).
  - *Burrow-Giles Lithographic Company v. Sarony* (1884)
    - not camera
  - *Naruto v. Slater* (2018) not a monkey or other animal
  - Perlmutter (2025) – not GenAI

# NEED ORIGINALITY

***Feist v. Rural* (1991) - Information or facts without a minimum of creative organization cannot be copyrighted.**

# NEED CREATIVITY

Work must be “**expressive**” (Copyright Registration Guidance, 2023) and have “an appreciable amount of **creative authorship**” (“General Guide to the Copyright Act,” 1977, p. 3:1). This amount can be very small.



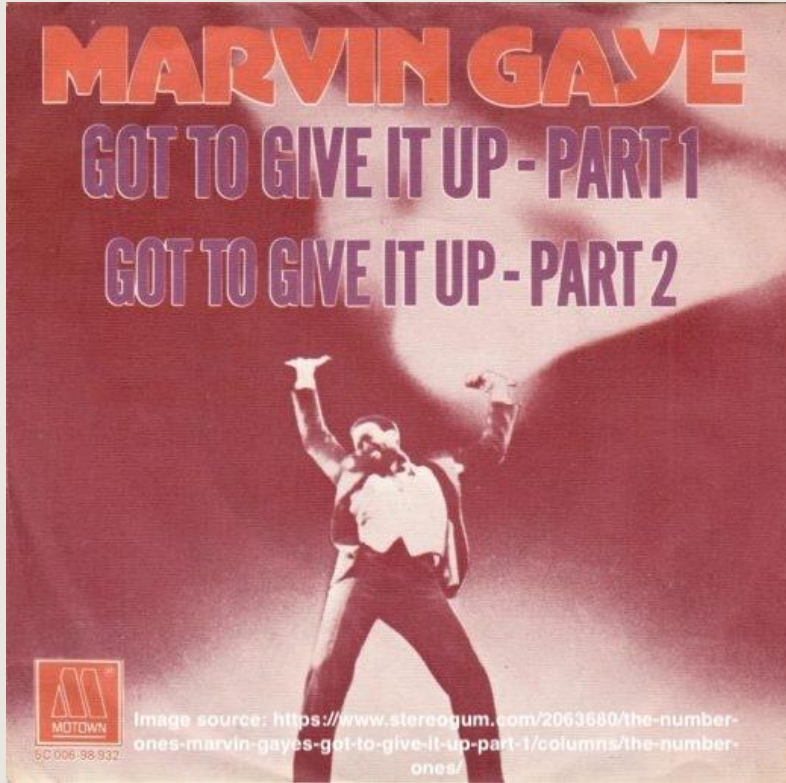
# CANNOT BE AI-CREATED

- AI content must be “**de minimis**” (Copyright Registration Guidance, 2023, p. 4; Perlmutter, 2025)
- Copyright will only be granted for **expressive** material the creator contributed.
- Non-human elements are not protected by copyright (Perlmutter, 2025; Copyright Registration Guidance, 2023, p. 2).

# LIMITATIONS OF COPYRIGHT

- Technology has always challenged copyright
  - Player piano rolls
  - Music sampling
  - Streaming music
- **Slow to respond** to technological change
- Is training GenAI on copyrighted works “fair use” or not? (**To be determined in court**)

# COPYRIGHT CONTRADICTIONS OR INCONSISTENCIES



**Corporations can own copyrights** to materials they have not actually created.

**Ghostwriters** – We can outsource our writing to someone else but put our own name on the work. **But NOT an AI ghostwriter.**

**Copyright does not protect style** only specific works.

**Courts may disagree** – *Blurred Lines* case (Pharrell Williams et al. v Bridgeport Music et al., 2018).

# TRADITIONAL CONCEPTIONS OF CREATIVITY

- “Ex nihilo” – out of nothing
- “Islands of creativity” (Bown, 2015, p. 17)
- Humans have **total control** – intention and agency

Artists have always pushed boundaries and challenged what counts as art / music / literature



**LOSING CONTROL – “RIDING ON  
THE DYNAMICS OF THE SYSTEM”**

**“Instead of trying to organize it in full detail, you organize it only somewhat; you then ride on the dynamics of the system in the direction you want to go.” (Beer, 1972, p. 69)**

# GIVING UP CONTROL IN CREATION IS NOT NEW

- Appropriation - “Readymades” and Found art
  - Marcel Duchamp – *Fountain*
- Ouija board composition - James Merrill – *Changing Light at Sandover*
- Splattering paint – Jackson Pollock
- Chance - John Cage
- Improvisation in jazz music
- Found sounds – John Cage
- Cut-ups in literature and music - William Burroughs and Brion Gysin, David Bowie, Radiohead

# AUTHORSHIP AS RECENT CONCEPT

- Barthes (1968)- Authorship is a modern creation, out of the Reformation, English empiricism, French rationalism, and their focus on the 'individual.'
- Woodmansee (1984) 18c German writers who wanted to earn a living by their pens.



# ORIGINALITY

- Barthes (1968) - Not the 'author' who speaks, but rather language itself (cultural references).
- Woodmansee (1984) – Prior to 18c in Germany:
  - Creators were either craftsmen who were masters of the rules and traditions of their domain, or
  - Divinely inspired.
  - Works were not considered uniquely original to them.

# AGENCY AND INTENTION – CAN VARY

- How much control is given over to one's tools and materials, other fellow collaborating artists, and to chance effects.
- **Traditional view:** creator has 100% agency and 100% intention.
- Agency and intention can be seen as **continua – not binary.**
  - Complete agency/intention to almost none!

# WAYS OF LOOKING AT AGENCY

- **Distributed agency** (Celis Bueno et al., 2025; Moruzzi, 2022) – Agency can be distributed between human and non-human agents such as between human and AI.
- **“Material agency”** (Malafouris, 2008) – materials and tools can be considered to have **some agency** in the creative process.
  - **“Affordances”** – Gibson, 1977)

A black and white photograph of a large, early computer system. The room is filled with tall, dark metal cabinets or racks. On the left, a complex web of wires and cables is visible, connected to the equipment. In the center, a person is standing, looking at the machinery. On the right, another person is visible, also interacting with the equipment. The ceiling has a circular light fixture. The overall scene depicts a mid-20th-century computing environment.

# Computational Creativity

# ALGORITHMIC OR GENERATIVE ART

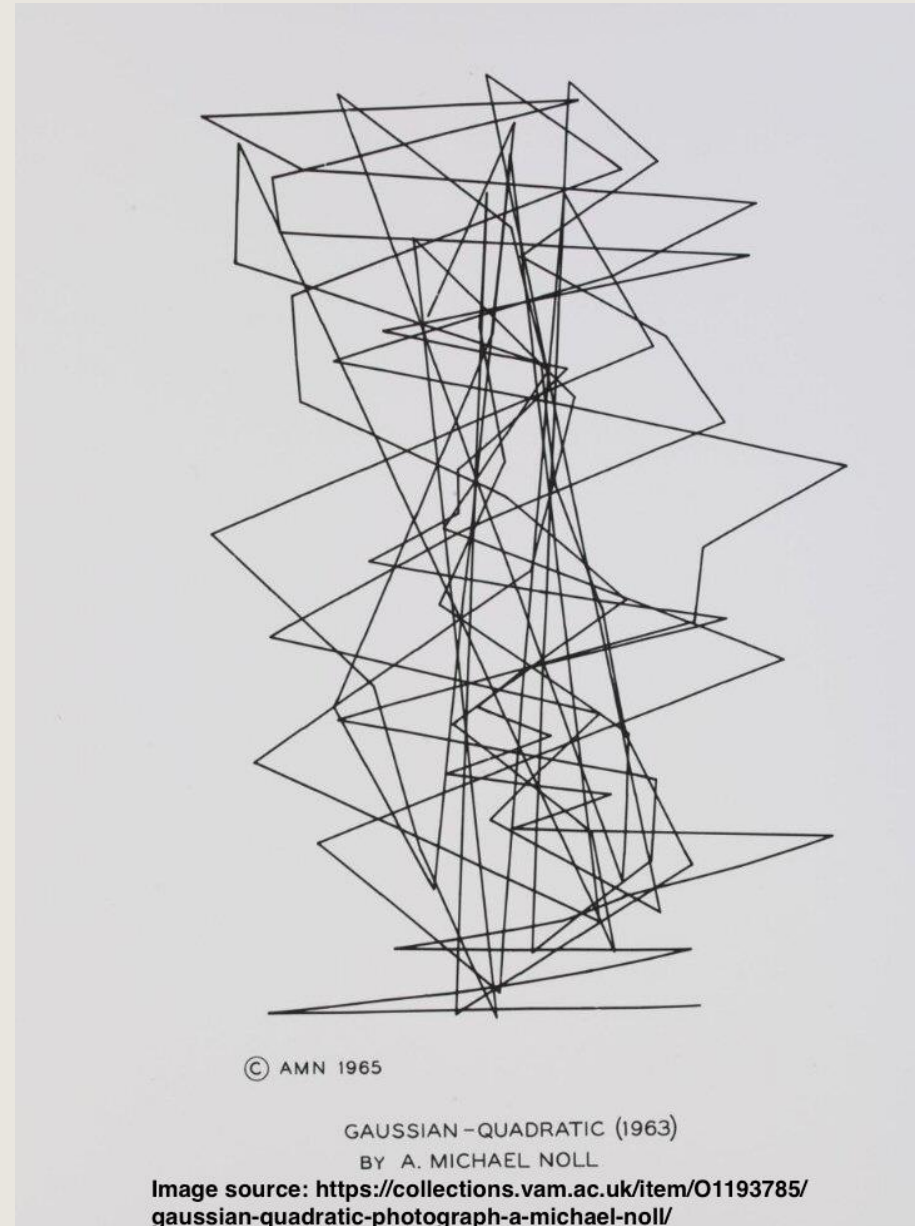
“Generative art refers to any art practice where the **artist creates a process**, such as a set of natural language rules, a computer program, a machine or other procedural invention, which is then set into motion with **some degree of autonomy** contributing to or **resulting in a completed work of art.**” –  
(Galanter, 2003, p. 5)

# ALGORITHMIC OR GENERATIVE MUSIC

- Hiller and Issacson, *Illiac Suite* (1957).
- Xenakis, Stochastic compositions (1963).
- “Generative music” (Eno, 1996, reprinted 2004).
- AI programs that improvise jazz (Bown, 2021)
- Holly Herndon (2022) Holly+ and “spawning”
- Randy Travis – “Where That Came From” (2024)



# A. MICHAEL NOLL (1963) GAUSSIAN QUADRATIC



# FRIEDER NAKE – 1965

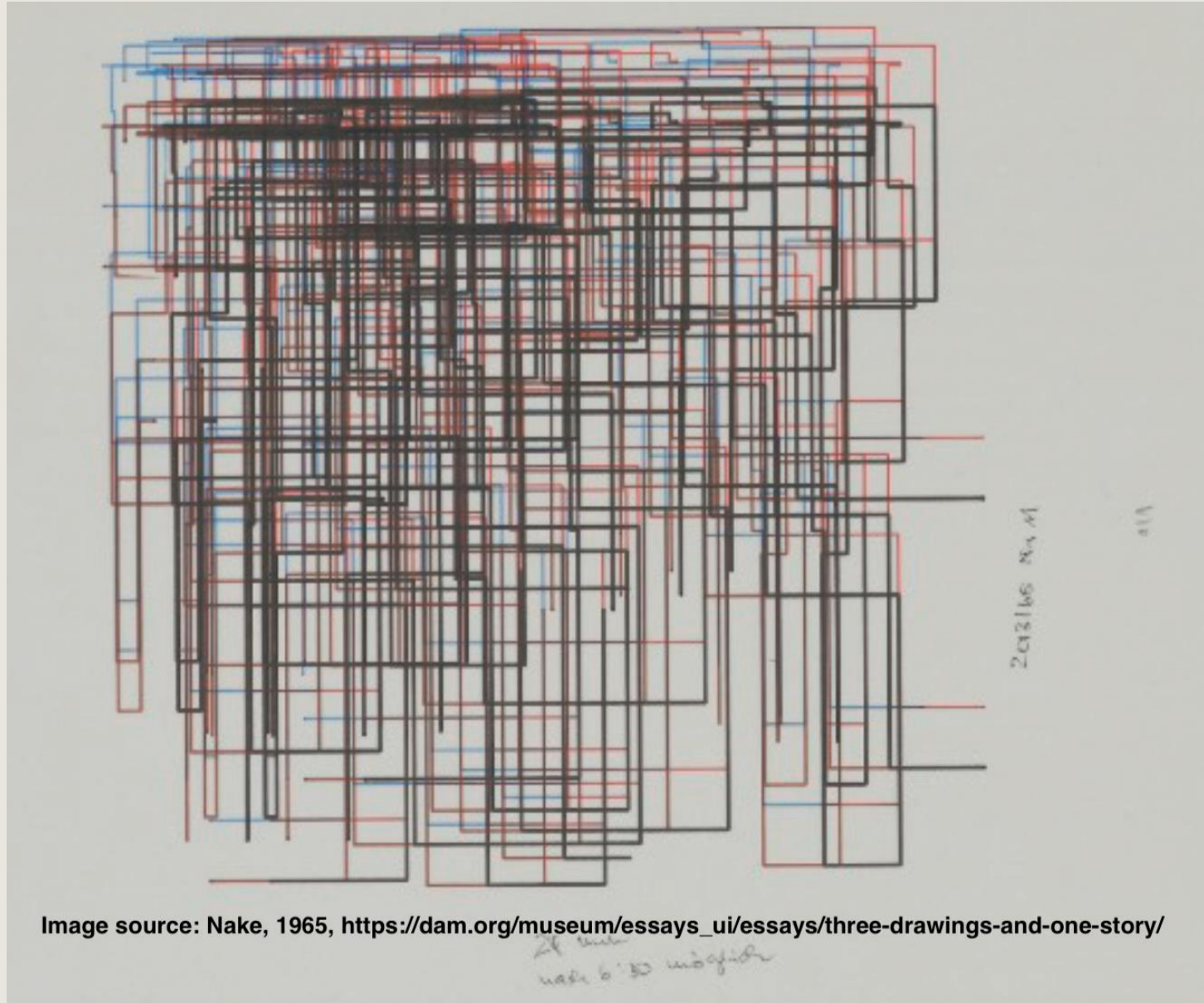


Image source: Nake, 1965, [https://dam.org/museum/essays\\_ui/essays/three-drawings-and-one-story/](https://dam.org/museum/essays_ui/essays/three-drawings-and-one-story/)



# LILLIAN SCHWARTZ (1970) PIXILLATION



Image source: Schwartz, 1970, <https://www.artforum.com/features/painting-by-numbers-the-art-of-lillian-schwartz-230796/>

# HAROLD COHEN – AARON – 1973 - 2016



Image source: <https://www.katevassgalerie.com/blog/harold-cohen-aaron-computer-art>



# HELENA SARIN (2025) @NEURALBRICOLAGE



**Image source:** Gazeli Art House. (2025). *Helena Sarin overview*. <https://gazelliarthouse.com/artists/342-helena-sarin/overview/>

## **AI CREATIVITY MAY NOT EVEN LOOK LIKE HUMAN CREATIVITY**

“...the contemporary language of creativity is geared towards the superlative creativity of humans. It does not do well at describing the simple forms of computational creativity we are developing today. For this reason, an “islands of creativity” view, that works for humans, needs to be replaced by a more fluid conception of creativity that will work equally well for computational systems.” – Bown 2015, p.20

# **THE WAY FORWARD**

# WHAT IS NEEDED

- “Critical systemic literacy of AI” (Zeilinger, 2021, p. 55)
- Artist consent and control
- Development of appropriate licensing schemes or models
- Protection against Deepfakes

# “CRITICAL SYSTEMIC LITERACY OF AI”

- Must critique how technology is developed and used, why, and who benefits or is hurt. (Zeilinger, 2021)
- **“Tactical art”** - “a critical mode of practice” (p.57) that “disturb[s], complicate[s], and contest[s]” (pp. 55-56) current ways of thinking about AI.
- **“Algorithmic Reading”** - “the ability to develop and implement a critical frame for interpreting objects that are also **interpreting you**” (Finn, 2017, p. 55).

# Statement on AI training

Signatories    Signatory Organizations

“The unlicensed use of creative works for training generative AI is a major, unjust threat to the livelihoods of the people behind those works, and must not be permitted.”

## Sign the statement

We will add your name and profession to the public list of signatories.

We will only use your email address for verification; we won't publish your email address or send you marketing emails.

## Signatories (50,544)

- Björn Ulvaeus, Songwriter
- Sir John Rutter, Composer and Conductor
- Sir Kazuo Ishiguro, Novelist
- Julianne Moore
- Thom Yorke, Musician
- James Patterson, Author
- Kate Bush, Singer-songwriter



# ARTIST CONSENT AND CONTROL

- “Making commercial use of...copyrighted works to produce **expressive content** that competes with them..., especially where this is accomplished through illegal access, goes **beyond established fair use** boundaries” (U.S. Copyright Office, 2025, p. 107).
- Any AI program must use clearly marked/labeled training data and license all its content from creators/copyright owners or use open access data (Stokel-Walker, 2022; Weiner, 2023).

# RESISTING USE OF WORKS IN TRAINING AI

- Most technological methods for “opting out” revolve around the use of “metadata, databases, watermarking, technical flags, and website terms of service” (U.S. Copyright Office, 2025, p. 102).
- Do Not Train Registry – Spawning – **flags content**
- Data poisoning – Kudurru (2025)
- Kudurru Defense Network – blocks AI scrapers from your site - <https://kudurru.ai/>

# APPROPRIATE LICENSING SCHEMES OR MODELS

- **Consent layer for AI systems** - Herndon/Dryhurst
  - **Source+** - Musicians and songwriters could train an AI on their work and then license the use of that AI for others to use in creating new songs, music.
  - **Spawning** - Make it easy for copyright owners to register their consent for the use of their work.
  - Artists must be given the **opportunity to opt in**, not have to opt out.

# **COPYRIGHT OFFICE REPORT ON LICENSING**

“...at this point in time, the Office recommends allowing the licensing market to continue to develop without government intervention” (U.S. Copyright Office, 2025, p. 106)

# PROTECTION AGAINST DEEPPFAKES

- Copyright does not protect style.
- Currently little in law to prevent DeepFakes.
- Some legislation at state level:
  - Tennessee- *Ensuring Likeness Voice and Image Security (ELVIS) Act 2024.*
- Copyright Office recommends a “federal right that protects all individuals from...unauthorized digital replicas” (“Copyright and artificial intelligence,” 2024, p. 57)



Photo by Roma Kaiuk on Unsplash



## **HAROLD COHEN (1995)**

**“If what AARON is making is not art, what is it exactly, and in what ways, other than its origin, does it differ from the ‘real thing?’ If it is not thinking, what exactly is it doing?”**

**TINYURL.COM/ECKEL-MIALA2025**





# THANK YOU

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