

## Artist Seeks Copyright Of AI Artwork That Uses Own Drawing

By **Tiffany Hu**

*Law360 (March 23, 2023, 10:19 PM EDT)* -- Following the U.S. Copyright Office's partial cancellation of artificial intelligence artist Kris Kashtanova's registration for an AI-assisted comic book, the artist has submitted a new application for a different artwork produced by AI tool Stable Diffusion using Kashtanova's own hand-drawn art and other input.

In a letter published Tuesday, lawyers for Kashtanova said the artist's two-dimensional visual artwork titled "Rose Enigma" was eligible for copyright protection because they contributed creative expression to the work through various artistic choices and AI model Stable Diffusion was used as an "assisting instrument" to realize their original mental conception.

Notably, Kashtanova's attorneys pointed to the artist's pen drawing depicting a face with flowers on top, their text prompt specifying that the subject of the work was a young woman cyborg and that the style was hyper-realistic and dramatic, as well as their use of a separate tool to control the viewer's perspective of the subject, to show that Kashtanova "forced" Stable Diffusion to produce an image that "visually realized Kashtanova's mental conception."

"The image Kashtanova created is not random," the artist's counsel wrote, noting that someone using the same models and inputting the same text and image would also generate the work. "Kashtanova's exercises of control and creative choices gave visible form to the work, thus making them the author of it."

Heather Whitney of Morrison Foerster LLP, an attorney for Kashtanova, told Law360 in an email Thursday that they believed "Rose Enigma" was copyright eligible because the artist "conceived the traditional elements of authorship with it."

The new application comes after the Copyright Office in February canceled part of Kashtanova's copyright registration granted last year for their comic book "Zarya of the Dawn" due to "inaccurate and incomplete information."

The comic contains art produced by Midjourney, an AI program that turns text into realistic images, but Kashtanova initially did not disclose in their application that the images were generated by an AI tool, according to the office.

The Copyright Office subsequently published a new guidance on AI-generated art, saying applicants needed to disclose whether AI was used in the work's creation, but that they "may claim copyright

protection for their own contributions to that work."

Whitney told Law360 on Thursday that she and Kashtanova believe the artist's latest work is "eligible for registration under the new guidance" as well as under the underlying law.

Kashtanova is represented by Heather M. Whitney and Joseph C. Gratz of Morrison & Foerster LLP.

--Editing by Janice Carter Brown.

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