

Annemarie Bridy
University of Idaho College of Law

The Author in the Machine: Copyright in the Age of Digital Production

The rise of the Internet in the 1990s brought about a now exhaustively documented paradigm shift in the technology for reproducing and distributing creative and artistic works. The transition from analog to digital reproduction meant that perfect copies of creative works could be made at virtually no marginal cost. The accompanying transition from real to virtual distribution meant that these perfect copies could be instantaneously distributed worldwide. These two transitions—one in the means of reproduction, the other in the means of distribution—exerted enough pressure on the existing legal infrastructure for protecting and enforcing copyrights to lead serious people to question its continuing relevance and viability.

While the crumbling infrastructure has been propped up by statutory buttresses such as the Digital Millennium Copyright Act and the No Electronic Theft Act, few would argue that the system is not broken, and many believe it is irretrievably so. This article considers the extent to which a third technological transition now underway, in the means of artistic production, could further undermine an already compromised copyright system. As the state of the art continues to advance in the area of artificial intelligence, we are fast entering an age of digital authorship, in which digital texts (i.e., software programs) produce other digital texts. We know what happens when code becomes law, but what about when code becomes author? This new twist on the postmodern “death of the author” poses a fundamental challenge to copyright’s inherent humanism.