

DEEP OR SHALLOW CONVERSATION ABOUT GENERATIVE AI AND COPYRIGHT

IP and Human Creativity in the AI Age: A Global Conversation | Berkeley | Nov 14, 2025

Panel IV | AI's Challenge to Authorship

Kwangnam Kim | High Court Judge | Seoul High Court | Republic of Korea | kimkwangnam@scourt.go.kr



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# TODAY'S PRESENTER

**KWANGNAM KIM HIGH COURT JUDGE, SEOUL HIGH COURT KIMKWANGNAM@SCOURT.GO.KR**

## Current Position

2022 ~ High Court Judge, Seoul High Court, IP Division

## Prior Positions

2021 ~ 2022 Judge, Daegu District Court, IP Division

2018 ~ 2021 Judge, IP High Court

2017 ~ 2017 Visiting Judge, Fellowship, U.S. Federal Court, Northern District of California

2017 ~ 2017 Visiting Judge, Externship, U.S. California Superior Court, Contra Costa County

**2015 ~ 2016 U.C. Berkeley LL.M. Law & Technology Certificate**

2014 ~ 2016 Judge, Suwon District Court

2010 ~ 2013 Judge, Daegu District Court



# AGENDA

## DEEP OR SHALLOW CONVERSATION ABOUT GENERATIVE AI AND COPYRIGHT

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- A MACHINE CAN BE AN AUTHOR?
- A HUMAN CAN BE AN AUTHOR OF GENERATIVE AI-ASSISTED WORKS?



# A MACHINE CAN BE AN AUTHOR?



# A MACHINE CAN BE AN AUTHOR?

## A MACHINE CAN BE AN AUTHOR?

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### KOR Copyright Act Article 2 (Definitions)

- The terms used in this Act shall be defined as follows: <Amended by Act No. 9625, Apr. 22, 2009; Act No. 10807, Jun. 30, 2011; Act No. 11110, Dec. 2, 2011; Act No. 14083, Mar. 22, 2016>
  - 1. The term “work” means a creative production that expresses human thoughts and emotions;
  - 2. The term “author” means **a person** who creates a work;



# A MACHINE CAN BE AN AUTHOR?

## A MACHINE CAN BE AN AUTHOR?

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- AI Alone Cannot Be an Author; Output Needs Human Creativity
- KIPO, IPTAB, Korean Courts Also Held That DABUS Cannot Be Recognized as an Inventor (Seoul High Court Decision, decided May 16, 2024, 2023Nu52088)



# THALER V. PERLMUTTER

(U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, CASE No. 23-5233 (2025))

## A MACHINE CAN BE AN AUTHOR?

- Dr. Stephen Thaler created a generative AI named the “Creativity Machine.”
- Dr. Thaler submitted a copyright registration application listed **the Creativity Machine** as the work’s **sole author**.
- The Copyright Office denied Dr. Thaler’s application.



A Recent Entrance to Paradise A Recent Entrance to Paradise



# THALER V. PERLMUTTER

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## A MACHINE CAN BE AN AUTHOR?

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- The court affirms the denial of Dr. Thaler’s copyright application.
- All the copyright act provisions collectively identify an “author” as **Human Being**
- The human authorship requirement does **not prohibit** copyrighting work that was made by or with the assistance of AI.
- This court’s job is to apply the statute as it is written, not to wade into technologically uncharted copyright waters and try to decide what might accord with good policy.



HUMAN CAN BE AN  
AUTHOR OF  
GENERATIVE  
AI-ASSISTED



# WHAT IS THE REQUIREMENT OF ORIGINALITY ?

## HUMAN CAN BE AN AUTHOR OF GENERATIVE AI-ASSISTED WORKS?

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- Under copyright law, a “work” refers to a creative expression of human thoughts or emotions, and an “author” is defined as the person who creates such a work (Articles 2(1) and 2(2) of the Copyright Act). Copyright specifically protects **the creative form of expression** that is **externally expressed**, not mere ideas or concepts. (...). For thoughts or emotions to be deemed “expressed,” it is not sufficient that they remain conceptualized in the mind—they must be expressed externally in some form or manner. There are **no limitations** as to the method or form in which such expression is made. (the Supreme Court of Korea, decided June 25, 2020, 2018do13696)



# WHAT IS THE REQUIREMENT OF ORIGINALITY?

HUMAN CAN BE AN AUTHOR OF GENERATIVE AI-ASSISTED WORKS?

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Can a prompt input be regarded as a creative form of expression concretely externalized?

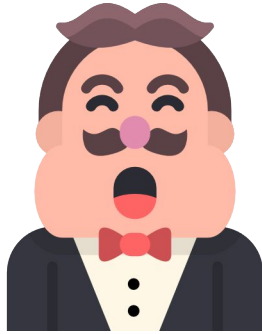


# CAN A BE AN AUTHOR?: HUMAN V. HUMAN

## HUMAN CAN BE AN AUTHOR OF GENERATIVE AI-ASSISTED WORKS?

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A



- Singer
- Painter (?)

B



- Student at Art School



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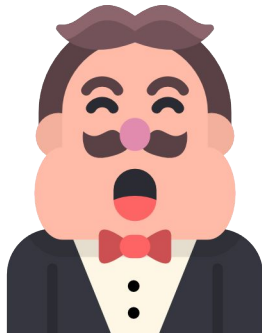
- Student at Art School



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source: <http://www.joongboo.com/news/articleView.html?idxno=363522346>



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- The prosecutor charged A with fraud.
- Although B drew the painting, A claimed that he had drawn it himself and sold it, which the prosecutor argues constitutes fraud.

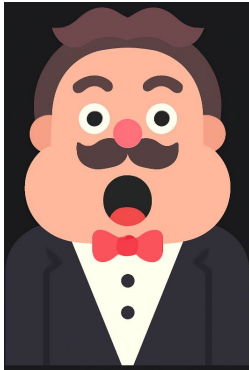


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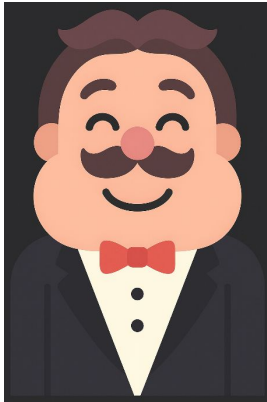
- The first trial found A guilty.
- B was not merely an assistant who helped A with creative activities under A's direction and supervision. Instead, it is reasonable to view B as an independent "author" who contributed to the creative expression of the artwork in question. (Seoul Central District Court, Decision

2016Godan5112, rendered October 18, 2017)

# CAN A BE AN AUTHOR?: HUMAN V. HUMAN

## HUMAN CAN BE AN AUTHOR OF GENERATIVE AI-ASSISTED WORKS?

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- The appellate court found A not guilty.
- It held that B was only a technical assistant who was paid to help turn A's ideas into finished artworks. B did not contribute his own artistic vision, style, or techniques to the works in a way that would make him an "author" of the artworks. (Seoul Central District Court,

Decision 2017No3965, rendered August 17, 2018)

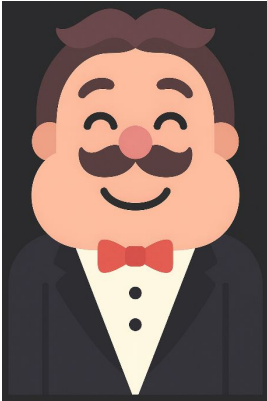


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## HUMAN CAN BE AN AUTHOR OF GENERATIVE AI-ASSISTED WORKS?

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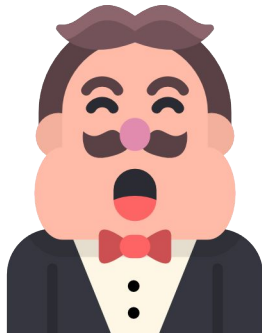
- The Supreme Court also found A not guilty.
- The authorship was not the issue in this case.
- The prosecutor argued that the A committed fraud because he did not tell buyers that assistants were involved in making the artwork, especially in the creative process. (Supreme Court of Korea, Decision 2018Do13696, rendered June 25, 2020)

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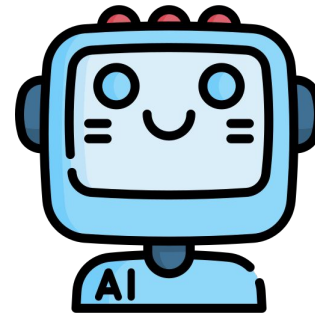
A



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B



# CAN A BE AN AUTHOR?: HUMAN V. MACHINE

## HUMAN CAN BE AN AUTHOR OF GENERATIVE AI-ASSISTED WORKS?

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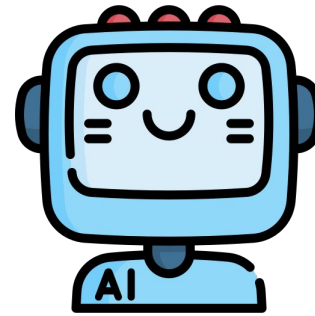
A



- Singer
- Painter (?)



B



# A PROMPT INPUT

HUMAN CAN BE AN AUTHOR OF GENERATIVE AI-ASSISTED WORKS?

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Can a prompt input be regarded as a creative form of expression concretely externalized?



# A PROMPT INPUT

## HUMAN CAN BE AN AUTHOR OF GENERATIVE AI-ASSISTED WORKS?

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- Under copyright law, a ‘work’ means a creative expression of an idea, thought, or feeling that is produced by a human’s mental effort. (Supreme Court of Korea, Decision No. 98Do112, delivered on October 22, 1999)
- Human Creative Contribution.
- **Outputs based on human prompts that do not exhibit human creative contribution** do not constitute works.



A PROMPT INPUT

HUMAN CAN BE AN AUTHOR OF GENERATIVE AI-ASSISTED WORKS?

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# CONTROLLABILITY and PREDICTABILITY



# MODIFICATION , ADDITION , OR DELETION

## HUMAN CAN BE AN AUTHOR OF GENERATIVE AI-ASSISTED WORKS?

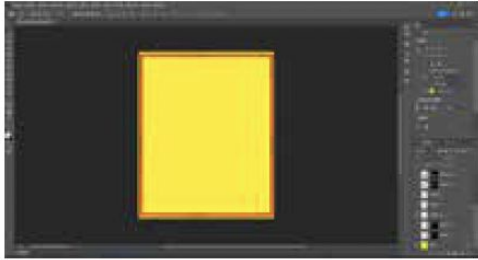
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- when the additional work performed by a user on an autonomous output—such as modification, addition, or deletion—displays creativity

☞ Human Creative Contribution.



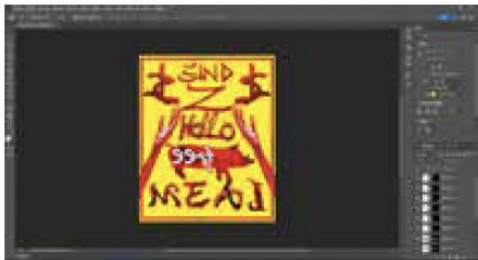
- Creation process:



1. The human user created simple sketches and the background for the image.



2. Image is created using GenAI.



3. After removing the backgrounds and making specific adjustments to the autonomous outputs, the human user configured and arranged them.



# SELECTION , ARRANGEMENT , OR COMPOSITION

## HUMAN CAN BE AN AUTHOR OF GENERATIVE AI-ASSISTED WORKS?

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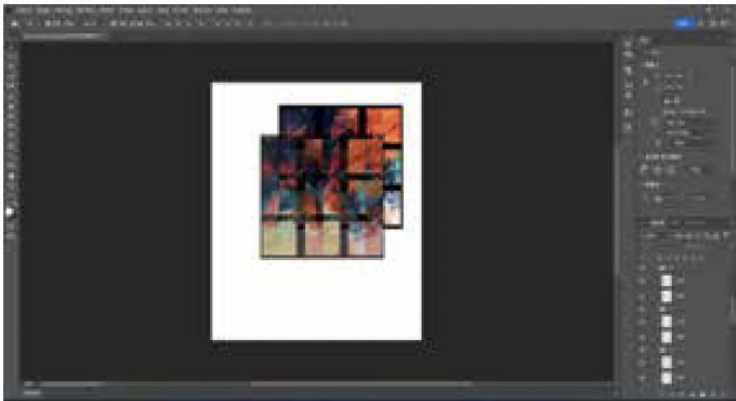
- when creativity is present in the selection, arrangement, or composition of an autonomous output 🖱️ Human Creative Contribution.



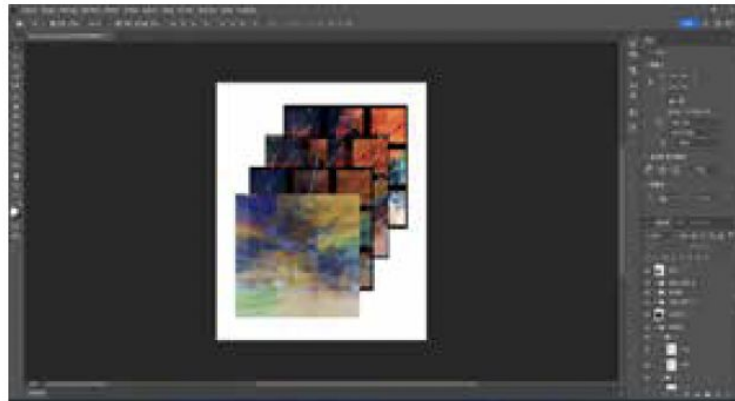
- Creation process:



1. Image is created using GenAI.



2. After segmenting and rearranging the autonomous output, the human user performs editing such as image segmentation and transparency adjustment.



3. The final image is created by repeating the previous step.



- Creation Process:

1. Prompts were used to generate scenes instead of filming with a camera.
2. The human user arranged and edited selected autonomous outputs to produce the final video.



In a countryside village in Korea lived an old couple who farmed pumpkins.



And one day, the Grim Reaper arrived...



It was so delicious that he kept devouring it without stopping.



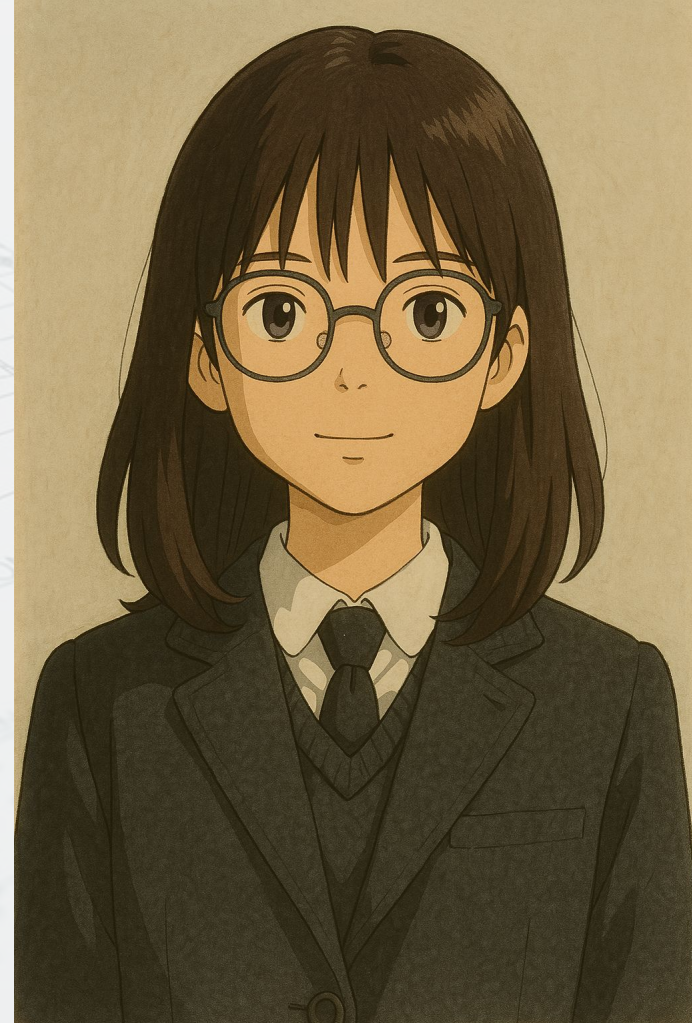
The old couple went against the laws of nature,



# STYLE?

## HUMAN CAN BE AN AUTHOR OF GENERATIVE AI-ASSISTED WORKS?

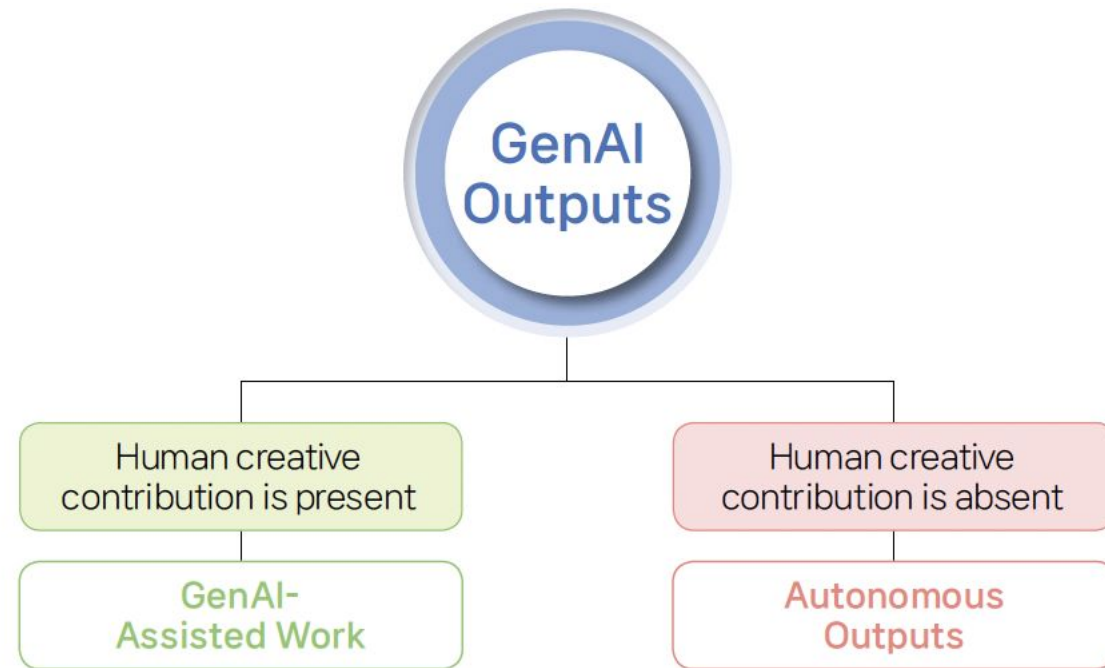
- A “style” is generally considered to be an idea, not an expression → not protected by copyright
- Right of publicity? Or Unfair Competition Prevention Act?



# SUMMARY

## HUMAN CAN BE AN AUTHOR OF GENERATIVE AI-ASSISTED WORKS?

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Source: Guide to Copyright Registration for Generative AI-Assisted Works, 12.



- **Online:** Fill out the application under the “Registration Application” tab on the registration website (cros.or.kr).
  - Fill out “Detailed Statement of Copyright Registration Application → Work → Content”
  - If additional explanation is needed regarding the human creative contribution, you may attach the file under the “Other supplementary documents” section.

**Registration Application**

Find the Right Application for You

Registration of Rights

- Copyright Registration (General: literary works, artistic works, etc.)
- Copyright Registration (Computer programs)
- Neighboring Rights Registration
- Database Producer's Rights Registration

Change of Rights Registration

Amendment/Correction/ Cancellation Registration

Copies Issuance

Software Research Output Registration

**Copyright Registration Application**

This is the Copyright Registration Application page where you enter information about the applicant (the rights holder) and their representative. Please make sure to fill out each field accurately by following the instructions that appear when you hover your mouse over the input fields.

Which one of the following best describes you: **the rights holder**, their **representative**, or an **heir**?  Rights holder (self)  Representative  Heir

Applicant (Rights holder) \*AI is not an author (rights holder)/neighboring rights holder/database producer. [View applicant details](#)

Please select your status as the rights holder:  Author  Joint author

**Other supplementary documents**

\* If you have supplementary documents, click the "Add file" button. After selecting the file, be sure to click the "Send" button to complete the submission. [Add file](#)

| Document | Name of file |
|----------|--------------|
|          |              |

**Detailed Statement of Copyright Registration Application** [Preview registered info](#)

This is the page for filling out the Detailed Statement of Copyright Registration Application and Program Overview for the work. The entered information will be recorded in the register and cannot be changed once registration is complete. Please fill out the form carefully.

**Work** \* AI outputs are not eligible for registration. (Filing a registration for an AI output as your own work may result in penalties for false registration.)

**Title** Document

\* If in foreign language, also put Korean transliteration or title in Korean.

**Type**

**Content**

\* Please provide a detailed explanation sufficient for understanding, limited to 1,000 characters or less. Byte=0/3000 (3 Byte per Korean character)  
\* For multiple submissions, ensure that the content entered for each work is distinct.

Image 4. Copyright Registration Application screen

- ① Overall summary of the work
  - Genre: Digital illustration
  - Theme: Coexistence of humans and AI in a future city
  - Subject matters: Flying public transportation, streets where AI robots and humans walk together, and eco-friendly buildings
  - Composition: An AI robot holds hands with a human child at the center, while various futuristic elements fill the background, creating a warm, hopeful atmosphere.
  - Expressive elements: Use of bright fluorescent colors, three-dimensionality based on perspective, dramatic contrast between light and shadow, and digital brush strokes and textures to accentuate the feel of a digital illustration
- ② Autonomous output used for the work
  - GenAI tool: Midjourney v6 (text prompt-based image generator)
  - Prompt: "a futuristic cityscape where humans and AI coexist, flying cars, neon lights, high-rise buildings with vertical gardens, digital painting style"
  - Role and proportion of the output: Only one of the ten AI-processed images best suited for developing ideas on subject matter and establishing the visual composition was selected to serve as the reference image.
- ③ Human creative expression
 

The final work was produced by the human creator using Photoshop to add the following expressive elements through manual transformation, drawing, and painting:

  - Redesign of composition and communication of the core theme
    - Based on the layout in the autonomous output, the author reconfigured the overall scene by placing empathy and sentiment between the AI robot and the human child at the center, conveying warmth through their gaze and smiles.
  - Expression of specific details
    - Taking buildings in existing cities as references, the building designs were expressed as graphic images by integrating sci-fi elements.
    - The characters (the child and robot), not present in the autonomous output, were completely newly sketched by hand and digitally painted using digital brushes.
  - Color and lighting effects
    - Bright fluorescent colors absent in the autonomous output were added, and positive sentiment toward the futuristic city was conveyed through shading contrast and highlights.

\* Attachment: The autonomous output itself and photographic records of the creative process are submitted as supplementary materials.

DEEP OR SHALLOW

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