

e-document	T-1717-24-ID 1
F I L E D	FEDERAL COURT COUR FÉDÉRALE
	July 08, 2024 08 juillet 2024
Jacob Legault	
OTT	1

Court File No.

FEDERAL COURT

B E T W E E N:

SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY AND PUBLIC INTEREST CLINIC

APPLICANT

- and -

ANKIT SAHNI

RESPONDENT

NOTICE OF APPLICATION

(Under Section 57(4) of the Copyright Act, R.S.C. 1985, c. C-42)

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The relief claimed by the Applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests this application be heard at the Federal Court in Ottawa, Canada.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the Applicant's solicitor or, if the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

July 8, 2024

Issued by: _____
(Registry Officer)

Address of
local office:

90 Sparks Street, Main Floor
Ottawa, Ontario
K1A 0H9

TO: **Mr. Ankit Sahni**
Ajay Sahni & Associates LLP
31/42 Punjabi Bagh
West New Delhi, 110026, India

APPLICATION

RELIEF SOUGHT:

1. The Applicant, Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (“CIPPIC”), seeks:
 - a. a declaration that:
 - i. there is no copyright in the image, *Suryast*; or
 - ii. alternatively, if there is copyright in *Suryast*, that the Respondent is its sole author;
 - b. an Order:
 - i. pursuant to paragraph 57(4)(b) of the *Copyright Act*, to rectify the Register of Copyrights by expunging the Registration dated December 1, 2021, in connection with the image titled *Suryast* (Canadian Copyright Registration Number 1188619) (the “*Suryast* Registration”); or
 - ii. in the alternative, pursuant to paragraph 57(4)(c) of the *Copyright Act*, to rectify the Register of Copyrights by deleting “RAGHAV Artificial Intelligence Painting App” (“RAGHAV AI Painting App”) from the *Suryast* Registration as a co-author;
 - c. CIPPIC does not seek costs and asks that costs not be awarded against it given the important public policy issues raised in this Application; and
 - d. such further or other relief as this Honourable Court may deem just.

THE GROUNDS FOR THIS APPLICATION ARE:

The Parties

2. The Applicant, CIPPIC, is Canada’s first and only public interest technology law clinic. CIPPIC’s mandate is to advocate in the public interest on legal and policy

issues arising at the intersection of law and technology. Based at the Centre for Law, Technology, and Society within the University of Ottawa's Faculty of Common Law, CIPPIC's team of lawyers, professors, and law students advance the interests and rights of Canadians, advocate for balanced copyright policy in Canada, and advocate for an appropriate role for technology in Canadians' lives.

3. CIPPIC's demonstrated history in matters related to copyright and artificial intelligence ("AI") makes it well-equipped to advocate before the Court on how this Application implicates the rights and obligations of creators, content users, and businesses in Canada and around the globe.
4. The Respondent, Ankit Sahni, is an intellectual property lawyer based in New Delhi, India.

Background

The Production of the Image, Suryast

5. The Respondent generated this image using an AI system titled RAGHAV AI Painting App. RAGHAV AI Painting App is a generative AI tool that allows users to generate visual images based on "prompts". A "prompt" is descriptive information – a sentence, or a series of structured directions – that structures how an AI's algorithm generates an output to achieve a desired result.
6. The Respondent generated this image by combining a photograph of a sunset the Respondent took (the base image) and a copy of the painting "The Starry Night" by Vincent van Gogh (the style image), which is in the public domain.
7. The Respondent inputted both images into the RAGHAV AI Painting App and

then entered a value indicating how strongly the style image was to apply to the base image. The Respondent then prompted the RAGHAV AI Painting App to apply the style of the van Gogh painting to the base image. The AI used neural artistic style transfer—a software algorithm—to apply the style image to the base image.

8. This mechanical and purely data-based process facilitated by the AI algorithm resulted in a third image, which the Respondent titled “*Suryast*”.
9. The Respondent claims copyright in the image *Suryast*, generated through his merely mechanical exercise of inputting two images into an AI system that then returned a single image.

The Respondent’s Copyright Registration Activities

10. The Respondent has attempted to register its alleged copyright in the image *Suryast* in various copyright registries throughout the world.
11. In November 2020, India’s Copyright Registrar registered copyright in *Suryast* and recognized RAGHAV AI Painting App as an author of the image (ROC No. A-135120/2020). However, the Registrar issued a notice of withdrawal in November 2021. The current status of the copyright registration for *Suryast* in India is unclear as the image still appears in the country’s copyright register despite the withdrawal notice.
12. In December 2023, the United States Copyright Review Board refused to register copyright in *Suryast*, and instead, despite repeated appeals by the Respondent,

denied (a) that copyright subsisted in *Suryast* and (b) authorship to the AI system. The United States Copyright Review Board stated that AI systems, including the Respondent's, cannot be authors for the purposes of copyright (United States Copyright Review Board decision on *Suryast*, Dec. 11, 2023, "Re: Second Request for Reconsideration for Refusal to Register SURYAST".)

13. The Respondent is not seeking to register copyright in *Suryast* because he is genuinely concerned about protecting his creativity. Rather, his motive appears to be more principled, but misguided. The Respondent seeks to force countries into addressing AI authorship by attempting to register an alleged copyright in *Suryast* in numerous jurisdictions. The Respondent seeks to capitalize on the global uncertainty over AI and the novelty of the technology.

Registration in Canada

14. On December 1, 2021, the Respondent obtained a Canadian copyright registration for the image *Suryast*. The Respondent registered the alleged copyright in the image *Suryast* in the Canadian Register of Copyrights by completing an online registration form and paying the prescribed fee.
15. The *Suryast* Registration lists two authors, the Respondent and RAGHAV AI Painting App. The *Suryast Registration* identifies the same address for both authors.
16. CIPPIC has made numerous attempts to determine how Canada's Intellectual Property Office ("CIPO") reviews, verifies, and approves copyright registration applications.

17. CIPO's website states that:
 - a. when a copyright applicant submits an online application, along with the fee, the application is downloaded into CIPO's internal processing system;
 - b. if the applicant submits an application to CIPO by mail or fax, the application details are entered manually;
 - c. "once CIPO gets a complete application and the appropriate fee, the copyright is registered." Certificates of Copyright Registration are to be issued within seven (7) business days; and
 - d. CIPO will contact applicants if there is an issue with an application.
18. However, in numerous communications directly from CIPO, CIPO indicated, unequivocally, that it does not verify authorship, ownership, or any other particulars of registration applications prior to granting Certificates of Copyright Registration.
19. CIPO stated to the Applicant that it will grant copyright registrations instantaneously following the completion of the online form and payment of the prescribed fee.

Ramifications of CIPO Granting Copyright Registration to Suryast

20. The Respondent's acquisition of the *Suryast* Registration sets a precedent that The Canadian Intellectual Property Office accepts AI authorship of copyrighted works.

21. An AI system listed as an “author” in the *Suryast* Registration suggests that “author” under the *Copyright Act* includes non-human entities. The *Copyright Act* and Canadian case law establish the opposite.
22. The Respondent’s acquisition of the *Suryast* Registration has led to Canada gaining publicity as one of the only jurisdictions in the world recognizing copyright in works “authored” by an AI.
23. In automating its copyright registration process, CIPO is derogating from its obligations to administer copyright in a fair and balanced manner under the *Copyright Act*. CIPO grants copyright registrations instantaneously, without verification or review that a proposed registration meets the statutory criteria set out in sections 54 and 55 of the *Copyright Act*.
24. The consequence of this system is that content that does not merit copyright can, as here, easily obtain the benefits of registration. The benefits and protections outlined in the legislation will fall to subject matter that does not meet the statutory requirements for copyright. Actors such as the Respondent can then derive economic benefit from misconceived copyrights attached to their “works”.
25. Copyright registrants obtain certain benefits under the Act – such as litigation presumptions – and users and defendants are correspondingly burdened. Once a “work” is registered, the *Copyright Act* subsection 53(2) shifts certain presumptions such as subsistence and ownership. For example, in this very case, as a result of CIPO’s oversight failures, the burden rests on CIPPIC to prove the image *Suryast* lacks originality and that an AI program cannot be an author.

CIPPIC's Attempts to Correct the Registry

26. CIPPIC has brought to CIPO's attention concerns that CIPO has included in the *Suryast* Registration an ineligible object as author of the image. CIPO has refused to take steps to correct the Copyright Register. CIPO has continually encouraged CIPPIC to seek legal counsel and pursue this matter in court.
27. CIPPIC has also asked the Respondent to correct the Canadian Copyright Registry by cancelling or otherwise withdrawing the *Suryast* Registration. The Respondent has not replied to CIPPIC's requests to amend the Register.
28. CIPPIC has no other option but to bring an Application for rectification of the *Suryast* Registration under subsection 57(4) of the *Copyright Act*.

Legal Grounds for Rectification

(a) CIPPIC's Standing as an "Interested Person"

29. CIPPIC is an "interested person" under subsection 57(4) of the Act that has standing to bring this Application for two reasons:
 - a. the Respondent's *Suryast* Registration raises issues at the core of CIPPIC's mandate to advocate for the public interest on policy issues arising at the intersection of law and technology. This Application raises important matters of public interest: the fundamental questions AI poses for authorship, originality, and the public domain under copyright law. CIPPIC's genuine interest and expertise in these issues – balanced copyright, new technologies, and the public interest – lends CIPPIC standing as an "interested person" well-suited to bring this Application;

and

- b. additionally, and alternatively, CIPPIC has public interest standing to bring this Application. CIPPIC meets the requirements for public interest standing as established in Canadian jurisprudence. This Application raises a serious justiciable issue, CIPPIC has a real stake in the proceeding, and the proposed means of addressing the issues is a reasonable and effective means to bring the case to court. Further, the proposed proceeding is an economical use of judicial resources, and the issues are suitable for judicial determination in an adversarial context. Allowing this Application to go forward will uphold the principle of legality.

(b) This Court Should Order Rectification of the Register of Copyrights

30. CIPPIC raises two alternative grounds for rectification:

- a. the image lacks originality and so does not enjoy copyright at all; and
- b. alternatively, a non-human cannot be an author under the Act.

i. The image is unoriginal

31. The *Suryast* Registration should be expunged in its entirety pursuant to subsection 57(4)(b) of the Act because the image ought not to have been accepted for registration at all: the Respondent has obtained a copyright registration in connection with an image in which copyright cannot subsist because it lacks originality.

32. The Respondent did not contribute sufficient skill and judgment in generating the image *Suryast* to warrant subsistence of copyright. The Respondent generated the image through a purely mechanical exercise of data entry and algorithmic luck; its production is the result of no exercise of human skill or judgment.
33. The Respondent seeks to benefit from the presumptions and rights granted by a Canadian copyright registration in subsection 3(1), 53(1) and (2) of the *Copyright Act* without satisfying the requirements for copyright in Canada.

ii. An AI Cannot be an Author

34. In the alternative, if the *Suryast* Registration is not expunged entirely, it should be rectified pursuant to subsection 57(4)(c) of the Act to remove any identification of “RAGHAV AI Painting App” as an author.
35. An AI program is not a legal entity capable of being an author under Canadian copyright law. Canadian jurisprudence has uniformly interpreted the word “author” in the *Copyright Act* to refer only to a human being and natural person.
36. The image *Suryast* is not a work of joint authorship between the Respondent and RAGHAV AI Painting App. As an AI system, RAGHAV AI Painting App cannot exercise the common intent required for joint authorship.

THE APPLICANT RELIES ON:

37. The *Copyright Act*, R.S.C., 1985, c. C-42, as amended;
38. The *Federal Courts Act*, R.S.C., 1985, c. F-7 and *Federal Courts Rules*, SOR/98-106; and

39. Such further and other grounds as counsel may advise and this Honourable Court may accept.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

40. A copy of the *Suryast* Registration;

41. Affidavit of one or more appropriate persons; and

42. Such further and other materials as counsel may advise and this Honourable Court may accept.



July 8, 2024

**SAMUELSON-GLUSHKO CANADIAN
INTERNET POLICY AND PUBLIC
INTEREST CLINIC**

100 Thomas More Private
Suite 306, Brooks Building
Ottawa, Ontario K1N 6N5

David Fewer

Email: dfewer@uottawa.ca

Telephone: 1-613-562-5800 ext. 2558

Lawyer for the Applicant